

State Brownfields and Voluntary Response Programs:



*an Update
from the States*



Forward

“Cleaning up contamination is vitally important to the physical health of America’s communities, but putting clean land back into productive use brings with it a range of social and economic benefits that will strengthen those communities for years to come. State response programs with support from CERCLA 128(a) funding are able to oversee assessment and cleanup activities at the majority of brownfields properties across the country. These accomplishments are as varied, as they are widespread. This report captures these successes and showcases them in a user friendly format.”

*Mathy Stanislaus
Assistant Administrator for EPA’s
Office of Solid Waste and Emergency Response (OSWER)*

U.S. Environmental Protection Agency
Office of Solid Waste and Emergency Response
Office of Brownfields and Land Revitalization
Washington, D.C. 20460

EPA Brownfields Regions

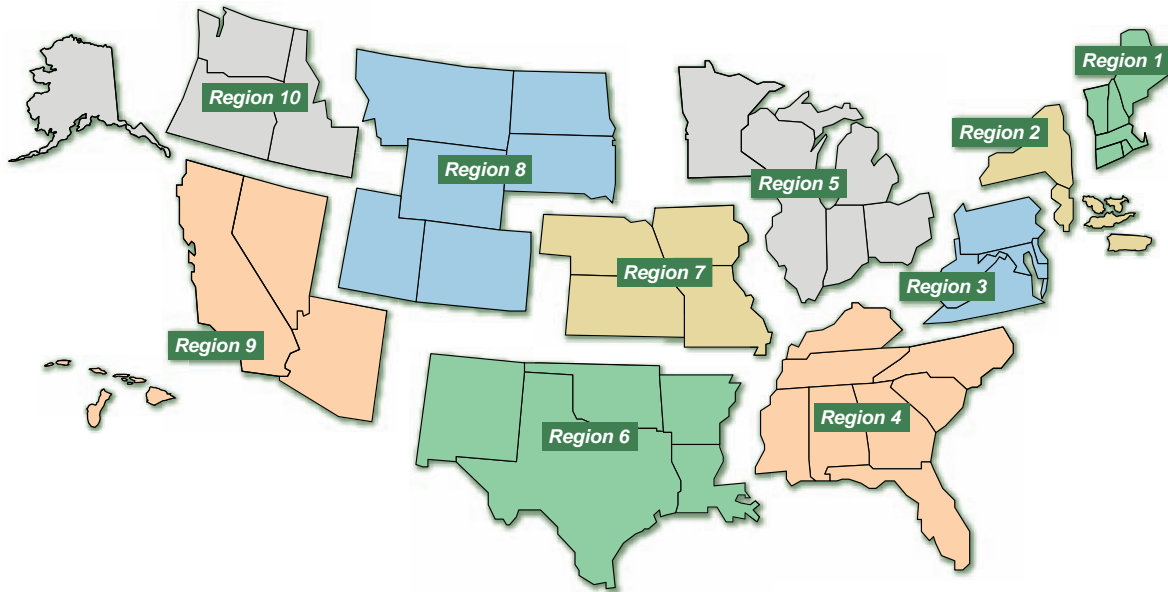


Table of Contents

Table of Contents	1	Region 3	34
Executive Summary	3	Delaware	34
What is on the Horizon	4	District of Columbia.....	37
Region 1	5	Maryland.....	39
Connecticut.....	5	Pennsylvania.....	42
Maine	10	Virginia	46
Massachusetts	12	West Virginia	48
New Hampshire	15	Region 4	51
Rhode Island.....	19	Alabama.....	51
Vermont.....	22	Florida.....	53
Region 2	25	Georgia	56
New Jersey	25	Kentucky	58
New York	28	Mississippi.....	62
Puerto Rico	32	North Carolina.....	65
Virgin Islands.....	33	South Carolina	68
		Tennessee.....	71

Region 5	73	Region 9	130
Illinois	73	American Samoa.....	130
Indiana	75	Arizona	132
Michigan.....	80	California.....	135
Minnesota	84	Commonwealth of the Northern Mariana Islands.....	140
Ohio	86	Guam	142
Wisconsin.....	89	Hawaii	144
Region 6	92	Nevada.....	146
Arkansas.....	92	Region 10	148
Louisiana.....	94	Alaska	148
New Mexico.....	97	Idaho	151
Oklahoma.....	99	Oregon.....	154
Texas.....	104	Washington	157
Region 7	108	Appendix A.....	161
Iowa	108		
Kansas	110		
Missouri	112		
Nebraska.....	115		
Region 8	117		
Colorado	117		
Montana.....	120		
North Dakota.....	122		
South Dakota	124		
Utah	126		
Wyoming	128		

State Brownfields and Voluntary Response Programs:

An Update from the States

The “State Brownfields and Voluntary Response Programs: An Update from the States” explores the evolving landscape of state environmental, financial, and technical programs designed to promote brownfields cleanup and reuse. The U.S. Environmental Protection Agency’s (EPA) goal for this analysis was to develop a concise, user-friendly synopsis of the programs and tools that are available through state programs. The information contained in this report was gathered from state response program contacts and state response program Web sites.

State programs continue to be at the forefront of brownfields cleanup and redevelopment, as both the public and private markets recognize the responsibilities and opportunities of state response programs in ensuring protective and sustainable cleanups. The increasing number of properties entering into state programs emphasizes the states’ growing role in brownfields cleanup. State programs are continuing to adapt to meet the changing needs of property owners and communities. Many different—but equally effective—approaches are available to meet the multiple challenges and common objectives of brownfields reuse. Several states recently passed legislative changes to establish new programs, while other states adopted new regulations to enhance their program and encourage cleanups.

Elements in the Analysis

This update looks at several components of state brownfields/response programs.

Program Description lays out the basics of each state’s voluntary response program and any other brownfields-related cleanup programs. It defines each state’s definition of “brownfields,” provides program titles, discusses liability relief provisions, and identifies program requirements.

Financial Elements provides an explanation of assessment and cleanup funding, tax incentives, and other forms of brownfields redevelopment support available under state programs, such as environmental insurance. Typically, the applicability of specific programs comes down to a state agency’s interpretation of which brownfields properties and activities are eligible for any particular assistance program. This update includes information on programs directly available through state voluntary response programs, as well as other incentive programs identified as being applicable to brownfields reuse efforts. The update includes information on funding sources, funding amounts, eligibility requirements, and a program’s focus on special types of properties, such as dry cleaners or petroleum properties.

Program Elements provides information on the technical elements of individual state programs. It includes information on applicable cleanup methods and standards, contaminants covered or excluded under state programs, requirements governing institutional controls, and state approaches to long-term stewardship. Administrative elements also are discussed, such as program costs, fees for service, and sources of funding for program staff and operations.

A major part of the update is the review of **Cleanup Activities**. To the extent that states provided the **necessary** data, the update contains information on the number of properties that entered and/or subsequently completed a state’s voluntary cleanup program, as well as data on program benefits, including economic impacts (e.g., jobs created; housing units developed; tax revenues added to the local economy; and businesses and investment value created).

The update also includes information on:

- Public participation requirements
- Programmatic statutory authorities
- Contact information for each state program



Future Direction of State Response Programs

Over the last several years, state brownfields programs continued to mature as programs are adapting to meet the evolving needs of property owners and communities. At the same time, it is clear that the overall goals of state response programs remained the same by:

- Bringing a greater level of certainty to the cleanup and redevelopment process
- Establishing finality for cleanups, with liability relief and no further action mechanisms
- Offering incentives to property volunteers to help level the economic playing field between brownfields and greenfields
- Ensuring that the long-term management of contaminated land is protective of human health and the environment

As this update demonstrates, states are putting many different approaches in place to meet these goals and address the diverse challenges of brownfields reuse.

A number of states amended their programs to fine-tune regulations or refine previously authorized processes. A few states modified their program benefits, putting new incentives in place—sometimes, at significant levels—to facilitate the cleanup and redevelopment process. Several states are considering the benefits of linking a broader range of community development efforts, such as training initiatives, to brownfields situations. Other states revised and streamlined their programs to make them more responsive and to ease participation requirements. Finally, an increasing number of states are working to document their voluntary response program progress and benefits.

This year's update points to several areas of activity to watch in the future: institutional controls financing, program staffing, financing, and sustainability.

Institutional Controls. Increasingly, states are allowing engineering and institutional controls to be incorporated into cleanup remedies and are promoting them as a way to reduce remediation costs and make brownfields redevelopment projects more economically viable. In the coming years, as states recognize the important role of long-term stewardship in promoting property cleanup and reuse, they will also need to address the challenges associated with effective long-term stewardship. These challenges include: how to best define workable conditions and constraints; how to ensure that ICs will be maintained; and how to monitor compliance with ICs over time. Ensuring that resources are committed for long-term monitoring and other property needs will become an important part of the overall state effort.

Program Staffing. As the opportunities available to public and private property owners and participants in voluntary cleanup programs become more apparent, and the role of the states in brownfields redevelopment efforts is more widely recognized, staffing resources may become overtaxed. This year, the level of brownfields reuse activity outpaced the capacity of the state staff assigned to administer many state response and voluntary programs. States will need to address these staffing issues as communities market more of their local properties to new users who want to enroll in and quickly complete voluntary cleanup program actions. Additionally, as the use of ICs increases, the need will also increase for state monitoring of properties where these controls are a critical part of the cleanup remedy.

Financing. Financing brownfields cleanup continues to be a barrier to brownfields reuse. More than half the states are working to address this issue by offering direct and indirect financing incentives. Direct financing tools include loans or grants, and indirect financing assistance includes tax abatements or credits, loan guarantees, and loss reserves. States will continue to create incentives to assist in the cleanup and reuse of brownfield properties.

Sustainability. In addition to focusing on a project's end use and economic development, more states are focusing on the sustainability or remedies and reuse alternatives. Many states are incorporating sustainability into cleanup and end use decisions and developing sustainability initiatives.



General Information

Contact: Graham J. Stevens
Brownfields Coordinator

Address: Connecticut Department of Environmental Protection (DEP)
79 Elm Street
Hartford, CT 06106-5127

Phone: 860 424 3705

Fax: 860 424 4057

Email: graham.stevens@ct.gov

Web site: <http://www.ct.gov/dep/remediation>

Program Description (VCP, brownfields, or related)

Brownfields definition: “Brownfield” means any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence or potential presence of pollution in the buildings, soil, or ground water that requires remediation before or in conjunction with the restoration, redevelopment, and reuse of the property. (Connecticut General Statute (CGS) 32-9kk)

Program titles: The Remediation Division in the Bureau of Water Protection and Land Reuse is organized into six geographic districts and staff from these districts administer the Brownfields and Voluntary Response Programs. The boundaries of the six geographic districts for remediation in Connecticut can be explored by the following link:
[CT DEP Remediation Districts](#)

Brownfields and Voluntary Response in Connecticut are conducted under several state remediation programs are managed by the Remediation Division. All [remediation programs](#) in Connecticut utilize the same remedial goals—the [Remediation Standard Regulations](#). As projects are entered into any of the Remediation Division programs, staff are assigned from that geographic district are assigned as project managers.

The state established a centralized Office of Brownfield Remediation and Development (OBRD) in the Department of Economic and Community Development in 2006 (Public Act 06-184), and OBRD was expanded in 2007 (Public Act 07-233) to be the primary office that manages and administers state brownfield funding. The primary regulatory programs used as the vehicle for brownfields remediation are the Property Transfer, Urban Sites Remedial Action, and Voluntary Remediation Programs

- Property Transfer Program - this program requires the disclosure of environmental conditions when certain real properties and/or businesses (“establishments”) are transferred. When an establishment is transferred, one of four Property Transfer Forms must be executed and a copy of the form must be filed with the department. When transferring an establishment where there has been a release of a hazardous waste or a hazardous substance, the party signing the Property Transfer Form certification agrees to investigate the parcel and remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment. [More Information](#)
- Urban Sites Remedial Action Program - DEP staff work closely with staff in the Office of Brownfield Remediation and Development to expedite the investigation and remediation of brownfield sites in this program. OBRD will suggest sites to DEP to enter into this program based on economic analysis and project review. DEP will then either provide expedited review and oversight, or DEP may request State Bond Funds to conduct the investigation and remediation of the site (when the responsible party is not known or unwilling to clean the property). Brownfield projects are entered into this program if OBRD identified the project as significant to the state’s economic development. State Bond Funds can only be spent on sites that are located in either a [Targeted Investment Community or in a Distressed Municipality](#). [More Information](#)
- Voluntary Remediation Programs - There are two voluntary remediation programs in Connecticut. Both programs are elective for property owners who wish to expedite the remediation of polluted property, thus enabling them the advantage of a remediated site should they ever decide to sell the property or expand on their site.
 - CGS Section 22a-133x was modified in 2009 by Public Act No. 09-235 and now can be used by any person.
 - In order to be eligible under CGS Section 22a-133y, real property which has been subject to a spill must be located in an area where the ground water is classified as GB or GC and the site must not be subject to any order, consent order or stipulated judgment issued by the Commissioner of the Department of Environmental Protection regarding such spill.
- Licensed Environmental Professional Program - In certain programs, DEP allows a Licensed Environmental Professional (LEP) to be responsible for the direct oversight of site investigation and remediation projects. The LEP program was established in 1995 pursuant to CGS §22a -133v. In

Connecticut

the Property Transfer and Voluntary 22a-133x Programs DEP or a LEP can have the oversight role. In Voluntary 22a-133y Program a LEP must maintain the oversight role. [More Information](#) and [Current LEP Roster](#)

- Other major [Remediation Programs](#) handled by staff in the Remediation Division are enforcement action projects (state enforcement for investigation and/or remediation), federal Superfund program, state Superfund program, Potable Water program, Underground Storage Tank (UST) Cleanup Account program, Significant Environmental Hazard program, Resource Conservation and Recovery Act (RCRA) Corrective Action (Connecticut has Primacy for this Program), and RCRA Closure program.

Liability Provisions

Legal authorities include strict, joint, several, and retroactive liability, orders for information and site access, subpoena authority, administrative and consent order authority, injunctive action and cost recovery authority. The preferred enforcement method is consent order, followed by administrative order or court action.

Civil penalties of \$25,000 per day are available under the hazardous waste program. Punitive damages (1½ times costs for negligent acts or two times costs for willful acts) are available in cost recovery actions.

Pursuant to CGS §22a-452a, any amounts paid by the state in cleanup costs shall be a lien against the property, and such liens take precedence over prior liens except in the case of residential property or property transferred pursuant to the state property transfer law. In these situations, the lien filed by the Commissioner does not take precedence over prior liens or previous transfers or encumbrances, respectively. The state is required to attempt cost recovery.

Limiting State Liability: Two types of Covenants Not To Sue (CNTS) (CGS §22a -133aa or CGS §22a -133bb) are available to prospective purchasers of contaminated property, current owners of contaminated property, or lending institutions, to provide relief from liability for additional remediation once a property has been remediated to current standards. Entities responsible for causing the contamination are not eligible for a CTNS pursuant to either CGS §22a -133aa or CGS §22a -133bb. Covenants Not To Sue pursuant to CGS §22a -133aa are at the Commissioner's discretion and require a fee in certain situations.

State law provides liability protection for "innocent landowners" as defined by [CGS §22a -452e](#).

A lender liability exemption is also provided by [CGS §22a -452f](#).

Limiting Third-Party Liability: Third-party liability is limited for non-responsible parties that own a contaminated property and investigate and remediate such properties pursuant to [CGS §22a -133ee](#).

Abandoned Brownfields Cleanup Program: This program was created by [Public Act No. 09-235](#) and provides off-site liability relief. Eligible properties must be brownfields that have been significantly underused since October 1, 1999 and their redevelopment must have a regional or municipal economic development benefit. Eligible applicants must not have created the pollution or are otherwise obligated by law to clean up the property, and the person responsible for such pollution is indeterminable, no longer in existence, or unable to perform the cleanup. If designated to the program, the eligible applicant must enter the Voluntary Cleanup Program (CGS 22a-133x) or the Property Transfer Program (CGS 22a-134); investigate the property; and eliminate further off-site emanation of pollution. However, such person will not be responsible for investigating or remediating any pollution that has historically emanated from the property.

Financial Incentives

- Urban Sites Remedial Action Program was originally capitalized with \$40,500,000 in state bond-funds for assessment/remediation of sites in "Distressed Municipalities" and "Targeted Investment Communities;" DEP can clean up and the state can acquire a site if it chooses, recovering costs from future users.

Two Types of Projects (Type I projects: DEP expedited review and approval; Type II: State Bond funded investigation and remediation).

- Type I - The owner or redeveloper of the property must be willing and able to conduct investigations and remediate the site. The site can be located anywhere statewide.
- Type II - Only sites located in Distressed Municipalities and Targeted Investment Communities are eligible for DEP assessment and/or remediation using State Bond Funds. State Urban Site Bond Funds can be used only when an owner cannot be identified, or is unwilling or unable to investigate and/or remediate the site.
- Special Contaminated Property Remediation and Insurance Fund (SCPRIF) provides low-interest loans to municipalities and private entities for Phase II and III investigations and demolition costs.
- Brownfield Pilot Program created by Public Act 07-233 will fund \$4,500,000 per year for 2008 and 2009 for brownfields investigation, remediation, and redevelopment. This grant program, administered by OBRD, will be awarded competitively to five municipalities that represent different populations. Recipients of this grant will be municipalities and economic development organizations. Projects utilizing the grant funds will be exempt from the Property Transfer program, if they clean up the property in accordance with the Remediation Standard Regulations.
- Brownfields Grants and Loans Program created by Public Act 07-233 provides OBRD with the ability to provide loans to private brownfields redevelopers and grants to municipal or economic development organizations. The funding for this program is \$2,500,000 per year for 2008 and 2009.

Connecticut

REGION 1

- Dry Cleaner Establishment Remediation Fund (managed by DECD) for financing soil and ground water remediation and prevention, up to \$50,000 per year, up to \$150,000 over three years.
- Underground Storage Tank Petroleum Cleanup Account (managed by DEP, Remediation Division) provides reimbursement for up to \$1,000,000, per release, for taking corrective actions and for third party liability costs. Notwithstanding such financial coverage, the responsible party for a release must bear all corrective action and third party liability costs less than ten thousand dollars.
- Connecticut Brownfields Redevelopment Authority (CBRA), a wholly owned subsidiary of the Connecticut Development Authority (CDA), provides the following direct and indirect financial assistance for brownfields remediation:
 - Direct Loans - CBRA will administer a direct loan for the remediation of a project.
 - Loan Guarantees (made in concert with qualifying financial institutions) - Guarantees may cover up to 30% of the loan amount made through a qualified lending institution.
 - Tax Increment Financing (TIF) - Up-front cash available to investors, developers, and business owners who undertake remediation projects. A financial tool using future increases in tax to finance the current improvements. TIF creates funding for projects that may otherwise be unaffordable to municipalities. Municipal authorities and CBRA collaboratively agree to the allocation of incremental tax revenues.
 - Eligibility - Any brownfield in any municipality in Connecticut is eligible for CBRA assistance.
- The Potable Water Grant Fund is used for grants to municipalities to provide long-term solutions for potable water contamination (typically through the extension of public water or the maintenance and monitoring of treatment systems).
- The Emergency Spill Response Fund (ESRF) was transferred into an identified account in the state general fund in 1995. The ESRF is administered in, and primarily used by, the Emergency Response and Spill Prevention Division of the Bureau of Materials Management and Compliance Assurance. The ESRF is funded by appropriations and cost recovery, and can be used for site investigation, studies and design, operations and maintenance, emergency response, removals, remedial actions, and natural resource restoration.
- In 1996, the state enacted legislation creating SCPRIF. In February 1998, DEP was awarded \$1,000,000 for establishment of the fund. The fund is used by DEP and DECD for loans to municipalities, individuals, or firms for environmental site assessments and site preparation of contaminated properties.

[More Information](#)

Availability of Funds

- The state Superfund and the Urban Sites Remedial Action Fund are the two funds that are generally used by DEP for investigation and remediation assistance.
- State Superfund - The fund monies may be used for site investigation, studies and design, removals, remedial actions, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, operations and maintenance, emergency response, victim compensation, grants to local governments, program administration, and natural resource restoration. In order to expend funds from the state Superfund, DEP must determine that a threat is unacceptable, and DEP must be unable to determine the responsible party (RP), or the RP must be in noncompliance with or appealing an order.
- The Urban Sites Remedial Action Fund (USRAF) - The USRAF is used primarily for site investigation, studies and design, operations and maintenance, removals, and remedial actions.
- **Tax incentives**
The Department of Economic and Community Development administers the following tax incentives:
 - Urban and Industrial Site Investment Tax Credit Program - Authorized by CGS §32-9t allows an investor, in a redevelopment project that is "industrial," in a Distressed Municipality, in an Enterprise Zone, or in a municipality with a population in excess of 100,000 people. Industrial sites must be subject to a spill or have state obligations to remediate under the Property Transfer Program. The tax credit is for corporate taxes and is applied over 10 years and up to \$100 million per project could be claimed with a \$500 million cap on each project. The investment will return the property to a viable business condition that will add significant new economic activity, increase employment, and generate additional tax revenue to the state and the municipality in which the property is located.
 - Enterprise Zone Program - Incentives provide tax abatement for five years and 80% of local property taxes on real estate improvements; 10 years/50% tax credit; and seven-year minimum deferral of increased taxes resulting from property value rise after remediation has been completed.
 - Housing and Historic Tax Credit Program - Various incentives are available for housing and historic tax credits are available through the federal government, Connecticut Housing Finance Authority, and DECD.

Connecticut

Other Incentives

- Environmental Insurance - State assistance to redevelopers to obtain financial assurance is available through DECD's Manufactured Assistance Act program, the SCPRIF program, the new Brownfield Pilot program, and the new Brownfield Grants and Loans program.
- CBRA - Offers redevelopment grants, loan guarantee program (up to 30% of the loan guaranteed to the lender in case of default), assessment grants, financing, and the one-stop center for programs that encourage and stimulate the development of Connecticut's brownfield sites.

Program Elements

Technical Elements

Methods/standards/controls: Remediation standard regulations (Regulations of Connecticut State Agencies [RCSA] 22a -133k -1 through k3) were adopted in January 1996. These regulations provide criteria for cleanup of soil, soil vapor, and ground water; permit use of background concentrations; allow site-specific conditions; and provide for the use of institutional controls that change cleanup requirements but ensure for the long-term stewardship of the site. Risk-Based Corrective Action (RBCA) process was used as a guide in developing the criteria.

Contaminants covered/excluded: These regulations require remediation of all substances that are part of a release (including petroleum, asbestos, lead from paint, and polychlorinated biphenyls (PCBs)). If numeric criteria are not provided, criteria must be proposed and submitted to DEP and the Department of Public Health (DPH) for review and approval. The Commissioner can require additional remediation.

Use of long-term stewardship and institutional controls (IC):

- **IC Tracking:** Environmental land use restrictions (as prescribed in the remediation standard regulations) can only be implemented with the land owner's consent, require the Commissioner's approval, are recorded on the land records, and are enforceable on future property owners. DEP's Web site lists all [Contaminated or Potentially Contaminated Sites](#) and identifies if a site that has been completed in the Brownfields and Voluntary Response Programs has an ELUR and, if so, what type.
- **IC Oversight:** DEP has an environmental land use restriction (ELUR) coordinator who reviews all ELURs for consistency, and conducts inspections of ELURs on a targeted basis.
- **IC Monitoring:** DEP's ELUR coordinator inspected properties with ELURs on an as-needed basis. DEP is currently considering options for long-term stewardship for all sites with institutional and engineering controls. In addition, DEP will soon have a stand-alone list on DEP's Web site that lists all ELURs.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service:

There are fees for:

- Participation in the Voluntary Remediation Program pursuant to CGS §22a -133x
- A Covenant Not To Sue pursuant to CGS §22a -133aa (fees can be paid over time or waived in many instances per Public Act No. 07-233, section 12)
- Property transfer filings

There are no fees for:

- Participation in the Voluntary Remediation Program pursuant to CGS §22a -133y
- A Covenant Not To Sue pursuant to CGS §22a -133bb

Funding source for administrative costs and staff:

Funds for staff and administration are from state funds (approximately 65%) and federal grants (approximately 35%).

- DEP's, Bureau of Water Management and Land Reuse, Remediation Division includes 42 full-time equivalent (FTE) staff associated with remedial activities, most of who work on non-National Priorities List (NPL) site cleanups. The Attorney General's office provides legal support with two to three attorneys spending some portion of their time on state Superfund and enforcement of remedial action orders.

Cleanup Activities

Sites currently in Brownfields and Voluntary Response Programs:

- More than 93 sites are currently in the Urban Sites Remedial Action Program (private and state funded).
- 426 sites are currently in the Voluntary Remediation Programs.
 - 351 in CGS §22a-133x
 - 75 in CGS §22a-133y
- 2,924 sites (Form III filings) are currently in the Property Transfer Program.
- 185 sites (Form IV filings) are currently in the Property Transfer Program.
- More than 3,500 sites in Brownfields and Voluntary Response Programs.

Sites Completed under the Brownfields and Voluntary Response Programs:

- More than 30 sites have been completed under the Urban Sites Remedial Action Program (private and state funded).
- 34 sites have been completed under the Voluntary Remediation Programs.
 - 24 completed under CGS §22a-133x
 - 10 completed under CGS §22a-133y

Connecticut

REGION 1

- 221 sites (Form III filings) have been completed under the Property Transfer Program.
- 42 sites (Form IV filings) have been completed under the Property Transfer Program.

Benefits (incentives to participate, covenants not to sue, etc.):

- A full economic impact analysis of the state's Brownfield and Voluntary Response Programs has not been conducted.
- DEP has observed a notable increase in use of brownfields for parks, open space, schools, day-care facilities, and recreational uses since the legislature increased DECD's authority to address environmental liability concerns.
- Approximately 40 Covenants Not To Sue (CGS §22a-133aa) have been issued by the Commissioner to both property owners and prospective purchasers. Every site completed under the Brownfields and Voluntary Response Programs is afforded the protections of a Covenant Not To Sue pursuant to CGS §22a-133bb.
- Since the program's inception in 1992, more than \$24,000,000 of the \$30,500,000 provided has been allocated to investigate and remediate contaminated urban sites. It is estimated that the 11 state-funded sites will create 2,500 construction jobs and a minimum of 5,000 permanent jobs in manufacturing, service, retail, research, and entertainment. In addition, a minimum of \$6,000,000 in annual municipal tax revenue will be generated. Additional jobs and associated benefits will be gained through responsible party redevelopment of urban sites with the cooperation of DEP.

Public Participation

Public participation requirements (notice, comment periods, etc.): The state's voluntary cleanup law and the remediation standard regulations require public notice of certain activities, and an opportunity for comment, as well as public hearings if there is substantial public interest in the remediation or other activity. The regulations also provide for public notice and an opportunity for a public hearing when the Commissioner is asked to approve a request by a property owner for an engineered control, such as a cap, to address polluted soil. Public notice of proposed environmental land use restrictions (with opportunity to comment) is also required. For state-funded projects, DEP holds public meetings at various stages of the investigation and cleanup. DEP also keeps local officials informed of the status of state-funded projects.

Public participation activities (hearing, meetings, etc.): See previous section.

Maine

General Information

Contact: Nick Hodgkins
Jean Firth

Address: Maine Department of Environmental Protection (DEP)
17 State House Station
Augusta, ME 04333-0017

Phone: Nick Hodgkins: 207 287 4854
Jean Firth: 207 287 7716

Fax: 207 287 7826

Email: nick.hodgkins@maine.gov
jean.m.firth@maine.gov

Web site: <http://www.maine.gov/dep/rwm/brownfields/index.htm>
<http://www.maine.gov/dep/rwm/vrap/index.htm>

Program Description (VCP, brownfields, or related)

Brownfields definition: No information available

Program titles: Voluntary Response Action Program (VRAP)

Liability relief provisions:

- Offers Certificate of Completion (COC) for all pollutants identified in site assessment and cleanup to the program's satisfaction.
- Legal authorities include: strict, joint and several, and retroactive liability; orders for information; site access and remediation orders; administrative order authority; cost recovery; liens and super liens; and punitive damages of treble the state's costs. The Commissioner must designate a site for a consent decree. Penalty authority is derived from the hazardous waste statute. DEP also has a property forfeiture provision.

Financial incentives (grants, loans, tax provisions, etc.):

- Targeted Brownfields Site Assessment grants (contractor services) to municipalities for site assessment of tax delinquent properties.

Legislative or program site eligibility requirements:

- Responsible parties at Resource Conservation and Recovery Act (RCRA) sites are not eligible.
- Responsible parties must conduct full cleanups of all identified contamination; non-responsible parties ((RP) buyers, etc.) may receive protections for partial cleanups.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Federal Section 128(a) Brownfields grant funding (~\$1.2M)
 - State Uncontrolled Sites Fund for staff time. Voluntary Cleanup Program (VCP) has the authority to seek recovery of all costs paid out of this fund.

Tax incentives (abatements, credits, etc.): None

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The state's voluntary program is an alternative to the state's regular cleanup program. Some monies are dedicated to fund the state's participation; participants pay a \$500 application fee and are charged for time spent by the state. Site owners are able to get full or partial liability releases depending on the cleanup work carried out at the site. Incentives for participation include getting sites back into economic use and getting a certificate from the state indicating that cleanup was completed to the state's satisfaction. An inter-agency team is identifying potential resources to promote brownfields redevelopment.

Program Elements

Technical Elements

Methods/standards/controls: New draft cleanup guidelines are currently available for public review and comment and consider four separate exposure scenarios for soil contact: residential, outdoor commercial worker, construction/excavation worker, and recreational/park user. Alternatively, a site-specific goal may be established using the state's risk-assessment guidance document.

Contaminants covered/excluded: All hazardous substances/wastes and petroleum.

Use of long-term stewardship and institutional controls

(IC): Institutional controls are part of most certifications at VRAP sites. All institutional controls are completed and recorded at the registry of deeds pursuant to the states' Uniform Environmental Covenants Act (UECA).

- **IC Tracking:** VRAP receives copies of the recorded UECA's.
- **IC Oversight:** The state has no official institutional control oversight.
- **IC Monitoring:** VRAP audits a small number of institutional controls on an annual basis.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides information regarding contaminated sites in the state.

<http://www.maine.gov/dep/rwm/data/remdescriptanddata.htm>

Maine

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No, but the state has met the “Four Elements” and “Public Record” requirements.

Costs to enter program or fees for service: \$500 application fee and reimbursement of all staff costs.

Funding source for administrative costs and staff:

See “Financial Elements” above.

Cleanup Activities

Sites currently in VCP: 71 sites are underway.

Sites completed under VCP:

- 524 sites completed investigation and remedial action as of August 1, 2009.
- Since the VRAP’s inception in 1993, 638 sites have applied to the program, with final VRAP certification documents being issued at 524 sites.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Economic impacts are not formally tracked, but the state documented specific sites, such as the Bangor Gas Works site, which increased state tax revenues by \$1,300,000 annually. A number of remediated sites are now parks, ball fields, and at least two marinas.

Public Participation

Public participation requirements (notice, comment periods, etc.): There is a guidance document, the “Voluntary Response Action Program Public Communication Decision Matrix,” that went into effect on January 1, 2008, that directs public communication at VRAP/brownfields sites.

Public participation activities (hearing, meetings, etc.): Hearings and/or meetings are viable methods in the matrix.

Statutory Authorities

The Uncontrolled Hazardous Substance Sites Act, Maine Rev. Stat., Title 38, §§1361 through 1371 (1983, as amended 1985, 1987, and 1990), establishes the Uncontrolled Sites Fund and authorizes DEP to clean up uncontrolled hazardous substances sites. The law provides for: enforcement; strict, joint, and several liability; cost recovery; and natural resources damages assessment and recovery. Maine Rev. Stat., Title 38, §§343–E (1993), creates a program for voluntary cleanup of hazardous waste sites.

Massachusetts

General Information

Contact: Catherine Finneran
MassDEP Brownfields Coordinator

Andrew Loew
MassDEP Assistant Brownfields Coordinator

Address: Department of Environmental Protection
(MassDEP)
Bureau of Waste Site Cleanup
One Winter Street, 7th Floor
Boston, MA 02108

Phone: 617 556 1138/617 556 1148

Fax: 617 292 5530

Email: catherine.finneran@state.ma.us/
andrew.loew@state.ma.us

Web site: <http://www.mass.gov/dep/cleanup/brownfie.htm>

Program Description (VCP, brownfields, or related)

Brownfields definition: No official definition has been adopted in Massachusetts.

Program titles:

- Privatized, Voluntary Cleanup Program (1993)
- Massachusetts Brownfields Act (1998)

Liability relief provisions:

- Under state cleanup laws (Massachusetts General Laws, Chapter 21E) there is strict, joint, and several liability for current and past owners/operators of contaminated property.
- The Massachusetts Brownfields Act amended Chapter 21E to provide liability protection for several types of parties involved in brownfields projects:
 - **Eligible Persons:** Owners/operators who did not cause or contribute to contamination at the site who meet other statutory requirements receive liability protection upon the completion of a cleanup from Commonwealth claims for response action costs and third party claims for property damage.
 - **Downgradient Property Owners:** Exempts certain owners and operators from liability for contamination that has migrated onto their property provided statutory requirements are met. Owners and operators are eligible if they have had no connection with the property that contains the source of the contamination and they did not cause or contribute to the contamination.

- **Tenants:** Exempts certain tenants from operator liability provided certain statutory requirements are met. Those include the requirement that their tenancy must have begun after the release was reported to MassDEP, and they did not cause or contribute to the contamination.
- **Redevelopment Authorities, Redevelopment Agencies, and Community Development Corporations (CDCs):** Exempts redevelopment agencies and authorities, CDCs, and Economic Development and Industrial Corporations (EDICs) provided statutory requirements are met. Those include the requirements that they: did not cause or contribute to the contamination; respond to imminent hazards; and act diligently to divest themselves of the property.
- **Secured Lenders:** Exempts secured lenders who take ownership of contaminated property through foreclosure provided they meet statutory requirements, including acting diligently to divest of the property.
- **The Brownfields Act created the Brownfields Covenant Not to Sue (CNTS) Program** administered by the Massachusetts Office of the Attorney General to provide liability protection for projects not covered by liability protection offered directly under the statute. For example, the CNTS can be offered to a causally responsible party, someone who is not eligible for liability relief under the statute. Protection through the CNTS is also available to an eligible person who can reach only a temporary solution. Statutory protection is provided only when a permanent solution is reached. Liability relief is offered to applicants as an incentive towards, and in return for, cleanup, redevelopment, and settlement of cost recovery claims at the site.

Financial incentives (grants, loans, tax provisions, etc.):

- The state offers assessment and cleanup loans for brownfields projects located in economically distressed areas through the Brownfields Redevelopment Fund administered by MassDevelopment. Several tax incentive programs are available.
- MassDEP dedicates a portion of its federal EPA Brownfields funding to implement site assessment and cleanup projects to facilitate property turnover and redevelopment.
- The state offers a tax credit that covers up to 50% of assessment and cleanup costs at the completion of the cleanup. If an Activity and Use Limitation is used, only a 25% credit is available.

Legislative or program site eligibility requirements:

- Permanent cleanup solutions must eliminate significant risk of harm to health, safety, public welfare, and the environment. Where remedial action is taken, cleanup to background conditions is required when feasible. Temporary solutions are required if a permanent solution is infeasible.

Massachusetts

- Activity and Use Limitations are required if the remediation levels are based on anything less than the most sensitive use (i.e., residential). These Use Limitations are implemented through a deed notice or deed restriction as authorized by statute and specified in regulation.
- Eligibility requirements for incentive programs created by the Brownfields Act differ, depending on the program.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- The Waste Site Cleanup Program is funded by the state general fund with support from federal grant programs.
- Bonds fund state response actions. Bond funds may be used for site investigation, studies and design, removals, emergency response, remedial actions, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, operations and maintenance, and grants to citizen groups and local governments for technical assistance. Since 1983, MassDEP spent approximately \$202,000,000. As of July 2009, a balance of approximately \$13,269,000 remained in the bond fund. Approximately \$7,223,000 was expended from the bond fund during FY09, including \$4,155,000 for non-National Priorities List (NPL) sites and \$3,069,000 spent on NPL sites.
- Brownfields and Related Economic Development Programs – The Brownfields Redevelopment Fund (BRF) Program provides interest-free site assessment financing of up to \$100,000. The borrower or project sponsor must be an “eligible person,” as defined by statute, with site control or evidence of the right to enter the site for purposes of conducting environmental testing. The BRF program also offers low-interest financing of up to \$500,000 for cleanup. Remediation loans are secured by a mortgage (or other substantial collateral), and the borrower must be the owner of the site. Terms are flexible and determined on a case-by-case basis.
- Approximately 10% of the state’s federal brownfields grant funding is dedicated to site-specific assessment and cleanup projects as an incentive to redevelopment. As of July 2009, the state initiated or completed 21 site assessments and seven site cleanups using such funding.

Tax incentives (abatements, credits, etc.):

- Brownfields Tax Credit for remediation—25% (with reuse restrictions) or 50% (without reuse restrictions), for eligible persons who complete projects in Economically Distressed Areas (EDAs).
- Municipal Tax Abatement—Municipalities can negotiate back taxes on contaminated sites in exchange for commitment by a new owner to clean and restore site to tax rolls.

- Economic Development Incentive Program (EDIP)—Tax increment financing, abandoned building tax deduction, and investment tax credit for revenue generating projects located in Economic Target Areas (ETAs).

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

Brownfields Redevelopment Access to Capital (BRAC)—State subsidized, volume discounted environmental insurance provided through a private insurer and administered by MassBusiness. Pollution Legal Liability and Cleanup Cost Cap coverage is available. The state subsidizes premiums on policies up to 50%.

Program Elements

Technical Elements

Methods/standards/controls:

- A risk-based regulatory program is in place; the regulations are set forth in the Massachusetts Contingency Plan (310 CMR 40.000).
- Reportable Concentrations in Soil and Groundwater and Reportable Quantities establish notifiable conditions. Required notification to MassDEP initiates mandatory site assessment and cleanup (where necessary).
- The Massachusetts Contingency Plan provides three methods for establishing cleanup standards at disposal sites. The first method relies on numeric cleanup standards for 120 chemicals in three ground water categories and three soil categories. The second method allows modification of the Method 1 numeric standards based on site-specific fate and transport information. The third method establishes cleanup goals based on site-specific conditions and a quantitative cumulative site risk assessment. For sites where a quantitative risk assessment is used to determine cleanup standards, any applicable or suitably analogous Massachusetts health and environmental standards must be met, and cumulative receptor risk limits must be achieved. The cancer risk limit is a cumulative excess lifetime cancer risk of 10⁻⁵. The non-carcinogen risk limit is expressed as a Hazard Index of 1.

Contaminants covered/excluded: Any oil or hazardous material (OHM) released to the environment is covered, including common contaminants such as petroleum, asbestos (in soil), volatile organic compounds (VOCs), semi-VOCs, metals, PAHs and polychlorinated biphenyls (PCBs), perchlorate, RDX, and HMX. Certain conditions are excluded by statute, including lead paint at the point of application and pesticides that were properly applied.

Massachusetts

Use of long-term stewardship and institutional controls (IC):

- Activity and Use Limitations (deed notices/restrictions) are used.
- Activity and Use Limitations are filed at county land record offices (Registry of Deeds).
 - **IC Tracking:** Activity and Use Limitations are tracked through publicly available databases, as well as GIS and KML/KMZ files.
 - **IC Oversight:** The state has a Long-Term Stewardship goal of conducting periodic follow-up inspections.
 - **IC Monitoring:** There is a state legislative mandate to audit all sites with Activity and Use Limitations. An unfavorable audit may re-open cleanup.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.mass.gov/dep/cleanup/sites/siteactu.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service:

Annual Compliance Fees are assessed each year for each site until a site is permanently remediated. In addition, permit fees apply to some waste site cleanup submittals.

Funding source for administrative costs and staff:

Waste Site Cleanup Program: MassDEP's Waste Site Cleanup Program has a total of 186 full-time equivalent (FTE) staff. The Bureau of Waste Site Cleanup is the program lead. The Bureaus of Waste Prevention and Resource Protection also have staff dedicated to the program. In addition, 10 FTE attorneys from MassDEP's Office of General Counsel and several attorneys in the Commonwealth's Attorney General's office provide enforcement support. Scientists in MassDEP's Office of Research and Standards provide risk assessment support at specific sites and in regulation and policy development. There are two state wide brownfield coordinators in MassDEP's Boston Office, and technical brownfield points-of-contact in each MassDEP regional office.

Cleanup Activities

Sites currently in VCP: As of July 2009, 38,876 release notifications have been made to MassDEP, with about 3,800 still active. Approximately 1,500 new releases enter the program each year.

Sites completed under VCP: From a universe of 38,876 releases that have been reported to MassDEP, 33,455 releases have been closed out. Beginning in 2002, the number of cleanups per year has surpassed the new notifications.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Liability protection is available under Chapter 21E and through the Brownfields CNTS Program.

Public participation requirements (notice, comment periods, etc.): The statute and regulations require public notice of all classifications of disposal sites and applications for Tier I permits for response actions. When citizens petition for community involvement in response actions, a public involvement plan must be prepared. Local officials are informed of key site activities throughout the cleanup process. The person conducting the response action is required to implement specific public involvement activities, and to provide notice to affected parties, owners of property within site boundaries, and owners of properties where sampling is conducted. The CNTS program requires notice of third parties as part of the covenant negotiation process. The BRF program requires community support letters for all applications.

Public participation activities (hearings, meetings, etc.): See above

Statutory Authorities

- The Massachusetts Oil and Hazardous Material Release Prevention and Response Act, MGL Chapter 21E: authorizes DEP to ensure the cleanup of sites contaminated by oil or hazardous material. Law provides for: enforcement; strict, joint, and several liability; cost recovery; public participation; natural resources damages assessment and recovery; and voluntary cleanups.
- The Massachusetts Brownfields Act MGL Chapter 206 (1998) authorizes several agencies at the state level to administer financial and liability programs created through this program.

General Information

Contact: H. Keith DuBois

Address: New Hampshire Department of Environmental Services (DES)
P.O. Box 95
Concord, NH 03301-0095

Phone: 603 271 2987

Fax: 603 271 2181

Email: Keith.DuBois@des.state.nh.us

Web site: <http://des.nh.gov/organization/divisions/waste/hwrb/sss/brownfields/index.htm>

Program Description (VCP, brownfields, or related)

Brownfield definition: New Hampshire defines brownfields in statute to be “properties which have been environmentally contaminated, subject to limitations of RSA 147–F:4, II. These limitations include requiring that the property be in compliance with any corrective actions or compliance orders and the property can not be eligible for cost reimbursement from the oil discharge and disposal cleanup fund, the fuel oil discharge fund or the motor oil discharge cleanup fund unless it receives substantially less than full reimbursement from these funds.” In addition, the state uses EPA’s definition as its working definition for broader brownfields redevelopment efforts (including those outside the Voluntary Cleanup Program (VCP)).

Program titles: Brownfields Covenant Program (1996)

Liability relief provisions:

- Program offers No Further Action (NFA) letter, Certificate of Completion (COC), and Covenant Not to Sue (CNTS).
- State law provides for strict, joint, and several liability. The state is authorized to issue administrative orders, including orders for information, site access, and site cleanup. The state also has subpoena and consent order authorities. New Hampshire may take injunctive action to induce a generator to clean up a site, may impose criminal penalties, and may bring an action to recover costs. New Hampshire has a first priority lien on: 1) real property (other than residential property) where hazardous waste or hazardous material is located; 2) the business revenues generated from the facility on the real property where the hazardous waste or hazardous material is located; and 3) all personal property located at this facility. A lien without priority, effective as of the date and time of recording and filing, can be established against all other property.

Financial incentives (grants, loans, tax provisions, etc.):

- Municipally-owned sites are eligible for state clean water revolving fund loans (as of October 1, 1999).
- EPA-capitalized Brownfield Cleanup Revolving Loan Fund (RLF) provides low-interest loans and some direct financial assistance to brownfields cleanup. Eight loans have been made. Sites statewide are eligible. Loan amounts are typically between \$50,000 to \$500,000, but any amount can be requested and will be considered. Interest rates and terms are negotiable. Interest rate for loans to date is 3%. Loans for environmental remediation may have terms of up to 10 years, but preference is given to shorter term or bridge loans.
- Site investigation and remedial action planning services available to municipalities and nonprofits through DES Brownfields Program (with EPA grant money and DES Cost Recovery Funds used to pay state environmental consulting contractors).
- DES established a Cleanup Grant Program under its RLF. The program allows DES to issue cleanup sub-grants up to a maximum of 40% DES’ RLF grant. At present, a total of \$400,000 was awarded for grants to clean up petroleum sites and a total of \$200,000 was awarded for grants to clean up hazardous waste/hazardous building materials contaminated sites. No site can receive more than \$200,000 in cleanup grants. DES does not anticipate awarding additional cleanup grants at this time. However, additional grant competitions will be announced when funding permits.
- DES cost recovers for staff time associated with the management of contaminated sites. DES has an agreement with EPA which allows DES to use cost recovery income to fund targeted assessments and cleanups at brownfields sites.

Legislative or program site eligibility requirements:

- Cleanup levels must meet or exceed any federal standards. Sites must achieve existing federal standards for ground water and surface water. The state developed a Risk Characterization and Management Policy for soils, which provides for a three-tiered approach to selecting cleanup standards. The first two tiers incorporate established values, while the third tier involves site-specific risk assessment. The state uses risk levels of 10-6 (individual) or 10-5 (cumulative) for carcinogens and a Hazard Index of 1. Where land use assumptions are a basis for establishing cleanup standards, the state may require that “Activity and Use Restrictions” (AUR) be recorded on the deed. In addition, NHRSA Chapter 485 authorizes the state to designate Ground Water Management Zones as a component

New Hampshire

of ground water remediation, and the law requires that Ground Water Management Zones be recorded in the registry of deeds.

- New Hampshire enacted legislation creating a Brownfields Covenant Program in July 1996. Any property contaminated with hazardous waste hazardous materials, or oil is eligible, except sites that are being cleaned up through one of the state's petroleum reimbursement funds and sites that are under an environmental or corrective order (unless participation in the program will bring about compliance). A CNTS which protects against liability under state law, may be issued to participants other than those who caused or contributed to the contamination. Cleanup is underway or completed at 27 sites participating in the Brownfields Covenant Program.
- New Hampshire law provides general authority for voluntary cleanups. The state considers voluntary cleanups to be an integral part of its program and essentially all non-National Priorities List (NPL) site cleanups to be voluntary cleanups.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- The Waste Management Division of DES administers the Hazardous Waste Cleanup Fund (HWCF). The Division's Hazardous Waste Remediation Bureau is primarily responsible for work on federal Superfund and all non-Superfund state sites.
- The HWCF is derived primarily from quarterly fees paid by generators of hazardous waste, recovered costs, fines, and penalties. An average of \$1,400,000 is collected each fiscal year. The HWCF can be used for site investigation, operations and maintenance, studies and design, removals, emergency response, remedial action, program administration, and grants to local governments. State law requires that the governor certify that circumstances require use of the fund. NHRSA Chapter 147-B provides for issuing bonds, to be paid from the HWCF, to fund remedial investigation and cleanup. A separate capital bond is appropriated for Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match for each fiscal year.
- DES established a Cleanup Grant Program under its RLF. The program allows DES to issue cleanup sub-grants up to a maximum of 40% of DES' RLF grant. At present, a total of \$400,000 was awarded for grants to clean up petroleum sites and a total of \$200,000 was awarded for grants to clean up hazardous waste/hazardous building materials contaminated sites. No site can receive more than \$200,000 in cleanup grants. DES does not anticipated

awarding cleanup grants in 2009 or 2010 unless additional funding becomes available.

- DES cost recovers for staff time associated with the management of contaminated sites. DES has an agreement with EPA which allows DES to use cost recovery income to fund targeted assessments and cleanups at Brownfields Sites.

Tax incentives (abatements, credits, etc.):

- "Qualified holder" provisions of hazardous waste and petroleum statutes provide protection to lenders and municipalities (for tax deeding).
- Brownfields sites are exempt from state hazardous waste generator fees.
- Municipalities can abate taxes at brownfields sites.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Not applicable to New Hampshire.

Program Elements

Technical Elements

Methods/standards/controls: Risk characterization and management policy includes a three-tiered risk-based approach. Contaminant-specific generic soil and ground water cleanup standards are provided in table form; alternatives can be developed based upon site-specific information.

Contaminants covered/excluded: Petroleum, asbestos, lead paint, polychlorinated biphenyls (PCBs) all OK.

Use of long-term stewardship and institutional controls (IC):

- AURs are used when the risk characterization depends upon the restriction of site activities and uses to achieve or maintain protection of human health and/or environment. After completion of active remedial measures, a ground water management permit (an institutional control itself) is typically issued to monitor ground water quality until it meets standards.
- When properly applied, AURs are protective and provide for cost-effective risk management. Use of AURs has helped make site redevelopment feasible at some sites.
 - **IC Tracking:** Require responsible parties (RPs) to submit draft Notices of Activity and Use Restriction to the Department. Groundwater use is addressed under Groundwater Management Permits and a Notice of Groundwater Management Permit is recorded in the chain of title for each property located within the permit Groundwater Management Zone. Copies of Recorded Notices of Activity and Use Restriction and Notices of Groundwater Management Permit bearing the County Registry of Deeds stamp are required. The Department posts all draft Notices, Groundwater Management Permit Applications. Final recorded Notices of Activity

New Hampshire

REGION 1

and Use Restrictions, and Groundwater Management Permits on our OneStop database for public access.

- **IC Oversight:** The Department reviews and approves all draft Notices of Activity and Use Restriction prior to recordation in the chain of title for a site.
- **IC Monitoring:** The Department does not currently have a program for monitoring compliance with Notices of Activity and Use Restriction. However, the Department is considering instituting a trial monitoring program in the future. RPs and subsequent site owners are required to submit self-certification forms to the Department on an annual basis to demonstrate continued compliance and awareness of the Notice of Activity and Use Restriction. Groundwater Management Permits require periodic submittal of ground water monitoring results and Annual Groundwater Monitoring Summary Reports.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www2.des.state.nh.us/OneStop/>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: There is a \$750 application fee and a \$4,500 participation fee for the Brownfields Covenant Program. The state also exercises its statutory authority to recover actual personnel and overhead costs for DES staff who work on contaminated sites investigation and remediation within the voluntary cleanup program.

Funding source for administrative costs and staff:

The Bureau has 25 full-time equivalent (FTE) staff, 15 of whom work on non-NPL sites. The Department of Justice (Office of the Attorney General) provides legal support through 4.5 FTE attorney positions and receives an annual appropriation from the HWCF. The program's funding comes from the HWCF (20%) and federal grants (80%).

Cleanup Activities

The state generally does not undertake remediation at non-NPL sites. About 12 non-NPL sites are currently being cleaned up. Approximately 187 sites have been cleaned up on a voluntary basis since the start of the program, with about 29 completed in the past fiscal year. In addition to staff and administration, the HWCF has been used for emergency removal activities and for various hydrogeological studies at sites in the preliminary stages of investigation.

Sites currently in VCP: Since inception, 49 sites have enrolled in program.

Sites completed under VCP: Site remediation has been completed and covenants have been issued at 21 sites in the Brownfields Covenant Program.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Approximately 2,000 jobs were created or retained. Redevelopment uses included hotel/conference center, multi-tenant office, small businesses, light manufacturing, town office complex, public parks, residential town houses, and a variety of other uses. In excess of \$50,000,000 in new capital investments in sites was leveraged.
- New Hampshire state and local governments have seen increased business and property tax revenues, but these have not been quantified. A good example—the former Whitney Screw site project in Nashua, New Hampshire—won an Environmental Merit Award in 2002. It used the Brownfields Covenant Program, Brownfields Cleanup RLF program, and state petroleum reimbursement funds to leverage private redevelopment investments in excess of \$3,500,000.

Public Participation

Public participation requirements (notice, comment periods, etc.): The state is working to develop public participation procedures in conjunction with its grant funding under the CERCLA 128(a) State and Tribal Response Program Grant. DES continues to maintain and update its inventory of brownfields sites. A list of active brownfield sites regardless of the funding source can be accessed by the public from DES' Web site at http://www2.des.state.nh.us/OneStop/ORCB/Brownfield_Results.aspx. A list of closed brownfield sites regardless of the funding source can be accessed by the public at http://www2.des.state.nh.us/OneStop/ORCB/Closed_Brownfield_Results.aspx. These two search features are being revised to capture the full universe of sites managed under the Brownfields Program umbrella. The revisions to these search features are expected to be completed May 30, 2008.

A "Master List" of contaminated sites currently being managed by DES and sites closed by DES can be viewed in DES' OneStop database at http://www2.des.state.nh.us/OneStop/DES_Master_Query.aspx. This database allows the public to search for a listing of sites by the municipality in which they are located.

DES' OneStop database also allows the public to search for sites with Groundwater Management Permits and Release Detection Permits (two forms of Institutional Control) by the municipality in which they are located. Please refer to http://www2.des.state.nh.us/OneStop/ORCB_Query.aspx?Project=GWP for this search feature. DES' OneStop database provides

New Hampshire

a list of sites with a Notice of Activity and Use Restriction at http://www2.des.state.nh.us/OneStop/ORCB_Remediation_restrictions.aspx. The OneStop database allows the public to search for sites at which remedial actions and initial response actions were completed. Please refer to www2.des.state.nh.us/OneStop/ORCB_Query.aspx?Project=CST for this search feature. These Web site search features do not currently allow the user to generate a statewide list of sites with ground water management permits completed remedial actions, or initial response actions. DES is in the process of revising the Web site to allow for statewide listings.

DES also continues to update its Brownfields Program Web site at <http://des.nh.gov/organization/divisions/waste/hwrb/sss/brownfields/index.htm>

To make the Web site more informative to the public and EPA, DES added the following information to the Brownfields Program Web site: (a) a tabular list of all brownfield sites regardless of the funding source where contaminant exposure hazards have been managed via recordation of a Notice of Activity and Use Restriction (a form of institutional control); (b) a tabular list of all brownfield sites that are the subject of long-term ground water monitoring under a Groundwater Management Permit (a form of institutional control); and (c) a tabular list of all brownfield sites that have received a Covenant Not To Sue. These search items are dynamic and are linked to the OneStop database. DES anticipates completion of these Brownfields Program Web site revisions by August 30, 2009.

Public participation activities (hearing, meetings, etc.):

DES participates in public meetings on a site specific basis. Publication of a notice of approved remedial action plan and a 30-day public comment period are required for all sites participating in DES' Brownfields Covenant Program. Public meetings are also held on a site specific basis for non-covenant sites based on the complexity of the proposed remedial action and/or the level of public interest/concern.

Statutory Authorities

- The New Hampshire Hazardous Waste Cleanup Fund Act (HWCF), NHRSA Chapter 147-B (1981, as amended 1983, 1985, 1986, 1987, 1990, 1991 and 1996), establishes the Hazardous Waste Cleanup Fund and authorizes the DES to use the fund for expenses directly associated with cleanup of hazardous waste or hazardous materials. The law provides for: enforcement; strict, joint, and several liability; and cost recovery. NHRSA Chapter 147-B and Chapter 147-A (hazardous waste management), provide general authority for voluntary cleanups.
- NHRSA Chapter 485 (1996) and the Groundwater Protection Rules, ENV-Ws 410, authorize the designation of Ground Water Management Zones as a component of the remediation of contaminated ground water and provide for the issuance of permits for the remediation. The law

also requires recipients of a permit to record notice of the Ground Water Management Zone designation with the registry of deeds.

- NHRSA Chapter 147-F (1996), establishes the state's brownfields program.
- Env-Or 600 establishes rules for the reporting, investigation, and remediation of contaminated sites and establishes soil and ground water remediation standards. Copies of Env-Or 600 can be downloaded at <http://des.nh.gov/organization/commissioner/legal/rules/documents/env-or600.pdf>.
- Env-Or 800 establishes rules for participation in and management of DES' Brownfields Covenant Program. Copies of Env-Or 800 can be downloaded at <http://des.nh.gov/organization/commissioner/legal/rules/documents/env-or800.pdf>.

Rhode Island

REGION 1

General Information

Contact: Kelly J. Owens

Address: Rhode Island Department of Environmental Management (DEM)
235 Promenade Street
Providence, RI 02908-5767

Phone: 401 222 2797

Fax: 401 222 3812

Email: kelly.owens@dem.ri.gov

Web site: <http://www.dem.ri.gov/brownfields>

Program Description (VCP, brownfields, or related)

Brownfields definition: Rhode Island does not define a brownfields in statute or regulations, but DEM relies on the Brownfields Law definition.

Program titles: Industrial Property Remediation and Reuse Program (1995); State Site Remediation and Brownfield Program, Voluntary Cleanup Program

Liability relief provisions: Under state law, all parties responsible for contamination at a site (“responsible parties” or “RPs”) are strictly, jointly and severally liable for remediating the site. The remedial liability is retroactive in the sense that liability attaches when a site is determined to be contaminated without regard to when the site became contaminated or whether the activity that caused the contamination was legal at the time it occurred. A person or entity can become a liable RP simply by acquiring ownership of or using a site that was contaminated by past activities. In addition to becoming liable for site cleanup, RPs may also be subject to administrative or judicial legal action, civil and criminal penalties, treble damages, and payment of costs incurred by the state in its handling of the contaminated site. An RP that participates in a cleanup, can receive a Letter of Compliance from DEM indicating that the remediation is complete. The brownfields program allows non-RPs—typically prospective purchasers or users—to protect themselves from liability of a contaminated site. Under the brownfields program, a non-RP that is interested in buying, using, developing, or remediating a contaminated site can become eligible to receive a Covenant Not to Sue (CNTS) that protects against liability from the state following completion of a DEM-approved cleanup, performed pursuant to a Brownfields Remedial Agreement. (Settlement Agreements and Covenants Not To Sue were removed from Brownfield statute and were replaced by Remedial Agreements). Although one or more RPs or potential responsible parties (PRPs) are often the parties that actually perform the cleanup, RPs and PRPs are not eligible to receive a CNTS.

Financial incentives (grants, loans, tax provisions, etc.): EPA-capitalized Brownfields Cleanup Revolving Loan Fund (RLF) provides low-interest loans and sub-grants (to nonprofits and municipalities only) for site cleanup.

DEM received funding for site assessment work for municipalities and nonprofit associations, through EPA Brownfield Assessment grants and the EPA Section 128(a) funding to the state. Section 128(a) funding can also be used for cleanups. Applications for assessments and cleanups are accepted on a rolling basis.

The Rhode Island Mill Building and Economic Revitalization Act offers a 10% tax credit on the cost of substantial rehabilitation for certified sites.

Incentives are available to lenders that provide financing to mill developers.

Legislative or program site eligibility

requirements: Cleanup levels are determined on a case-by-case basis, using water quality criteria, Maximum Contamination Level/Maximum Contamination Level Goal (MCLs/MCLGs), ground water standards, background levels, EPA guidelines and generic risk-based soil standards developed by the state. The state also uses site-specific risk assessment. The remedial objective for each carcinogenic substance cannot exceed a 1×10^{-6} excess lifetime cancer risk level and the cumulative excess lifetime cancer risk posed by the contaminated-site cannot exceed 1×10^{-5} . The remedial objective for each non-carcinogenic substance does not exceed a Hazard Index of 1 and the cumulative Hazard Index posed by the contaminated-site does not exceed 1 for any target organ. The state considers assumptions about future land use in establishing cleanup levels. Where remediation standards are based on land use restrictions, the state requires that environmental land usage restrictions (ELURs) be recorded with the title and that restrictions are annually monitored in order to ensure compliance with the Remediation Regulations.

Voluntary cleanups are handled under the regular cleanup program. Although anyone is eligible, non-PRPs may obtain a CNTS and protection from contribution actions. The brownfields program targets any underutilized site where contamination or suspected contamination impedes development. Participating sites may receive liability protection.

Highlights of the changes to the state brownfields legislation:

• Establishment of Remedial Agreement:

- No new proposals for settlement agreements after 12/31/2006
- No execution of settlement agreements after 6/30/2007
- NEW remedial agreements after 6/30/2007
- Remedial agreement boilerplate format is **STILL** currently under development. The remedial agreement is intended to be far simpler than the settlement agreement and is intended to improve the time involved by limiting unnecessary negotiations.

Rhode Island

- **Deferral of Cleanup Obligations During Marketing:**

- A responsible party may defer their cleanup obligations for up to three years if they conduct, or allow another party to conduct, an investigation of the site; provided, however, that: (1) the site has not been subject to previous notification; (2) any imminent threat to human health, public safety, or the environment, as determined by the department; and (3) any contamination found that is migrating off-site, or presents a threat to migrate off-site within one year. A responsible party may only defer cleanup obligations when the delay will not aggravate or contribute to a release at the site and the results of those investigations are submitted to the department of environmental management in a timely manner.

- **Due Diligence Requirements for Sensitive Reuse Scenarios:**

- Addresses a high priority concern regarding development of brownfield sites by requiring a new public participation process for sensitive reuse scenarios (e.g., schools, day care facilities, and recreational facilities for public use) that prohibits investigation, remediation, or construction until the conclusion of a public comment period (except for imminent public health and/or environment hazards and off-site migration scenarios). Allows for greater public participation by residents when brownfield sites are going to be redeveloped for a clear public use—schools, daycare facilities, parks and recreational facilities being important examples.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): The Rhode Island Targeted Brownfields Assessment (TBA) Program is funded by EPA and administered through DEM's Office of Waste Management. The purpose of the TBA program is to provide environmental site assessments of brownfield properties in order to determine the actual extent and severity of contamination—if any is present. This program is targeted specifically at government, tribal, and nonprofit organizations that are not considered RPs relative to the contaminated property. The TBA is conducted by one of DEM's technical assistance contractors (TAC) with direct oversight and control by Department personnel. The TBA Report, generated by the performance of the TBA, fully meets the Site Investigation requirements of Section 7.0 of the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (Remediation Regulations). The TBA Report also provides a preliminary cost estimate for the proposed remedies to bring the site into compliance with the Remediation Regulations. Due to the fact that DEM generates the TBA Report, it enjoys a higher level of acceptance with the business and environmental communities and eliminates the uncertainty surrounding the required cleanup of the property, thereby facilitating its redevelopment and reuse.

Through EPA's 128(a) funding to the state, DEM's Office of Waste Management can assist government, tribal, and non-profits with remediation expenses by having a state TAC work on the cleanup. There are no direct cash disbursements or sub-grants to the eligible parties. Instead the TAC contractor will perform cleanup services up to a maximum of \$50,000 and be paid directly by the state.

Tax incentives (abatements, credits, etc.):

- There were nine participating municipalities that nominated mill buildings for participation in the program which provided Mill Building Tax Credits for investors. The Economic Development Corporation (EDC) oversaw the program aimed to assist developers in renovating certified mill buildings. The nominating process for mill buildings concluded in December 2000, and the enabling legislation (RIGL 42-64.9) sunset on August 8, 2009.
- There are Historic Mill Building Tax Credits for the rehabilitation of historic commercial structures. The Rhode Island Historical Preservation and Heritage Commission formerly administered both the federal and state tax credit programs. The state tax credit was eliminated during the 2009 legislative session due to state budget issues.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

- The state EDC in coordination with DEM administers a Brownfields Cleanup Revolving Loan Fund. EDC acts as the program manager and DEM acts as the site manager. Sub-grants are available to nonprofits and municipalities under the RLF, and loans are available to all interested parties.

Program Elements

Technical Elements

Methods/standards/controls: The Remediation Regulations were amended on February 24, 2004. The changes include the following: 1) revised arsenic standards for Residential and Industrial/Commercial Direct Exposure Criteria both raised to 7.0 mg/kg; 2) special requirements for managing arsenic in soil—Section 12; and 3) additional revisions and clarifications in Sections 1 through 14, including the appendices.

Contaminants covered/excluded: Petroleum and polychlorinated biphenyls (PCBs) are included under the Remediation Regulations. Lead-based paint from industrial/commercial properties also are covered under the regulations, but only in cases where they are in the environment and not still on a structure. Lead-based paint contamination at residential properties falls under the jurisdiction of the Department of Health when the source of the contamination is the residence. Some jurisdiction remains under the Remediation Regulations if the source is from some other structure such as a water tank or a bridge.

Use of long-term stewardship and institutional controls (IC): State supports the use of Environmental Land Usage Restrictions (ELURs) on properties when warranted. Annual ELUR compliance monitoring wells and annual monitoring has been required since 1999. In addition, DEM's Office

Rhode Island

of Waste Management has been auditing a percentage of the properties that have ELURs since 2005. Benefits of institutional controls are that more sites are being cleaned and reused. Community concerns are being addressed by mandatory public notice requirements at various points in investigation and remedy selection and there are special Public Notice requirements on sites in Environmental Justice areas.

- **IC Tracking:** ELURs are recorded on the deeds of the properties and their presence is tracked in a database maintained by DEM. The self-monitoring and audits are also tracked in the database. Properties not in compliance are issued progressive enforcement documents.
- **IC Oversight:** DEM provides oversight on all remediation projects, which includes reviewing plans for engineered caps and ELURs.
- **IC Monitoring:** DEM audits a percentage of all sites with ELURS every year since 2005 and has required self monitoring of the ELURs by the property owners since approximately 1999.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.dem.ri.gov/brownfields/documents/#pubrecrd>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: February 1997

Costs to enter program or fees for service: The only fee is the \$1,000 Remedial Action Approval fee which is required of all projects that fall under the Remediation Regulations.

Funding source for administrative costs and staff:

Previously the majority of the program was supported by out-of-state funds, however brownfields funding, from EPA 128(a), Subtitle C of the federal Brownfields Law, is currently paying for some administrative costs and staff.

DEM's Bureau of Environmental Protection, Office of Waste Management, has 39 full-time equivalent (FTE) staff. Federal grants provide the majority of funding for staff and administration, with the remainder coming from the state general fund.

Cleanup Activities

Sites currently in VCP: 779 sites are currently active or are in long-term monitoring; 133 sites entered into Settlement Agreements and Covenants Not To Sue (SACNTS) totaling 1,150 acres. The ability to enter into SACNTS was removed from legislation in June of 2007 and was replaced by Remedial Agreements which also contains a covenant not to sue section. Only one Remedial Agreement has been finalized to date.

Sites completed under VCP: 39 sites completed the Voluntary Cleanup Program (VCP) program during the last fiscal year. Approximately 780 sites have completed the VCP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): An estimated 2,014 jobs were created; 133 businesses were created or retained on brownfields sites; based on the 133 sites with agreements in place, new value of remediated properties is \$108,998,486; they generated approximately \$2,496,000 in sales and property taxes, and \$6,992,278 in income tax revenues.

Public Participation

Public participation requirements (notice, comment periods, etc.): State law and regulations require community involvement in investigation and remediation of contaminated sites, including notification to nearby residents of proposed site investigations, availability of records, notice, and notice and comment on the technical feasibility of proposed remedies. DEM policy is to expand public participation opportunities; DEM sought to implement this policy through the public notice and comment process, as well as through agency program planning meetings. DEM expanded Public Notice requirements on sites in Environmental Justice (EJ) areas during the last fiscal year. That policy was finalized on June 23, 2009. The current policy guiding these sites will be adjusted based on practical experience gained through use and is expected to be adopted into Statute or Regulation at some point in the future.

Public participation activities (hearing, meetings, etc.):

Based on the proposed reuse and nature of the site, DEM has the flexibility in its public notice requirements to require public meetings and hearings. DEM found the need to require public meetings when brownfield properties are being redeveloped as schools, daycare facilities, and recreational facilities for public use.

Statutory Authorities

- The Hazardous Waste Management Act, R.I. Gen. Laws, §§23–19.1–1 through 23–19.1–33 (1978, as amended, 1979, 1984, 1987), establishes the Environmental Response Fund and authorizes DEM to clean up abandoned, uncontrolled, and/or inactive sites. The law provides for: enforcement; joint and several liability; cost recovery; natural resources damages assessment and recovery; and public participation.
- The Industrial Property Remediation and Reuse Act, R.I. Gen. Laws §§23–19.14–1 through 23–19.14–19 (1995), provides for voluntary cleanup and brownfields cleanup, and clarifies enforcement authorities and public participation.

Vermont

General Information

Contact: George Desch
Don Einhorn

Address: Vermont Department of Environmental
Conservation (DEC)
103 South Main Street
Waterbury, VT 05671-0404

Phone: 802 241 3888

Fax: 802 241 3296

Email: george.desch@state.vt.us
donald.einhorn@state.vt.us

Web site: <http://www.anr.state.vt.us/dec/wmd.htm>
[http://www.anr.state.vt.us/dec/wastediv/SMS/
brownfields-home.htm](http://www.anr.state.vt.us/dec/wastediv/SMS/brownfields-home.htm)

Program Description (VCP, brownfields, or related)

Brownfields definition: Vermont's Brownfields Reuse and Environmental Liability Limitation Act defines a brownfield as "real property, the expansion, redevelopment, or reuse of which may be complicated by the release or threatened release of a hazardous material."

Program titles:

- Brownfields Reuse and Environmental Liability Limitation Act (BRELLA), 10 V.S.A. §6641 et seq. This Brownfields Program provides participants with a broad release from state liability in exchange for cleanup of a contaminated property. Participation in BRELLA is open to prospective purchasers and current owners, provided that they did not cause or contribute to the contamination and are not affiliated with any entity that caused or contributed to the contamination. As indicated by the above definition, most contaminated properties are eligible for participation in BRELLA. National Priorities List (NPL) sites are excluded, as are properties that are subject to an administrative or court order under Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or the state's hazardous waste law. As indicated below, many brownfields redevelopment projects in Vermont take place outside of BRELLA, through the use of a less formal, voluntary cleanup process. In those instances, the property owner does not receive the broad release from state liability afforded by BRELLA, but rather receives a state sign-off that is subject to re-openers. Participation in BRELLA also enables access to the state's Brownfields Revitalization Fund (see below).

- Vermont does not have a formal Voluntary Cleanup Program (VCP) for responsible parties that do not otherwise qualify for participation in BRELLA. However, the state does encourage and support voluntary cleanups, and many brownfields projects are handled in this manner. In those instances, the property owner receives a Sites Management Activities Complete (SMAC) letter. This letter is issued when the state is satisfied with the work performed at the property. However, under the SMAC approach the state reserves the right to re-open the matter and require additional work in the future.

Liability relief provisions:

- BRELLA provides participants with a Certificate of Completion (COC) upon implementation of a state approved Corrective Action Plan. The COC effectively releases the property owner from state liability, which may only be rescinded in limited circumstances, such as fraud or hazardous material releases which occur subsequent to the cleanup. The release conferred by the COC is permanent and runs with the property, transferring the benefit to successor property owners. The release from state liability also extends to cover future regulatory changes which result in more stringent cleanup standards or the designation of previously unregulated materials as hazardous. COC recipients are also protected from contribution claims that may be brought by responsible parties. Protection from third-party liability claims is not provided. For participants that enter BRELLA prior to acquiring the brownfield property, the COC may be issued upon "substantial completion" of the cleanup contemplated by the approved Corrective Action Plan (CAP). For participants that own the property at the time of entry into BRELLA, the COC is issued upon completion of all activities identified in the CAP.

Financial incentives (grants, loans, tax provisions, etc.):

- BRELLA contains a cleanup cost increase protection provision. This provision applies to BRELLA participants that enroll in the program prior to acquiring a brownfield property and limits the state's ability to unilaterally modify an approved CAP when that modification would result in a cleanup cost increase of more than 30% of the estimated costs of completing the original CAP.
- The Brownfields Revitalization Fund (BRF) provides grants and loans to eligible parties for site investigation and cleanup at brownfield properties. With very limited exception, applicants for a grant or loan must be enrolled in BRELLA. Applicants must also have a state approved work plan for the phase of the project for which assistance is sought. The state initially capitalized the BRF with \$400,000 and subsequently received a \$1,000,000 Revolving Loan Fund grant from EPA. As of June 2009, all of the state funds had been committed and approximately \$200,000 of the EPA funds were committed.

- The state has a Technical Assistance Program which provides grants of services to municipalities, nonprofits, and private parties involved in brownfields reuse projects. Under this program, the state contracts with qualified environmental professionals who perform the work for which assistance is sought. This work may include site investigation, cleanup planning, and actual cleanup. Applications are scored based on the project's ability to accomplish state brownfield reuse goals. Primary goals are protection of environmental and human health along with economic development – which may include job creation or retention, creation of affordable housing, and creation of greenspace. Additional goals include smart growth, green development, and ecological enhancement.
- The state's Petroleum Cleanup Fund (PCF) has been utilized in connection with brownfield projects. The PCF reimburses eligible parties for the costs of investigating and remediating accidental releases from above-ground and underground storage tanks.

Legislative or program site eligibility requirements:

- See discussion on BRELLA above.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- See financial incentives, above.

Tax incentives (abatements, credits, etc.):

- Tax incentives for rehabilitation of existing properties in designated "downtown" areas; not specific to brownfields, but contaminated properties are eligible.
- Participants in BRELLA are exempted from the state's hazardous waste transport tax for hazardous waste that is being removed from the brownfield site in connection with the cleanup.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

- The Vermont Community Development Program, using Housing and Urban Development (HUD) grant funds, accepts applications for assistance with brownfields investigations and cleanups as part of a qualified community development project. Applications are only accepted from municipal entities who may then sub-grant funds to nonprofits or loan funds to for-profit entities.
- The BRF will provide grants to assist with the purchase of environmental insurance in connection with implementation of a state approved work plan.

Program Elements

Technical Elements

Cleanup standards are determined on a case-by-case basis. The state uses water quality criteria (based on the state ground water statute), Maximum Contamination Level/Maximum Contamination Level Goal (MCLs/MCLGs), and EPA guidelines (e.g., soil cleanup standards) in conjunction with risk assessments. The state uses a risk level of 10⁻⁶ for excess cancer cases and a Hazard Index of 1 for non-carcinogens. The state considers assumptions about future land use in establishing cleanup standards. Zoning restrictions are used to support land use assumptions, and the state utilizes deed restrictions.

Methods/standards/controls: No formal Risk-Based Corrective Action (RBCA) or comparable/informal process in place. State uses EPA Preliminary Remediation Goals (PRGs) as screening values, and allows for site-specific or risk-based evaluations of alternative standards. DEC is developing a procedure for determining site-specific remediation standards that consider the future land use, appropriate use of institutional controls, environmental media, requirements for source removal, treatment or containment, and other related issues.

Contaminants covered/excluded: Asbestos, lead paint, and polychlorinated biphenyls (PCBs) are covered, as is petroleum.

Use of long-term stewardship and institutional controls (IC): Specifically provided for in the statute.

- **IC Tracking, Oversight, and Monitoring:** DEC is in the process of implementing a system for monitoring landowner compliance with institutional controls.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://www.anr.state.vt.us/dec/wastediv/sms/RCP/ pubs/Brownfield_Sites_List.pdf

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Cost to enter program or fees for service: All applicants to BRELLA must pay a non-refundable application fee of \$500. Upon enrollment in BRELLA, parties who are current innocent owners must deposit \$5,000 to be used for DEC project review and administration fees and costs. These administration fees are waived for parties that enroll in BRELLA prior to purchasing the brownfield site.

Vermont

Funding source for administrative costs and staff: DEC, Waste Management Division, Hazardous Materials Program has 14 full-time equivalent (FTE) staff members. That section handles all hazardous waste work including Comprehensive Environmental Response Compensation and Liability Act (CERCLA), RCRA, pre-remedial, and state list work. Four attorneys in the Attorney General's office, two attorneys in DEC's Enforcement Division, and one program attorney work on hazardous waste cases, for a total of about three FTE positions. Staff and administrative costs come from federal grants (75%), the state general fund (23%), and state cleanup funds (2%).

Cleanup Activities

Sites currently in VCP: As of June 25, 2009, there were 16 active projects enrolled in BRELLA.

Sites completed under VCP:

- As of June 25, 2009, ten projects had received Certificates of Completion through BRELLA and four projects withdrew or had been removed from BRELLA.
- In addition, cleanup activities have been completed outside of BRELLA at approximately 130 non-petroleum sites since the start of the state program.

Public Participation

Public participation requirements (notice, comment periods, etc.): DEC meets with town officials and holds public meetings. The state brownfields law requires public notice of a proposed corrective action plan and a minimum 15-day public comment period.

Public participation activities (hearing, meetings, etc.):
No information available

Statutory Authorities

- The Water Pollution Control Law, Vt. Stat. Ann., Title 10, §§1282–1283, establishes the Environmental Contingency Fund for emergency responses, studies and design, and remedial actions.
- The Waste Management Act, Vt. Stat. Ann., Title 10, §§6601–6618 (1977, as amended 1981, 1985, 1987, 1995 and 1996), establishes the state's hazardous waste program and authorizes DEC to take removal and remedial actions to clean up sites contaminated by the release of hazardous materials. The law provides for strict, joint, and several liability for responsible parties, and for cost recovery. The law was amended in 1995 to establish a brownfields cleanup program (Vt. Stat. Ann, Title 10, §6615a).

- The Brownfields Reuse and Environmental Liability Limitation Act, Vt. Stat. Ann., Title 10, §§6641 – 6656 (2007), establishes a program to allow brownfields developers to obtain a release from state liability, and achieve other benefits, in exchange for implementing a state approved cleanup at a brownfield property.
- An Act Relating to Administrative Enforcement of Specified Environmental Laws (Act 98), Vt. Stat. Ann., Title 10, §§8001–8221 (1989), provides additional enforcement authorities.

General Information

Contact: Colleen Kokas

Address: New Jersey Department of Environmental Protection (NJDEP)

Office of Brownfield Reuse
401 East State Street, 6th Floor
P.O. Box 028
Trenton, NJ 08625-0028

Phone: 609 292 1251

Fax: 609 777 1914

Email: Colleen.Kokas@dep.state.nj.us

Web site: <http://www.state.nj.us/dep/srp/brownfields/>

Program Description (VCP, brownfields, or related)

Brownfields definition: New Jersey defines a brownfield as any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

Program titles: The Site Remediation Reform Act (“SRRA”), signed into law in May 2009, provides sweeping changes to the way in which sites are remediated in New Jersey. In addition to amending statutes outlined below, the SRRA establishes a program for the licensing of Licensed Site Remediation Professionals (“LSRP”) who will have responsibility for oversight of environmental investigation and cleanup. While the law changes the process of how sites are remediated, it ensures the same stringent standards required for cleanup remain intact. The NJDEP will retain significant authority over the remediation process and will ensure that LSRPs comply with all applicable regulations, but the day-to-day management of site remediation will be overseen by qualified LSRPs.

Under the SRRA, NJDEP approval is no longer required prior to proceeding with remediation. Implementation of the SRRA will, therefore, result in contaminated sites being remediated more quickly, thus providing a greater measure of environmental protection to the citizens of New Jersey and ensuring that development of underutilized properties returns them to the tax rolls more quickly.

Some of the highlights of the law are:

- The establishment of an LSRP Program and an LSRP Board that issues licenses to qualified individuals to conduct the remediation of sites in New Jersey. LSRPs are bound by a strict code of ethics, violation of which could result in the assessment of penalties as well as suspension or revocation of their licenses. When the SRRA becomes fully effective in 2012, all remediating parties must employ the services of an LSRP and must proceed with the remediation of their site without prior NJDEP approval.
- An affirmative obligation now exists for persons to remediate any discharge for which they would be liable pursuant to the Spill Compensation and Control Act. As such,

the Voluntary Cleanup Program, which utilized Memoranda of Agreement (MOAs), no longer exists.

- The NJDEP is required to establish mandatory remediation timeframes for the completion of key phases of site remediation.
- The NJDEP is required to maintain Direct Department Oversight in cases in which the remediating party is recalcitrant in conducting timely cleanups and for those sites that pose the greatest risk to human health and the environment.
- The NJDEP is authorized to establish presumptive remedies for residential development, schools, and childcare facilities.

The following statutes govern the remediation of cases in the Site Remediation Program:

- Site Remediation Reform Act (“SRRA”)
- Brownfields and Contaminated Site Remediation Act (“Brownfield Act”)
- Spill Compensation and Control Act (“Spill Act”)
- Industrial Site Recovery Act (“ISRA”)
- Underground Storage Tank Act (“UST”)
- Solid Waste Management Act

Liability relief provisions: With the enactment of the Site Remediation Reform Act (N.J.S.A. 58:10C), and related amendments to the Brownfield and Contaminated Sites Act (N.J.S.A. 58:10B), the determination that a remediation of a contaminated site is protective of public health, safety, and the environment, will rest initially, in most circumstances, with an LSRP. An LSRP shall make that determination based on the remediation conducted, supervised and/or reviewed, and ultimately accepted by the LSRP using their independent professional experience. An LSRP is authorized to memorialize the completion of remediation by issuing a response action outcome (RAO) to the person responsible for conducting the remediation, which renders their opinion that the site has been remediated in accordance with all applicable statutes, regulations, and guidance.

Some of the highlights of the law are:

- The response action outcome represents the licensed site remediation professional’s opinion that:
 - There are no discharged hazardous substances or hazardous wastes present at a site or area of concern; or
 - There are discharged hazardous substances or hazardous wastes, present at the site, area of concern and/or migrating from the site that have been remediated in accordance with all applicable statutes, regulations, and guidance; and
 - The remedial action undertaken is protective of public health, safety and the environment.
- Brownfield developers that meet the innocent purchaser defense requirements under the Spill Act are exempt from Natural Resources Damages (NRD) and claims for damages or compensatory restoration.

New Jersey

Financial incentives (grants, loans, tax provisions, etc.):

- Hazardous Discharge Site Remediation Fund
- Environmental Infrastructure Trust
- Brownfield Reimbursement Fund
- Brownfield Redevelopment Loans

Legislative or program site eligibility requirements: The SRRA requires the NJDEP to phase in implementation of the use of LSRPs by remediating parties. All parties initiating remediation after November 3, 2009 or who opt into the LSRP Program will be required to follow the provisions of the SRRA which are codified at N.J.S.A. 58:10B-1.3b 1-9, including the requirement to hire an LSRP to conduct the remediation, and the requirement to remediate the site without prior NJDEP approval. Parties who initiated remediation prior to November 3, 2009 will not be required to hire an LSRP to conduct the remediation. Remediation of those sites will follow the remediation process with traditional NJDEP oversight and approvals until May 7, 2012, at which time parties remediating sites will be required to follow N.J.S.A. 58:10B-1.3b 1-9.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Hazardous Discharge Site Remediation Fund (HDSRF) - Administered jointly by the NJDEP and the NJ Economic Development Authority, provides grants and low-interest loans to municipalities, nonprofits, and private parties.

Municipal awards are capped at \$3 million annually (with an additional \$2 million for sites in designed Brownfield Development Areas (BDAs)).

- 100% grants for investigation
- 75% grants for remedial action (for conservation/recreation end use)
- 50% grants for remedial action (for affordable housing end use)
- 25% grants for remedial action for unrestricted use remedy or use of innovative remedial technology

Nonprofit awards under a pilot program (total program funding of \$5 million).

- 100% grants for investigation

Private entities awards are capped at \$1 million. A nonprofit can also apply as a private entity.

- 25% grants for remedial action for unrestricted use remedy or innovative technology remedy
- 50% grants for remedial action when meeting the specific definition of “qualifying innocent purchaser” in the funding statute
- Low interest loans for investigation and remedial action
- NJ Environmental Infrastructure Trust—provides low-interest loans to government agencies for brownfields activities that are linked to improving water quality.

Tax incentives (abatements, credits, etc.):

- Brownfield Reimbursement Program administered by the NJ Division of Taxation and the NJ Commerce Commission. Reimburses for up to 75% of remediation costs based on specific new taxes that are generated from a redevelopment project. Most significant taxes eligible for reimbursement include, the Sales and Use Tax (on retail establishments), the sales tax paid on remediation activities and on construction materials, and the Corporate Business Tax generated at the site.
- Environmental Opportunity Zones, designated by municipal ordinance, allow for an incremental tax abatements on real property (to offset cleanup costs) for up to 15 years.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

- NJDEP’s BDA program works with selected communities impacted by multiple brownfield sites to implement remediation and reuse plans in a coordinated fashion. Under this designation, all brownfield sites within a BDA will be assigned to a single case manager, who will coordinate with partnering state agencies to direct targeted technical and financial assistance to stimulate reuse. The plans will be developed under the direction of a local steering committee with support from NJDEP advisors.

Program Elements

Technical Elements

Methods/standards/controls:

- State allows three cleanup levels: 1) unrestricted use remedial actions; 2) limited restricted use remedial actions (institutional controls only); and 3) restricted use remedial actions (engineering and institutional controls). Natural attenuation is allowed in some circumstances when combined with a Classification Exception Area (CEA) institutional control. Contamination source must be removed.
- The state has statutory cleanup provisions with risk based goals, and also uses water quality criteria, Maximum Contamination Level (MCLs) and Maximum Contaminant Level Goal (MCLGs), background levels, risk assessment. State has promulgated soil cleanup standards. The risk level set by the statute is 10–6 for carcinogens, and a Hazard Index of 1 or less for non-carcinogens. For soil cleanup, the state may use the standards or determine case-specific levels by risk assessment. If the standards are determined to be below background levels, then the cleanup level is background. For sites where cleanup is based on restricted land uses, site specific deed notices must be recorded. The same standards are used for all cleanups, including brownfield sites.
- Unregulated Heating Oil Tank (UHOT) Program – NJDEP pre-qualifies environmental professionals holding a valid New Jersey Underground Storage Tank (UST) Certification in Subsurface Evaluation and employed by a firm holding the same certification to investigate and remediate Unregulated Heating Oil Tanks with limited NJDEP oversight.

Contaminants covered/excluded: All hazardous substances on adopted list pursuant to Section 4 of P.L. 1983, c. 315 (NJSA 34:5A-4), including petroleum. In addition,

New Jersey

REGION 2

the list of hazardous substance and toxics adopted by EPA respectively, pursuant to Section 311 and 307 of the Water Pollution Control Act; and the list of hazardous substances opted by EPA pursuant to Section 101 of CERCLA. Sewage and sewage sludge are not included in the definition of hazardous substances pursuant to the Spill Act.

Use of long-term stewardship and institutional controls

(IC): Institutional and engineering controls for soils and ground water are acceptable remedies when they meet the risk-based requirements of the regulations. The SRRA required NJDEP to develop a permitting system to track the obligations for maintaining institution and engineering controls. Part of this permitting system includes the submission of a biennial certification to report on the status of the controls' effectiveness; state inspection is required every five years.

- **IC Tracking:** The NJDEP has an oversight program that tracks those cases that have used engineering and institutional controls to ensure that inspection and reporting obligations meeting the biennial certifications are submitted. A report of those cases that have not submitted a biennial certification is available at <http://www.nj.gov/dep/opra/online.html> in the NJDEP's Data Miner Database.
- **IC Oversight and Monitoring:** The NJDEP reviews all biennial certifications to ensure that the remedy is still protective. Any integrity issues with a remedy must be addressed by the party responsible for maintaining the control. In addition, any person that fails to submit a biennial certification may be subject to penalties.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.nj.gov/dep/srp/kcsnj/>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: Oversight fees charged are based on: 1) fixed fees for certain activities and programs; or 2) calculated fees based on hourly rate. Billing based on staff time spent includes the staffs' direct salary and overhead, excluding its indirect costs for homeowners and developers.

Funding source for administrative costs and staff: The SRP in NJDEP has approximately 500 staff. The Attorney General's Office (Department of Law and Public Safety, Division of Law, Hazardous Site Litigation Section) provides attorneys for legal support of the program. Funding for staff and administration comes from the Spill Compensation Fund, Corporate Business Tax, and Bond funds, direct billing, and federal grants.

Cleanup Activities

Active Sites: Approximately 18,000 known contaminated sites are currently under NJDEP oversight.

Sites completed: Between July 1, 2008 and June 30, 2009, NJDEP issued 5,521 No Further Action (NFA) determinations indicating that remediation was complete.

Benefits (covenants not to sue, etc.):

- LSRP-issued RAOs are accompanied by a Covenant Not to Sue, by statute.
- Certain liability protections require prospective purchaser activities.

Public Participation

Public participation requirements (notice, comment periods, etc.):

The NJDEP's Public Notification regulations became final in September 2008, which required existing cases to come into compliance by September 2009. The focus of the regulation is to improve public access to site remediation information and increase public awareness of ongoing remediation projects.

Public participation activities (hearing, meetings, etc.):

As required and as requested. The NJDEP holds quarterly brownfields roundtables with interested parties and a quarterly advisory committee meeting to update interested parties on regulatory and policy issues. In addition, NJDEP's Office of Community Relations conducts workshops to educate citizens about the site remediation process.

Statutory Authorities

Site Remediation Reform Act, NJSA §58:10C-1 provides sweeping changes to the way in which sites are remediated and establishes a program for the LSRPs who will have responsibility for oversight of environmental investigation and cleanup.

- Brownfields and Contaminated Site Remediation Act, NJSA §58:10B, provides the basis for the remediation of contaminated sites and a brownfields program; it also amended site remediation standards to reflect land use restrictions.
- Spill Compensation and Control Act, NJSA §58:10-23-11 separately et seq., (enacted 1976, and amended almost annually thereafter), establishes a fund for cleanups and provides authority for emergency response, removals, remedial actions, enforcement, cost recovery, victim compensation, natural resources damages, and voluntary cleanup.
- Industrial Site/Recovery Act (ISRA) (1993), NJSA §13:1K-6 et seq., requires transferors of industrial facilities to clean up contamination.
- Environmental Rights Act, NJSA §2A:35A establishes a basis for filing citizen suits.
- Water Pollution Control Act (WPCA), NJSA §10A-1 et seq., provides the basis for the remediation of contaminated sites which impact the waters of the state.
- Underground Storage Tank Act, NJSA §58:10A-21-37., establishes criteria for installing and maintaining regulated underground storage tanks.
- Solid Waste Management Act, NJSA §13:1E et seq., establishes criteria for operating transfer and recycling facilities and permitting and closing landfills.

General Information

Contact: Division of Environmental Remediation

Address: NY State Department of Environmental Conservation (DEC)
625 Broadway, 12th Floor
Albany, NY 12233-7011

Phone: 518 402 9711

Fax: 518 402 9722

Email: derweb@gw.dec.state.ny.us

Web site: <http://www.dec.ny.gov/chemical/brownfields.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: The only explicit definition of a brownfield in New York State's cleanup programs is found in the Brownfield Cleanup Program (BCP). The BCP defines a brownfield site as any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant (the remainder of the brownfield programs address similar sites but do not refer to the sites as brownfields).

Program titles:

- Brownfield Cleanup Program (BCP) (2003)—Cleanup program, successor to Voluntary Cleanup Program.
- Voluntary Cleanup Program (VCP) (1994)—Cleanup program. As of October 1, 2003, no new VCP applications are being accepted. Projects currently in the VCP may remain in the program until completion.
- Environmental Restoration Program (ERP) (1996)—Cleanup program.
- Brownfield Opportunity Areas Program (BOA) (2003)—Planning program.

Liability relief provisions:

- BCP—Following the completion of the project, the DEC issues a Certificate of Completion (COC), which entitles the recipient to an environmental liability limitation (subject to reopeners) that would be binding on the state for any liability including future liability or claim for further remediation of hazardous waste and/or petroleum at or emanating from the site that was subject to the agreement. The liability limitation extends to successors and assigns except a responsible party, unless that person was party to the Brownfields Cleanup Agreement. The BCP also provides appropriate liability relief to innocent landowners, municipalities, and fiduciaries.
- Projects completed in the VCP are assigned a release and Covenant Not to Sue (CNTS), which is transferable to future non-potentially responsible party (PRP) owners.

Non-PRP volunteers also receive a release that covers natural resource damages. The DEC's release binds itself, and does not bind private parties harmed, does not bind the state attorney general or the state comptroller, and does not bind EPA.

- ERP gives liability release and indemnification to municipalities and non-PRP successors, including future owners, lenders, or lessees for hazardous substances that were on the property prior to the ERP grant.
- BOA—None

Financial incentives (grants, loans, tax provisions, etc.):

- Tax Credits (BCP)
- Technical Assistance Grants (TAGs) up to \$50,000 per site are available at significant threat sites under the BCP or at Class 2 sites under Superfund.
- Clean Water/Clean Air Bond Act (ERP) (grants of 90% for eligible on-site costs to 100% for eligible off-site costs)
- Clean Water State Revolving Fund
- Empire Zones, Environmental Zones
- Planning Grants of 90% (BOA)

Legislative or program site eligibility requirements:

- BCP—All sites are eligible to participate, except: federal National Priorities List (NPL) sites; Class 1 or Class 2 sites on the New York State Registry of Inactive Hazardous Waste Disposal Sites (NYS Registry sites); permitted Resource Conservation Recovery Act (RCRA) sites (note: interim status sites are eligible); sites subject to an enforcement action; sites subject to a cleanup order under Article 12 of the Navigation Law; and sites subject to any other federal or state environmental enforcement action.

Also, under the BCP, the above eligible parties are able to participate unless: they are subject to a pending action or proceeding relating to the proposed site in any court or administrative agency in any jurisdiction wherein the state or federal government seeks the investigation, removal, or remediation of contamination or penalties; they are subject to an order providing for the investigation, removal, or remediation of contamination relating to the proposed site; or they are subject to an outstanding claim for cleanup and removal costs under Article 12 of the Navigation Law ("Oil Spill Prevention, Control, and Compensation"). The DEC may also reject a request for participation if the DEC determines that the public's interest would not be served. (See the NYSDEC's Web site at: <http://www.dec.ny.gov/chemical/8450.html> for additional eligibility criteria.)

- VCP—Site owners, prospective purchasers, municipalities, and (under some circumstances) operators may participate. Participation by Class 2 sites and NPL sites is not allowed. Note: As of October 1, 2003, no new VCP applications are being accepted.
- ERP—New York State municipalities are eligible. The term municipality includes counties, cities, towns, and villages as well as local public authorities, public benefit corporations, school and supervisory districts, and

New York

REGION 2

improvement districts. Additionally, the term municipality includes community based organizations which partner with a municipality. The municipality must own the property and cannot be responsible for the contamination. The property cannot be listed as a Class 1 or 2 NYS Registry sites.

- BOA—Applicants that are eligible to apply for a grant include, New York State municipalities and community based organizations or municipalities and community based organizations acting in cooperation. A community based organization is a nonprofit corporation, incorporated under Section 501(c)(3) of the Internal Revenue Code whose stated mission is to promote community revitalization within the geographic area in which the community based organization is located; has 25% or more of its board of directors residing in the community in such area; and represents a community with a demonstrated financial need as indicated by high unemployment, low resident incomes, depressed property values, and high commercial vacancy rates.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- The state Superfund/Brownfield Law authorizes up to \$135,000,000 annually, broken down as follows:
 - \$120,000,000 for investigation and remediation of inactive hazardous waste disposal sites and hazardous substance sites, and investigation and remediation of off-site contamination for volunteer sites under the BCP. These funds are provided by the sale of bonds. Debt service on the loans is funded 50% by industry fees and 50% by the state's general fund.
 - \$15,000,000 for TAGs (which are associated with the state Superfund/Brownfield Cleanup Programs), BOA grants, state implementation of the BCP and VCP, and non-bondable costs associated with the state Superfund program. This funding would be provided through the state's general fund.
 - In addition, approximately \$33,000,000 will continue to be appropriated to fund the state's Oil Spill Program.
- Clean Water/Clean Air Bond Act—As part of the \$1.75 billion 1996 Clean Water/Clean Air Bond Act, a fund of \$200 million was created for the ERP. Under the ERP, the state provides grants to municipalities for reimbursement of up to 90% of eligible costs for onsite investigation and remediation activities, and 100% for off-site remediation if required by the DEC. The property may then be used for commercial, industrial, residential, or public use, depending on the level of cleanup. All of the \$200 million authorized under the 1996 Clean Water/Clean Air Bond Act for the ERP was committed as of March 31, 2009. Application approvals are on hold. Additional dedicated

funding is required if the ERP is to continue to assist municipalities with their revitalization efforts.

- Clean Water State Revolving Fund offers interest-free short-term loans, and low-interest long-term loans for water-related projects.

Tax incentives (abatements, credits, etc.):

- The state's environmental conservation law, tax law, and insurance law provide for a suite of tax credits available to parties cleaning up sites under the BCP. These credits offset costs associated with real property taxes, site preparation, ground water remediation, property improvements, and insurance premiums relating to environmental remediation insurance. The applicant must receive a COC from the DEC stating that remediation requirements have been or will be achieved for the brownfield site in question in order to be eligible for the tax credits.

In addition, Environmental Zones (En-Zones) provide enhanced tax credits under the BCP for parties who remediate and redevelop brownfield sites in designated areas. En-Zones are areas identified by the Commissioner of Economic Development as having a poverty rate at least 20% and an unemployment rate at least one-and-a-quarter times the statewide average or a poverty rate of at least double the county poverty rate.

- The tax credits involved with the BCP include those for site preparation and onsite ground water costs cover remediation, demolition, excavation, fencing, security, and other capital account costs to make the site usable for redevelopment, excluding site acquisition costs. Eligible costs may be claimed for up to five years after the issuance of the COC. Projects accepted into the BCP after June 23, 2008 may qualify for credits ranging from 22-50% whereas projects accepted prior to June 23, 2008 may qualify for credits ranging from 10-22%.
- Tangible Property Credit Component ("Redevelopment Credit"): For sites accepted into the BCP after June 23, 2008, new state legislation enacted in 2008 increases the tangible property credits by 2% for sites in a designated Brownfield Opportunity Area (BOA) where redevelopment conforms with the goals and priorities of the BOA. The tangible property credit component is capped as described below. This component covers costs of buildings and improvements (including structural components of buildings) that are placed into service within 10 years after the COC is issued. Projects accepted into the BCP after June 23, 2008 may qualify for credits ranging from 10-24 %, whereas projects accepted prior to June 23, 2008 may qualify for credits ranging from 10-22%.
- Tangible Property Credit Cap: The law now limits redevelopment credits for sites accepted into the BCP after June 23, 2008 to provide balance between credits available for remediation and redevelopment.

New York

The applicable tangible property tax cap is based on allowable land uses as outlined in the COC and calculated as follows:

- Non-manufacturing projects: \$35 million or three times (3x) the site preparation and onsite ground water remediation costs, whichever is less.
- Manufacturing projects: \$45 million or six times (6x) the site preparation and onsite ground water remediation costs, whichever is less.

Tangible Property Credit Cap: The law now limits redevelopment credits for sites accepted into the BCP after June 23, 2008 to provide balance between credits available for remediation and redevelopment. The applicable tangible property tax cap is based on allowable land uses as outlined in the COC and calculated as follows:

- Non-manufacturing projects: \$35 million or three times (3x) the site preparation and onsite ground water remediation costs, whichever is less.
- Manufacturing projects: \$45 million or six times (6x) the site preparation and onsite ground water remediation costs, whichever is less.

The Remediated Brownfield Credit for Real Property Taxes provides the following tax credit for qualified sites:

- 25% (or if in an En-Zone, then 100%)
- Multiplied by employment factor
- Multiplied by real property taxes
- Subject to a limitation of: \$10,000 multiplied by the number of full time employees
- Employment Number Factor is determined as follows:
 - At least 25 but less than 50 = .25
 - At least 50 but less than 75 = .50
 - At least 75 but less than 100 = .75
 - At least 100 or more = 1.0

If the site is located in whole or in part in an Empire Zone, the taxpayer must make an irrevocable election between the two real property tax credits available. Thus, the taxpayer needs to select between Remediated Brownfields Credit or the QEZE Real Property Tax Credit in the first year the taxpayer qualifies for both the Remediated Brownfields Credit for Real Property Taxes and the QEZE Real Property Tax Credit.

- The Environmental Remediation Insurance Credit (NYS Insurance Law—Section 3447) provides credits for certain types of insurance coverages including those with:
 - On-site cleanup of pre-existing pollution conditions coverage.
 - Third party claims coverage (bodily injury, property damage).
 - Cost-cap coverage.
 - Re-opener coverage.
- The credit is equal to the lesser of: \$30,000 or 50% of the cost of the policy. There is a one time refundable credit for each policy.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The BOA Program is a local planning tool. BOAs provide technical and financial assistance to municipalities and community-based organizations to conduct redevelopment planning and for areas containing brownfields as well as site assessments for strategic sites. Funding is available to cover 90% of the costs to complete BOA pre-nomination studies, nomination documents, implementation strategies, and site assessments. Projects in the BOA Program may receive a priority and preference when considered for financial assistance pursuant to any other state, federal, or local law. The BOA Program is administered by the DEC in partnership with the Department of State (DOS).

Program Elements

Technical Elements

Methods/standards/controls:

- BCP—Cleanups under the BCP must be protective of public health and the environment based on remedy selection criteria including the current, future, and reasonably anticipated land use of the site. New York State law prescribes a multi-track approach for the remediation of contamination: Track 1 (unrestricted use); Track 2 (restricted use with generic soil cleanup objectives); Track 3 (restricted use with generic soil cleanup objectives); and Track 4 (restricted use with site-specific soil cleanup objectives). A responsible party (RP) must also conduct any necessary off-site remediation.
- ERP—Remedies are protective of public health and the environment. The remedial program for soils at a site must utilize soil cleanup objectives that are protective of public health and the environment. An alternative analysis is used to determine final soil cleanup levels. Environmental easements are used to control future land use where cleanup is not to unrestricted standards.
- VCP—Cleanups under the VCP must be protective of public health and the environment based on remedy selection criteria that includes the site's contemplated use. Contemplated use includes unrestricted and restricted forms of residential, commercial, and industrial uses.

Contaminants covered/excluded:

- BCP—hazardous waste (including hazardous substances) and petroleum are covered.
- ERP—hazardous waste (including hazardous substances) and petroleum are covered; no lead paint inside buildings; 50% of the eligible costs for asbestos/demolition.
- VCP—hazardous wastes, hazardous substances, and petroleum are covered.

New York

REGION 2

Use of long-term stewardship and institutional controls (IC):

- Institutional controls and/or engineering controls are allowed in the BCP, ERP, and VCP programs if they are protective of public health and the environment. In addition, environmental easements may be required for the protection of public health and the environment and to achieve the requirements for remediation established at contaminated sites.
- Institutional controls/engineering controls are beneficial because they may be less expensive, allow for expedited cleanups, and allow property to be reused that is not cleaned up to unrestricted use levels.
 - **IC Tracking:** Yes, the DEC tracks all institutional and engineering controls.
 - **IC Oversight:** Yes, the DEC reviews all proposed institutional and engineering controls.
 - **IC Monitoring:** Yes, the DEC monitors institutional and engineering controls.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.dec.ny.gov/chemical/8437.html>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: In the BCP and VCP, state oversight costs must be reimbursed by the party cleaning up the site. Responsible parties must also pay past costs.

Funding source for administrative costs and staff:

- Administrative and staff costs are provided by the state's general fund and from the sale of bonds.

Cleanup Activities

Sites currently in State Brownfields Programs:

- BCP—As of March 31, 2009, the DEC approved 294 applications for participation in the program.
- ERP—As of March 31, 2009, the DEC approved 284 applications for participation in the program.
- VCP—As of March 31, 2009, the DEC approved 754 applications for participation in the program. (Note: the DEC stopped accepting applications for the VCP in 2003.)

Sites completed under State Brownfields Programs:

- BCP—As of March 31, 2009, 51 sites completed remedial actions since the program's inception.
- ERP—As of March 31, 2009, 25 sites have remedial actions completed.
- VCP—As of March 31, 2009, 171 sites have remedial actions completed.

Benefits (incentives to participate, covenants not to sue, etc.): New York's brownfields programs are designed to promote environmental restoration and preservation, public health protection, economic development, job creation, and community revitalization throughout the state. Incentives to increase participation in the state's programs include technical and financial assistance, liability releases, and tax credits.

Public Participation

Public participation requirements (notice, comment periods, etc.):

- The BCP law sets forth citizen participation requirements at several milestones during a BCP project. These requirements may include: developing a citizen participation plan; public notices; fact sheets; public comment periods; and may include public meetings.
- The ERP law and regulations set forth citizen participation requirements. Among other requirements, the municipality must develop a citizen participation plan that serves as a tool to manage the project's citizen participation program.
- The VCP incorporates public notice and comment at various project's milestones as a matter of policy rather than legal requirement.

Public participation activities (hearing, meetings, etc.):

- The Department conducts meetings and hearings as required by law or as needed to inform and educate the public on remediation activities. Updated information on Public Participation activities is regularly provided on DEC's Web site.

Statutory Authorities

- The Environmental Conservation Law, Articles 17, 19, 27, 71, provides general, comprehensive enforcement and cleanup authority. It includes authority under which the state established a voluntary cleanup program. Part of the Environmental Conservation Law, Article 56, Title 5 (1997), establishes the Environmental Restoration Program.
- The General Municipal Law, Article 18-C, Section 970-r, establishes the Brownfield Areas Opportunity Program.
- The Tax Law, Articles 1 and 8, establish the various brownfield remediation and redevelopment tax and insurance credits.

Puerto Rico

General Information

Contact: Puerto Rico Environmental Quality Board (PREQB)
CORE and Superfund Program
Enid Y. Villegas-Henriquez

Address: P.O. Box 11488
San Juan, Puerto Rico 00910

Phone: 787 767 8181 Ext. 3207, 3209

Fax: 787 766 0150

Web site: <http://www.jca.gobierno.pr>

Program Description (VCP, brownfields, or related)

In 2000, Puerto Rico began the development of the Property Redevelopment and Voluntary Cleanup Program (PRVCP) under a state assistant grant from EPA. Incentives for participation in the program include liability relief for prospective purchasers and lenders, cleanup certification, Memorandum of Understanding between PREQB and EPA, and agreements between interested parties.

Brownfields definition: No information available

Program titles: Property Redevelopment and Voluntary Cleanup Program

Liability relief provisions: The program offers liability relief for prospective purchasers and lenders through letters, certificates, and/or agreements.

Financial incentives (grants, loans, tax provisions, etc.): The PRVCP contemplates tax exemptions as a possible financial incentive, but no final determination has been made.

Legislative or program site eligibility requirements: The site eligibility requirements will be included in the program's rules and regulations.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): No information available

Tax incentives (abatements, credits, etc.): PREQB is evaluating tax incentives to be used in the PRVCP.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): PREQB has the authority to issue cleanup letters and completion letters.

Program Elements

Technical Elements

Methods/standards/controls: PREQB is developing the procedures, cleanup standards, and methods to be used in the PRVCP. The PREQB Superfund Core Program will start the Technical Guidelines during fiscal year 2010. PREQB is approaching the contract that will provide professional services to draft the Puerto Rico Property Redevelopment and Voluntary Cleanup Program Technical Guidelines.

Contaminants covered/excluded: PREQB is developing the list of chemicals of concern to be addressed under the PRVCP.

Use of long-term stewardship and institutional controls (IC): No information available

- **IC Tracking:** No information available
- **IC Oversight:** No information available
- **IC Monitoring:** No information available

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: PREQB will establish a reasonable cost to enter into the PRVCP.

Funding source for administrative costs and staff: The funding source for the PRVCP will be a special account with funds collected from the program.

Cleanup Activities

Sites currently in VCP: The PRVCP is under development.

Sites completed under VCP: The PRVCP is under development.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The PRVCP is under development.

Public Participation

Public participation requirements (notice, comment periods, etc.): The PRVCP requires notification to the public on issues related to the cleanup standards, rules and regulations, and cleanup activities related to the program.

Public participation activities (hearing, meetings, etc.): PREQB has conducted several public meetings to present the PRVCP to communities, industries, government agencies, and other stakeholders.

Statutory Authorities

The Environmental Emergencies Fund Act, Law 81, 12 LPR Ann. §§1271 et seq. (1987), establishes the Environmental Emergencies Fund and authorizes the Environmental Quality Board to respond to emergencies and recover response costs from liable parties. The Act has no order or injunctive authorities; Puerto Rico relies on other authorities for these purposes, including the Public Policy Environmental Act, Law 9, 12 LPR Ann., §§1121 et seq. (1970, as amended 1973, 1974, 1978, 1983, 1984, 1985, 1993, and 1997).

Virgin Islands

REGION 2

General Information

Contact: Division of Environmental Protection of Planning & Natural Resources (DPNR)

Address: Cyril E. King Airport, 2nd Floor
St. Thomas, US Virgin Islands 00802

45 Mars Hills, Frederiksted
St. Croix, US Virgin Islands 00841

Phone: 340 774 3320
340 773 1082

Fax: 340 714 9549
340 692 9794

Web site: <http://www.dpnr.gov.vi/dep/home.htm>

Program Description (VCP, brownfields, or related)

The DPNR is developing a Voluntary Cleanup Program (VCP) under a cooperative agreement with EPA to spur cleanup of brownfield sites in the Virgin Islands. The activities funded under this agreement include: 1) forming a technical committee to guide the development of the VCP; 2) hiring consulting firms to assist DPNR in developing VCP strategies; and 3) training personnel on relevant aspects of the VCP and site inventory procedures.

Brownfield definition: Brownfields means real property; the expansion, redevelopment, or use of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles: No information available

Liability relief provisions: 12 V.I.C. Chapter 14 §555

Financial incentives (grants, loans, tax provisions, etc.): Title 29 V.I.C., Chapter 12. The Commission may provide tax credits or benefits under this chapter for cleanup and redevelopment activities by developers real property declared and certified to the Commission as brownfield sites under 12 V.I.C., Chapter 14.

Legislative or program site eligibility requirements: No information available

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): No information available

Tax incentives (abatements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: 12 V.I.C Chapter 14 §553(b) and (c)

Contaminants covered/excluded: 12 V.I.C Chapter 14 §553(b) and (c)

Use of long-term stewardship and institutional control: 12 V.I.C Chapter 14 §553(b) and (c)

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Cost to enter program or fees for service: Registration fees to be collected from persons conducting voluntary remediation to defray the actual reasonable costs of the voluntary remediation program expended at the site not to exceed the lesser of \$5,000 or one percent of the actual costs of remediation; however, no registration fee is required when the person conducting voluntary remediation is an agency, department or authority of the Virgin Islands' government.

Funding source for administrative costs and staff: No information available

Cleanup Activities

Sites currently in VCP: No information available

Sites completed under VCP: No information available

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available

Public Participation

Public participation requirements (notice, comment periods, etc.): No information available

Public participation activities (hearing, meetings, etc.): Annual Brownfields Forum
<http://www.dpnr.gov.vi/dep/brownfields.htm>

Statutory Authorities

12 V.I.C Chapter 14

Delaware

General Information

Contact: James Poling

Address: Delaware Department of Natural Resources and Environmental Control (DNREC),
Division of Air and Waste Management
State Investigation & Restoration Branch
391 Lukens Drive
New Castle, DE 19720-4801

Phone: 302 395 2600

Fax: 302 395 2601

Email: james.poling@state.de.us

Web site: <http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/sirb/brownfield.asp>

Program Description (VCP, brownfields, or related)

Brownfield definition: Delaware defines brownfields as “any vacant, abandoned or underutilized real property the development or redevelopment of which is hindered by the reasonably held belief that the real property may be environmentally contaminated.” 7 Del. C. §9102(3).

Program titles:

- Brownfields Development Program (BDP) (2004) – The BDP codifies the prospective purchaser concept and provides liability waivers and financial assistance to brownfield developers.
Brownfield Voluntary Cleanup Program (BFVCP) – The site owners and/or responsible parties who purchased the property and can show they did not cause or contribute to the contamination of the property are eligible for this program.
- Voluntary Cleanup Program (VCP) (1995) – The VCP provides programmatic and liability assistance to current owners or potentially responsible parties (PRPs).

Liability relief provisions: The BDP offers complete liability protection for existing contamination to qualified brownfield developers provided that they enter into a Brownfields Development Agreement (BDA), and agree to clean up the contamination as specified in the Final Plan of Remedial Action approved by the Department prior to development of the site. Once the remedy is in place, the developer may request and receive a Certificate of Completion of Remedy (COCR) which provides liability protection as long as the requirements of the COCR are followed. The BDP offers liability protection for geographic or environmental media specific operable units identified within the site.

- The BFVCP offers protection similar to the BDP once a remedy is complete and a COCR has been issued for a site.

- The VCP offers No Further Action (NFA) letters; prospective purchasers may sign a consent decree for contribution protection; and new owners of remediated sites may receive a Covenant Not to Sue (CNTS), and can receive a COCR for remedies, which provide liability protection waivers.
- The Hazardous Substance Cleanup Act (HSCA) establishes strict, joint and several liabilities and authorizes cost recovery.
- DNREC must attempt a settlement prior to initiating an enforcement action, unless an emergency exists. The state has injunctive action and administrative order authority. Civil penalties of up to \$10,000 per day per violation are available. The state may recover punitive damages, treble the state’s cleanup costs.

Financial incentives (grants, loans, tax provisions, etc.):

DNREC has allocated \$5,000,000 a year for Brownfields Grants. The grants are up to \$225,000 for private parties and up to \$1 millions for nonprofit and government entities.

- The Delaware Economic Development Office (DEDO) has a \$1,000,000 matching grant fund for certified brownfields. These grants are a maximum of \$100,000 per grant.
- DNREC also has a Revolving Loan Fund and a Hazardous Substance Cleanup Loan program. The Revolving Loan Fund provides loan of \$10,000 to \$400,000 and the Hazardous Substance Cleanup loans provide up to \$250,000 or 90% of the cleanup costs, whichever is lower, per site.
- The Tanks Management Branch has additional monies that may be used on brownfield sites, including the FIRST Program (Fund for the Inability to Rehabilitate Storage Tanks), and the PLUS Program (Program Loans for Underground Storage Tank Systems).

Legislative or program site eligibility requirements: To enter into the BDP, the site must be a certified brownfield and the developer must not have any contractual or familial relationship with any PRP. Anyone may enter into the VCP provided they make reasonable progress towards investigations and cleanups at the site.

All cleanups must comply with the Delaware Regulations Governing Hazardous Substance Cleanup. Participants receive a COCR and subsequent purchasers receive a release from liability for existing contamination.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): The Hazardous Substance Cleanup Act Fund (HSCAF) had a balance of \$12,000,000 at the end of FY07. The HSCAF receives petroleum products tax receipts, penalties, cost recovery, and interest. The fund

Delaware

REGION 3

is available for program administration, site investigation, studies and design, removals, remedial actions, emergency response, natural resource restoration, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, and operations and maintenance.

The Brownfields Grant allocation is for the private sector and municipal, county and state governments, nonprofit organizations, and redevelopment authorities. Eligible entities receive funding based on the type of organization. The amount of grant funds available ranges from \$225,000 for the private sector up to \$1,000,000 for nonprofits, governmental entities and redevelopment authorities in any fiscal year. The eligible entity must not have caused or contributed to the contamination.

The DEDO matching grant awards up to \$100,000 per project. Qualified parties must be from the private sector. The project must result in the hiring of five full time employees.

Tax incentives (abatements, credits, etc.): Tax credits of \$650/year per new job created related to cleanup and redevelopment (\$900/year in poverty areas).

Participants receive tax credits based on the size of investment and number of new employees brought to the site. Grants of up to \$25,000 are available for site investigation and cleanup. In addition, low interest loans up to \$250,000 are also available for brownfield sites. About 700 sites have been identified for inclusion in the program, with cleanup underway at 96.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): There are several redevelopment authorities that are engaged in redeveloping brownfields. They include the Riverfront Development Corporation, the Downtown Dover Development Corporation, the Blades Economic Development Corporation, and others.

Program Elements

Technical Elements

Methods/standards/controls: Risk-based cleanup standards of 1.0×10^{-5} for carcinogenic risk and a Hazard Index of 1.0 for non-carcinogenic risks are used. DNREC provides guidance on the investigation and remediation of sites.

Contaminants covered/excluded: Hazardous substances as defined in HSCA are covered. In addition, petroleum contamination is covered on brownfield sites; asbestos and lead paint contamination are covered if found in the soil.

Use of long-term stewardship and institutional controls: Institutional controls/land-use controls are allowed, including Uniform Environmental Covenants, operation and maintenance plans, and Ground Water Management Zones (GMZ). GMZs prevent the use of ground water and encourage development by allowing low levels of contamination to remain in the ground water while preventing exposure.

- **IC Tracking:** DNREC uses a database to track sites with ICs. This database is in the process of being improved.
- **IC Oversight:** DNREC performs inspections on a regular basis of the sites that have O&M requirements.
- **IC Monitoring:** DNREC reviews O&M reports for sites with O&M controls.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/sirb/ssd_map.asp

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: August 1997

Costs to enter program or fees for service: There is no cost to enter into the BDP and the BFVCP. There are oversight costs for investigative or remedial activities for DNREC staff time. The developer will also be responsible for the cost of publishing public notices. These costs are often included in the allowable costs for a Brownfields Grant.

To fund the state's VCP oversight, participants are required to remit an initial deposit up to a maximum of \$5,000. Additional deposits will be requested based on the oversight cost estimate as the site cleanup progresses. Any deposit funds not expended by the state are returned to the participant.

Funding source for administrative costs and staff: The DNREC, Division of Air and Waste Management, Site Investigation and Restoration Branch (SIRB) have 36 full-time equivalent (FTE) staff, with 36 FTE staff authorized. Legal support is provided by the Department of Justice (Attorney General's office) with two attorneys assigned to both state and CERCLA work. The majority of funding for administrative and staff costs come from the federal grants (35%) and the HSCAF (49%). Oversight cost reimbursements (10%) and state general fund (6%), comprise the balance.

Cleanup Activities

Sites currently in VCP: 283 sites have entered the VCP, and 170 sites are currently in the program. There are 125 sites in the BDP.

Sites completed under VCP: 113 sites have been completed under the VCP and the BDP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The state has identified a number of economic benefits attributable to the

Delaware

BDP and the VCP: more than 3,200 jobs and 55 businesses created; tax revenues increased; over 1,000 apartment/housing units for University of Delaware students created; three school sites in process of development; and several parks, open space and recreational uses created.

Public Participation

Public participation requirements (notice, comment periods, etc.): The HSCA provides for public notice and opportunity for public comment on proposed consent decrees, settlement revisions, proposed and final remedial action plans; public hearings and meetings; and document availability. Additionally, there are public notices when DNREC enters into negotiations for a BDP or VCP applicant, and a notice once DNREC has entered into a BDA.

Public participation activities (hearing, meetings, etc.): Delaware's first statewide Brownfields Development Conference was held on October 14, 2004.

Statutory Authorities

- The Hazardous Substance Cleanup Act (HSCA), Title 7, §§9101–9126 (1990, as amended 1995, 2001, 2003, and 2004), establishes the HSCF and authorizes DNREC to clean up sites contaminated by hazardous substances. The law provides for enforcement; strict, joint and several liability; cost recovery; public participation; natural resource damage assessment and recovery; property transfer provisions; water replacement; the BDP (2004) and the VCP (1995). The 2004 amendments creating the BDP created a subsection to HSCA.
- The Delaware Regulations Governing Hazardous Substance Cleanup (1993, revised 1995 and 1996), prohibit site cleanup at a property contemplated for redevelopment or development without prior approval from DNREC.

The passage of the BDP in 2004 has required that the HSCA regulations be amended to reflect the new program. The Department is currently in the process of revising the **Delaware Regulations Governing Hazardous Substance Cleanup**. The current schedule calls for a draft for public review to be available in early 2009.

General Information

Contact: District of Columbia Department of the Environment Toxic Substances Division

Address: 51 N Street, NE
Washington, DC 20002

Phone: 202 535 1747

Fax: 202 535 1383

Web site: [http://ddoe.dc.gov/ddoe/cwp/view,a,1209,q,495015,ddoeNav_GID,1486,ddoeNav,\[31375|31377\].asp](http://ddoe.dc.gov/ddoe/cwp/view,a,1209,q,495015,ddoeNav_GID,1486,ddoeNav,[31375|31377].asp)

Program Description (VCP, brownfields, or related)

On June 15, 2001, the *Brownfield Revitalization Amendment Act of 2000*, became effective. The Act established the Voluntary Cleanup Program (VCP), a brownfields program, and provides for long-term stewardship of sites that have been cleaned up under these programs. The Act also authorized tax and other incentives for development of contaminated property, and amended provisions of the *Tax Increment Financing Authorization Act of 1998*, *National Capital Revitalization Corporation Act of 1998*, and the *District of Columbia Community Development Act of 1975* to incorporate and support the cleanup and redevelopment of contaminated property.

Brownfield definition: Abandoned, idled property or industrial property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

Program titles:

- Voluntary Cleanup Program
- Brownfields Program
- Underground Storage Tank (UST) Program
- Leaking UST (LUST) Program

Liability relief provisions: The Brownfield Revitalization Amendment Act of 2000 authorizes a civil penalty of up to \$50,000 and strict, joint, and several liability for the unlawful release of any hazardous substance. It does not authorize punitive damages or retroactive liability.

Financial incentives (grants, loans, tax provisions, etc.): Participants may receive grants (subject to the availability of funds in the Clean Land Fund), loans, and tax credits to offset real property taxes and business franchise taxes.

Legislative or program site eligibility requirements:

- Under the VCP, non-responsible parties are eligible to participate.

- Any brownfields or site contaminated by hazardous substances that is not listed on EPA's National Priorities List (NPL), and is not the subject of a current cleanup action by EPA or EHA.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Participants entered in the program may receive grants and loans subject to the availability of funds in the Clean Land Fund.
- The Clean Land Fund provides for the administration, improvement, and maintenance of the brownfields and VCP, loans and grants made for contaminated property cleanup assistance, and any other brownfields revitalization incentives established by the Brownfields Revitalization Amendment Act. Authorized sources of the Clean Land Fund include funds from appropriations, income from operations, grants, revenues, and fees.

Tax incentives (abatements, credits, etc.):

Participants may receive tax credits to offset real property taxes and business franchise taxes.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

Participants may contact the Office of the Chief Financial Officer and the Office of the Deputy Mayor for Economic Development regarding specific tax incentive financing support such as bonds.

Program Elements

Technical Elements

Methods/standards/controls: The District is developing hazardous substance cleanup standards. The District Department of the Environment (DDOE) must publish cleanup standards for contaminated properties under the VCP that include ground water, surface water, and soil standards. Until these cleanup standards are published, the VCP will use the District's Water Pollution Control Act ground water standards, and the District's LUST program standards.

Use of long-term stewardship and institutional controls (IC):

The Brownfield Revitalization Amendment Act of 2000 authorizes EHA to create, maintain, and disseminate records, informational systems, and educational materials that are necessary to protect public health and the environment at contaminated properties cleaned up under the Act. EHA may also

District of Columbia

issue instruments for cleaned up properties and properties adversely affected by residual hazardous substances from the cleaned up properties, which will include a notice of residual risk, residual risk restrictions, hazardous substance easements, and orders that run with the land.

- **IC Tracking:** The Brownfield Revitalization Amendment Act of 2000 authorizes EHA to create an institutional control tracking process.
- **IC Oversight:** The Brownfield Revitalization Amendment Act of 2000 authorizes EHA to create an institutional control oversight process.
- **IC Monitoring:** The Brownfield Revitalization Amendment Act of 2000 authorizes EHA to create an institutional control monitoring process.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://app.doh.dc.gov/services/administration_offices/environmental/services2/vcp/fact_sheets.shtm

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: The application fee to enter the District's VCP is \$10,000.

Funding source for administrative costs and staff: Currently, a combination of appropriated funds and federal brownfields grants provides for the administration costs.

Cleanup Activities

Sites currently in VCP: 12 (since 2003)

Sites completed under VCP: 6 completed. Anticipate one more in 2009.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Participants released from further liability for the cleanup of the eligible property and for any contamination identified in the environmental assessment of the property, and not subject to a contribution action instituted by a responsible person. Transferable Certificate of Completion (COC). Right to withdraw from the program.

Public Participation

Public participation requirements (notice, comment periods, etc.): The Brownfield Revitalization Amendment Act of 2000 provides for 14-day public notice and comment period before approval of an application, cleanup plan and the issuance of a COC under the VCP.

Public participation activities (hearing, meetings, etc.):

The law also authorizes EHA to develop public involvement plans for response or cleanup actions. Any person may bring an action to compel the Mayor to perform non-discretionary duties under the Brownfields Revitalization Amendment Act of 2000 or to bring a civil action on his or her own behalf against any person who is in violation of any standards, regulations, requirements, or orders pursuant to the act.

Statutory Authorities

- The Brownfields Revitalization Amendment Act of 2000, D.C. Code §101 et seq., authorizes a regulatory cleanup program, a voluntary cleanup program, a brownfields program, and provides for long-term stewardship of sites that have been cleaned up under these programs. Regulations to implement these programs have been drafted but are not yet finalized.
- The Hazardous Waste Management Act of 1978, D.C. Code §§6–701 et seq., (as amended in 1984, 1989, and 1991), establishes the District's hazardous waste management program. The law authorizes the Mayor to revoke or suspend a permit and, if a responsible party fails to comply with an administrative order, directs the Mayor to take corrective action necessary to alleviate or terminate a violation of the law, a threat to health or the environment, or a release of hazardous waste. The law also authorizes the Mayor to recover costs of the corrective action from the responsible person and provides for injunctions and civil and criminal penalties.

General Information

Contact: VCP Division Chief

Address: Maryland Department of the Environment (MDE)
1800 Washington Boulevard Suite 625
Baltimore, MD 21230-1719

Phone: 410 537 3447

Fax: 410 537 3472

Web site: http://www.mde.state.md.us/Programs_LandPrograms/ERRP_Brownfields/index.asp

Program Description (VCP, brownfields, or related)

Brownfields definition: No information available

Program titles:

- Voluntary Cleanup Program (VCP) (1997)
- Brownfields Revitalization Incentive Program (administered by the Department of Business and Economic Development)

Liability relief provisions:

- VCP offers Certification of Completion (COC) or No Further Requirements Determination; sites contaminated after October 1, 1997, listed on the National Priorities List (NPL), or under active enforcement are not eligible.
- Maryland has strict, joint, and several liability, but provides for apportionment where there is a reasonable basis for determining a party's contribution. Under state law, the state program may impose liability for cleanup of substances disposed of before the date program was enacted. State has civil penalty authority up to \$25,000 per violation. Punitive damages are not available.
- Through the VCP, certain purchasers who did not cause or contribute to contamination may limit their retroactive liability upon purchase of the property. Amendments effective October 1, 2004, clarify that a person who is not a "responsible person" because he meets one of the statutory exclusions is entitled to "inculpable person" status. The new law also ensures liability protection.

Financial incentives (grants, loans, tax provisions, etc.):

- The Maryland Department of Business and Economic Development administers the Brownfields Revitalization Incentive Program, which provides financial incentives for the redevelopment of brownfields. Eligible brownfield sites are either those that qualify for the VCP or those contaminated by oil. Properties must generally be industrial or commercial sites that are located in densely populated urban centers and generally underutilized to qualify for the program. Financial incentives include:

- Low interest loans or grants for Phase I and Phase II environmental assessments;
- Property tax credits in jurisdictions that have enacted enabling legislation for the difference on the assessed property value after pre- and post-cleanup and/or redevelopment; and
- Low interest loans or grants for site remediation; these incentives are designed to stimulate redevelopment in areas where cleanup will have significant environmental, economic development and urban revitalization benefits.
- The Brownfields Site Assessment Initiative, funded by EPA grants, is intended to help eligible property owners or prospective property owners determine the type and extent of possible contamination on a property. These assessments are conducted by MDE free of charge and both property owners and prospective property owners are eligible to participate. Applicants to the VCP may also apply for a brownfields assessment, which will reduce the investigation costs associated with a VCP application. The property should meet the following conditions: have perceived or known contamination; be vacant or underutilized; be located in a commercial or industrial area; create jobs; and improve the local tax base following redevelopment. Eligible properties also include sites on the EPA Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) and state Master List. Properties under active enforcement by MDE are not eligible to participate, unless the applicant is an inculpable person. This initiative is administered on a first-come, first-serve basis beginning July 1 of each calendar year and is open to both the public and private sector.

Legislative or program site eligibility requirements:

- Under the state Superfund program, MDE applies water quality criteria, ground water standards, Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), risk-based assessments, background levels, and EPA guidelines, as appropriate. Site-based risk assessments are used in conjunction with any applicable regulatory criteria and are based on EPA published standards and Region 3 guidance as appropriate and available. The state's voluntary cleanup law requires participants to select one or more of the following criteria that protect public health and the environment: uniform numeric risk-based standards; measurable standards based on site-specific risk assessment; background levels; federal or state soil standards or water quality standards; federal or state MCLs; or any other federal or state standards.

Maryland

- MDE has developed uniform numeric risk-based cleanup standards, based on industrial and residential uses. In cases where MDE approves a voluntary cleanup based on land use assumptions, the agency requires deed restrictions.
- The Brownfields Revitalization Incentives Program is open to sites that are not on the NPL list, not Treatment, Storage, and/or Disposal (TSD) facilities, and not subject to active enforcement, provided those sites are owned or operated by an inculpable person. The state brownfields law lists several factors to be considered in determining eligibility for financial assistance, including location, type of site, and economic development potential.
- In the VCP, any site that is contaminated or perceived to be contaminated is eligible for participation, other than NPL sites, sites under active enforcement, or TSD facilities. Eligible applicants include responsible persons who have not knowingly or willingly violated any hazardous substance law, as well as inculpable persons, defined as purchasers with no previous connection to the property.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Pursuant to state law, MDE is required to seek cost recovery for any state response costs funded by the Hazardous Substance Control Fund (HSCF). The HSCF includes monies used for activities outside the state Superfund program, and information specific to state Superfund activities is not available. The Voluntary Cleanup Fund currently consists of user fees. In the first year of the program, 23 applications were submitted, and \$138,000 in fees were placed in the Fund. If the state does not use the entire \$6,000 fee paid by a participant in its oversight role, it will refund the balance; conversely, if state oversight costs more than \$6,000, the balance will be collected from the participant.
- The Brownfields Revitalization Incentives Fund received \$500,000 in appropriations in the first year. The Fund may be used to make low interest loans and grants for site remediation.

Tax incentives (abatements, credits, etc.): Tax credits may be extended to 10 years in designated Enterprise Zones (EZs); incentive available in jurisdictions which agree to contribute 30% of the increase to the state's Brownfields Revitalization Incentive Fund.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: VCP provides a menu of cleanup options: uniform risk-based standards; site-specific risk assessment; federal/state soil standards or water quality standards; federal/state MCLs; and other federal/state standards. Site-specific risk assessments follow a Risk-Based Corrective Action (RBCA)-like process.

Contaminants covered/excluded: Polychlorinated biphenyls (PCBs) and oil (as of October 1, 2004) are OK; other contaminants accepted conditionally—petroleum (not exclusively, but along with other contaminants); paint and asbestos (as long as they comply with all other applicable laws and regulations).

Use of long-term stewardship and institutional controls

(IC): Institutional controls are allowed and are included in the No Further Requirements Determination (NFRD) or COC. The state notes that institutional controls “probably have resulted in more cleanups and more properties reused. Institutional Controls also have probably lowered the cost of cleanups.”

- **IC Tracking:** Institutional Controls/Land Use Controls (IC/LUC) are tracked by the Maryland Department of the Environment's Land Restoration Program. These documents are also recorded in the land records and sent to Miss Utility. Both programs are currently engaged in updating the GIS-based Web site to ensure that sites with IC/LUCs are readily available to the general public.
- **IC Oversight:** When the Voluntary Cleanup Program (VCP) issues NFRDs or COCs with LUCs, the enforcement of the IC/LUCs falls to the VCP through follow-up inspections.
- **IC Monitoring:** Other IC/LUCs associated with No Further Action (NFA) letters issued by the Controlled Hazardous Substance Enforcement Division are enforced by the Department and recorded with the land records.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://textonly.mde.state.md.us/Programs/LandPrograms/ERRP_Brownfields/mapping/index.asp

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: February 1997

Maryland

REGION 3

Costs to enter program or fees for service: An initial fee of \$6,000 is collected from each participant, although the fee is ultimately based on the actual cost of state oversight. Additional fees include:

- Application fee for subsequent application for the same property or contiguous or adjacent property in the same development: \$2,000.
- Fee for expedited determination as an inculpable person: \$2,000.
- Fee for issuance of NFRD or COC conditioned on certain uses or maintaining certain conditions: \$2,000.
- Fee for altering the record of determination in land records: \$2,000.

Program incentives include a streamlined process, determination of no further requirements and issuance of a COC, which releases the participant from state enforcement action and further liability for remediation approved by state.

Funding source for administrative costs and staff: MDE, Land Management Administration, Land Restoration Program (LRP) has three divisions involved in the state Superfund process: the Site and Brownfields Assessment/State Superfund Division, with approximately nine full-time equivalent (FTEs); the Voluntary Cleanup Program, with 13 FTEs; and the Federal Facilities and NPL Division, with 13 FTEs (approximately 7.5 of whom work on non-NPL sites). The core function falls under the Land Management Administration's Planning and Resource Management Program, and has approximately eight FTEs. The Attorney General's office has two attorneys located at MDE who work on hazardous substance cleanup. Funding for the state's Superfund program comes from the state general fund (10%), the state cleanup fund (10%), and from federal grants (80%).

Cleanup Activities

Sites currently in VCP: 432 sites have been accepted into the VCP.

Sites completed under VCP: 205 sites totaling approximately 3,028 acres have been completed.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): An estimated 100 businesses and more than 5,700 jobs have been created on brownfields sites; another 160 businesses have been located on, created and/or retained on brownfield sites.

Public Participation

Public participation requirements (notice, comment periods, etc.): There are statutory requirements for public meetings, document availability, as well as requirements for notice and public comment. Community involvement is encouraged if there is interest. The voluntary cleanup law provides for notice and comment, as well as an opportunity for a public informational meeting to discuss proposed cleanup plans. Amendments effective October 1, 2004, require MDE to post on its Web site notice of VCP applications and the opportunity for public comment. Persons receiving an NFRD or COC that includes any institutional controls must send this information to "Miss Utility" for recordation.

Public participation activities (hearing, meetings, etc.): Amendments effective October 1, 2004, require VCP applicants to hold a public informational meeting for all proposed response action plans.

Statutory Authorities

- The Annotated Code of Maryland, Environment Art., Title 7—Hazardous Material and Hazardous Substances, Subtitle 2—Controlled Hazardous Substances, §§7-201 through 7-268 (1982, as amended 1984, 1985, 1986, 1987, 1989, 1991, 1992, and 1993), establishes the HSCF and authorizes MDE to cleanup sites contaminated by hazardous substances. The law provides for enforcement; strict, joint and several, and proportional liability; cost recovery; public participation; and natural resources damages assessment and recovery.
- The Annotated Code of Maryland, Environment Art., Title 7—Hazardous Material and Hazardous Substances, Subtitle 5—Voluntary Cleanup Program, §§7-501 through 7-516 (1997), establishes the state's VCP (amended April 2004).
- The Annotated Code of Maryland, Art. 83A, Subtitle 9, Brownfields Revitalization Incentive Program, §§3-901 through 905 (1997), establishes the state's Brownfields Financial Incentives Program.

Pennsylvania

General Information

Contact: Troy Conrad

Address: Pennsylvania Department of Environmental Protection (DEP)
Land Recycling and Cleanup Program
P.O. Box 8471
Harrisburg, PA 17105-8471

Phone: 717 783 7816

Fax: 717 787 0884

Email: tconrad@state.pa.us
landrecycling@state.pa.us

Web site: <http://www.depweb.state.pa.us>
keyword "Brownfields"

Program Description (VCP, brownfields, or related)

Brownfields definition: Pennsylvania has adopted the federal definition: 'real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.'

Program titles:

- Land Recycling Program (est. 1995) a.k.a. "Act 2"
- Voluntary Cleanup Program (VCP)
- Brownfields Program
- Brownfield Action Team
- One Cleanup Program

Pennsylvania's Department of Environmental Protection also has several other remediation programs that complement the voluntary cleanup process and utilize the cleanup standards promulgated by the Land Recycling Program. Those programs include the Tanks Program and Pennsylvania's Hazardous Sites Cleanup Program (HSCP). Those programs are not outlined in this state profile.

Liability relief provisions: Program offers release from liability for approved cleanups and potentially responsible parties (PRPs) may participate. The program identifies risk-based standards for cleanup, simplifies the approval process, and limits future liability when standards are attained.

Pennsylvania signed a Memorandum of Agreement (MOA) with EPA in April 2004 that clarifies that sites remediated under the state Land Recycling Program (LRP) may also

satisfy requirements under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Resource Conservation Recovery Act (RCRA), or Toxic Substances Control Act (TSCA). This is the first One Cleanup Program MOA negotiated with EPA in the nation.

Financial incentives (grants, loans, tax provisions, etc.):

- Industrial Sites Reuse Program
- Infrastructure Development Program
- Hazardous Sites Cleanup Fund (HSCF)
- Keystone Opportunity Zones/Keystone Opportunity Expansion Zones (KOZ/KOEZ)
- Job Creation Tax Credit Program
- Building PA
- Tax Increment Financing (TIF) Guarantee Program
- Infrastructure and Facilities Improvement Program
- Section 108 Department of Housing and Urban Development (HUD) Loan Pool
- New PA Venture Guarantee Program
- New PA Venture Capital Investment Program
- 2nd Stage Loan Program
- Pennsylvania Infrastructure Investment Authority (PENNVEST) Brownfield Loans

Legislative or program site eligibility requirements:

- The LRP, along with its implementing regulations adopted in 1997, establishes statewide cleanup standards. The party undertaking cleanup must select one or a combination of the standards set out in the law and regulations. The three general remediation standards are: background; generic statewide health standards (concentrations of regulated substances associated with a specific environmental medium, which take into account land use factors); and site-specific risk assessment. The levels used for risk assessments are 10–4 to 10–6 for carcinogens and a Hazard Index of 1 for non-carcinogens.
- The regulations implementing LRP also provide a remediation standard for Special Industrial Areas (SIAs). The requirements include a remediation plan that provides for: 1) addressing "all immediate, direct, or imminent threats to public health and the environment which would prevent the property from being occupied for its intended purpose" and compliance monitoring; and 2) preventing access to contaminated areas not required to be remediated. For sites cleaned up to standards based on a specific land use, deed notice is the primary mechanism used by the state to maintain future land use restrictions. In some cases, deed restrictions are used.

Pennsylvania

REGION 3

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Industrial Sites Reuse Program provides loans and grants to municipalities and private entities for site assessment and remediation; maximum of \$200,000 for site assessment, or \$1,000,000 for remediation per year; all require a 25% match; loans carry a 2% rate for terms up to five years (for assessments) or 15 years (for remediation).
- Infrastructure Development Program provides public and private developers with grants and loans for site remediation, clearance, and new construction, up to \$1,250,000 per project at 3% interest for 15 years.
- Building PA provides funding for the development of real estate assets within the commonwealth. Funds are loaned to private investors and foundations looking to match funds to facilitate projects.
- New PA Venture Guarantee Program allows the commonwealth to actively partner with the investment community by providing guarantees to venture capital companies interested in Pennsylvania businesses. These guarantees will provide increased capital for Pennsylvania businesses to grow and create jobs.
- New PA Venture Capital Investment Program provides capital to Pennsylvania-focused venture capital companies that agree to match those funds and make investments in Pennsylvania businesses.
- Second Stage Loan Program will provide guarantees for bank loans to second stage manufacturers and technology companies for working capital and other financing needs. Targeted toward manufacturing, advanced technology and biotechnology, these funds support growth in these vital sectors.
- Infrastructure and Facilities Improvement Program is a multi-year grant program that provides grants to issuers of debt in order to assist with the payment of debt service.
- PENNVEST manages a Clean Water State Revolving Fund (CWSRF) to administer both state and federal funds available for certain infrastructure projects, including the construction of wastewater collection and treatment projects and endeavors that control non-point sources of pollution. In 2004, PENNVEST extended the use of its funds to include the remediation of brownfields that pose a threat to local ground water or surface water sources. PENNVEST allocates 30% of its yearly CWSRF funding capacity to address brownfields. Loans to one municipality may total up to \$11,000,000 per project. The amount is increased to \$20,000,000 for multi-municipal projects. Any requests over \$20,000,000 or projects that serve all or parts of four or more municipalities require a special vote by the PENNVEST Board of Directors.

Tax incentives (abatements, credits, etc.):

- KOZ/KOEZ—in designated KOZ/KOEZs, state and local taxes maybe forgiven until 2010 or 2013, respectively.
- Job Creation Tax Credit Program created a tax credit of \$1,000 per new job for firms that increase employment by 25 jobs or 20% within three years from start date (with program).
- The TIF Guarantee Program has been a significant financing tool for the commonwealth for many years. Through TIF, communities can borrow funds for projects that will develop blighted areas and then repay those borrowed monies through the new tax revenues that will be generated as a result of the development. While this method of financing has been used extensively by the state's largest cities, smaller communities have not tapped into the potential of TIF. In order to solve this disparity, a combination of technical assistance and loan guarantee assistance is proposed to encourage small communities to utilize this effective program.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): PA SiteFinder—Web site for marketing previously-used commercial and industrial properties available for redevelopment in Pennsylvania. A person can list a site for sale or lease and also search for one to purchase or lease. PA SiteFinder can be searched by property location, acreage, building square foot, or cost. Once a potential site is identified, additional information can be retrieved including county, municipality, property size, zoning, buildings and conditions, and utility access.

Environmental Insurance—Pennsylvania has pending legislation that would establish an environmental insurance program and a subsidies pool to help alleviate the premium costs for purchasing a Pennsylvania-specific policy.

Program Elements

Technical Elements

Methods/standards/controls:

By site—One property may have more than one site.

By media—Ground water and soil can use different standards, even for the same substance.

By substance—Can apply any one of the standards to each substance.

Contaminants covered/excluded: See list on LRP Web site.

Pennsylvania

Use of long-term stewardship and institutional controls (IC):

Reopeners include: fraud in the attainment demonstration; newly identified areas of contamination; remedy failure; and increased risk due to substantial changes in exposure or new toxicology information.

In late 2007, Governor Rendell signed Act 68, the *Uniform Environmental Covenants Act (UECA)*, into law. Act 68 provides a standardized process for creating, documenting, and assuring the enforceability of activity and use limitations on contaminated sites. Under UECA, an environmental covenant will be required whenever an engineering or institutional control is used to demonstrate the attainment of an Act 2 remediation standard for any cleanup conducted under an applicable Pennsylvania environmental law.

DEP is required to and has already begun to develop the "Pennsylvania Environmental Covenant Registry." Until the registry is developed, DEP will maintain an interim list of sites with an environmental covenant on its Web site. The list will include location information (e.g., street address, municipality, county) about each site as well as digital copies of the applicable environmental covenant, notice of environmental covenant or waiver (www.depweb.state.pa.us, Keyword "UECA").

- **IC Tracking:** Environmental covenants created under the law will be recorded in county land records and in a state registry to be created by DEP.
- **IC Oversight and Monitoring:** The environmental covenants will be binding and enforceable on successive owners over time.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.pasitefinder.state.pa.us/>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: April 2004

Costs to enter program or fees for service:

- \$250 for statewide health final report, background final report, and site-specific reports except final.
- \$500 for site-specific final report.
- No fee for SIA reports.
- Not required for regulated tank cleanups.
- If combined reports are submitted, multiple fees apply.

Funding source for administrative costs and staff: LRP in DEP handles hazardous substance cleanup and has 175 full-time equivalent (FTE) staff. Legal support is provided by the DEP Office of Chief Counsel with approximately 12 FTE attorneys. The state cleanup fund provides 100% of administrative costs.

- **Establishment of Office of Community Revitalization and Local Government Support**—This office is charged with coordinating economic development and brownfields redevelopment activities.
- **Brownfields Action Team (BAT)**—This program was established to provide redevelopment projects with an enhanced management process specifically designed to facilitate both environmental protection and economic development. Each BAT is assembled based on the needs of that specific project. Each project will be provided with a single point-of-contact to facilitate project advancement and eliminate avoidable delays. This includes site assessment, remediation activities, permit coordination, and priority funding opportunities.
- **Best Management Practices for Low-Risk Sites**—A series of criteria and reporting requirements have been established that allow low-risk sites to receive the full liability protection afforded by Act 2 without DEP review. Low-risk site submittals are not subject to more than an administrative verification for completeness. The burden of compliance is on the submitting licensed professional.
- **Mothball Properties**—DEP is working with local governments to identify properties critical to community revitalization efforts that have been "mothballed" by owners reluctant to offer for sale or initiate the remediation of these properties. In consultation with local officials, DEP staff will initiate enforcement action to require assessment and remediation work on these properties with potential environmental liabilities. At any point in the process, an owner may choose to enter LRP.
- **Grayfields**—Abandoned mine lands (AML) historically have not been eligible for funding under Act 2 or for related tax incentives available at the federal level. DEP will initiate a program to apply land recycling procedures to AMLs. DEP hopes to identify a subset of AMLs that are well positioned (close to resources and infrastructure) for redevelopment. Monies may be leveraged for AML reuse from the federal Office of Surface Mining under the Surface Mining Control and Reclamation Act (SMCRA), and the Industrial Sites Reuse Program administered by Department of Community and Economic Development (DCED). Legislation is being drafted to promote an AML reuse program, and to ensure the protection of water rights by reusers relying upon mining-affected waters for their operational needs.
- **Pennsylvania Uniform Environmental Covenants Act - Act 68 of 2007** - see previous section under Technical Elements

Pennsylvania

Cleanup Activities

Sites currently in VCP: 1,843 as of July 1, 2009.

Sites completed under VCP: 3,172 as of July 1, 2009.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Liability relief, improved quality of life, and community/urban revitalization.

Public Participation

Public participation requirements (notice, comment periods, etc.):

- HSCA establishes requirements relating to public notice, public comment, hearings and meetings, document availability, and grants to citizen groups. The state provides public notice of the analysis of a selected response action and alternatives. The public notice is followed by a 90-day comment period. A public hearing is held within the 90-day comment period. HSCA also has a citizen suit provision.
- The LRP and its regulations contain public participation requirements for parties proposing remediation under one of the law's cleanup standards. These include public notice and comment, as well as the development of public involvement plans where the site-specific standard is used and the affected municipality requests to be involved. Community Relations Coordinators perform additional public participation functions on an ad hoc basis.

Public participation activities (hearing, meetings, etc.):

As required by Pennsylvania statute and MOA.

Statutory Authorities

- The Hazardous Sites Cleanup Act (HSCA) (Act 1988–108), 35 PS §6020.101 et seq., establishes the HSCF and authorizes the DEP to clean up sites contaminated by hazardous substances. The law provides for enforcement, strict, joint and several liability, cost recovery, public participation, natural resource damage assessment and recovery, water replacement, and environmental disclosure upon property transfer.
- The Land Recycling and Environmental Remediation Standards Act, (LR&ERSA) (Act 1995–2), 35 PS §6026.101 et seq., establishes statewide cleanup standards and a voluntary cleanup program, and addresses brownfield sites.

Virginia

General Information

Contact: Kevin Greene

Address: Virginia Department of Environmental Quality
(DEQ) Division of Waste Program
Coordination

629 East Main Street, Fourth Floor
P.O. Box 10009
Richmond, VA 23240-0009

Phone: 804 698 4236

Fax: 804 698 4234

Email: klgreene@deq.state.va.us

Web site: <http://www.deq.state.va.us/brownfieldweb/>

Program Description (VCP, brownfields, or related)

Since 1997, Virginia has had a program for voluntary cleanups of contaminated sites. Regulations provide a framework for selecting cleanup standards under the Voluntary Cleanup Program (VCP). Eligibility is limited to sites where remediation is not mandated pursuant to a federal or state regulatory program. Incentives for participation in the program include the issuance of a certification of satisfactory completion of remediation, which constitutes immunity to a state enforcement action.

On March 12, 2004, Virginia issued an Interim Brownfields Manual. DEQ's goal in implementing the brownfields program is to make its innovative and business oriented provisions substantive, user friendly, and timely. The manual presents definitions, frequently asked questions, and flowcharts to help the user quickly and easily self assess the applicability of the amnesty and limited liability provisions for project. The program covers sites with a local government interest and a potential for redevelopment. The state provides the site assessment service as an incentive for the reuse or redevelopment of brownfields.

Brownfields definition: Idled, underutilized, or abandoned industrial or commercial properties where expansion or redevelopment is complicated by real or perceived environmental contamination.

Program titles:

- Brownfields Program
- Voluntary Remediation Program (VRP)

Liability relief provisions: Virginia's brownfields law protects bona fide prospective purchasers and innocent landowners from having to conduct containment or cleanup under Virginia's air, water, and waste laws at a brownfield

site if they meet the statutory definitions and the additional requirements in the statute.

Financial incentives (grants, loans, tax provisions, etc.): Local governments are authorized to provide tax incentives.

Legislative or program site eligibility requirements: No information available

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Voluntary Response Action (VRA) provides funding for brownfields remediation projects for localities and governmental authorities across the commonwealth, both through the Virginia Pooled Financing Program (VPFP) and through the Virginia Water Facilities Revolving Fund (VWFRF).

Tax incentives (abatements, credits, etc.): Defines environmental restoration sites holding Certificates of Completion (COCs) as a separate class of property and allows local governments to adopt an ordinance partially or fully exempting that class from taxation.

Other forms of support (environmental insurance, Brownfields redevelopment, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: Risk-Based Corrective Action (RBCA)-like process in place; applicants have a choice of remediation standards—Tier I (background), Tier II (look-up values adopted/modified from EPA standards), or Tier III (risk-based, including institutional controls).

Contaminants covered/excluded: Petroleum, asbestos, lead paint, and polychlorinated biphenyls (PCBs) all OK, if not regulated under another program.

Use of long-term stewardship and institutional controls (IC): Institutional controls are allowed; however, Virginia does not have a long-term stewardship program for its state cleanup program or for its voluntary cleanup program.

- **IC Tracking:** Virginia does not have a long-term stewardship program for its state cleanup program or for its voluntary cleanup program.
- **IC Oversight:** Virginia does not have a long-term stewardship program for its state cleanup program or for its voluntary cleanup program.
- **IC Monitoring:** Virginia does not have a long-term stewardship program for its state cleanup program or for its voluntary cleanup program.

Virginia

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.deq.virginia.gov/brownfieldweb/brnsites.html>

<http://www.deq.state.va.us/vrp/public.html>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: January 2002

Costs to enter program or fees for service: \$5,000 or 1% of the cost of remediation, whichever is less.

Funding source for administrative costs and staff: State oversight is funded in part by a fee of \$5,000 or 1% of the cost of remediation, whichever is less.

Cleanup Activities

Sites currently in VCP: 152 enrolled in VRP as of January 1, 2009.

Sites completed under VCP: 178 No Further Action (NFA) certificates issued as of January 1, 2009.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): COCs provide assurance that the remediated site will not later become the subject of a DEQ enforcement action unless new issues are discovered.

Public Participation

Public participation requirements (notice, comment periods, etc.): State regulations establish public notice and comment requirements for the VRP.

Public participation activities (hearing, meetings, etc.): State regulations establish public notice and comment requirements for the VRP.

Statutory Authorities

- Brownfields Restoration and Land Renewal Act, Va. Code §§10.1–1230 through 10.1–1237.
- The Waste Management Act, Va. Code §§10.1–1400—10.1–1457 (1986, as amended 1987, 1988, 1990, 1993, 1994, 1995 and 1996), authorizes DEQ to contain or clean up sites where hazardous wastes have been improperly managed. The law provides for enforcement, strict liability, and cost recovery.
- The 1995 amendments created a voluntary remediation program. The Virginia Environmental Emergency Response Fund Act, Va. Code §§10.1–2500—10.1–2502 (1992) establishes the state fund.

West Virginia

General Information

Contact: Ken Ellison

Address: West Virginia Department of Environmental Protection (DEP)
Division of Land Restoration
601 57th Street, SE
Charleston, WV 25304-2345

Phone: 304 926 0455 ext. 1263

Fax: 304 926 0457

Web site: <http://www.wvdep.org>

Program Description (VCP, brownfields, or related)

The Voluntary Remediation and Redevelopment Act (VRRRA) encourages voluntary remediation and redevelopment through an administrative program set out in the West Virginia Code of State Regulations, Title 60, Series 3 entitled the Voluntary Remediation and Redevelopment Rule (the Rule), which became effective on July 1, 1997. The VRRRA limits enforcement actions by DEP, provides financial incentives to entice investment in brownfield sites, and limits liability under environmental laws and rules for those who remediate sites under the standards provided in the Rule.

Brownfields definition: "Brownfield" means any industrial or commercial property which is abandoned or not being actively used by the owner as of the effective date of state law, but shall not include any site subject to a unilateral enforcement order under §104 through §106 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or which has been listed or proposed to be listed by EPA on the National Priorities List (NPL), or subject to a unilateral enforcement order under the Resource Conservation Recovery Act (RCRA) or any unilateral enforcement order for corrective action under this law.

If public funds are used, a much higher degree of public involvement is required for brownfields cleanups.

Program titles:

- Voluntary Remediation Program (VRP)

Liability relief provisions: The VRP offers Certificates of Completion (COC) that provide liability relief.

Any person demonstrating compliance with the applicable standards whether by remediation or where the site assessment shows that the contamination at the site meets applicable standards, shall be relieved of further liability for the remediation of the site. Contamination identified in the remediation agreement submitted to and approved by the

DEP shall not be subject to citizen suits or contribution actions. The protection from further remediation liability provided by the state law applies to the following persons:

- The current or future owner or operation of the site, including development authorities and fiduciaries who participated in the remediation of the site;
- A person who develops or otherwise occupies the site;
- A successor or assign of any person to whom the liability protection applies;
- A public utility, as defined in section two, the West Virginia Code (§24-1-2), and for the purpose of the VRRRA, a utility engaged in the storage and transportation of natural gas, to the extent the public utility performs activities on the site;
- A remediation contractor;
- A licensed remediation specialist; or
- A lender or developer who engages in the routine practices of commercial lending, including, but not limited to, providing financial services, holding of security interests, workout practices, foreclosure or the recovery of funds from the sale of a site.

A person shall not be considered a person responsible for a release or a threatened release of contaminants simply by virtue of conducting or having a site assessment conducted. Nothing relieves a person of any liability for failure to exercise due diligence in performing a site assessment.

Financial incentives (grants, loans, tax provisions, etc.): Brownfields Revolving Loan Fund (RLF) targeted for remediation currently funded by an EPA RLF grant.

Legislative or program site eligibility requirements: See brownfields definition.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): RLF targeted for remediation currently funded by an EPA RLF grant.

Tax incentives (abatements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

- West Virginia Brownfields Assistance Centers (<http://www.wvbrownfields.org/>)
- A Memorandum of Agreement (MOA) with the state Development Office exists to promote the redevelopment of remediated brownfields sites.

West Virginia

Program Elements

Technical Elements

Methods/standards/controls: Risk-based standards

- The VRRP has standards that are used to decide whether a site represents an unacceptable risk. The detailed risk exposure and toxicity equations used to evaluate risk under these standards can be found in the VRRP Guidance Manual. The Guidance Manual describes three standards: de minimis standards, uniform standards and site-specific standards.
- De minimis and uniform standards are similar to each other and differ mainly in the assumptions used to create them. Both the de minimis and uniform standards represent the amount (concentration) of a contaminant that could be present at a site without causing an unacceptable risk. These concentrations are calculated for individual contaminants in the various media (e.g., soil, water, or air) where they may occur. The de minimis and uniform standards are derived by running the basic risk equation in reverse. This is, starting with an acceptable risk level (for example, 10⁻⁶ for carcinogens or a Hazard Quotient of 1 for non-carcinogens) and the known toxicity of a chemical, risk assessors calculate an exposure concentration for that chemical that corresponds to the acceptable risk. This exposure concentration is the standard. If the concentration of a chemical at a site is below its standard, then its risk is acceptable. Having the de minimis and uniform standards expressed as concentrations allows for a quick comparison of measured levels of contamination at a site with the standards to determine whether the site represents a risk.
- Site-specific standards are calculated by running the basic risk equation in the traditional way. This is, measured amounts of chemicals at the site are used to produce an exposure value. The exposure value for each chemical at the site, along with its known toxicity value, is used to calculate a level of risk for each chemical everywhere that it is found (e.g., soil, water, or air). The resulting level of risk is then compared to the acceptable risk levels. As stated above, the acceptable risk level for carcinogens is 10⁻⁶ or less. Cancer risk levels above 10⁻⁴ require remediation. Cancer risk levels between 10⁻⁶ and 10⁻⁴ are evaluated for acceptability on a case-by-case basis. The acceptable risk level for non-carcinogens is a Hazard Quotient of 1 or less.

Contaminants covered/excluded: There are no exclusions.

Use of long-term stewardship and institutional controls

(IC): The DEP established by rule the criteria for deed recordation of land-use covenants and contains all necessary deed restrictions. The DEP causes all land-use covenants to appear in the chain of title by deed to be properly recorded in the office of the county clerk where the site is located. If institutional and engineering controls are used, in whole or in part, to achieve a remediation standard, the DEP directs

that a land-use covenant be applied. The covenant shall include whether residential or nonresidential exposure factors were used to comply with the site-specific standard. The covenant contains a provision relieving the person who undertook the remediation and subsequent successors and assigns from all civil liability to the state as provided under the VRRP and remains effective as long as the property complies with the applicable standards in effect at the time the covenant was issued.

The West Virginia Legislature passed the Uniform Covenants Act (§22-22B-1) during the regular 2005 session, and during the Spring 2008 Session, the VRRP Rule was amended to incorporate the provisions of the act which provides additional specific requirements pertaining to environmental covenants.

- **IC Tracking:** The Office of Environmental Remediation is continuing to work with the Information Technology (IT) and Geographic Information System (GIS) sections of DEP to complement the Voluntary Remediation sites on the agency's interactive mapper, <http://gis.wvdep.org/imap/index.html>, with the development of links to the recorded Land Use Controls (LUC) so that they may be reviewed online or downloaded by interested parties http://gis.wvdep.org/kml/covenant_bdy.kmz.
- **IC Oversight:** Property owners, VRRP applicants and WVDEP, OER staff. Effective January, 2008 WVDEP implemented a policy requiring an inspection and reporting paragraph be inserted in all future recorded land use covenants, requiring self-inspection of the restrictions contained in the LUC, and submittal of the inspection report to the agency by the property owner. The frequency of the inspection is dependent upon the restrictions imposed by the LUC, but in no case less frequent than once per year.
- **IC Monitoring:** WVDEP, DLR staff and MISS Utility of West Virginia. WVDEP is a member of the MISS Utility of West Virginia, the one-call system for notification regarding excavation activities as potentially related to recorded LUCs. For the period of calendar year 2008, WVDEP received 712 notifications of excavation activities for sites within the MISS Utility grid network and for January through July 2009 received 685. Each notification received is forwarded to the respective project manager for their review and follow-up as appropriate. Project managers also conduct routine inspections of VRRP sites with LUCs.

West Virginia

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.wvbrownfield.org/index.cfm?page=bFind.cfm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: Yes, fee is calculated according to the size of the property.

Funding source for administrative costs and staff: Costs are reimbursed by the applicant.

Cleanup Activities

Sites currently in VCP: 193 sites have entered the VRP.

Sites completed under VCP: 85 COCs have been issued.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): DEP issues COCs.

Public Participation

Public participation requirements (notice, comment periods, etc.): Under the VRP, public notice and provisions for public comment are required by the statute.

Public participation activities (hearing, meetings, etc.): Under the VRP, public hearings and meetings are required by the statute.

Statutory Authorities

The Voluntary Remediation and Redevelopment Act, WV Code §§22-22-1 through 22-22-21 (1996), establishes the state's voluntary cleanup and brownfields programs, as well as long-term stewardship authority.

General Information

Contact: Larry Norris, Chief
Redevelopment Section

Brownfields Redevelopment and
Voluntary Cleanup Program (VCP)

Alabama Land Recycling Revolving Loan Fund
Program

Alabama Uniform Environmental Covenants
Program

Address: Alabama Department of
Environmental Protection (ADEM)
1400 Coliseum Boulevard
Montgomery, AL 36110-2059

Phone: 334 279 3053
Fax: 334 279 3050
Email: lan@adem.state.al.us

Web site: <http://www.adem.state.al.us/LandDivision/LandDivisionPP.htm>

Program Description (VCP, brownfields, or related)

Brownfields definition: Abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived contamination.

Program titles: Brownfields Redevelopment and Voluntary Cleanup Program (VCP)

Liability relief provisions: Program incentives include letters of concurrence providing limited liability protection for owners and operators and broad liability protection for prospective purchasers, lenders, and clean-hands parties after the receipt and review of a compliance certification.

Financial incentives (grants, loans, tax provisions, etc.): Industrial grants of up to \$375,000 can be adapted for brownfields purposes; EPA-capitalized Brownfields Revolving Loan Fund (RLF) targeted to counties and municipalities.

Legislative or program site eligibility requirements: Sites eligible for voluntary cleanup are also eligible for the brownfields program.

- The property must not be listed on the federal National Priorities List (NPL) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- The property must not be currently undergoing response activities required by an order of ADEM.

- The property must not be currently undergoing response activities required by an order of EPA issued pursuant to the provisions of CERCLA.
- The property must not be a Resource Conservation and Recovery Act (RCRA) hazardous waste treatment, storage, or disposal facility subject to the permitting requirements of Alabama Administrative Code R. 335-14-8-.01 through 335-14-8-.08.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Industrial grants up to \$375,000 can be adapted for brownfield purposes.
- EPA-capitalized Brownfields Cleanup RLF targeted to counties and municipalities became effective in November 2004.

Tax incentives (abatements, credits, etc.): Tax credits and incentives are available, including the environmental cleanup deduction which allows businesses to deduct the qualified cleanup cost of hazardous substances in certain areas (brownfields) in the tax year the business pays or insures the cost.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The Alabama Land Recycling and Economic Development Act, §22-30E-1 et seq., passed in 2001, authorized long-term stewardship, voluntary cleanups, and brownfields.

Program Elements

Technical Elements

Methods/standards/controls: Formal Risk-Based Corrective Action (RBCA) process is in place; state uses Alabama Risk-based Corrective Action Guidance and background information using the residential numbers for soil and below Maximum Contaminant Levels (MCLs) for ground water, at sites not using institutional controls.

Contaminants covered/excluded: Program covers all types of contaminants and pollutants including, petroleum, asbestos, lead paint, and polychlorinated biphenyls (PCBs).

Use of long-term stewardship and institutional controls (IC): Alabama has a long-term stewardship program for its state voluntary, brownfields, and Resource Conservation and Recovery Act (RCRA) sites.

Alabama

- **IC Tracking:** A MS Excel database is used to track institutional and engineering controls at cleanup sites as part of the voluntary and brownfields programs, and will be adapted to other programs. Environmental covenants are required by law for sites not returned to an unrestricted use scenario.
- **IC Oversight and Monitoring:** Sites using institutional controls are addressed through a site-specific risk assessment and have a longer term enabling mechanism (covenant) to ensure that institutional controls are maintained.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.adem.state.al.us/LandDivision/Brownfields/128Spreadsheet.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: The state's participation is funded through fees and reimbursement of oversight costs.

Funding source for administrative costs and staff: Funding for staff and administrative costs for the voluntary cleanup program comes from federal cooperative agreements (95%), and the ADERTFA and the Alabama Land Recycling and Economic Redevelopment Act (ALRERA) fees. Funding for long-term stewardship programs is not tracked separately from other cleanup funding. Approximately 20 employees have long-term stewardship work as part of their designated duties.

Cleanup Activities

Sites currently in VCP: Currently, 78 companies are responsible for the assessment and possible remediation of 80 sites under the voluntary cleanup program.

Sites completed under VCP: 61 companies have completed assessment and remediation activities on 212 sites.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Four sites are currently in use for public activities and nine sites are projected to be used for public activities in post-cleanup scenarios.

Public Participation

Public participation requirements (notice, comment periods, etc.): The state is required to provide public notice and to receive public comment for voluntary and brownfields sites. Once a voluntary cleanup plan is complete, the state must notify the public through the newspaper and mailings.

Public participation activities (hearing, meetings, etc.):

The state may hold hearings in response to legitimate requests or at the discretion of ADEM whenever such a hearing may clarify one or more issues concerning a voluntary cleanup plan. ADEM is required to provide public notice of hearings at least 30 days before they occur.

Statutory Authorities

The Code of Alabama §22–30E–1 et seq., (1988) provides general authority for voluntary cleanups.

- The Alabama Land Recycling and Economic Redevelopment Act, §22–30E–1 et seq., passed in 2001, authorizes long-term stewardship, voluntary cleanups, and brownfields.

The Code of Alabama §35–19–1 et seq., provides local authority for the abatement of non education related taxes.

- *The Alabama Brownfields Development Tax Abatement Act*, §35–19–1 et seq., passed in 2004, authorizes local governments to grant tax abatements as an incentive to remediate brownfield sites.

The Code of Alabama §40–9C–1 et seq., provides authority to mandate and enforce environmental covenants.

- *The Alabama Uniform Environmental Covenants Act*, §40–9C–1 et seq., passed in 2007, authorizes ADEM to require environmental covenants and enforce the provisions thereof on properties not remediated to an unrestricted use scenario.

General Information

Contact: Kim Walker, Brownfields Liaison

Address: Florida Department of Environmental Protection (DEP)
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Phone: 850 245 8934

Fax: 850 245 8976

Email: kim.walker@dep.state.fl.us

Web site: <http://www.dep.state.fl.us/waste/categories/brownfields/default.htm>
(Brownfields Redevelopment Program)

<http://www.dep.state.fl.us/waste/categories/brownfields/pages/ICR.htm>
(Institutional Controls Registry)

Program Description (VCP, brownfields, or related)

Brownfields definition

Brownfield Site: means real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination (376.79 (3), Florida Statutes).

Brownfield Area: means a contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other designated economically deprived communities and areas, and Environmental Protection Agency-designated pilot projects (376.79(4), Florida Statutes). Note: In order to receive program benefits under the state Brownfields Redevelopment Program, a brownfield site must be located in a brownfield area.

Program titles: Brownfields Redevelopment Program

Liability relief provisions: Under the Brownfields Redevelopment Program (1997; amended 1998, 2000, 2004, 2005, and 2006 and 2008) non-responsible parties and certain responsible parties may receive liability protection from state and third party claims. Liability protection is provided for lenders and nonprofit organizations that agree to clean up sites. State issues a Site Rehabilitation Completion Order (SRCO).

Financial incentives (grants, loans, tax provisions, etc.):

- Job Bonus Refund – up to \$2,500 for each new job created in a brownfield area by an eligible business.
- Loan guarantee program.
- Expedited permitting process.
- Sales tax credit on building materials used for the construction of certain redevelopment projects located in brownfield areas.
- Voluntary Cleanup Tax Credit (corporate income) of 50% on annual voluntary cleanup costs incurred, up to \$500,000 in tax credits per year.
- Enterprise Zone program.
- Local option sales surtax exemptions for sales made in urban infill/redevelopment areas.

Legislative or program site eligibility

requirements: All sites are eligible to conduct voluntary cleanup, unless the site is on the National Priorities List (NPL) under the federal Superfund Law. For the Brownfields Redevelopment Program, any person that has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program. Sites that are on the NPL under the federal Superfund Law are not eligible to participate in the Florida Brownfields Redevelopment Program without EPA approval. Voluntary cleanup tax credit incentives are only available to sites that enter the Brownfields Redevelopment Program and certain sites in the Florida dry cleaning program that enter into a voluntary cleanup agreement.

There are no incentives for sites that enter voluntary cleanup outside of the brownfields or dry cleaning programs.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Funding available for voluntary cleanup and brownfields projects includes:

- DEP receives funding for its state response program (SRP) from EPA. A portion of these funds are used to fund site-specific assessments and limited cleanup of source areas for eligible applicants. Sites that receive these services are also encouraged to participate in the state Brownfields Redevelopment Program.

Florida

- Loan guarantee program provides limited guarantees for up to five years for primary lenders financing redevelopment projects in brownfield areas.
- Petroleum stations and dry cleaning establishments are eligible for participation in the Brownfields Redevelopment Program.

Tax incentives (abatements, credits, etc.):

- State sales tax credit on building materials (purchased on or after July 1, 2000) used for the construction of a redevelopment project (e.g., housing or mixed-use project) located in urban high crime area, enterprise and empowerment zones, Front Porch Communities, and designated brownfields or urban infill area.
- Job Bonus Refund – up to \$2,500 for each new job created in a brownfield area by an eligible business. The job bonus refund is available to companies that create jobs at any site within a designated brownfields area. A company may qualify for the job bonus refund if the new business is a qualified target industry (QTI) in Florida or if the new business makes a capital investment of at least \$2,000,000, and creates at least 10 jobs.
- Tax credit (corporate income) of 50% on voluntary cleanup activity that is integral to site rehabilitation, with a maximum of \$500,000 in tax credits, per site per year. The annual tax credit allocation is \$2,000,000. The Voluntary Cleanup Tax Credit program issued a total of \$13,523,652 in tax credits since inception of the program in 1998.
- Enterprise Zone program provides a variety of incentives in cooperation with local governments to encourage economic growth and investment in zones: job creation tax credits, enterprise zone property tax credits, building material sales tax refund, business equipment sales tax refund, and electrical energy sales tax exemption.
- Local option sales surtax exemptions are available for sales made in urban infill and redevelopment areas.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: Cleanup criteria for all sites in Florida are essentially the same. For historical reasons, there are some minor differences between the four cleanup rules that manage brownfields, petroleum, dry cleaning, and all other contaminated sites, respectively. The criteria are based on: risk assessment; background levels, water quality criteria, Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs); ground water standards; chemical-specific health-based standards; land use considerations; nuisance, organoleptic, and aesthetic standards. Land use assumptions are based on local planning board determinations, current and projected use, and individual

site characteristics. Numerical risk goals are set at 10⁻⁶ for carcinogens and a Hazard Index of 1 for non-carcinogens.

- A Risk-Based Corrective Action (RBCA)-type of process is in place that establishes default levels for residential and commercial/industrial scenarios and provides greater flexibility in achieving cleanup target levels by the use of institutional and engineering controls.

Contaminants covered/excluded: All contaminants are accepted including petroleum and polychlorinated biphenyls (PCBs). Asbestos and lead paint are accepted conditionally.

Use of long-term stewardship and institutional controls (IC):

Institutional controls are key to a RBCA approach and are allowed in all cleanup program areas. The property owner must agree to the use of an institutional control such as a deed restriction or restrictive covenant on the property if an engineering control is the selected remedy.

- **IC Tracking:** The state maintains a tracking system that tracks the use of institutional controls at sites. It is available online for public users.
- **IC Oversight and Monitoring:** Policy is under development for reviewing sites where institutional controls have been implemented.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.dep.state.fl.us/waste/categories/brownfields/pages/ICR.htm>

Management & Implementation Elements

Brownfields Redevelopment Program MOA with EPA: First agreement in December 1999; Revised agreement in October 2005 includes RCRA sites.

Costs to enter program or fee for service: There is no fee to enter the Florida Brownfields Redevelopment Program. Sites that enter the program and that choose to apply for the annual Voluntary Cleanup Tax Credit must submit a \$250 fee with each annual tax credit application.

There is no fee for sites that choose to conduct voluntary cleanup outside the Brownfields Redevelopment Program.

Funding source for administrative costs and staff: Funding for the Brownfields Redevelopment Program and brownfields staff comes from the state general fund. There is a brownfields coordinator in each of the six DEP district offices. The brownfields coordinators oversee voluntary cleanup of brownfield sites. Funding for long-term stewardship is not allocated separately from other cleanup funds. Sites that enter into voluntary cleanup outside the Brownfields Redevelopment Program are managed by other DEP staff members; who are also funded by the state general fund.

Florida

Cleanup Activities

Sites in the Florida Brownfields Redevelopment

Program: As of August 2009, 130 sites have voluntarily entered into brownfield site rehabilitation agreements with DEP.

Sites completed under the Brownfields Redevelopment

Program: Currently, 30 sites have been issued final Site Rehabilitation Completion Orders (SRCOs) from DEP since the start of the program.

Benefits (incentives to participate in the VCP, covenants

not to sue, etc.): Cumulative totals for new job creation and capital investment attributable to the brownfields program from its start until December 31, 2008: 10,827 new direct jobs; 13,127 new indirect jobs; and \$1,291,636,591 of capital investment in designated areas.

Public Participation

Public participation requirements (notice, comment

periods, etc.): *The Brownfields Redevelopment Act* requires public notice of certain agency decisions and provides for public comment.

Public participation activities (hearing, meetings, etc.):

The Brownfields Redevelopment Act includes specific public participation requirements such as public hearings and meetings.

Statutory Authorities

The Pollutant Discharge Prevention and Removal Act, Fla. Stat. §§376.30 through 376.86, authorizes voluntary cleanups, long-term stewardship, and brownfields. Sections 376.77 through 376.86, the Brownfields Redevelopment Act, establish the state's brownfields program, eligibility criteria, and the process by which an area may be designated a brownfield. It also provides for institutional controls and voluntary cleanups.

General Information

Contact: Madeleine Kellam,
Brownfields Coordinator

Address: Georgia Department of Natural Resources
(DNR)
Hazardous Waste Management Branch
2 Martin Luther King Jr. Drive SE
Suite 1154 East Tower
Atlanta, GA 30334

Phone: 404 656 7802

Fax: 404 651 9425

Email: Madeleine_Kellam@dnr.state.ga.us

Web site: www.gaepd.org/documents/brownfields.html

Program Description (VCP, brownfields, or related)

Brownfields definition: Not defined in the statute, although eligibility criteria are outlined. The state provides a formal mechanism for oversight of voluntary cleanups. Two tracks are used, one for sites listed on the state Superfund list, the Hazardous Site Inventory (HSI), and one for contaminated sites that are not listed. Brownfields designation is made upon request of program applicant for cleanup cost certification.

Program titles: Hazardous Waste Management Branch, Environmental Protection Division, Georgia Department of Natural Resources:

- Brownfields Redevelopment Program (oversees non-listed site cleanups)
- Hazardous Site Response Program (oversees HSI-listed site cleanups)

Liability relief provisions: The *Hazardous Site Reuse and Redevelopment Act* (Brownfields Act) (OCGA §12-8-200, as amended) provides limited liability relief for prospective purchasers of contaminated property who voluntarily agree to remediate soil and source material to promulgated risk reduction standards. Qualified prospective purchasers, upon approval of the prospective purchaser corrective action plan or state concurrence with the certification of compliance described in the Brownfields Act, whichever first occurs, are not liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from preexisting releases, and are not required to certify compliance with risk reduction standards for ground water, perform corrective action, or otherwise be liable for any preexisting releases to ground water associated with the qualifying property.

Financial incentives (grants, loans, tax provisions, etc.): Tax abatement provisions are available for recovery of certified cleanup costs at qualifying properties.

Legislative or program site eligibility

requirements: Eligibility requirements pertain to both properties and prospective purchasers of properties. In order to qualify: the property must have a preexisting release; any lien filed against the property under the state Superfund statute must be satisfied, and the property must not be listed on the federal National Priorities List (NPL); it must not be currently undergoing response activities required by an EPA order; or it must not be a hazardous waste facility. Responsible parties and their affiliates are ineligible for the program.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): No monetary grants or loans are provided for under the program; however, a limited amount of direct assistance, in the form of Targeted Brownfields Assessment, is provided to eligible entities subject to state criteria and available funds.

Tax incentives (abatements, credits, etc.): Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia was amended in 2003 to provide for preferential assessment of environmentally contaminated property that has entered the Brownfields Program. The preferential assessment freezes the ad valorem value of the property for the first of a period of ten years, or until the certified cleanup costs have been recovered through tax savings.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: Risk reduction standards promulgated under the *Georgia Hazardous Site Response Act* (the state Superfund statute) are used to determine compliance with cleanup requirements under the Brownfields Program. These risk-based standards provide four options for cleanup, all of which are designed to protect human health and prevent degradation of ground water quality: standardized residential; site-specific residential; standardized non-residential; and site-specific non-residential. For sites where these four standards cannot be applied, a fifth option provides for control measures (institutional controls, engineering controls, and or monitoring, as appropriate) to be maintained.

Contaminants covered/excluded: On-site releases of petroleum and hazardous substances are covered.

Use of long-term stewardship and institutional controls

(IC): Georgia has promulgated institutional controls provisions for brownfield sites that are on the state Superfund

Georgia

list and that have not certified compliance with a residential risk reduction standard for soil and ground water. In addition, Georgia has enacted a Uniform Environmental Covenants Act to establish an additional mechanism for creating and maintaining engineering and institutional controls.

- **IC Tracking:** For non-listed brownfields properties (which do not have such regulatory requirements) Georgia uses Response Program Grant funding to inspect, monitor, and track institutional controls. A database to capture all institutional controls has been developed under the Response Program Grant. Georgia's brownfields statute contains provisions for revocation of the limitation of liability for failure to conduct approved cleanups or failure to abide by land-use controls embodied in the certification of compliance with risk reduction standards.
- **IC Oversight:** Oversight and technical review is provided by environmental engineers and geologists under both the Brownfields and Hazardous Site Response Programs.
- **IC Monitoring:** Monitoring is required when dictated by statute, (i.e. at HSI-listed sites and at sites that rely on long-term stewardship/institutional controls).

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.gaepd.org/Documents/hazsiteinv.html>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: A non-refundable \$3,000 application review fee is required to participate in the program. Additional fees may be invoiced if the review costs exceed the initial fee. These fees are deposited in the state's general treasury.

Funding source for administrative costs and staff: Funding for staff and administrative costs for both the listed and non-listed sites comes from a Response Program Grant from EPA. Although a \$3,000 application review fee is required for participation in the program, the Georgia General Assembly is not obligated to appropriate these funds back to the Environmental Protection Division for its operating budget.

Cleanup Activities

Sites currently in Brownfields Program: 152

Sites completed under Brownfields Program: 146 (298 applicants to date; 146 of which have completed activities).

Benefits (incentives to participate in the Brownfields Program, covenants not to sue, etc.): Participants receive limitations of liability prior to purchase of property and can qualify for tax abatement following completion of cleanup.

Participants have commented on the utility of the limitation of liability letters in securing private financing for redevelopment.

Public Participation

Public participation requirements (notice, comment periods, etc.): Brownfield sites that are regulated through listing on the state Superfund list have a statutory requirement for public notice and a 30-day public comment period on cleanup plans and delisting. For non-listed brownfields properties, the provisions of the Georgia Open Records Act pertain. All documents relating to the site cleanup are available for review by the public during regular business hours. The Georgia Environmental Protection Division Web site provides a listing of all properties that have entered the program and provides information about how to access decision documents for these properties. Lastly, the Georgia program utilizes promulgated risk reduction standards that were subject to public notice and public comment during development.

Public participation activities (hearing, meetings, etc.): Georgia instituted a statewide outreach campaign to raise community awareness of the Brownfields Program, to increase community involvement, and encourage community participation in the federal brownfields grant program. Response Program grant funds will be used to further expand real-time public access to all site files and decision documents, through a Web-based filing system.

Statutory Authorities

- Hazardous Site Reuse and Redevelopment Act (OCGA §12-8-200, as amended)
- Hazardous Site Response Act (OCGA §12-8-90, as amended)
- General Provisions Regarding Ad Valorem Taxation of Property (OCGA §48-5-2, et seq)
- Georgia Uniform Environmental Covenants Act (OCGA §44-16-1)
- Georgia Voluntary Remediation Program Act (OCGA §12-8-107)

Kentucky

General Information

Contact: Herb Petitjean

Address: Kentucky Division of Compliance Assistance
300 Fair Oaks Lane
Frankfort, KY 40601

Phone: 800 926 8111
502 564 0323

Fax: 502 564 9720

Email: Herb.Petitjean@ky.gov

Web site: <http://www.dca.ky.gov/brownfields>

Program Description (VCP, brownfields, or related)

Brownfields definition: Kentucky does not have a definition provided by statute or regulations.

Program titles:

Kentucky Voluntary Cleanup Program includes:

- A formalized program, the Voluntary Environmental Remediation Program (VERP), which provides a Covenant Not to Sue (CNTS); and
- Less formalized options leading to a Notice of Completion or a No Further Remediation Letter.

Liability relief provisions: Kentucky law offers liability defenses for bona fide prospective purchasers, contiguous property owners and innocent landowners. The requirements for these defenses are the same as under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

Volunteers may apply to obtain a CNTS under the VERP.

Kentucky expanded its liability coverage for those who complete the VERP process. An entity that has completed the program cannot be sued by a third party to perform remediation in excess of that required by the approved corrective action plan.

Volunteers may also conduct cleanups under a less formal process and obtain a Notice of Completion or a No Further Remediation letter—the latter being limited to public entities.

Financial incentives (grants, loans, tax provisions, etc.):

- Kentucky tax incentives for bona fide prospective purchasers of qualified properties
- Brownfield Redevelopment Fund (currently under development)
- Targeted Brownfield Assessments

- Kentucky Cabinet for Economic Development incentives and other state programs based on end use
- Kentucky Housing Corporation program
- Agricultural Warehousing Sites Cleanup Fund
- Duke Energy, Kentucky Utilities and Louisville Gas and Electric offer reduced electrical rates for qualified redevelopment projects on brownfields

Legislative or program site eligibility requirements: Any party is eligible to enter VERP to receive a CNTS unless:

- The property is a licensed radioactive materials facility.
- The property is part of or contains a site that is on the National Priorities List (NPL).
- The property is part of or contains a hazardous waste treatment, storage, or disposal facility for which a permit has been issued, or the site is otherwise the subject of hazardous waste closure or corrective action.
- The property or site is the subject of state or federal environmental enforcement action related to a release for which the application is submitted.
- The property or site presents an environmental emergency.

Properties containing underground storage tanks (UST) are eligible for the program, but they must satisfy the cleanup requirements of the UST program and any release from an UST is not covered by the CNTS.

There are no restrictions on parties wishing to enter the program to receive a Notice of Completion. A No Further Remediation letter is only available to public entities.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): The Kentucky Cabinet for Economic Development offers a variety of incentives for new or expanding businesses, but none of these incentives is specifically directed to brownfields.

The Kentucky Division of Waste Management uses a grant from EPA to conduct a limited number of Targeted Brownfields Assessments each year for local governments and eligible nonprofits. The Division of Compliance Assistance helps eligible parties develop applications for federal grants.

VERP established an Agricultural Warehousing Sites Cleanup Fund to address the growing number of closed tobacco warehouses, but no money has been allocated to the fund.

Kentucky is exploring using the Clean Water State Revolving Loan Fund to provide incentives to redevelop brownfields that have a current or a potential water quality impact.

Kentucky

In 2009, the Kentucky Legislature authorized the establishment of a Brownfield Redevelopment Fund to provide grants and loans to local governments. The legislation did not provide any funding at this time, but allowed the Cabinet to develop procedures to administer such a fund.

Tax incentives (abatements, credits, etc.): For qualified parties, the state and local property tax rates on a remediated brownfield property are reduced. For three years following the cleanup, the property will not be subject to local ad valorem property taxes. The state ad valorem property tax rate will be reduced from 31.5 cents per \$100 of assessed value to one point five cents per \$100 of assessed value. Qualified parties can also receive up to \$150,000 worth of income tax credits for expenditures made in order to meet the requirements of the assessment and cleanup. The allowable credit for any taxable year is a maximum of 25% of the credit authorized. The credit may be carried forward for 10 successive years.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Owners of brownfields for sale or lease can list their sites on the Kentucky Brownfield Program Web site.

The Kentucky Housing Corporation is establishing a program to assist qualified persons and families of lower and moderate income to help defray the cost of assessment and decontamination of methamphetamine contamination of inhabitable properties. A person shall not be eligible for the program if convicted of a felony or found by the corporation to be responsible for contamination of the relevant property through methamphetamine (meth) production.

Duke Energy and E.ON U.S. (Louisville Gas and Electric and Kentucky Utilities) have programs that offer reduced electrical rates for companies that redevelop on qualified brownfields.

Program Elements

Technical Elements

Methods/standards/controls: State Superfund statute provides four cleanup options:

- Proving that no action is required;
- Proving that site/release can be managed with engineering/institutional controls;
- Removal; and
- Any combination of the above.

EPA Region 9 Preliminary Remediation Goals (October 2002) and associated guidance are used for screening.

Target risk set at an excess cancer risk of 10⁻⁶ for carcinogenic endpoints and a Hazard Index of 1 for non-carcinogenic endpoints.

May use Generic Statewide Ambient Background Table or develop site-specific values.

Future land use may be considered as part of proposal, but requires institutional controls to insure that use remains compatible with remedy.

Contaminants covered/excluded: Petroleum and polychlorinated biphenyls (PCBs) are covered, but petroleum releases are not eligible for CNTS if they fall under the UST program. Asbestos and lead paint are covered if released in environment and not part of a structure.

Kentucky has contractor certification requirements and guidance for decontamination of methamphetamine labs in inhabitable properties.

Use of long-term stewardship and institutional controls (IC): Kentucky adopted legislation that mirrors the Uniform Environmental Covenant Act. Kentucky Revised Statutes 224.80-100 to 210 provide greater assurance that protective measures remain in place at properties where contamination is being managed onsite.

- **IC Tracking, Oversight, and Monitoring:** The party or applicant shall conduct annual (or other approved frequency) inspections of the engineering and institutional controls and shall make annual (or other approved frequency) certification to the cabinet that the controls remain protective of human health, safety, and the environment. In accordance with KRS 224.01-400 (17), a review of environmental conditions at sites that have not been restored or remediated shall be conducted every five (5) years to determine if additional action is necessary to protect human health or the environment.
- **Reopeners:** Reopeners under the VERP. The Covenant Not To Sue does not apply to:
- Releases not expressly identified in the corrective action plan.
- Claims based on failure of the applicant or any successive landowner to comply with the approved corrective action plan, including any required land use restrictions and engineering or institutional controls.
- Liability resulting from the applicant's exacerbation of releases identified in the corrective action plan.
- Criminal liability.
- Petroleum storage tanks.
- Claims or liability based on or resulting from misrepresentations or intentional omissions by the applicant.
- Liability for conditions at the site that were not known at the time that prevent the remediation of being protective of human health, safety, or the environment.

Kentucky

- Claims based on changes in scientific knowledge.
- Environmental emergencies.
- Natural resource damages.
- Any administrative or civil action not expressly excluded by the covenant.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.dca.ky.gov/brownfields/Kentucky+Brownfield+Inventory.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: Kentucky has started negotiations with EPA towards a Memorandum of Agreement (MOA).

Costs to enter program or fees for service: VERP application fees; Area of 3 acres or less (\$1,000); area greater than 3 acres and less than 10 acres (\$2,500); and area of 10 acres or more (\$3,500).

Applicant reimburses cabinet for cost of review and oversight cost that exceed the application fee. The cabinet may waive in whole or in part its right to be reimbursed if the property is less than three acres and the cabinet determines the waiver is in the public interest.

Any public entity entering property that is publicly owned is exempt from the application fees.

Voluntary cleanups outside VERP: There is currently no fee for the informal cleanup options.

Funding source for administrative costs and staff:

Funding comes from application fees and reimbursement for oversight costs. Grants and state Hazardous Waste Management Funds are used to cover oversight costs for properties that have exemptions or waivers.

Cleanup Activities

Sites currently in VCP: Currently, two properties are in the VERP. The other, less formalized programs, remain available and are actively utilized by volunteers.

Most volunteers continue to conduct cleanups under a less formal process to obtain a Notice of Completion rather than a CTNS. Over 100 sites per year are addressed through this process.

Sites completed under VCP: No sites have been completed under the VERP. Kentucky's Superfund program has addressed approximately 4,000 sites under a less formal process.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

VERP establishes an efficient and predictable process for voluntary cleanups. It includes time

limits for review of documents by the cabinet. Upon successful completion of a cleanup, the applicant receives a CNTS and expanded liability coverage. However, the majority of volunteers prefer to use the less formalized Notice of Completion option rather than VERP. They find it less onerous and feel that the Notice provides an adequate degree of liability protection.

Clandestine Meth Lab Cleanup: This program oversees the contractor certification, promulgates cleanup regulations, and approves decontamination reports. This program acts as a liaison between property owners, health department, law enforcement, and cleanup contractors. Upon the approval of the decontamination report, the program recommend to the local health department that the posting of contamination to be removed and that decontamination procedures were performed safely and that the cleanup meets the decontamination standard referenced in KRS 224.01-410. The Meth Cleanup Program tracks the clandestine meth labs in inhabitable properties on the Tier Assessment Intel/Remediation Database. This database is compiled of reported meth lab activities in the commonwealth since July of 2008. This database is a quick reference for program staff to assist property owners with various questions about the remediation of their meth contaminated property. The ongoing database tracking receives 20-30 meth lab reports monthly and has 231 properties recorded to date. The Tier Assessment Intel/Remediation database has been an asset to the remediation program. Since the inception of the program, 80 meth labs have been remediated to habitable conditions or demolished. The trend in reported meth labs has increased over the last two years due to the depressed economy and increased efforts of law enforcement to control the manufacturing of the drug. This database aids in the graphical representation of meth lab activity, contaminated and remediated, in the commonwealth.

Public Participation

Public participation requirements (notice, comment periods, etc.): Kentucky's VERP has a public participation component. Requirements include:

- The applicant shall notify the local government units at the time of application and at the time that the corrective action plan is proposed.
- The applicant shall place notices in the newspaper of largest circulation in the county at the time of application and at the time that the corrective action plan is proposed.
- The applicant shall post a sign on the property stating that the site is undergoing remediation and providing information on where and when the corrective action plan is available for public review and comment.
- Copies of all relevant documents shall be placed in the local public library. Documents are also available from the Division of Waste Management file room as provided by Kentucky's Open Records Act, KRS 61.870-884.

Kentucky

REGION 4

- A comment period of at least 30 days shall follow publication of the notice of the submittal of a corrective action plan. During the comment period, any person may submit written comments to the cabinet concerning the corrective action plan and may request a public hearing. The cabinet may hold a public hearing if request is made.
- The cabinet shall consider all written comments and public testimony prior to taking any action.
- The public may appeal approval of a corrective action plan or issuance of a CNTS.

Voluntary cleanups outside the VERP also have a public participation component, but not to the extent of the VERP.

- All cleanups being conducted under the No Further Remediation Letter process (KRS 224.01–450 through 465) include a public notice and public comment period.
- For any proposed remedy that does not achieve the target risk levels at the point of exposure, the volunteer shall provide a public notice. The cabinet shall receive public comments for 30 days following the publication of the notice.
- Documents related to any cleanup are available for public review under the provisions of Kentucky’s Open Records Act, KRS 61.870–884.

Public participation activities (hearing, meetings, etc.):
See comments under public participation requirements.

Statutory Authorities

Cleanup Statutes and Regulations

- KRS 224.01–400 – Reportable quantities and release notification requirements for hazardous substances, pollutants, or contaminants; Variation of requirements by administrative regulation; Emergency plan; Powers of the cabinet; Remedial action to restore environment; Lien of cabinets costs of cleanup; Defenses to Liability; Liability of financial institution acquiring property or serving as fiduciary.
- KRS 224.01–405 – Corrective action for release of petroleum or petroleum product from a source other than a petroleum storage tank.
- KRS 224.01–450 to 465 – No Further Remediation Letter.
- KRS 224.01–510 to 532 – Voluntary Environmental Remediation Act, including limits to suits or claims to compel remediation in excess of corrective action plan.
- 401 KAR 100:030 Remediation Requirements.

Environmental Covenant Act

- KRS 224.80 Environmental Covenants

Brownfield Redevelopment Fund

- KRS 224.01-030 Brownfield Redevelopment Fund

Tax incentives

- KRS 132.010 (18) Defines qualifying voluntary environmental remediation property for state and local ad valorem tax incentives.
- KRS 132.020 (1) (c) State ad valorem tax reduction for bona fide prospective purchasers of qualified properties.
- KRS 132.200 (21) Three year elimination of local ad valorem taxes for bona fide prospective purchaser of qualified properties.
- KRS 141.418 Tax credit for voluntary environmental remediation.

Methamphetamine contamination

- KRS 224.01-410 Standards and procedures for assessment and decontamination of inhabitable properties.
- 401 KAR 101:001 Definitions for 401 Chapter 101
- 401 KAR 101:010 Contractor Certification
- 401 KAR 101:020 Financial Requirements
- 401 KAR 101:030 Tiered Response System
- 401 KAR 101:040 Cleanup and Sampling Requirements
- KRS 198A.040 (29) Gives the Kentucky Housing Corporation the authority to establish a program to assist persons and families of lower and moderate income to help defray the cost of assessment and decontamination of meth contamination of inhabitable properties.

Mississippi

General Information

Contact: Trey Hess
Mississippi Department of Environmental
Quality (MDEQ)
Ground Water Assessment and
Remediation Division

Address: P.O. Box 10385
Jackson, MS 39289-0385

Phone: 601 961 5654

Fax: 601 961 5300

Email: Trey_Hess@deq.state.ms.us

Web site: <http://www.brownfields.ms>

Program Description (VCP, brownfields, or related)

The Ground water Assessment and Remediation Division (GARD) is responsible for the assessment and remediation of contaminated sites in the State of Mississippi.

Brownfields definition: Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

- Uncontrolled Site definition—Site, facility, plant, or location where hazardous or toxic wastes have been released to the environment and, due to existing regulations, there is no federal program that can handle the problem.
- Voluntary Evaluation Program (VEP)—Uncontrolled site that is receiving expedited site review under the Voluntary Evaluation Program.

Program titles:

- Mississippi Brownfields Program
- Uncontrolled Sites Program
- Voluntary Evaluation Program

Liability Protection Provisions: Brownfields parties who execute a Brownfields Agreement shall be relieved of liability to all persons, including MDEQ (other than the United States) for remediation of the Brownfields Agreement site other than the remediation required by the Brownfields Agreement, and all costs reasonably related to the remediation other than the remediation costs required by the Brownfields Agreement or the regulations. For sites cleaned up to unrestricted levels, a No Further Action letter is issued.

Uncontrolled Sites/VEP Program—For sites with contamination left in place above unrestricted levels, a Restrictive Use Agreed Order has the following language:

(a) the staff of the Commission has evaluated this Restrictive Use Agreed Order and believes once the requirements of it have been completed that 1) the site will be protective of the public health and the environment and 2) no further corrective action will be required at this time; (b) for sites cleaned up to unrestricted levels, a No Further Action letter is issued.

Financial incentives (grants, loans, tax provisions, etc.): MDEQ conducts limited assessments (Phase I Environmental Site Assessments (ESAs), limited Phase II ESAs) for eligible entities (See federal Brownfields Law Subtitle A definition) on a competitive basis. The *Mississippi Brownfields Voluntary Cleanup and Redevelopment Incentives Act* contains a number of financial incentives for property owners and local governments to clean up and redevelop brownfield properties. The legislation also provides additional financial assistance to counties and municipalities. The Act expands eligible projects for financial assistance under the Local Governments Capital Improvements Revolving Loan Program under the jurisdiction of the Mississippi Development Authority to include remediation of brownfield sites.

Legislative or program site eligibility requirements: A brownfields party must provide MDEQ with information necessary to demonstrate that: 1) the proposed remediation will result in a suitable use for the property (as stated in the application) and will protect public health and the environment; 2) the party can obtain the financial, managerial, and technical resources to complete the proposed remediation and assure the safe use of the brownfield property; 3) the current owner of the brownfield property is an applicant or has given written approval for submission of the application; 4) the brownfields party will comply with all applicable procedural requirements; and 5) the brownfields party will agree to pay for MDEQ oversight costs.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): MDEQ conducts limited assessments for eligible entities on a competitive basis. There is EPA funding to MDEQ for environmental assessments at brownfield sites throughout the State of Mississippi under the Targeted Brownfields Assessment Program.

The Brownfields Voluntary Cleanup and Redevelopment Incentives Act expands eligible projects for financial assistance under the Local Governments Capital Improvements Revolving Loan Program to include remediation of brownfield sites and cities and counties may apply for a low interest loan through the Mississippi Development Authority (MDA) to remediate a brownfield site.

Tax incentives (abatements, credits, etc.): The Brownfields Voluntary Cleanup and Redevelopment Incentives Act provides an income tax credit for a property owner equal to

Mississippi

REGION 4

25% of the costs of remediating a brownfield property, with the annual credit capped at \$40,000, and the total credit not to exceed \$150,000. Any unused portion of the tax credit may be carried over into succeeding tax years. In lieu of the state income tax credit, the property owner may claim a job tax credit for each new employee created as a result of the cleanup and redevelopment of a brownfield site.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

No information available

Program Elements

Technical Elements

Methods/standards/controls: The brownfields program uses a three tiered risk-based approach to remediation. Tier 1 evaluation compares site-specific data to a table of chemical-specific Target Remediation Goals (TRGs). Tier 2 provides the applicant the option of performing a more in-depth evaluation of site-specific conditions to develop site-specific Remediation Goals (RGs). Tier 3 is a site-specific risk assessment to evaluate the potential human health and ecological risks at the site that will result in the development of site-specific RGs. Institutional controls play a major role in Tier 2 and Tier 3 assessments.

Contaminants covered/excluded: Asbestos, lead paint, polychlorinated biphenyls (PCBs), and petroleum are covered.

Use of long-term stewardship and institutional controls (IC): The Uniform Environmental Covenants Act (UECA), Miss. Code Ann. § 89-23-1, et. seq. (Rev. 2008) is in effect for the purpose of subjecting the site to the activity and use limitations.

- **IC Tracking, Oversight, and Monitoring:** The state tracks and monitors institutional controls with an online database located at <http://list.brownfields.ms>

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

[http://www.deq.state.ms.us/MDEQ.nsf/pdf/GARD_filelist/\\$File/Filelist.xls?OpenElement](http://www.deq.state.ms.us/MDEQ.nsf/pdf/GARD_filelist/$File/Filelist.xls?OpenElement)

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: On March 27, 2008, in a letter to MDEQ, Region 4 EPA acknowledged that MDEQ has demonstrated that the Mississippi Brownfields Program meets the requirements of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) section 128(a) for a State Response Program. Under the existing federal Brownfields Law, Congress expressly provided a federal enforcement bar under CERCLA §106(a) or §107(a) to all landowners/developers who have enrolled their brownfield site into the State Response

Program and who are successfully completing (or have completed) the state prescribed remedial actions. This bar on federal enforcement was Congress' method of streamlining the administrative process, reducing delay, and providing landowners/developers the prerequisite regulatory clarity needed to undertake brownfields redevelopment. Under the existing federal brownfields law, Congress recognized the primacy of state brownfield cleanup programs to both determine cleanup standards for brownfield sites and confirm when those cleanup standards have been successfully achieved. With the issuance of this acknowledgement letter, the partnership between EPA and MDEQ is further strengthened allowing for greater clarity and less uncertainty in the assessment, cleanup, and reuse of sites moving through the Mississippi Brownfields Program.

Costs to enter program or fees for service: At the time a Brownfields Agreement application is filed, the applicant agrees to pay MDEQ all reasonable and direct costs associated with the administration of the application at the rate of \$100/hour, and must attach a \$2,000 application fee. An applicant under the Uncontrolled Sites VEP, must also agree to pay MDEQ all reasonable and direct costs associated with the administration of the application at the rate of \$100/hour.

Funding source for administrative costs and staff: The Brownfields Cleanup and Redevelopment Trust Fund pays for reasonable direct and indirect costs associated with the processing of the Brownfield Agreement applications and the administration of Brownfields Agreements. Money in the Uncontrolled Site Evaluation Trust Fund shall be utilized to pay reasonable direct and indirect costs associated with the administration and evaluation of uncontrolled sites, including, but not limited to, the reasonable costs of reviewing plans, specifications, engineering reports, and other documents related to site assessments; establishing cleanup levels; and preparing requirements and guidance. For other cost not directly billable to a VEP or brownfield site, MDEQ utilizes Section 128(a) grant monies from EPA.

Cleanup Activities

Sites with active oversight under Uncontrolled Sites/VEP/Brownfields: 178

Sites completed under Uncontrolled Sites/VEP/Brownfields: 597

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The VEP allows accepted parties the opportunity to receive expedited review of site information. The Brownfields Program offers liability protection before cleanup (at the point that a Brownfields Agreement is reached) eliminating

Mississippi

the need for a No Further Action letter typically used after cleanup to unrestricted use. Also, under the existing federal Brownfields Law, Congress expressly provided a federal enforcement bar under CERCLA §106(a) or §107(a) to all landowners/developers who have enrolled their brownfield site into the State Brownfields Program and who are successfully completing (or have completed) the state prescribed remedial actions. Finally, the Brownfields Voluntary Cleanup and Redevelopment Incentives Act provides an income tax credit for a property owner equal to 25% of the costs of remediating a brownfield property, with the annual credit capped at \$40,000, and the total credit not to exceed \$150,000. Any unused portion of the tax credit may be carried over into succeeding tax years. In lieu of the state income tax credit, the property owner may claim a job tax credit for each new employee created as a result of the cleanup and redevelopment of a brownfield site.

Public Participation

Public participation requirements (notice, comment periods, etc.): If the department and a brownfields party reach a proposed agreement for the remediation of a Brownfields Agreement site, MDEQ must publish a public notice in a newspaper of general circulation in the county or counties in which the Brownfields Agreement site is located. The public notice shall: 1) describe the proposed agreement and site; 2) request public comment on the proposed agreement; and 3) provide the date and location of the commission's consideration of the proposed Brownfields Agreement. A copy of the proposed Brownfields Agreement shall be filed for public inspection.

Public participation activities (hearing, meetings, etc.): MDEQ may conduct a public hearing on the proposed Brownfields Agreement. MDEQ shall publish a notice of the hearing in a newspaper of general circulation in the county or counties in which the proposed Brownfields Agreement site is located. MDEQ shall provide to the commission for review before its consideration of the proposed Brownfields Agreement all public comments and the transcript of any public hearing on the proposed Brownfields Agreement.

Statutory Authorities

- Brownfields Voluntary Cleanup and Redevelopment Act (Miss. Code §49-35-1).
- Uncontrolled Site Voluntary Evaluation Trust Fund (Miss. Code §17-17-54).
- Mississippi Air and Water Pollution Control Law (Miss. Code §49-17-29 & §49-17-43).
- Solid Waste Disposal Law (Miss. Code §17-17-17 & §17-17-27(8)).
- Uniform Environmental Covenants Act ("UECA") – (Miss. Code § 89-23-1)

General Information

Contact: Bruce Nicholson
Brownfields Program Manager

Charlotte Jesneck
Inactive Hazardous Sites Branch Head

North Carolina Department of Environment
and Natural Resources (DENR)
Special Remediation Branch/Superfund
Section

Address: North Carolina Division of Waste
Management
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Phone: 919 508 8400
Fax: 919 715 4061

Email: bruce.nicholson@ncmail.net
charlotte.jesneck@ncmail.net

Web site: Brownfields: <http://www.ncbrownfields.org/>
VCP: [www.wastenotnc.org/sfhome/
ihsbrnch.htm](http://www.wastenotnc.org/sfhome/ihsbrnch.htm)

Program Description (VCP, brownfields, or related)

North Carolina has both a Voluntary Cleanup Program (VCP) and a Brownfields Program and makes a distinction between them by the type of party that is conducting the work. The state's public policy calls for allowing the extra benefits associated with participation in the Brownfields Program only to non-causative parties. In this way, these sites are truly abandoned sites being addressed by developers that need liability protection to obtain financing for brick and mortar redevelopment projects. Responsible parties cannot receive these benefits, but can conduct cleanups under a different statute within the state's VCP.

The Brownfields Program (1997) operates under the Brownfields Property Reuse Act of 1997. The Program provides prospective developers (PDs), who are non-causative parties, liability protection under a brownfields agreement in the form of a Covenant Not To Sue (CNTS), contingent on completion of cleanup and/or safe-making actions in the brownfields agreement. Cleanups are risk-based and designed to ensure safe reuse of the property and include institutional controls such as land use restrictions. A PD must certify that it did not cause or contribute to site contamination. The property must be abandoned, idled, or underused and must have real or perceived contamination

that hinders redevelopment. It cannot be a National Priorities List (NPL) site. The project must be a bona fide redevelopment with public benefits (e.g., jobs, quality of life, tax base) commensurate with liability protection provided by the brownfields agreement.

The VCP operates under the Inactive Hazardous Sites Response Act of 1987. Responsible parties (or any other parties for that matter) are eligible for cleanup actions under this program. The VCP offers No Further Action letters at the completion of work. Cleanups to levels other than unrestricted use concentrations can apply for soils not posing a threat to ground water if they are accompanied with land use restrictions. Ground water must be restored to state ground water standards if it is technically practicable to do so. In such cases, land use restrictions would be required along with possibly other controls to prevent exposure. Lower priority voluntary actions are addressed by the Inactive Hazardous Sites Branch's (IHSB) Registered Environmental Consultant (REC) Program. In the REC Program, the remediating party is required to hire an approved REC and enter into an agreement with the IHSB. The REC then performs and certifies that the remedial action has been performed in accordance with state law (privatized oversight). Remediating parties at sites having a high potential for exposure, contaminated sensitive environments, or significant public concern or interest may still perform a voluntary remedial action. However this work is directly overseen and approved by the IHSB.

Brownfields definition: An abandoned, idled, or underused property where the threat of environmental contamination has hindered its redevelopment. This definition is applicable for the requirements of the Brownfields Program above only.

Program titles:

- Brownfields Program
- Inactive Hazardous Sites Voluntary Cleanup Program

Liability relief provisions: A brownfields agreement provided by the Brownfields Program is designed to break barriers to obtaining financing at lending institutions through the CNTS contained within.

Financial incentives (grants, loans, tax provisions, etc.): North Carolina has a brownfields tax incentive that applies to those who obtain brownfields agreements from the DENR (i.e., non-causative parties only). The holder of a brownfields agreement statutorily receives local property tax relief upon completion of improvements to the brownfield property. The value of such improvements is excluded from future property taxes for five years at a rate of 90% exclusion in the first year, gradually decreasing to a 10% exclusion in year five.

North Carolina

Legislative or program site eligibility requirements:

While any party may enter the state's VCP, the Brownfields Program and its specific benefits are statutorily restricted to non-causative prospective developers desiring to redevelop the brownfield property. The redevelopment project must be shown to have public benefit (e.g., jobs, tax base, community quality of life, greenspace) commensurate with the liability relief provided. An eligible prospective developer must be in substantial compliance with rules and regulations regarding environmental protection.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

Assessment and cleanup are funded by the brownfield applicant in the Brownfield Program and by the remediating party in the VCP. Note that the Inactive Hazardous Sites Program has a separate program for addressing non-permitted landfills that closed prior to 1983. A waste disposal tax funds the assessment and mitigation of these sites. The state contracts this work. Local governments can also perform the assessment and get reimbursed if conducted under a plan approved by the Inactive Hazardous Sites Program. The state also has a program to address dry cleaning solvent releases. For those that qualify, the state funds the assessment and cleanup through a sales tax on dry cleaning.

Tax incentives (abatements, credits, etc.): 2000 legislation authorized sliding scale of property tax abatements for increased value of sites being redeveloped under a brownfields agreement (90% for year one, down to 10% in year five), effective July 1, 2001.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: Under the Brownfields Program, because the program only works with non-causative prospective developers, site cleanup is required only to the extent necessary to make the site safe for intended reuse or the permanence of the agreement is threatened by uncontrolled migration of contaminants. Site-specific risk-based cleanup standards and land use restrictions are used.

Under the VCP, site-specific risk-based standards can be used at VCP sites for soils where the remedy includes land use restrictions and the soils are not a source of ground water contamination that could practicably be treated or removed. Ground water cleanup under the VCP must meet state ground water standards unless a demonstration is made and approved that cleanup is technically impracticable.

Contaminants covered/excluded: Sites with exclusively petroleum hydrocarbon contamination from Underground Storage Tanks (USTs) are ineligible for the Brownfields Program. Otherwise, all soil and ground water contaminants are OK, including those with comingled UST contamination. The VCP addresses only non-petroleum hazardous substance and pollutant contamination.

Use of long-term stewardship and institutional controls

(IC): The North Carolina brownfields process assumes that land use restrictions (LURs) will be an integral part of all brownfields agreements where site specific LURs are developed to coordinate with design footprints and run with the land. Annual LUR compliance updates are required by all brownfields agreements. Violation of a LUR is a reopener that subjects the violating party to complete cleanup of the site to state environmental standards.

Under the VCP, LURs can be used in relation to restricted use soil remedies, ground water contamination that is deemed impracticable to correct, and where they may otherwise be a necessary part of a remedy. Perpetual reporting on the restrictive covenants is a requirement that runs with the land. The VCP does have reopeners if the Branch finds that false or incomplete information was provided on the site or if there is a violation of the restrictive covenants.

- **IC Tracking:** For the Inactive Hazardous Sites Program, sites with LURs are tracked in a database.
- **IC Oversight:** In the Inactive Hazardous Sites Program, LURs are part of the Remedial Action Plan (RAP). The RAP is approved by staff or an REC.
- **IC Monitoring:** For both the VCP and the Brownfields Program, owners must submit an annual certification that LURs are still in place and that the owner is in compliance with their requirements.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://www.ncbrownfields.org/project_inventory.asp

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: Under the Brownfields Program, PDs pay a \$2,000 fee for a brownfields agreement. Funds remain in a non-reverting account for the program to use to defray its costs. Under the VCP, remediating parties must pay a \$500 fee if they want a written No Further Action letter. If the voluntary action is addressed through the REC Program, the remediating party pays an annual adjustable fee to provide for a state auditor/educator/enforcer of this privatized part of the program.

Funding source for administrative costs and staff: The Brownfields Program is funded through a CERCLA 128(a) State and Tribal Response Program Grant (Response

North Carolina

Program Grant) cooperative agreement and also through its \$2,000 fee. The VCP is funded mostly through fees paid by remediators under the REC Program. Voluntary cleanup oversight staff are also funded by state appropriations, federal grants, and a coalition of responsible parties at former manufactured gas plant sites.

Cleanup Activities

Sites currently in VCP: Under the Brownfields Program, there are 112 sites. Redevelopment projects include manufacturing, commercial, residential, mixed commercial/residential, and greenspace uses. Approximately one third of these sites are in rural settings. All of these sites were initiated by prospective developers applying for entry into the Brownfields Program.

Under the VCP, currently 153 sites have approved voluntary assessments and/or cleanups underway.

Sites Completed under VCP: Under the Brownfields Program, 52 brownfields agreements have been completed and 60 are in the pipeline. These projects, facilitated by brownfields agreements, represent approximately \$1,000,000,000 in committed private investment in brownfields redevelopment.

A current total of 451 sites have completed all work and been assigned No Further Action status under the Inactive Hazardous Sites Program.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The public policy of restricting the Brownfields Program to non-causative parties allows greater public benefits to be provided to these redeveloping entities, thereby encouraging an additional set of cleanups above and beyond what is possible under the VCP. Benefits to PDs include site-specific risk-based cleanups designed for safe reuse of the site rather than meeting current state environmental standards that responsible parties are required to meet. This typically results in ground water use restrictions for the PD. For the PD, this holds considerable savings over more active remedial action, and also reserves the state's right to enforce against viable responsible parties for further action. PDs also receive the property tax incentive. Perhaps most importantly, they receive strong liability protection under the brownfields agreement's CNTS. Such agreements now have a track record of facilitating project redevelopment loans.

For parties conducting remedial actions under the VCP, cleanup costs are capped at \$3 million per responsible party.

Public Participation

Public participation requirements (notice, comment periods, etc.): The Brownfields Program requires that the PD establish that there is public benefit with the project that is commensurate with the liability relief provided. One manner in which to establish this is through letters from the public or neighborhood groups. Statutory public notice requires

that a summary of the brownfields agreement must be posted on the brownfield property, advertised in a local newspaper, and published in the state register. Brownfields agreement documents must be made available at a local repository and at the Brownfields Program public files. There is a statutory minimum 60-day public comment period on every brownfields agreement. Under the VCP, there are 30-day public notice periods for both the agreement and the remedial action plan.

Public participation activities (hearing, meetings, etc.): Under the Brownfields Program, the public may request a public meeting within the first 30 days of the public comment period. The program reports that no public meetings have been requested. Public comments are rare, and, when received, have been universally supportive. Under the VCP, public participation activities beyond notice can include public meetings, establishing local file information repositories, meetings with local community groups, fact sheet distribution and such.

Statutory Authorities

- Brownfields Program: The Brownfields Property Reuse Act of 1997, NCGS §§130A–310.30 through 310.40.
- Voluntary Cleanup Program: The North Carolina Inactive Hazardous Sites Response Act of 1987 (NCGS §§130A-310.1 through 310.13).

South Carolina

General Information

Contact: Robert Hodges, Brownfields Coordinator

Address: South Carolina Department of Health and Environmental Control (DHEC)
Bureau of Land and Waste Management

2600 Bull Street
Columbia, SC 29201

Phone: 803 896 4069

Fax: 803 896 4001

Email: hodgesrf@dhec.sc.gov

Web site: <http://www.scdhec.net/environment/lwm/HTML/brownfields.htm>

Program Description (VCP, brownfields, or related)

South Carolina's Voluntary Cleanup Program (VCP), established in 1988, is a component of the hazardous substance cleanup program. In 1995, South Carolina's VCP was expanded and enhanced to incorporate a brownfields component. All sites are eligible to participate with the exception of National Priorities List (NPL) sites, and parties under enforcement action or permits. Incentives for participation include Covenants Not to Sue (CNTS) for successful completion of work for responsible parties (RPs) and CNTS for existing contamination, contribution protection, and third party liability protection for non-responsible parties (non-RPs). This protection may be transferred to future owners and operators as long as they are able to certify that they are non-RPs for the site. Financial incentives are also available for non-RPs who participate in the VCP.

The state's brownfields program is included in the VCP, and is the non-RP portion of the VCP. Criteria for inclusion are the same as those under the voluntary program. Cleanup standards are also identical to those of the VCP, although non-RPs are not necessarily required to remediate sites to the extent that RPs must. Non-RPs are required to take reasonable steps to stop continuing releases and to clean up the property for its intended future use. Incentives for participation in the program are the same as those listed for the VCP above.

Brownfield definition: Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a contaminant, petroleum, or a petroleum product.

Program titles: Brownfields/Voluntary Cleanup Program.

Liability relief provisions: The VCP provides covenant not to sue for existing contamination, contribution protection, and third party liability protection for non-RPs.

Financial incentives (grants, loans, tax provisions, etc.): In 2002 and 2008, the South Carolina legislature passed financial incentives to encourage brownfields redevelopment as amendments to the South Carolina Tax Code.

- If a non-RP makes a minimum investment of at least \$1,000,000 in a brownfield property (includes assessment and/or cleanup conducted pursuant to VCP), the developer is eligible for fees in lieu of property taxes.
- \$1,000 annual credit for each new, qualifying job created on a brownfield site completed by a non-RP through a voluntary cleanup contract, in addition to the current credits.
- With county concurrence, five-year property tax exemption at brownfield sites at which a cleanup has been performed by a non-RP through a voluntary cleanup contract and certified complete by DHEC.
- Taxpayer income tax credit for expenses paid and accrued by a non-RP performing a voluntary cleanup—lesser of 50% or \$50,000 in a taxable year (unused credit up to \$100,000 may be carried forward for five years). An additional credit of 10% of cleanup costs (not to exceed \$50,000) is allowed in the year that the cleanup is certified.
- Through an EPA grant, DHEC administers a Brownfields Cleanup Revolving Loan Fund (RLF) of \$4,250,000, which offers low interest loans to non-RPs for removal of contamination at brownfields redevelopment projects in the VCP.
- DHEC can perform a limited number of Site Specific Assessments of selected and EPA approved sites that are publicly owned or have strong local government support for redevelopment.

Legislative or program site eligibility requirements:

The eligibility requirements are set forth in the South Carolina Hazardous Waste Management Act, Article 7—Brownfields/Voluntary Cleanup Program, South Carolina Code of Laws, Section 44-56-710 et. seq.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): For brownfield sites, DHEC has some funding available through its EPA grant to perform Site Specific Assessments. Also, DHEC administers a Brownfields Cleanup RLF. This financial assistance for assessment and removal is outlined in financial incentives above.

South Carolina

The South Carolina General Assembly created the Dry Cleaning Restoration Trust Fund (DCRTF) in 1995. The DCRTF money is collected from participating dry cleaners through annual fees, solvent surcharges, and special add-on sales taxes. All DCRTF assessment and remediation activities are performed by DHEC and are subject to a priority score assigned to the site; the fund can not be used to pay for work unless the work is approved by the Department through the Drycleaning Restoration Program. Depending on the solvent type and the years of operation, some currently operating dry cleaning plants were allowed to opt out of participation in the Fund. The DCRTF can only be used at participating dry cleaning plants that meet specific eligibility criteria specified by law. Eligibility for the Fund transfers with the property. The fund may be used at former dry cleaning plants only if all RPs have participated in the Fund for all of their operating plants. Lower priority sites may be redeveloped as long as DHEC is granted access to the site in the future for assessment and remediation once they become a priority.

South Carolina created two state funds to assist owners and operators in meeting their financial obligations to address petroleum releases from Underground Storage Tanks (USTs). The State Underground Petroleum Environmental Response Bank (SUPERB) fund is used for the usual and customary costs for site rehabilitation of releases. The SUPERB Financial Responsibility fund is used for compensating third parties for actual costs for injury and property damage caused by a petroleum release. The funding source is a half-cent per gallon environmental impact fee assessed on petroleum. The maximum payout from the state fund is \$1,000,000 per occurrence, and a deductible of \$25,000 must be met before the state fund can be used. All releases must be qualified to receive state funds, and state statute requires that all costs for site rehabilitation receive prior approval from the UST program and work be performed by a state certified contractor.

Tax incentives (abatements, credits, etc.): For brownfields sites, financial incentives are available for non-RPs who have entered into the VCP. Those incentives include:

- State income tax credit for expenses incurred by a taxpayer in cleaning up a site.
- Jobs tax credit in the amount of an additional \$1,000 to established job tax credit.
- Property tax exemption, with county concurrence.
- Fees in lieu of property taxes, with a \$1,000,000 threshold minimum.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): None

Program Elements

Technical Elements

Methods/standards/controls: No formal Risk-Based Corrective Action (RBCA) process is in place for hazardous substances; state generally uses the “EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites” as remedial goals. Applicants can use Preliminary Remediation Goals (PRG) and Soil Screening Levels (SSL), background concentrations, and site-specific concentrations based on a site-specific risk assessment

The UST program uses a risk-based process in making decisions concerning corrective action for releases of petroleum products from regulated USTs. The requirements for the RBCA process are established by state statute and regulations.

Contaminants covered/excluded: Under South Carolina’s Brownfields/VCP law, hazardous substances, contaminants and pollutants, and petroleum and petroleum products are addressed. Asbestos and lead-based paint can be addressed if there is an environmental exposure. Polychlorinated biphenyls (PCBs) are included as hazardous substances. Petroleum is addressed through the VCP or the UST program, depending on the source of the contamination.

Use of long-term stewardship and institutional controls (IC): South Carolina has a long-term stewardship (LTS) program for its state voluntary, brownfields, state remediation, and Resource Conservation and Recovery Act (RCRA) programs. Sites where institutional controls have been implemented under the Brownfields Program are required to certify compliance with the Restrictive Covenant every year. DHEC performs inspections to ensure compliance with the Restrictive Covenant, as needed. The Restrictive Covenant clearly delineates the restrictions placed on the property and is noticed on the deed. Brownfields/VCP sites that are worked on during each year and that have determined land use controls are so noted on the Public Record available at: http://www.scdhec.net/environment/lwm/Databases/Public%20Record/public_record.htm

- **IC Tracking:** South Carolina maintains a database that tracks institutional controls at cleanup sites.
- **IC Oversight:** Parties owning sites that are not cleaned up for unrestricted use as determined by comparison to the “EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites” must enter into a Restrictive Covenant with DHEC.

South Carolina

- **IC Monitoring:** DHEC monitors compliance with Restrictive Covenants by annual certifications and by performing inspections.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://www.scdhec.net/environment/lwm/Databases/Public%20Record/public_record.htm

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: There is no application fee to enter into the VCP; however, private party RPs and non-RPs must pay oversight costs. DHEC provides oversight without charge to governmental entities and nonprofit agencies as long as sufficient funding is available through EPA's 128(a) State and Tribal Response Program grant.

Funding source for administrative costs and staff: State oversight costs are funded by participants in the VCP. Additionally, funding is provided by EPA through its Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 128(a) State and Tribal Response Program Grant to South Carolina. No state appropriated funds are available.

Cleanup Activities

Sites currently in VCP: South Carolina keeps a list of the sites currently in the VCP.

Sites completed under VCP: South Carolina keeps a list of the sites that have completed cleanup under the VCP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The protections provided by participating in the VCP, as well as the financial incentives, are outlined above. In addition, the state has seen much benefit from its brownfields redevelopment program, in that 174 properties have been or are being redeveloped as of December 31, 2008. These redevelopments include greenspace, housing developments, industrial, and mixed use (i.e., commercial, residential, and greenspace) developments with the primary redeveloped use as commercial.

Public Participation

Public participation requirements (notice, comment periods, etc.): To provide notice to and an opportunity for community involvement, the following components are included for public participation:

- Notify citizens of proposed contract by placing a notice of the Department's decision to enter into a voluntary cleanup contract in the local newspaper and on DHEC's Web site.
- Hold a 30-day public comment period on the contract that would begin on the date the notice is in newspaper.

Public participation activities (hearing, meetings, etc.): The following components are also included for public participation:

- Hold a public meeting, if requested or deemed necessary.
- Non-RP must post a sign on the site stating: contact name, address, and telephone number.

Statutory Authorities

The Hazardous Waste Management Act, South Carolina Code Ann. §44-56-10 et seq., establishes general enforcement authority, a cleanup fund, and provisions governing contaminated property transfer. Article 7 of the statute establishes the brownfields and voluntary cleanup programs. Article 4 is the Dry Cleaning Facility Restoration Trust Fund. It provides authority for a cleanup fund and a priority list. Requirements for the management of UST systems are established by the State Underground Petroleum Environmental Response Bank Act (§ 44-2-10) and South Carolina Underground Storage Tank Control Regulations (SCUSTCR) R. 61.92.

General Information

Contact: Andy Shivas

Address: Tennessee Department of Environment and Conservation (TDEC)
4th Floor, L&C Annex
401 Church Street
Nashville, TN 37243-1538

Phone: 615 532 0912

Fax: 615 532 0938

Email: Andy.Shivas@tn.gov

Web site: <http://www.state.tn.us/environment/dor/voap/>

Toolbox: <http://www.state.tn.us/environment/dor/toolbox/>

Program Description (VCP, brownfields, or related)

Brownfields definition: Any abandoned, idle, underutilized, or other property whose reuse, growth, enhancement or redevelopment is complicated by real or perceived adverse environmental conditions.

Program titles: Voluntary Cleanup Oversight and Assistance Program (VOAP)

Liability relief provisions: Participants can receive a No Further Action (NFA) letter and release of liability under any statute administered by TDEC for investigation, remediation, monitoring, and/or maintenance of contamination identified and addressed in a voluntary agreement or consent order. With certain conditions and limitations, liability protection may extend to successors in interest or in title to the participant, contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries, or insurers. Third party contribution protection may be provided if certain notice requirements are met.

Financial incentives (grants, loans, tax provisions, etc.):

- Dry Cleaning Environmental Response Program Trust Fund (DCERPTF)—Can possibly be used to clean up eligible active and abandoned dry cleaning sites. In order to utilize the fund, fees, and deductibles are required by program participants.
- Tax Increment Financing (TIF)—Can be used by local governments that have jurisdiction over any part of a brownfields project.
- Federal Funds—Grants or loans from federal funds available to TDEC and any state funds used as a match to obtain federal funds in certain cases may be used by municipalities, counties, and/or other governmental instrumentalities to assess and clean up sites.

Legislative or program site eligibility

requirements: By statute, parties that did not release, generate, or transport contamination to be addressed may enter into a voluntary agreement. While responsible parties (RPs) are not eligible to enter into voluntary cleanup agreements, they may enter into consent orders to conduct voluntary cleanups. Sites on or proposed for listing on the federal Superfund program's National Priorities List (NPL) may not be subject to a voluntary cleanup agreement or consent order without the concurrence of EPA.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): DCERPTF can be used to clean up eligible active and abandoned dry cleaning sites provided that the applicant pays all delinquent DCERP fees. A solvent surcharge paid by dry cleaners and suppliers and an annual business registration fee are the significant sources of funding.

Federal Funds—By statute, parties that did not release, generate, or transport contamination to be addressed may enter into a voluntary agreement. While responsible parties (RPs) are not eligible to enter into voluntary cleanup agreements, they may enter into consent orders to conduct voluntary cleanups. Sites on or proposed for listing on the federal Superfund program's National Priorities List (NPL) may not be subject to a voluntary cleanup agreement or consent order without the concurrence of EPA.

Tax incentives (abatements, credits, etc.): Tax increment financing (TIF) can be used by local governments that have jurisdiction over any part of a brownfields project.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: EPA Region 9 Preliminary Remediation Goals (PRGs) are used for initial screening. The criteria for selecting containment and cleanup actions, including monitoring and maintenance options to be followed under the VOAP, are identical to those under the hazardous substance cleanup program. No formal Risk-Based Corrective Action (RBCA) or comparable informal process is in place, but risk-based cleanups can be done via site-

Tennessee

specific assessment with standards based on risk. Applicants can also request or develop standards based on future use.

Contaminants covered/excluded: Petroleum, asbestos, and polychlorinated biphenyls (PCBs) are covered. Lead paint is covered if other hazardous substances are present. Statute covers hazardous substances, solid waste, or any other pollutant.

Use of long-term stewardship and institutional controls (IC): Tennessee has a long-term stewardship program for voluntary sites. The 2001 amendments to the VOAP allow for enforceable land-use restrictions.

- **IC Tracking:** Tennessee does have a tracking system for institutional controls.
- **IC Oversight and Monitoring:** The state reviews sites on a site-specific basis at least every five years. The results of the reviews are available to the public.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.state.tn.us/environment/dor/pdf/promsite.pdf>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: Participants are charged a \$750 entry fee. Additional fees are charged per report or work product: Site Characterization—\$2,000; Remedial Action—\$2,500; Risk Assessment—\$2,000; Voluntary Agreement or Consent Order—\$3,000; Site Specific Ground Water Classification—\$2,000; Remedy Requirement Institutional Controls—\$500.

Additionally, participants are charged a \$3,000 annual assessment if they remain in the program longer than one year.

Funding source for administrative costs and staff: The VOAP receives funding from federal cooperative agreements, the state general fund, and the state cleanup fund. Certain oversight costs are recovered from participants.

Cleanup Activities

Sites currently in VCP: 161 enrolled in the VOAP.

Sites completed under VCP: 94 sites have received No Further Action letters.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Parties successfully completing the program are afforded liability protection under all statutes contamination addressed in a consent order or voluntary agreement. Additionally, parties may be eligible for third party contribution protection provided they conduct appropriate actual or constructive notice.

Public Participation

Public participation requirements (notice, comment periods, etc.): Upon entering into a voluntary agreement or consent order, participants are required by statute to notify all local governments having jurisdiction over any part of the subject property and all owners of adjoining properties by certified mail. If it is determined that a land use restriction is appropriate, a notice of land use restrictions must be mailed to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. Furthermore, if a participant desires to receive third party contribution protection, a notice summarizing the agreement must be published in a newspaper. In addition, a 30-day comment period must be provided for any interested party to respond.

Public participation activities (hearing, meetings, etc.): Public hearings and meetings occur on an ad hoc basis.

Statutory Authorities

For details visit: http://www.state.tn.us/environment/dor/pdf/voap_statute.pdf

General Information

Contact: Heather Nifong

Address: Bureau of Land, Illinois Environmental Protection Agency (IEPA)
1021 North Grand Avenue East
Springfield, IL 62794-9276

Phone: 217 785 9407

Fax: 217-557-4231

Email: Heather.Nifong@illinois.gov

Web site: <http://www.epa.state.il.us/land/cleanup-programs/>

Program Description (VCP, brownfields, or related)

Brownfields definition: Illinois defines a brownfield site or brownfields to be a parcel of real property, or a portion of the parcel, that has actual or perceived contamination and an active potential for redevelopment. Environmental Protection Act, Title 17, Section 58.2.

Program titles:

- Site Remediation Program (SRP) (1989, revised 1996) – Offers No Further Remediation (NFR) letter after cleanup meets the risk-based Tiered Approach to Correction Action Objectives (TACO)
- LUST Section – NFR letter
- Permit Section-Corrective Action Unit – No Further Action (NFA) letter

Liability relief provisions:

- Site Remediation Program (SRP) (1989, revised 1996)—Offers No Further Remediation (NFR) letter after cleanup meets the risk-based Tiered Approach to Correction Action Objectives (TACO)
- LUST Section—NFR letter
- Permit Section-Corrective Action Unit—No Further Action (NFA) letter

Financial incentives (grants, loans, tax provisions, etc.):

- Municipal Brownfields Redevelopment Grant Program
- Brownfields Cleanup Revolving Loan Fund
- Bank Participation Loan Program (Chicago)

Legislative or program site eligibility requirements:

Generally any site not required to clean up under any other program (e.g., Resource Conservation and Recovery Act (RCRA), Superfund) is eligible for the Illinois Site Remediation Program.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Municipal Brownfields Redevelopment Grant Program offers municipalities grants of up to \$240,000 for investigation and cleanup of brownfields. Sites must be enrolled in the Site Remediation Program and investigation/cleanup activities must be approved. The grant has a 70/30 match requirement.
- Brownfields Cleanup Revolving Loan Fund offers stipulated loans up to \$425,000 per site to municipalities to clean up former industrial commercial or industrial sites. Sites must be enrolled in the Site Remediation Program and investigation/cleanup activities must be approved. Municipality must own the site.
- Bank Participation Loan Program (in Chicago) offers up to \$250,000 or \$350,000 for commercial and industrial loans (respectively) that are matched by banks at 75% of prime rate, for terms from three to 15 years.

Tax incentives (abatements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls:

- Under TACO, applicant has a choice of cleanup standards. Remediation objectives generated by TACO are risk-based, site-specific, and derived from Risk-Based Corrective Action (RBCA) and EPA Soil Screening Levels (SSLs).
- The state uses background levels, water quality criteria, Maximum Contamination Level/Maximum Contamination Level Goals (MCLs/MCLGs), ground water standards, soil standards, and land use based standards to establish cleanup objectives. In Tier 1 of TACO, site evaluators compare site sample analytical results to baseline remediation objectives, contained in “look-up” tables. These objectives are based on simple, conservative models. In Tier 2, site evaluators take into account the physical and chemical properties of the contaminants, site-specific soil and ground water parameters, and

Illinois

the application of institutional controls and engineered barriers. Tier 3 is used to address those situations that site evaluators choose not to handle or cannot handle under the first two tiers. These situations can range from simple sites where physical barriers limit remediation, to complex sites where full-scale risk assessments or alternative modeling are applied. Cleanup standards are based on relative risks to human health with a 10–6 carcinogenic risk goal.

- The state uses deed restrictions and NFR letters as institutional controls to ensure that specified land uses are maintained in the future.

Contaminants covered/excluded: Petroleum and all hazardous substances are included. Institutional controls allowed under TACO and may include engineered barriers, ground water restrictions, highway authority agreements, and land-use restrictions.

Use of long-term stewardship and institutional controls (IC): Illinois assures the maintenance of land use controls through title searches, physical site inspections, and enforcement of any identified violations under the terms and conditions of the No Further Remediation letter.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://epadata.epa.state.il.us/land/srp/>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: April 1995

Costs to enter program or fees for service: User fees based on personnel costs, overhead, travel, lab costs, etc. Fees on hazardous waste treatment/disposal fund state participation.

Funding source for administrative costs and staff:

- The IEPA, Bureau of Land, Division of Remedial Management administers the state brownfields and cleanup programs.
- The Site Remediation Program is funded through applicant user fees. Other remedial activities are funded through cost recovery actions, the solid waste tipping fees, and federal funding.

Cleanup Activities

Sites currently in VCP: 959 sites as of August 10, 2009 are in pursuit of completion letters.

Sites completed under VCP: Since 1989, 3,923 Voluntary Cleanup Program (VCP) enrollments and 2,565 completion letters issued. In 2008, 243 sites enrolled; 275 completion letters issued.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available

Public Participation

Public participation requirements (notice, comment periods, etc.): The Site Remediation Program requires public participation at sites intended for use as schools. Public participation at other sites is recommended on an ad hoc basis.

Public participation activities (hearing, meetings, etc.): No information available.

Statutory Authorities

- The Environmental Protection Act, Title XVIII §58 (1970, amended every year from 1983, 1993, and 1995, 1996), establishes the Hazardous Waste Fund for state site cleanups and provides for enforcement, contaminated property transfer, and voluntary cleanups.

General Information

Contact: Michele Oertel
EPA/Community Liaison & Outreach Coordinator
Indiana Brownfields Program

Address: Indiana Brownfields Program
100 N. Senate Ave., Rm 1275
Indianapolis, IN 46204

Voluntary Remediation Program
Office of Land Quality, Indiana Department of
Environmental Management (IDEM)
P.O. Box 6015
Indianapolis, IN 46206-6015

Phone: Indiana Brownfields Program:
317 234 0235

IDEM Voluntary Remediation Program:
317 234 0966

Fax: Indiana Brownfields Program: 317 234 1338

Voluntary Remediation Program:
317 234 0428

Email: moertel@ifa.in.gov
raharris@idem.in.gov

Web site: *Indiana Brownfields Program* <http://www.brownfields.IN.gov>

IDEM Voluntary Remediation Program <http://www.in.gov/idem/programs/land/vrp/index>

Program Description (VCP, brownfields, or related)

Brownfields definition: Indiana defines in statute a brownfield site as a parcel of real estate that:

- Is abandoned or inactive; or
- May not be operated at its appropriate use; and
- On which expansion, redevelopment, or reuse is complicated because of the presence or potential presence of a hazardous substance, a contaminant, petroleum, or a petroleum product that poses a risk to human health and the environment.

Program titles:

- Indiana Brownfields Program (1997, 2005)—Mechanism for state to partner with communities to promote cleanup and redevelopment. The main goal is to help communities identify and mitigate environmental barriers that impede local economic growth by offering government assistance for the assessment, cleanup, and redevelopment or reuse of brownfield properties to revitalize communities. In 2005, the program was restructured under the Indiana Finance Authority (IFA) combining financial, legal, and technical resources/staff.

- IDEM Voluntary Remediation Program (VRP) (1993)—Main goal is to provide government approval for privately funded remediation projects, some of which may be considered brownfields.

Liability relief provisions:

Indiana Brownfields Program offers Comfort Letters and Site Status Letters to address environmental liability issues; highest forms of “comfort” or “closure” offered at this time. Sites remediated with federal or state brownfield funds may enter the IDEM VRP for a Certificate of Completion (COC) or Covenant Not to Sue (CNTS).

IDEM VRP offers highest form of liability protection through a COC issued by IDEM, followed by a CNTS from governor’s office; contaminated sites that are not subject to enforcement action or considered an imminent threat to human health may participate.

Financial incentives (grants, loans, tax provisions, etc.):

- Indiana Brownfields Program Trails and Parks Initiative (TPI) - free assessment service via EPA awards
- Revolving Loan Fund (RLF) Phase Is - pending, free assessment service via RLF repayments
- Federal Matching Grants - via State Environmental Remediation Revolving Loan Fund (ERRLF) established in 1997
- Stipulated Site Assessment Grants (SAG) - pending, via ERRLF
- Stipulated Remediation Grants (SRG) - pending, via ERRLF
- Petroleum Remediation Grants (PRG) - unfunded waitlist, via fund transfer established in 1999
- RLF Supplemental/Recovery Act - sub-grants/loans for cleanup via EPA award
- RLF Incentive - loans for cleanup via EPA award
- Low-Interest Loans (LIL) - for assessment/cleanup via ERRLF
- Supplemental Environmental Projects (SEPs) - for assessment/cleanup via IDEM enforcement settlement
- IDEM Excess Liability Trust Fund (ELTF) - not specific to brownfields, for regulated tank owners who pay/have paid into the fund (ELTF recipients not eligible for PRG)
- State and Federal Tax Provisions - site determinations conducted by Indiana Brownfields Program

Legislative or program site eligibility requirements:

Authority for the VRP is provided in Indiana Code 13-25-5, as amended. Entry to IDEM VRP is open to any site unless an enforcement action is pending, the site is a substantial and imminent threat, or a federal grant requires action. Responsible parties may apply.

Indiana

The Indiana Brownfields Program generally follows these standards in evaluating eligibility for financial and technical assistance. However, assistance is not available to entities that caused or contributed to any site contamination.

The Indiana Brownfields Program works under the directives of *Senate Enrolled Act 360 (1997)*, *House Enrolled Act 1909 (1999)*, *House Enrolled Act 1935 (2001)*, *Senate Enrolled Act 273 (2001)*, *Senate Enrolled Act 170 (2001)*, *Senate Enrolled Act 321 (2001)*, *Senate Enrolled Act 339 (2001)*, *Federal HR 2869 (2001)*, *House Enrolled Act 1714 (2003)*, *Senate Enrolled Act 207 (2003)*, *House Enrolled Act 1653 (2005)*, *Senate Enrolled Act 578 (2005)*, *House Enrolled Act 1033 (2005)*, *House Enrolled Act 1192 (2007)*, and *House Enrolled Act 1162 (2009)*.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Assessment - In 2007, the Indiana Brownfields Program developed TPI using \$400,000 in EPA assessment funding awarded to Indiana plus \$200,000 in matching funds from IFA. TPI offers Phase I and Phase II environmental site assessments for hazardous and petroleum contamination to eligible local units of government and nonprofit organizations with plans to redevelop eligible brownfield sites for use as trails, parks, recreational space, or other greenspace. Unlike other financial incentives through the Indiana Brownfields Program, applicants will not receive monies directly, but program-contracted consultants will perform assessments for the awarded applicants. Applications are on a rolling basis until 2010, unless funds are depleted earlier.
- Assessment - SAG funding, through state budget appropriations, has been available to political subdivisions to perform site assessment and investigative activities at eligible brownfield sites with non-petroleum contamination. Eligible SAG activities include Phase I and Phase II Environmental Site Assessments, lead paint surveys, and asbestos surveys. Amount available and deadline to apply for future SAG funding are pending.
- Assessment - Phase I assistance is anticipated to be available from RLF repayments.
- Assessment/Cleanup - state LIL funding is available to political subdivisions for the acquisition of and environmental assessment, remediation, and demolition activities at eligible brownfield sites. Loans can be used for hazardous and petroleum contamination. The maximum LIL amount is based on available funds and determined on a case-by-case basis (dependent, in part, on what other financial assistance the borrower has received from the Program in the fiscal year), but in no instance will exceed 50% of funds available for loans. A LIL may also be partially forgivable such that not more than 20% of the total LIL amount may be in the form of a forgivable loan. Applications are on a rolling basis.
- Assessment/Cleanup - PRG funding that was the result of a 2001/2003 state budget transfer of 9,000,000 from the IDEM Excess Liability Fund (ELF) to ERRLF for petroleum contamination at brownfield sites is pending. In 2007, this incentive was successfully restructured, dividing the state into seven regions and allocating \$750,000 per region to identify, assess, and remediate eligible brownfield sites with the intent of more efficiently utilizing available funding. By the end of 2008, the total budget for approved PRG projects was estimated at close to \$6.3 million, a little over \$3.5 million of which has already been disbursed. PRG funds were available to political subdivisions as services provided by consultants retained by IFA. PRG awards may not be used to remediate sites contaminated solely by hazardous substances, although they may be applied to sites contaminated by both hazardous substances and petroleum. The Indiana Brownfields Program is maintaining wait lists for each Region until the availability of additional funding is determined.
- Assessment/Cleanup - The Indiana Brownfields Program has collaborated with IDEM to offer political subdivisions in Indiana access to SEP funds for brownfield redevelopment activities. SEPs are used by IDEM as tools to settle enforcement cases. When IDEM agrees to allow a respondent to settle a case with a brownfield SEP, an agreed-upon amount from a civil penalty owed to IDEM is paid directly by the respondent to the IFA for use on a brownfield project. Examples of eligible uses of brownfield SEP funds include the following: Phase I and Phase II Environmental Site Assessments, remediation and demolition activities, habitat restoration, and site acquisition. In order to administer this form of financial assistance, Program staff have developed guidelines for those communities that are the beneficiaries of a brownfield SEP to explain the eligible uses of the funding, administrative procedures for accepting and utilizing the funding, etc. Unlike other financial incentives received through the Indiana Brownfields Program, these are not funds for which an entity can apply; they result only from a negotiated settlement from IDEM's Office of Enforcement.
- Cleanup - SRG funding, through state budget appropriations, has been available to political subdivisions to finance environmental remediation costs at eligible brownfield sites. SRG awards may not be used to remediate sites contaminated solely by petroleum, although sites contaminated by both hazardous substances and petroleum may be eligible. Amount available and deadline to apply for future SRG funding are pending.

Indiana

REGION 5

- Cleanup - FMG funding is available to EPA Brownfields Cleanup or RLF grant award recipients. The amount of a FMG award is up to 20% of the EPA grant.
- Cleanup - RLF Incentive low-cost (e.g., low to zero-interest) loan funding of approximately \$2.4 million currently available to political subdivisions and private eligible entities for brownfield cleanup activities from an EPA award (and IFA match) in 2008. Applications are accepted on a rolling basis until 2013, unless funds are depleted earlier.
- Cleanup - \$2.5 million (\$900,000 for hazardous substances and \$1,600,000 for petroleum) available from RLF Supplemental/Recovery Act funding awarded to Indiana Brownfields Program to provide loans and sub-grants to support cleanup activities at several of the 31 shovel-ready brownfield projects identified by local governments in the state. Selection and implementation procedures are to be determined.

Misc. background information/criteria:

- In 1997, state ERRLF (or the Brownfields Fund) established through legislation—\$10,000,000 over three years to eligible cities, towns, or counties (with funds having been reallocated to date); grants for assessments; loans for assessments or remediation (including demolition); applicants evaluated for several criteria, including ability to repay, matching funds available, and economic development potential; and 50% allocated to jurisdictions with fewer than 22,000 people. Future funds are through budget appropriations.
- On July 1, 1999, an extra \$5,000,000 was added through legislation to the ERRLF for forgivable loans; 20% of the ERRLF loan may be forgiven for projects meeting community-determined economic development goals, with priority given to former gas station or underground storage tank (UST) sites, or facilities located within one-half mile of a childcare center or school.
- ERRLF applicants may partner/co-apply with private entities that did not cause or contribute to any contamination. ERRLF loan recipients may re-loan money to an eligible private entity, with 20% of the loan forgiven if it meets criteria (noted in the first column); referred to as the third-party model.
- No funding is retroactive.

Tax incentives (abatements, credits, etc.):

- Brownfields Revitalization Zone tax abatements - available in locally designated “brownfields zones.”
- Tax waiver - Indiana Brownfields Program determines whether a site is a “brownfield” as a part of the petition that is filed for the Department of Local Government Finance to cancel local back taxes.
- Federal Brownfield Tax Incentive - Indiana Brownfields Program determines whether a site is a “qualified contaminated site” and issues a Federal Brownfield Tax

Incentive Property Eligibility Statement as one step in the process to help reduce a taxpayer’s tax burden by allowing eligible remediation costs to be fully deducted in the year the costs were incurred.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): N/A

Program Elements

Technical Elements

Methods/standards/controls:

- Risk-based process (Risk-Based Corrective Action-like) in place. State’s Risk Integrated System of Closure (RISC) non-rule policy, which allows for consistent, risk based standards among all IDEM cleanup programs, has been utilized since 2002.
- Indiana developed default risk-based closure criteria for soil and ground water and allows for site-specific risk assessments to determine alternative closure levels.
- In addition to risk-based numeric standards, the VRP considers risk management practices in evaluating sites.
- Land use is considered in determining cleanup levels for state and voluntary cleanups. Future land uses are considered either residential or industrial/commercial. A party must control the site to select industrial use. Indiana uses restrictive covenants recorded on deeds as institutional controls for maintaining specified land uses.

Contaminants covered/excluded:

- Both programs cover hazardous substances and petroleum. Default closure standards have been developed for approximately 150 common constituents, excluding asbestos and polychlorinated biphenyls (PCBs).
- For the Indiana Brownfields Program, asbestos, lead paint, and PCBs are OK, as well as petroleum for state and federally funded projects.
- In VRP, petroleum and PCBs are OK; no asbestos or lead paint.

Use of long-term stewardship and institutional controls (IC):

Both programs generally view ICs as acceptable. ICs are considered under RISC when determining remediation-type activities. ICs may be approved on a site-by-site basis. Indiana Brownfields Program Comfort/Site Status Letters may indicate land-use restrictions as necessary. Land-use restrictions are enforced by IDEM through Environmental Restrictive Covenants. The most common type of IC approved by IDEM is an Environmental Restrictive Covenant. IDEM developed and maintains an Institutional Controls Registry to track Environmental Restrictive Covenants.

Indiana

IC Tracking: Tracked by individual programs (including VRP and Indiana Brownfields Program) through IDEM's Registry. A summary report from the registry is posted monthly at <http://www.in.gov/idem/5959.htm>. The registry also has interactive features including a link to view the actual IC document using IDEM's Virtual File Cabinet.

- **IC Oversight:** pending study committee outcome.
- **IC Monitoring:** pending study committee outcome.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: December 1995 for VRP. Indiana Brownfields Program has Cooperative Agreements for multiple grants with EPA.

Costs to enter program or fees for service: While 2007 legislation allows for fees, the Indiana Brownfields Program is free, and costs for services are currently not recovered from program participants.

VRP is funded through application fees of \$1,000 (municipalities are exempt) per site and through applicant agreements to pay additional state costs. State costs for voluntary cleanups generally range from \$5,000 - \$20,000. VRP recovers costs for project administration, technical evaluation, confirmatory sampling, and travel.

Funding source for administrative costs and staff: The Indiana Brownfields Program utilizes approximately 15 full-time equivalent (FTE) staff. The IDEM Office of Land Quality employs approximately 50 FTE staff in the VRP, including science services/technical support staff (e.g., Chemists, Geologists, etc.). Legal support is provided by only one attorney in the Office of Legal Counsel. Staffing and administration are primarily funded by the state general fund, the state cleanup fund, and federal grants/cooperative agreements.

Cleanup Activities

Sites currently in VCP: As of August 2009, 728 VRP applicants and 862 Indiana Brownfields Program sites.

Sites completed under VCP:

- For the VRP, 556 active and completed sites.
- For the Indiana Brownfields Program, an approximate total of 250 Closure letters (Comfort Letters (101); Site Status Letters (98); NFA Letters (51) and 16 Project Status Letters issued; 433 grants awarded; 27 loans approved.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Both programs—Facilitate property transfers and brownfields redevelopment thereby enhancing property values; are voluntary; provide technical assistance; conduct educational and outreach activities; utilize RISC closure levels for cleanup goals; and offer their respective "closure" documents.

- VRP is a fee-based program that offers a COC and CNTS through the governor's office for sites that have been remediated through the VRP; this is the highest level of liability protection offered for media, constituents, and areas addressed. Responsible parties are eligible to participate.
- The Indiana Brownfields Program offers educational, financial, legal, and technical assistance primarily to communities, but also to private non-responsible parties. Participation in the Indiana Brownfields Program is at no cost. The program offers Comfort Letters and Site Status Letters to address liability issues as appropriate. While these documents do not provide the level of liability protection as a CNTS (i.e., release of liability), they often facilitate lending transactions and property transfers.

Public Participation

Public participation requirements (notice, comment periods, etc.):

- The Indiana Brownfields Program generally has no public participation requirements, except for federally funded projects (e.g., RLF) where such requirements may exist and with which the program must comply.
- VRP requires public notice. Hearings and meetings are held at IDEM's discretion.

Public participation activities (hearing, meetings, etc.):

- While the Indiana Brownfields Program does not require such public meetings/notices, public participation is an important selection factor incorporated in all applications/request forms for receiving financial, legal, and technical assistance. There are two sites in the program that received federal RLF loan funds where this was a requirement such that information was placed in a public repository and public meetings were held about the community projects.
- VRP requires that all remediation work plans (100% of sites) be placed on a 30-day public comment period in the IDEM file room, and in a repository (typically a public library) in the community where the subject property is located before formal work plan approval is granted. Public officials in the affected community (mayor and county health department) are notified when VRP accepts a project into the program, and again when the work plan is placed on public notice. In addition, the VRP Community Relations Plan requires that all program participants notify residents or community groups in close proximity to the subject property if impacts or activities at the site are likely to affect them.

Indiana

REGION 5

Statutory Authorities

- The Hazardous Substances Response Trust Fund, IC §13–25–4 (1986, as amended 1987, 1988, 1989, and 1991), establishes a state cleanup fund and authorizes enforcement actions, and recovery of natural resource damages (NRDs).
- The Environmental Response Revolving Loan Fund (IC §13–19–5–5).
- The Responsible Property Transfer Law, IC §13–25–3 (1990), establishes disclosure requirements for contaminated property transfers.
- The Voluntary Remediation of Hazardous Substances and Petroleum, IC §13–25–5 (1993), establishes a voluntary cleanup program.
- The Brownfields Revitalization Zone Tax Abatement, IC §6–1.1–42 (1997), provides for tax rebates under the brownfields program.
- The Environmental Legal Actions Act, IC §13–30–9 (1997), establishes citizen suit authority.
- IDEM's petroleum response authority (IC §13–24–1).
- IDEM's leaking underground storage tank response authority (IC §13–23–13).
- The Indiana Brownfields Program also works under the directives of *Senate Enrolled Act 360 (1997)*, *House Enrolled Act 1909 (1999)*, *House Enrolled Act 1935 (2001)*, *Senate Enrolled Act 273 (2001)*, *Senate Enrolled Act 170 (2001)*, *Senate Enrolled Act 321 (2001)*, *Senate Enrolled Act 339 (2001)*, *Federal HR 2869 (2001)*, *House Enrolled Act 1714 (2003)*, and *Senate Enrolled Act 207 (2003)*, *House Enrolled Act 1653 (2005)*, *Senate Enrolled Act 578 (2005)*, *House Enrolled Act 1033 (2005)*, *House Enrolled Act 1192 (2007)*, and *House Enrolled Act 1162 (2009)*.
- Legal Actions Act, IC §13–30–9 (1997), establishes citizen suit authority.
- Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC §9601.

Michigan

General Information

Contact: Susan Erickson

Address: Michigan Department of Environmental Quality (DEQ)
P.O. Box 30426
Lansing, MI 48909-7926

Phone: 517 241 8707

Fax: 517 373 9657

Email: ericksons@michigan.gov

Web site: <http://www.michigan.gov/deqbrownfields>

Program Description (VCP, brownfields, or related)

Brownfields definition: Michigan's functional definition of a brownfield is a property with real or perceived contamination and one that has a potential for redevelopment. The term also includes blighted or functionally obsolete properties. A property is a "facility" if the contaminant concentration exceeds one or more residential criteria, as defined in Part 201, Environmental Remediation of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

Eligible properties, including those that are blighted, functionally obsolete, or owned by a land bank, are defined in the Brownfield Redevelopment Financing Act, PA 381 of 1996, as amended.

A more detailed description of Michigan's brownfield program can be found at: http://www.michigan.gov/deq/0,1607,7-135-3311_4110_23243---,00.html

Program titles:

- Brownfield Redevelopment Grants and Loans
- Cleanup and Redevelopment Program
- Brownfield Redevelopment Assessment Program

Liability relief provisions: Completing a Baseline Environmental Assessment (BEA) and submitting it to the DEQ prior to or within 45 days of purchase provides an exemption from liability for existing contamination. The BEA establishes the means to distinguish a new release from pre-existing contamination, and provides liability protection for the new owner for known and unknown contamination under certain parts of Michigan's environmental protection law. A BEA may not provide liability protection under other state and federal laws, including state regulated landfills and underground storage tanks, and sites regulated by the

federal Resource Conservation and Recovery Act (RCRA), Comprehensive Response Compensation and Liability Act (CERCLA), and Superfund. Owners and operators of contaminated properties must use due care when redeveloping the property and may seek a determination from the DEQ on the adequacy of the BEA and associated Due Care Plan (Compliance Analysis). The DEQ has received over 12,000 BEAs since the law was enacted in 1995. Michigan cleanup standards are land-use based.

Financial incentives (grants, loans, tax provisions, etc.):

- Brownfield Redevelopment Grants and Loans are available for investigation and environmental cleanup of brownfield sites targeted for redevelopment. The program is funded through past environmental bond initiatives (1988 Quality of Life Bond and 1998 Clean Michigan Initiative). http://www.michigan.gov/deq/0,1607,7-135-3311_4110_29262---,00.html
- A Brownfield Redevelopment Authority (BRA) has tax-increment financing (TIF) and bonding authority and may use these funds to address eligible environmental, and in some cases, infrastructure costs at sites in an approved Brownfield Plan. Funds may also be used for demolition, and lead and asbestos abatement. A BRA may also establish a local site remediation revolving fund through capture of excess tax increment revenues for up to five years to conduct eligible activities on other eligible properties. Bonds can be repaid with tax increment revenues. http://www.michigan.gov/deq/0,1607,7-135-3311_4110_23246---,00.html
- Michigan Business Tax (MBT) credits are available to developers of brownfield sites for up to 12.5% of eligible investment hard costs. For projects designated as Urban Development Area Projects (UDAP), a credit of up to 20% is available. Eligible investment hard costs include: site improvements, demolition, construction, restoration, alteration, building renovation or improvement, and addition of machinery, equipment, and fixtures. <http://ref.themedc.org/cm/attach/b0bc12b6-18b0-4e74-823f-50b40d116e36/BrownfieldSBT.pdf>
- The Brownfield Redevelopment Assessment Program provides free site assessments for up to eight sites per year.
- The DEQ works closely with the Community Assistance Team of the Michigan Economic Development Corporation (MEDC) on tax-increment financing and economic incentive programs for brownfield redevelopment (products and services, tax credits, and tax-free zones). Other economic development incentives through the Michigan State Housing Authority (MSHDA) (low interest financing), the Michigan Department of Transportation (grants for infrastructure, road and non-motorized trails, http://www.michigan.gov/mdot/0,1607,7-151-9621_17216---,00.html), the Michigan Department of

Michigan

Natural Resources (grants for property acquisition and development of public recreational facilities http://www.michigan.gov/dnr/0,1607,7-153-10366_37984---,00.html), and the Michigan State Historic Preservation Office (tax incentives and credits, http://www.michigan.gov/hal/0,1607,7-160-18833_18873---,00.html) are frequently used at brownfield sites, but are not specifically linked to brownfield redevelopment. The Michigan Land Bank Fast Track Authority also helps return blighted tax-reverted properties back to productive use (<http://www.michigan.gov/dleg/0,1607,7-154-34176---,00.html>).

Legislative or program site eligibility requirements:

- Brownfield Redevelopment grants and loans: Eligible applicants include local units of government and authorities or organizations created pursuant to state law, such as a BRA, Economic Development Authority, or a Downtown Development Authority. The local governing body must commit its full faith and credit for loans. An eligible property can be either known or suspected to be contaminated. Liability issues may result in a property or applicant being ineligible for a grant or loan.
- Brownfield Redevelopment Authorities: Any local unit of government can establish a BRA which may adopt a brownfield plan to provide TIF to reimburse developers for the costs of eligible activities and MBT credits for qualified taxpayers for their eligible investments. In order to be eligible for either TIF reimbursement and or MBT credits, the property must be in a BRA's Brownfield Plan.
- Michigan Business Tax credits: Qualified taxpayers such as property owners, lessees, or parties that have agreed to purchase or lease eligible property are eligible to claim a tax credit. The property can be:
 - A contaminated property
 - Blighted or functionally obsolete property
 - Contiguous to property that is contaminated, blighted, or functionally obsolete
 - Tax reverted and owned or under the control of a land bank authority

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfield programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Property prioritized by communities for redevelopment can be addressed with Brownfield Redevelopment Grants and Loans. Ultimately, the goal of the Michigan DEQ's Brownfield Grant and Loan Program is to level the playing field between brownfield and greenfield sites, and provide incentives that encourage or leverage investment of funding by other public and private sources. However, in order to attract projects that maximize environmental

benefits, brownfield grant and loan recipients are encouraged to incorporate green building standards, energy efficiency, walkability, rain gardens, green roofs, and other storm water control measures into funded projects. The DEQ coordinates with other state agencies to help identify financial and technical assistance.

Both grants and loans maybe used for assessment and cleanup, but a project must have a committed developer to qualify for a grant, or to use funds for demolition costs. Without a committed developer, a loan may be used if the site has redevelopment potential. Loans have a five-year grace period with no interest and no payments. After the fifth year, nominal interest (currently 1.5%) is charged on the loan balance, and repayments are due annually for the next 10 years (total loan term is 15 years). Loans may be repaid with TIF collected by a BRA. Applications are accepted year-round to allow timely responses to developer timeframes.

The grant and loan program was capitalized with \$75,000,000 from the 1998 Clean Michigan Initiative bond proceeds. However, this funding source for grants and additional loan awards is anticipated to be depleted in 2010. About \$8,000,000 was available from these programs at the end of 2009. The Brownfield Redevelopment Grant Program has existed in Michigan since 1992.

- The Cleanup and Redevelopment Program (CRP) of the DEQ initiates and oversees state-funded cleanup actions at Michigan sites of environmental contamination when there are no financially viable liable person(s), or where the liable person(s) refuses to act in a timely manner, and immediate action is needed. Cleanup projects are proposed annually by the DEQ and are approved by the legislature. Historically, sites selected and approved are those that present the most significant risks to public health or the environment. Starting in 1997, sites were also selected and approved based on the redevelopment potential. In 2004, the Leaking Underground Storage Tank Program was incorporated into the Environmental Cleanup and Redevelopment Program. The program also provides funding to match federal funds for cleanup actions at federally listed sited of contamination (e.g., Superfund Sites). Funding sources for the CRP include the 1988 Environmental Protection Bond Fund, the 1998 CMI Bond Fund, the Cleanup and Redevelopment Fund (CRF, created in 1996), and the Michigan Refined Petroleum Fund. From FY89 through FY06, over \$830 million has been appropriated for site-specific cleanup projects at 1,752 sites.

Michigan

The state recovers some funds from liable parties, but the amount varies widely. Recovered funds are returned to the cleanup program.

- The Brownfield Redevelopment Assessment Program provides free site assessments for up to eight sites per year. The program is funded through a grant from EPA to the Michigan DEQ. Assessments are conducted by DEQ staff to evaluate properties for redevelopment. The brownfield assessments provide enough information to make remedial and due care decisions before a party commits to purchase and/or redevelop a property. While federal funds are used, a property is not entered into the Superfund evaluation or National Priorities List (NPL) nomination process unless specifically requested by the state. Candidate properties are identified by a local unit of government and submitted to the DEQ Remediation and Redevelopment Division Superfund Section. Properties proposed for reuse as public facilities are eligible for investigation. Sites proposed for private redevelopment are higher priority if a developer has a strong interest in the property, and if the property has tax-reverted to the state or is under the control of the local unit government. (http://www.michigan.gov/deq/0,1607,7-135-3311_4110_52069-199235--,00.html).

Tax incentives (abatements, credits, etc.): The MBT credit is available for up to 12.5% of eligible investment in development (not cleanup) costs made on an eligible property by a qualified taxpayer. For redevelopments designated as Urban Development Area Projects (UDAP), a credit of up to 20% for eligible costs is available until the end of 2010, then is reduced to 15%. An eligible property must be in an approved Brownfield Redevelopment Plan, and eligible development costs include site improvements, demolition, construction, restoration, alteration, building renovation or improvement, and addition of machinery, equipment, and fixtures. A UDAP includes projects located on eligible property in a downtown or traditional business district or traditional commercial corridor of one the 103 qualified local units of government or a county seat. UDAPs typically include multistory, increased density, mixed-use or walkable community developments, sustainable and green redevelopment, or address areas with multiple parcel redevelopments and underserved commercial areas.

Renaissance zones are virtually free of all state and local taxes for businesses located within their boundaries. Many Renaissance Zones include brownfield properties. There are over 150 geographic areas in Michigan that are designated as renaissance zones.

<http://ref.michigan.org/medc/services/sitedevelopment/renzone/index.asp>

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): BRAs are created locally to develop and implement brownfield plans. Properties in a brownfield plan are eligible for TIF to reimburse developers for eligible activities, including

environmental costs, demolition, and lead or asbestos abatement. TIF can also be used for infrastructure improvements and site preparation costs. A project must be in a brownfield plan to qualify for the MBT credit. A BRA can issue bonds that are repaid with TIF. Finally, a BRA can also establish a local site remediation revolving fund to capture excess tax increment revenues for up to five years to conduct eligible activities on other properties in the brownfield plan.

Program Elements

Technical Elements

Methods/standards/controls: Risk-based standards in place for soils and ground water (although not a formal Risk-Based Corrective Action (RBCA)) in several land-use categories—residential, commercial and industrial, and limited uses with institutional controls. DEQ may also approve site-specific criteria.

The DEQ employs background levels, water quality criteria, Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), ground water standards, and soil standards as generic cleanup levels, or uses site-specific risk assessment to determine cleanup levels. The DEQ uses a risk goal of 10–5 for carcinogens and a Hazard Quotient of 1 for non-carcinogens. Future land use assumptions are made based on probability of continued current use, current zoning, and future zoning or intended use as indicated by local governments. The DEQ uses deed restrictions and ordinances as institutional controls to maintain specified future land uses.

Contaminants covered/excluded: The program does not exclude specific contaminants. A property is a “facility” if the contaminant concentration exceeds one or more residential criteria, as defined in Part 201, Environmental Remediation of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

Use of long-term stewardship and institutional controls (IC): Institutional controls are accepted and, with respect to cleanup grants to communities, encouraged as cost saving as well as protection action.

- **IC Tracking:** Privately-funded cleanups are not tracked by the DEQ. State-funded cleanups are tracked and available on our Web site: <http://www.deq.state.mi.us/part201ss/>
- **IC Oversight:** The DEQ does not oversee private cleanups.
- **IC Monitoring:** The DEQ does not monitor private cleanups. State-funded cleanups are monitored as necessary.

Michigan

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: July 1996

Costs to enter program or fees for service: Fee of \$750 to request DEQ review and determination of adequacy of BEAs.

Funding source for administrative costs and staff: Grant and loan programs are administered by the Remediation and Redevelopment Division (RRD) of the DEQ. The brownfield programs are administered by one supervisor, one administrative assistant, one financial analyst and four professional staff.

The RRD also provides technical oversight for the grant and loan programs and administers the hazardous substance cleanup program. The division employs 250 full-time equivalent (FTE) staff, and legal support is provided by eight FTE attorneys in the Department of the Attorney General, Natural Resources Division. Funding for staff and administration is provided by a combination of the funding sources described.

Cleanup Activities

Sites undergoing cleanup: At the end of 2009, there were ongoing activities at 200 sites where the DEQ is paying for response activities prioritized based on threat to public health and the environment.

There are 69 grant and loan projects in progress.

Voluntary cleanups undertaken without state funding assistance are not tracked by DEQ.

Sites completed under cleanup program: By 2009, the DEQ had committed \$847 million at nearly 1,647 orphan sites for cleanup and redevelopment and provided oversight or assistance on more than 10,000 cleanup projects performed by liable parties. The DEQ has also addressed over 12,500 leaking underground storage tank releases. From 1995 through September 2009, the DEQ received 4,699 BEA petitions, which are reviewed at a cost of \$750. An additional 8,186 disclosures were submitted without a fee or DEQ review.

Since 1992, the DEQ has awarded \$142.6 million in grant funding and \$33.7 million in loans to local units of government and Brownfield Redevelopment Authorities.

Public Participation

Public participation requirements (notice, comment periods, etc.): Michigan law requires Brownfield Redevelopment Authorities to provide two notices and requires the municipal governing body to hold a public hearing before adopting a brownfield plan.

Statutory Authorities

Part 201 of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, as amended (NREPA), establishes a state cleanup fund and provides enforcement authority, a priority list, Natural Resource Damage recovery, citizen suits, water replacement, contaminated property transfer requirements, and voluntary cleanups. Underground Storage Tanks are regulated under Parts 211 and 213 of NREPA. Brownfield Redevelopment Grants and Loans are funded under Parts 195, 196, and 201 of NREPA. The Brownfield Redevelopment Financing Act (1996, PA 381, as amended) authorized municipalities to establish BRAs, adopt brownfield redevelopment financing plans, and capture incremental local and school property taxes. (http://www.michigan.gov/deq/0,1607,7-135-3307_4132---,00.html).

Minnesota

General Information

Contact: Barbara Jackson

Address: Minnesota Pollution Control Agency (MPCA)
Remediation Division
520 Lafayette Road
St. Paul, MN 55155

Phone: 651 757 2459

Fax: 651 296 9701

Email: barb.jackson@state.mn.us

Web site: <http://www.pca.state.mn.us/cleanup/brownfields.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Brownfields are abandoned, idled or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or suspected environmental contamination. The state brownfields programs provide assistance or legal assurances for parties seeking to investigate or cleanup contaminated property.

Program titles:

- Voluntary Investigation and Cleanup Program (VIC) (1988)
- Agriculture Voluntary Investigation and Cleanup Program (AgVIC) (1993)
- Petroleum Brownfields Program (PBP) (1992)
- Resource Conservation and Recovery Act Program (RCRA)

Liability relief provisions:

- VIC Program (1988) - Minnesota Pollution Control Agency (MPCA) offers liability assurances, including No Association Determinations, No Action Determinations, Off-site Source Determinations, and Certificate of Completion.
- AgVIC Program (1993) - Minnesota Department of Agriculture (MDA) offers similar assurances as MPCA's VIC program for sites contaminated with agricultural chemicals.
- PBP - MPCA offers site closure letters for petroleum brownfield sites.

Financial incentives (grants, loans, tax provisions, etc.):

- Department of Employment and Economic Development (DEED) Contamination Cleanup and Investigation Grant Program: Minnesota Cleanup Revolving Loan Fund, and Redevelopment Grant Program
- MPCA Dry Cleaner Environmental Response and Reimbursement Account

- MPCA Petroleum Tank Release Cleanup Account
- Minnesota Department of Agriculture (MDA) Agricultural Chemical Response & Reimbursement Account (ACRRA)
- MPCA Site-specific brownfields assessments
- Metropolitan Council in Twin Cities region offers brownfields project grants in seven-county area

Legislative or program site eligibility requirements:

State superfund law imposes strict, joint, and several liability standards on persons responsible for releases of hazardous substances to the environment, as appropriate, and may impose liability retroactively. The MPCA and MDA may impose civil penalties up to \$20,000 per day for failure to take formally requested cleanup actions. No punitive damages may be imposed. Liability assurances are offered to parties that investigate and/or clean up contaminated brownfield sites on a voluntary basis. The assurances provide protection from Superfund liability.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Contamination Cleanup and Investigation Grant Program provides \$8 million annually for grants to cities for cleanup at sites with development potential; covers up to 75% of project costs.
- Dry Cleaner Reimbursement Fund reimburses current or former owners and operators for cleanup costs over \$10,000 at dry cleaning facilities that have entered the state's VIC program.
- MPCA approved Minnesota Environmental Response and Liability Act (MERLA) (i.e., state Superfund) project expenditures for FY09 of \$7,600,000, MERLA funds are used only when responsible persons fail to take requested cleanup actions or there are no financially viable or identified responsible persons for a release. Primary sources of MERLA funds are cost recovery and taxes. Minor sources are penalties, interest and occasional special appropriations. The MERLA fund may be used for site investigation, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, studies and design, operations and maintenance, removals, victim compensation, emergency response, grants to local government, remedial actions, program administration, natural resource restoration, and cost recovery.
Agricultural Chemical Response and Reimbursement Account may reimburse corrective action costs to an eligible person for 80% of costs greater than \$1,000 and less than or equal to \$350,000.
- MPCA has limited funds available for the assessment of brownfield property that is likely to be developed as greenspace.

Minnesota

Tax incentives (abatements, credits, etc.): Legislature has limited tax increment financing.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available.

Program Elements

Technical Elements

Methods/standards/controls: State uses a risk-based approach that considers planned property use. Minnesota employs surface water quality standards, ground water standards, and Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), in conjunction with risk assessments to determine cleanup levels. Minnesota has a tiered approach for providing risk-based guidance on acceptable soil concentrations (Soil Reference Values) for specific exposure categories. In order to calculate individual Soil Reference Values, a 10–5 risk level is used for carcinogens, and a Hazard Quotient of .2 is used for non-carcinogens. Site-specific risk assessments can also be done in order to select and apply cleanup values for sites.

Planned land use is considered in applying cleanup standards. A formal guidance document, *Guidance on Incorporation of Planned Property Use into Site Decisions*, identifies appropriate institutional controls for specific sites with residual contamination. Minnesota uses a variety of institutional controls including the following: environmental covenants, affidavits/notification and easements.

Contaminants covered/excluded: The VIC program will provide oversight of asbestos or lead if there is a release to the environment. Petroleum contamination mixed with MERLA contaminants is allowed in the VIC program but not if petroleum is the sole contaminant. The PBP provides oversight of petroleum brownfield sites.

MDA AgVIC program addresses contamination from agricultural chemicals only, which includes pesticides and fertilizers.

Use of long-term stewardship and institutional controls: Institutional controls are used for purposes such as managing residual contamination, maintaining response actions, and notifying future property owners of the presence of residual contamination. Minnesota had adopted the Uniform Environmental Covenants Act, Minn. Stat. ch 114E.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.pca.state.mn.us/pca/srs/remSearch.cfm?sType=VIC&CFID=1413929&CFTOKEN=80733773>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: May 1995

Cost to enter program or fees for service: Hourly fee charged for MPCA and MDA staff time on projects.

Funding source for administrative costs and staff: The MPCA Remediation Division administers the state Superfund program. A total of 36 full-time equivalent (FTE) MPCA staff work on the Superfund and the VIC Programs. A total of 2.2 FTE staff work on the Superfund and AgVIC Programs at the MDA. Minnesota's Attorney General's Office provides legal support for the program with about two FTE attorneys. The state program receives funding from the state cleanup fund. Minnesota's federal grants include a Defense Summary Memorandum of Agreement (MOA) for federal facility cleanups.

Cleanup Activities

Sites: 507 are active in MPCA VIC. 220 sites are active in PBP. 47 are active in MDA AgVIC.

Sites completed: Over 3,000 sites are completed in MPCA VIC. Approximately 2,300 sites are completed in PBP, and 271 sites are completed in MDA AgVIC.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Over 3,000 jobs created and a \$3,000,000 increase in the tax base is attributable to brownfields assistance.
- Recent figures from DEED show 13,224 jobs will be created at DEED sites and 5,663 housing units will be created (1,178 deemed affordable housing). Tax-base increases are estimated at \$41,360,000.
- Approximately 5% of all brownfield sites have been reused for parks, open space or recreational facilities. Private leverage is estimated at almost \$1,000,000,000.

Public Participation

Public participation requirements (notice, comment periods, etc.):

Public participation activities (hearings, meetings, etc.): No information available

Statutory Authorities

The Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. §§115B.01–.20 (1983, as amended 1984, 1985, 1986, 1987, 1990, 1992, 1994, 1995, 1997, and 1998), establishes a state fund and provides for enforcement authorities, a state priority list, Natural Resource Damages (NRDs), and victim compensation.

General Information

Contact: Ohio Environmental Protection Agency (OEPA):

Amy Yersavich,
Manager, Site Assistance and Brownfield

Revitalization Section (SABR)

Tiffani Kavalek,
Manager, Assessment, Cleanup and ReUse
Section (ACRE)

Ohio Department of Development (ODOD):

William Murdock, Director, Office of Urban
Development (UD)

Address: Voluntary Action Program or
Site Assistance and Brownfield Revitalization
Program
Division of Emergency and Remedial Response
Ohio Environmental Protection Agency
P. O. Box 1049
Columbus, OH 43216-1049

Ohio Department of Development
Office of Urban Development
77 South High Street, 26th Floor
Columbus, OH 43215-6130

Phone: VAP/SABR: 614 644 2924
UD: 614 995 2292

Fax: VAP/SABR: 614 644 3146
UD: 614 466 4172

Email: amy.yersavich@epa.state.oh.us
Tiffani.kavalek@epa.state.oh.us
oud@odod.state.oh.us

Web site: VAP:
<http://www.epa.state.oh.us/derr/volunt/volunt.html>
SABR:
<http://www.epa.state.oh.us/derr/SABR/sabr.html>
ODOD:
<http://development.ohio.gov/UD/>

Program Description (VCP, brownfields, or related)

Brownfields definition: A brownfields is an abandoned, idled or under-used industrial or commercial property where expansion or redevelopment is complicated by known or potential releases of hazardous substances and/or petroleum.

Program titles:

- Voluntary Action Program (VAP)—created to give companies a way to investigate possible environmental contamination, clean it up if necessary, and receive a promise from the State of Ohio that no more cleanup is needed.
- Site Assistance & Brownfield Revitalization Program (SABR)—serves as the contact for brownfields or contaminated sites not yet in any cleanup program (e.g., VAP, remedial response, Superfund, RCRA corrective action).
- Office of Urban Development (OUD)—assists communities in creating wealth from personal, business, and community successes. OUD works to identify the resources and financing necessary to enhance the economic viability of local communities.

Liability relief provisions: A person undertaking a voluntary action contracts with consultants certified by Ohio EPA to perform investigation and cleanup activities in this program. Once the cleanup is done, the Agency-certified consultant, a certified professional (CP), and a laboratory also certified by Ohio EPA, prepare a No Further Action letter (NFA) to demonstrate that proper investigation and cleanup activities were performed and that no further action is needed. If the data show that the work was properly conducted, Ohio EPA can issue a Covenant Not to Sue (CNTS), which promises the volunteer that the State of Ohio will not require further investigation or cleanup of the property.

In addition, U.S. EPA and Ohio EPA have entered into a Superfund Memorandum of Agreement (MOA) for the Voluntary Action Program, called the "MOA Track." The MOA Track requires volunteers to follow the existing procedures for VAP sites and conduct additional steps. The MOA Track includes more Agency involvement, such as notice of entry into the program, approval of certain documents and work plans, and greater public involvement. Participants who conduct these additional steps have the added comfort of knowing that the cleanup is being conducted under a program that EPA has reviewed and determined to be adequate.

Financial incentives (grants, loans, tax provisions, etc.):

- Grant-funded technical assistance
- Clean Ohio Assistance Fund (COAF)
- Clean Ohio Revitalization Fund (CORF)
- Job Ready Sites (JRS) Program
- Brownfield Revolving Loan Fund
- Urban Redevelopment Loan Program

- Water Pollution Control Loan Fund
- Ohio Water Development Authority Loans
- Tax exemptions
- Tax credits

Legislative or program site eligibility requirements: Any property is eligible for the VAP except for those already regulated under federal or state law.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Grant-funded technical assistance—<http://www.epa.state.oh.us/derr/vap/guidance/GrantTA/grantta.html>
- Clean Ohio Assistance Fund (COAF)—a \$10 million annual appropriation dedicated to brownfields redevelopment in eligible priority investment areas. Eligible applicants such as local governments, park and joint recreation districts, conservancy districts, soil and water conservation districts, and nonprofit organizations are eligible to receive grants for conservation projects from the Clean Ohio Fund. Applicants must provide a 25% local match. Applicants undertaking projects on properties located in an eligible area may expend the dollars on three activities: 1) Phase I and Phase II Assessments; 2) Brownfield Cleanup; 3) and Public Health Projects. (<http://www.odod.state.oh.us/ud/COAF.htm>)
- Clean Ohio Revitalization Fund (CORF)—part of a \$200 million dollar initiative approved by Ohio voters as part of the \$400 million Clean Ohio Fund. (<http://www.odod.state.oh.us/ud/CORF.htm>)
- Job Ready Sites (JRS) Program—designed to stimulate the development of large parcels of land and/or buildings that will be marketed to attract state economy-shifting development projects. The maximum grant award available per eligible site improvement project is \$5 million. Awarded grant amounts cannot exceed 75% of the total costs of improvements to eligible sites. (<http://www.odod.state.oh.us/edd/obd/jrs/>)
- Brownfield Revolving Loan Fund (RLF)—capitalized by a grant from EPA and offers below-market rate loans to assist with the remediation of a brownfield property to return it to a productive economic use in the community. (<http://www.odod.state.oh.us/ud/BCRLF.htm>)
- Urban Redevelopment Loan Program—removes development barriers from urban core property so private sector job opportunities can be created. (http://www.odod.state.oh.us/EDD/Loans_Grants.htm)
- Water Pollution Control Loan Fund—issues low-interest loans for water-related brownfield activities, for terms up to 20 years. (<http://www.epa.state.oh.us/defa/comguide.html>)

- Ohio Water Development Authority—extends loans to public or private entities for remediation of property. (<http://www.owda.org/owda-doc/program%20info/notesbf.pdf>)

Tax incentives (abatements, credits, etc.):

- Tax Abatement—upon issuance of a covenant not to sue from the Director of the Ohio EPA for a remedy under the Voluntary Action Program, the Department of Taxation will grant a tax exemption to the property (ORC 5709.87). The exemption, which is issued as an order by the tax commissioner, only covers the increase in the assessed value of land and the increase in the assessed value of improvements, buildings, fixtures, and structures that exist at the time the tax abatement order is granted. The Department of Taxation will send copies of the exemption order to the owner of the property and the County Auditor's Office. The County Auditor's Office maintains the list of properties in the county that are subject to taxes and exemptions. The abatement lasts for 10 years.
- Ohio Enterprise Zone Program—<http://www.odod.state.oh.us/edd/ez/ezsummary.pdf>
- Brownfields Tax Incentive—<http://www.epa.gov/brownfields/bftaxinc.htm>

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): VAP Environmental Insurance Program - <http://www.epa.state.oh.us/derr/vap/docs/VAP%20INS/EIWebPagedesign.pdf>

Program Elements

Technical Elements

Methods/standards/controls: See Ohio Administrative Code rule 3745–300–01 through 3745–300–15 at

<http://www.epa.state.oh.us/derr/Rules/rules.html>

Contaminants covered/excluded: Hazardous substances and/or petroleum. Sites contaminated with petroleum not from Underground Storage Tanks (USTs) are allowed entry into the VAP. In general, sites contaminated with polychlorinated biphenyls (PCBs) after 1978, and which exceed 50 parts per million (ppm), are excluded from the program without prior remediation/compliance. Sites containing asbestos and lead-based paint are eligible for the VAP.

Use of long-term stewardship and institutional controls (IC): Ohio EPA audits at least 25% of the properties taken through the VAP. Engineering controls are maintained through Operation and Maintenance (O&M) Agreements.

Ohio

If the property's remedy relies on "activity and use limitations" (formerly known as use restrictions) to restrict property use, the volunteer must provide to the CP a "proposed environmental covenant" that complies with ORC §5301.82. The proposed environmental covenant—with its activity and use limitations—is a remedy to support the CP's issuance of an NFA letter.

- **IC Tracking:** ICs are tracked through the division's database (Preclaims database).
- **IC Oversight and Monitoring:** OEPA inspects institutional controls (activity and use) every five years.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.epa.state.oh.us/derr/SABR/Brown/BrownDtb/browndtb.html>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: July 2001 amended to include RCRA Corrective Actions in November 2008.

Costs to enter program or fees for service: The state charges a range of fees to cover its program administration, including program audits.

CP initial certification	\$ 2,500.00
CP renewal certification.....	\$ 2,000.00
Laboratories initial certification	\$ 5,000.00
Annual renewal fee for certified labs.....	\$ 3,000.00
Certification for additional parameter groups, analytes, or methods.....	\$ 500.00
NFA reviews:	
Option 1—Flat Fee	
Phase I NFA w/no releases identified.....	\$ 2,980.00
Phase I NFA with asbestos as the only contaminant of concern identified	\$ 6,270.00
NFA which includes both a Phase I and Phase II assessment (and an operation and maintenance plan and agreement, if applicable)	\$ 17,650.00
Variance from Applicable Standards (in addition to the other applicable NFA fees).....	\$22,400.00

Option 2—Pay-As-You-Go Option (PAYGO) allows the costs associated with the NFA Letter review be directly billed to the volunteer. The VAP charges a flat, nonrefundable fee to enter the program under this option. The volunteer submits an "Intent to Enter the VAP" letter to Ohio EPA along with the \$1,000 fee. VAP staff provide a cost estimate and a review schedule to the volunteer following the kick-off meeting. The estimate is based on the anticipated review time needed to review the documents. The current average hourly rate is \$72.60/hour.

In addition, the program may provide technical assistance at an hourly rate to any party participating in the program.

Funding source for administrative costs and staff:

U.S. EPA grant, State Environmental Protection Fee, and fees for service.

Cleanup Activities

Sites currently in VCP: 386 NFAs have been issued by CPs since the inception of the program in 1994. Of these, 20 were withdrawn by the CPs, 17 were denied a CNTS by Ohio EPA, 30 did not request a CNTS, and 65 are pending. In addition, 20 properties have provided notices of entry into the MOA Track.

Sites completed under VCP: 254 properties have received a CNTS from Ohio EPA.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Receiving a CNTS has been a major incentive; also, the creation of the COAF and the CORF as a source of funding for communities for site assessment and brownfields cleanup and remediation. The tax abatement has also been an incentive.

Public Participation

Public participation requirements (notice, comment periods, etc.): The VAP is a totally voluntary program thus, no public participation is required. The director's final action issuing a CNS is publicly noticed. However, for the MOA with EPA, the CP and volunteer must follow a step-wise process. The first step is the notice of entry stage which requires submitting a Notice of Entry Form, setting up a document repository and public noticing the entry into the MOA Track. There is also a public notice step after the risk assessment and remedial action plan have been completed.

Public participation activities (hearing, meetings, etc.): N/A

Statutory Authorities

- The Ohio Revised Code (ORC) §3734 (Solid and Hazardous Waste Disposal) authorizes a cleanup fund and voluntary cleanup activities, and provides enforcement authorities.
- ORC §3745 (Environmental Protection Agency) authorizes enforcement activities and citizen suits.
- The ORC §3746 (Voluntary Action Program) provides for a cleanup fund, and authorizes property transfer provisions and a voluntary cleanup program.
- ORC §5301 (Environmental Covenants) establishes the requirements for imposing activity and use limitations at remediated properties.
- ORC §6111 (Water Pollution Control) authorizes enforcement activities.

General Information

Contact: Darsi Foss
Chief of the Brownfields and Outreach Section

Address: Wisconsin Department of Natural Resources (WDNR)
Remediation and Redevelopment Program
101 South Webster Street, Box 7921
Madison, WI 53707-7921

Wisconsin Department of Commerce (Commerce)
5th Floor, 201 West Washington Avenue
Madison, WI 53707

Phone: WDNR: 608 267 6713
Commerce: 608 561 7714

Fax: WDNR: 608 267 7646
Commerce: 608 266 8969

Email: darsi.foss@wisconsin.gov

Web site: WDNR: <http://dnr.wi.gov/org/aw/rr/>

Commerce: <http://commerce.wi.gov/CD/CD-bfi-grants.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Wisconsin defines brownfields as abandoned, idled, or under-used industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

Program titles: All brownfields and voluntary cleanups are conducted in accordance with the Remediation and Redevelopment Program's comprehensive one cleanup program, following the NR 700 rule series cleanup requirements. On June 3, 2006, Wisconsin Act 418 became effective; it contains additional incentives to promote the cleanup and reuse of contaminated properties.

Liability relief provisions: Program offers two primary forms of end-relief after cleanup is completed:

- Case closure letters—Per ch. NR 726 for traditional cleanup process.
- Certificates of Completion (COCs)— Voluntary Party Liability Exemption (1994; amended 1997, 1999, and 2006) process with an exemption from liability that is transferable to new owners.

Wisconsin also offers liability exemptions for lenders, local governments, and property owners impacted by contamination from off site.

Wisconsin Act 418 expanded the environmental liability protections that are already in place for local governments and private parties who enter DNR's Voluntary Party Liability Exemption (VPLE) process, s. 292.15, Wis. Stats. The legislation broadens the types of properties which may be eligible for a VPLE to include waste disposal sites that are considered "unlicensed solid waste landfills."

Wisconsin Act 418 created a new environmental liability exemption for local governments that acquire title to properties where an "unlicensed solid waste landfill" is or may be present on the property. The new exemption in s. 292.24, Wis. Stats, is modeled on the spill law exemption created in 1994 for local governments that acquire properties through tax delinquency, for blight or slum purposes, condemnation, or other specified purposes.

Financial incentives (grants, loans, tax provisions, etc.): All the financial elements noted below are available to all properties regardless of regulatory status.

Legislative or program site eligibility requirements:

Any party, including a responsible party (RP), is eligible to participate in the state's comprehensive cleanup process, NR 700. Any type of contamination site is eligible, including Leaking Underground Storage Tank (LUST), hazardous waste, and spill sites. In November 2006, WDNR and EPA Region 5 signed the nation's most comprehensive One Cleanup Program Memorandum of Agreement (MOA). This agreement clarifies that most contaminated properties in Wisconsin may be cleaned up using the state's NR 700 process. (See the OCP MOA at <http://dnr.wi.gov/org/aw/rr/cleanup/ocp.htm>)

Sites where a person elects to address the known environmental contamination go through the NR 700 process and receive a ch. NR 726 closure letter. This closure pathway comes with limited reopener provisions for the area on the site that was addressed. With respect to the VPLE process, after DNR approves environmental investigation and cleanup of the entire property, the voluntary party receives a COC and is protected from future liability. Since 2001, parties can use natural attenuation to get a COC if they pay an environmental insurance fee through state program. Wisconsin offers other specific liability exemptions:

- Lenders and Representatives - The law provides exemptions to lenders and representatives in certain situations, including when a lender forecloses on a contaminated property.
- Local Governments - Municipalities acquiring properties through means such as tax delinquency, blight elimination, or eminent domain are exempt from liability.

Wisconsin

- Off-site Contamination - Property owners whose contamination comes from off-site sources are exempt from liability.
- Assurance Letters - WDNR was given authority to issue a variety of assurance letters to clarify liability in various situations.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Brownfields Site Assessment Grant Program (SAG) - The WDNR annually awards grants to local governments for site assessment, investigation, demolition, and tank removal; requires 20% match.
- Brownfields Green Space and Public Facilities Grant Program - Grants are made available through the WDNR to assist local governments in environmental remediation of brownfields that will be reused as greenspace, recreation areas, or used by a local government.
- Blight Elimination and Brownfields Redevelopment (BEBR) Grants - \$13,141,000 (2009-2011 biennium) is available through Commerce for public or private use, for investigation, cleanup, and redevelopment; 20% to 50% match required. This includes both state funds and federal Community Development Block Grant (CDBG) funds.
- Dry Cleaner Environmental Response Fund - Funded through industry tax, will reimburse up to \$500,000 per facility to clean up solvent discharges. The program is currently no longer accepting new applications.
- Environmental Fund - The WDNR maintains a resource pool for state-funded cleanups at priority contamination sites, including some brownfields.
- EPA-funded Revolving Loan and Grant Program - EPA awarded \$2,500,000 to the Wisconsin Brownfields Coalition for the Ready Reuse Initiative, which can fund remediation at non-petroleum brownfield sites (in development). Of those funds, \$2,000,000 was provided through the American Recovery and Reinvestment Act. WDNR awards both loans and sub-grants.

Tax incentives (abatements, credits, etc.):

- Business Improvement Districts (BIDs) - Use special tax assessments in designated districts to raise revenues for Phase I and II assessments, public improvements, redevelopment staff, and cleanup costs.
- Environmental Remediation Tax Increment Financing - Districts can be created by local governments to recoup investigation and remediation costs, with increment based on value-added of the clean site; eligible costs expanded in 1999 to include underground tanks, and container and asbestos removal.

- Federal Tax Deduction - for both petroleum and hazardous substance discharges. WDNR provides letter of eligibility to eligible parties. This program is set to expire in 2010, but may be continued if Congress approves.
- Counties (and Milwaukee) can cancel delinquent taxes if owner agrees to clean up contaminated property.
- Counties (and Milwaukee) can transfer tax-delinquent brownfield property to a new owner if the new owner agrees to complete cleanup.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The state has developed the Wisconsin Brownfields Insurance Program to provide insurance to businesses and local governments that are cleaning up and developing brownfields, at <http://dnr.wi.gov/org/aw/rr/rbrownfields/wbip.htm>.

Program Elements

Technical Elements

Methods/standards/controls: Wisconsin has performance-based soil cleanup standards (NR 700 rule series) that apply to all cleanup sites, including VPLE sites. A Risk-Based Corrective Action (RBCA)-like process is in place; applicants have a choice of cleanup standards for soil contamination. A few numeric values are in rules, but a cleanup may employ other site-specific cleanup standards, or risk-based performance standards. Ground water must meet enforcement standards or demonstrate that an adequate source control remedy has been conducted and that the plume is stable or receding.

Contaminants covered/excluded: No contaminants are excluded. Where federal requirements (RCRA, TSCA) apply, Wisconsin's One Cleanup Program clarifies state and federal roles.

Use of long-term stewardship and institutional controls (IC): In 2006, section 292.12, Wis. Stats., was amended and broadened to change the way Wisconsin implements institutional controls. Closures with residual contamination and certain remedial action approvals include "continuing obligations," legal requirements on the current property owner (including new owners) to maintain certain safeguards. These obligations include properly handling excavated contaminated soil, obtaining state approval before constructing a water supply well, and complying with other property-specific obligations defined by the state, such as maintaining a pavement cap over a contaminated area.

The three general situations where the state imposes property-specific continuing obligations are:

- When an engineering control requires long-term maintenance;
- When a building or other structure that inhibited full investigation of the contamination is removed and further investigation and cleanup becomes possible; and

Wisconsin

- When the state imposes continuing obligations related to land use, such as industrial soil standards that are appropriate until the land use changes.

Continuing obligations are created in the state's closure or remedial action plan approval and these documents are available to the public around the clock in an online database.

- **IC Tracking:** Sites with continuing obligations are tracked using <http://dnrm.wisconsin.gov/imf/imf.jsp?site=brts2>.
- **IC Oversight:** Each state regulatory agency has oversight for its own continuing obligations.
- **IC Monitoring:** WDNR audits 50 properties with continuing obligations per year using its EPA Section 128(a) State Response Program funds. Each audit consists of a review of the state's file, an interview with the site owner, a visit to the property, a written summary, and ensuring return to compliance when necessary.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: October 1995 and November 2006.

Costs to enter program or fees for service: There are fees for most DNR oversight. Flat fees, per NR 749, range from \$500 to \$1,250 depending on the type of technical review requested in the traditional cleanup review process. The cost for VPLE is a \$250 application fee and an oversight fee for DNR staff of over \$80 per hour.

Funding source for administrative costs and staff: DNR staff who conduct program support and oversee cleanups are funded from a range of sources, including program fees, various EPA grants, and state funds.

Cleanup Activities

Sites currently in VCP:

- More than 4,500 sites are being cleaned up in the traditional cleanup program, seeking closure letters.
- More than 125 active sites are in the VPLE program, seeking certificates of completion.

Sites completed under VCP: More than 22,700 sites have received close-out letters and more than 85 sites have received COCs.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Commerce is brownfields grant program has assisted with more than 160 brownfield projects and awarded more than \$70 million in brownfields grants, which will result in:

- Converting more than 1,500 acres of abandoned or underused environmentally contaminated sites into clean, viable properties;
- An increase in more than \$1.5 billion in taxable property values; and

- The creation of more than 6,100 new jobs.

For WDNR's Site Assessment Grant (SAG) program:

- 440 grants awarded totaling \$15 million
- More than 496 storage tanks and containers removed
- More than 590 structures and buildings demolished
- More than 178 Phase I and 298 Phase II environmental site assessments and 301 site investigations conducted
- 199 Wisconsin communities assisted
- 1,562 acres of land addressed

Public Participation

Public participation requirements (notice, comment periods, etc.): Established in ch. NR 714, Wis. Admin. Code.

Public participation activities (hearing, meetings, etc.): Established in ch. NR 714, Wis. Admin. Code, and varies from project to project depending on site-specific information and community interest.

Statutory Authorities

Wisconsin Statute chapter 292 includes the primary authority for environmental cleanups in Wisconsin including:

- Cleanup requirements for responsible parties (s. 292.11, Wis. Stats).
- Liability exemptions for local governments (s. 292.11(9)(e) and 292.23, Wis. Stats).
- Responsibilities for sites with residual contamination at closure (s. 292.12, Wis. Stats).
- Liability exemptions for contamination from off-site (s. 292.13, Wis. Stats).
- Liability exemption for voluntary cleanups (s. 292.15, Wis. Stats).
- Liability exemption for lenders and representatives (s. 292.21, Wis. Stats).
- Local government cost recovery cause of action (s. 292.33, Wis. Stats).

The cleanup standards and regulations are in the ch. NR 700 rule series of Wisconsin's Administrative Code and ch. NR 140 has the requirements for ground water cleanup. Chapter NR 168 has the requirements for the Brownfields Site Assessment Grant; ch. NR 173 contains the requirements for the Public Facilities and Greenspace Grant program.

Arkansas

General Information

Contact: Tamara Almand

Address: Arkansas Department of Environmental Quality (ADEQ)
5301 Northshore Drive
North Little Rock, AR 72118-5317

Phone: 501 682 0867

Fax: 501 682 0565

Email: almand@adeq.state.ar.us

Web site: <http://www.adeq.state.ar.us/hazwaste/bf/default.htm>

Program Description (VCP, brownfields, or related)

Brownfields definition: A parcel of property where commercial, industrial, or agricultural use may have contaminated the site with a hazardous substance, thereby complicating prospects for expansion, redevelopment, or reuse.

Program titles:

- Arkansas Brownfields Program
- Arkansas Brownfields Revolving Loan Fund (RLF) Program

Liability relief provisions: The Implementing Agreement (IA) establishes cleanup liabilities and obligations for the abandoned site.

The brownfields participant is not relieved of any liability for contamination later caused by the participant, or contamination not intended to be addressed in the IA, after acquisition of legal title to the brownfield site.

A prospective purchaser of an abandoned site will not be responsible for paying any fines or penalties levied against any person responsible for contamination on the abandoned site prior to the IA with ADEQ.

Liability protection for the purchaser is based upon a full disclosure of environmental conditions at the property via the Comprehensive Site Assessment. Should new information become available after project completion, which was intentionally withheld by the purchaser, the release of liability is null and void. However, if the purchaser had no knowledge of this new information, and the new information relates to a portion of the property addressed by the Comprehensive Site Assessment and Agreement, it will become the responsibility of ADEQ to address the issue, and take action, if necessary, to remediate the problem.

The Brownfields Program is a voluntary program and can therefore be “backed out of” at any point during the process.

But if the participant holds title to the property and should fail to complete the remedial requirements explained in the IA, he/she will continue to hold liability for any past contamination found on the site. Also, if the environmental conditions are somehow worsened by the program participant during the project, ADEQ reserves the right to enforce the agreement and require the participant to abate any threat to human health and/or the environment which they caused or exacerbated.

Financial incentives (grants, loans, tax provisions, etc.): Arkansas Brownfields Revolving Loan Fund (RLF) Program:

This low-interest funding is available for loans to Brownfields Program participants for cleanup costs based on an ADEQ-approved Comprehensive Site Assessment. Individual loans will be available for up to \$500,000 each. Although assessment costs may be considered eligible in the future, loans can currently be approved for purposes of cleanup of non-petroleum, petroleum-only, and mixed petroleum substances.

Legislative or program site eligibility requirements:

The Arkansas Brownfields Program:

- Eligible applicants include individuals, companies, or lenders who do not hold (or have held) title to the property and are not responsible for contamination at the site.
- Eligible properties include abandoned or underutilized industrial, commercial, or agricultural properties for which no responsible party can reasonably be pursued for cleanup.

Arkansas RLF Program:

- Eligible applicants include private, public, and nonprofit organizations which are not responsible for or have not contributed to the contamination existing at the time of the application.
- Eligible activities include those which involve the cleanup or assessment of a contaminated site.
- Ineligible activities include examples of land acquisition, construction of a new building or infrastructure, marketing, ordinary operating expenses, site maintenance, and job training.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Arkansas RLF (see previous section)

Tax incentives (abatements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Arkansas

Program Elements

Technical Elements

Methods/standards/controls: The state's cleanup standards are based on a risk management process. No single set of soil cleanup levels has been implemented and site-specific factors are considered when developing action levels. Cleanup goals may be met by reaching background metals concentrations, consulting EPA Region 6 Human Health Media Specific Screening Levels, performing a traditional human health risk assessment, or a combination of all three options when appropriate.

Site-specific cleanup standards are established in IAs. Ecological risk assessment decisions are based on sediment screening levels developed by the National Oceanographic and Atmospheric Administration. Factors in determining the appropriate action levels for state, voluntary, and Resource Conservation Recovery Act (RCRA) cleanups include reasonably anticipated future land use, the use of engineering or institutional controls, human and/or ecological receptors, water quality criteria, background levels, and Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs). Numerical risk goals range from 10⁻⁴ to 10⁻⁶ for carcinogens and a Hazard Index of 1 for non-carcinogens. Depending on the remaining risk, land use restrictions may be specified in a site's IA and recorded in the property deed. Under the Voluntary Cleanup Law, an IA must be filed with the clerk of the circuit court in the county in which the site is located. The IA is transferable to all subsequent owners, and the land use designated therein cannot be changed without notifying ADEQ, which will revisit the associated risk management decision.

Contaminants covered/excluded: The Arkansas RLF establishes categories of funding in connection to the types of contaminants covered or excluded:

- Category A—Funds may be used for environmental remediation activities at sites contaminated by non-petroleum hazardous substances (except in cases of commingled petroleum/non-petroleum wastes).
- Category B—Funds may be used for environmental remediation activities to address petroleum and/or non-petroleum contamination.
- Category C—Funds may be used for environmental site assessment and remediation activities at petroleum and/or non-petroleum contaminated sites.

Use of long-term stewardship and institutional controls (IC): Arkansas does not have a system to monitor or enforce long-term stewardship and institutional controls. Institutional controls are listed in the Arkansas Record of Brownfields Projects, which is available on the Web site.

- **IC Tracking, Oversight and Monitoring:** Arkansas does not have a system to track, monitor, or enforce ICs.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.adeg.state.ar.us/hazwaste/bf/#RecordOfArkansasBrownfieldsProjects>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: December 2000

Costs to enter program or fees for service: A fee schedule has not been established for the Brownfields Program.

Funding source for administrative costs and staff: Funding for staff and administration comes from federal grants/cooperative agreements.

Cleanup Activities

Sites currently in VCP: 65 sites currently in the Brownfields Program.

Sites completed under VCP: 23 brownfields sites completed as of August 14, 2009.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Arkansas Brownfields Program benefits to the participant include defining legal and financial environmental liabilities early in the process and obtaining a liability release for past contamination addressed in the environmental site assessment.

Public Participation

Public participation requirements (notice, comment periods, etc.): State statutes and regulations provide requirements for public notice, provisions for public comment, hearings/meetings, and document availability for all sites in the state, voluntary, and brownfields cleanup programs.

Public participation activities (hearing, meetings, etc.): Public meetings and/or fact sheets are provided prior to major milestones on cleanup projects.

Statutory Authorities

- Arkansas Voluntary Clean-Up Act, Arkansas Code Annotated §§8–7–1101 et seq.
- Arkansas Hazardous Waste Management Act, Arkansas Code Annotated §8–7–201 et seq.
- Arkansas Remedial Action Trust Fund Act, Arkansas Code Annotated §8–7–501 et seq.
- APC&EC Regulation 29 Brownfields Redevelopment.

Louisiana

General Information

Contact: Roger Gingles
Duane Wilson

Address: Louisiana Department of Environmental
Quality (DEQ)
P.O. Box 4314
Baton Rouge, LA 70821-4314

Phone: 225 219 3236

Fax: 225 219 3239

E-mail: brownfields@la.gov

Web site: www.deq.louisiana.gov/brownfields

Program Description (VCP, brownfields, or related)

The Louisiana Voluntary Remediation Program (VRP) provides a mechanism by which property owners (or potential owners) or others can clean up contaminated properties and receive a release of liability for further cleanup of historical contamination at a site. This release of liability flows to future owners of the property as well.

Through the VRP DEQ hopes to provide administrative, technical and legal incentives in order to encourage the redevelopment and reuse of brownfield properties.

Brownfields definition: Real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles:

- Voluntary Remediation Program/Brownfields Initiative
- Louisiana Risk Evaluation/Corrective Action Program (RECAP)
- Louisiana Brownfields Cleanup Revolving Loan Fund (RLF)

Liability relief provisions: In 1995, the Louisiana Legislature passed Act 1092, known as the Voluntary Investigation and Remedial Action law, which allows property owners and other persons who clean up properties to risk-based standards (see Louisiana RECAP) to get a Certificate of Completion (COC) from DEQ. With this certificate, the property owner and any subsequent owners of the property are released from further liability under state law for the past contamination at the site. In effect, the certificate allows potential buyers to acquire and remediate brownfield properties without fear of state Superfund liability.

La. R.S. 30:2285.1. Voluntary remedial actions; liability exemption

- Any person who is not otherwise a responsible person will not be liable for the discharge or disposal or threatened discharge or disposal of the hazardous substance or waste if the person undertakes and completes a remedial action to remove or remedy discharges or disposals and threatened discharges or disposals of hazardous substances and wastes at a property in accordance with a voluntary remedial action plan approved in advance by the DEQ following public notice and the opportunity for a public hearing in the affected community.

The exemption from liability also applies to discharges or disposals or threatened discharges or disposals of hazardous substances and hazardous wastes at the identified property that are not required to be removed or remedied by the approved voluntary remedial action plan if the requirements of R.S. 30:2286 are met.

Exemption from liability does not apply to the following:

- Any person who undertakes or completes a voluntary remedial action plan which he would otherwise have under any federal rule or regulation.
- The liability of any person with respect to damage caused to third parties.

La. R.S. 30:2287. Performance liability: Provides that persons specified in R.S. 30:2288 or R.S. 30:2288.1(C) will not be liable for aggravating or contributing to any discharge or disposal or threatened discharge or disposal identified in an approved voluntary remedial action plan for the purpose of R.S. 30:2289(1) as a result of their performance of the remedial actions required in accordance with the plan and the direction of the secretary. There is no exemption for any liability for failure to perform the work required by the voluntary remedial action plan in a workman-like manner and in accordance with generally accepted standards of performance and operation applicable to such remedial work.

La. R.S. 30:288. Persons exempt from liability:

Provides that in addition to persons who undertake and complete remedial actions, and subject to the provisions of R.S. 30:2289, the exemption from liability applies to the following persons when the secretary issues the certificate of completion of remedial actions:

- The owner of the identified property, if the owner is not responsible for any discharge or disposal or threatened discharge or disposal identified in the approved voluntary remedial action plan.
- A person who acquires or develops the identified property.
- A successor or assign of any person to whom the liability exemption applies.

Any person who provides financing for the implementation of a remedial action plan or for the development of the identified property in accordance with the applicable use restrictions after completion and acceptance of the plan will not be liable for any damages, costs or penalties unless that person is considered to be a responsible person under the provisions of the statute.

Louisiana

REGION 6

La. R.S. 30:2288.1. Voluntary remedial actions by responsible persons: A responsible person who undertakes and completes an approved remedial action plan will be exempt from liability if the remedial actions are undertaken and completed in accordance with the statute.

The parties to whom the exemption from liability is applied once the secretary issues a Certificate of Completion are:

- A person who acquires the identified immovable property after approval of the voluntary remedial action plan.
- A successor or assign of a person to whom the liability exemption applies under this subsection.

Any person who provides financing for the implementation of a remedial action plan or for the development of the identified immovable property in accordance with the applicable use restrictions after completion and acceptance of the plan will not be liable for any damages, costs, or penalties unless such person is considered to be a responsible person under the provisions of the statute.

La. R.S. 30:2289. Persons not exempt from liability:

- A person who aggravates or contributes to a discharge or disposal or threatened discharge or disposal that was not remedied under an approved voluntary remedial action plan.
- A person who was a responsible person under the statute for a discharge or disposal or threatened discharge or disposal identified in the approved voluntary remedial action plan before taking an action that would have made the person subject to the exemptions under R.S. 30:2288 or R.S. 30:2288.1.
- A person who obtains approval of a voluntary remedial action plan by fraud or misrepresentation, or by knowingly failing to disclose material information, or who knows that approval was so obtained before taking an action that would have made the person subject to the exemptions from liability under R.S. 30:2288 or R.S. 30:2288.1.

Financial incentives (grants, loans, tax provisions, etc.): Louisiana Brownfields Cleanup Revolving Loan Fund. Pilot programs have their own incentives.

Legislative or program site eligibility requirements: All properties are eligible for participation in the VRP, except the following:

- Sites listed on the National Priorities List (NPL) or formally proposed to be listed.
- Permitted hazardous waste management units (HWMU), however, if the HWMU is located within a larger site, then only that portion of the site inside the HWMU is ineligible.
- Trust-fund-eligible underground storage tank sites.
- Sites that have pending, unresolved federal environmental enforcement actions (not simply cost-recovery actions) that are related to the proposed voluntary remediation.

All persons are eligible except that only non-responsible persons (as defined in LAC 33:VI.903) are eligible to perform voluntary remedial actions, using institutional controls.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Louisiana Revolving Loan Fund (RLF).

Tax incentives (abatements, credits, etc.): Louisiana Tax Credit Program for Remediating Certified Brownfields Sites (aka: Brownfields Investor Tax Credit). The Brownfields Investor Tax Credit was not renewed by the Legislature and will expire on December 31, 2009.

Louisiana taxpayers are eligible to receive tax credits to remediate state-certified brownfield sites under legislation (S.B. 322) which became effective on July 1, 2005 and Act 392 of the 2007 Legislature which became effective on January 1, 2008. Each taxpayer is eligible to receive a 15% tax credit of the total investment to complete a remedial investigation and a 25-50% percent tax credit of the total investment made to complete a voluntary remediation action. The legislation authorizes a 10-year carry forward of the credit but prohibits the amount of the tax credit applied by a taxpayer from exceeding the amount of taxes due in a taxable period. The amount of the credit is also fully transferable (may be sold or traded) for ten years. The bill prohibits the party or landowner responsible for contamination from applying for the credit or receiving a transfer of the credit. Tax credits also will not be issued if a taxpayer terminates an investigation or remediation.

The text of the Louisiana bill granting tax credits for remediating certified brownfield sites is available at: <http://www.legis.state.la.us>

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: 10^{-4} to 10^{-6} and Hazard Index of 1; three tiers of Management Options under RECAP (a risk-based system in Louisiana).

Contaminants covered/excluded: No restrictions based on contaminants; petroleum, asbestos, lead paint, polychlorinated biphenyls (PCBs) are all covered. Asbestos and lead paint abatement sites where there is no release to the environment are not eligible for VRP participation (i.e., only indoor abatement sites are eligible).

Louisiana

Use of long-term stewardship and institutional controls (IC): Use restrictions for partial voluntary remedial actions.

- **IC Tracking:** Institutional controls are tracked through the general site management database.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://www.deq.louisiana.gov/portal/Portals/0/RemediationServices/VRP/form_5226_r07.pdf

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: October 2004

Costs to enter program or fees for service: \$500.

Applicant must reimburse DEQ for the actual direct costs of oversight.

Waivers for oversight costs are available to government and nonprofit VRP applicants as funding permits.

Funding source for administrative costs and staff: EPA grants (90%) and state cleanup fund (10%).

Cleanup Activities

Sites currently in VRP: 57

Sites completed under VRP: COCs issued: 40; No Further Action (NFA) letters issued: 11

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available

Public Participation

Public participation requirements (notice, comment periods, etc.): After a satisfactory review, the Voluntary Remediation Application is accepted for public review and the Voluntary Remedial Action Plan must undergo 30-day public notice and comment period. The participant must place this public notice in the local newspaper and must also provide a direct notice of the plan to adjacent landowners by certified mail.

La. R.S. 30:2286. Partial remedial action plans: Provides that the owners of land subject to a partial remediation will impose use restrictions on the future use of the property as may be determined by the secretary to be necessary to prevent a significant threat to public health, safety, and welfare and to the environment. No land may be partially remediated unless such restrictions are imposed and recorded as stipulated in the statute. The provision states that the secretary shall determine the use restrictions and may conduct public hearings for the purpose of determining the reasonableness and appropriateness of such restrictions in the parish where the land is located.

LAC33:VI §911 (C),(D),(E), and (F) detail the requirements for public review, public notice, public hearing and comment.

Public participation activities (hearings, meetings, etc.): No information available

Statutory Authorities

- Louisiana Voluntary Investigation and Remedial Action (VIRA) statute (La. R.S. 30:2285–2290).
- Louisiana Voluntary Remediation Regulations (LAC 33:VI)

General Information

Contact: Alex Puglisi

Address: New Mexico Environment Department
(NMED)
Harold Runnels Building Room, N2250
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, NM 87502

Phone: 505 827 2754

Fax: 505 827 2965

Email: alex.puglisi@state.nm.us

Web site: <http://www.nmenv.state.nm.us>

Program Description (VCP, brownfields, or related)

On July 15, 1999, the New Mexico Environment Department (NMED or Department) introduced the Voluntary Remediation Program (VRP), intended to promote the voluntary cleanup of contaminated properties. The VRP is intended to encourage redevelopment of contaminated sites (i.e., brownfields) by providing a streamlined, non-punitive remediation process.

Brownfields definition: Abandoned, idled or underutilized industrial or commercial sites, where expansion or reuse is complicated by real or perceived environmental contamination. Although, inner city images may come to mind, in a largely rural state such as New Mexico, many sites meeting this definition are in rural locations.

Program titles: The VRP is part of the Remediation Oversight Section of the Ground Water Quality Bureau.

Liability relief provisions: Secretary issues a Certificate of Completion or a Conditional Certificate of Completion (COC) for a site, and provides a Covenant Not to Sue (CNS) to a purchaser or prospective purchaser of the site that did not contribute to the site contamination, for any direct liability, including future liability for claims based upon the contamination covered by the agreement and over which the department has authority. Except as may be provided under federal law or as may be agreed to by a federal government entity, the CNS shall not release or otherwise apply to claims by the federal government for claims based on federal law. Except as may be agreed to by another department or agency of the state, the CNS shall not release or otherwise apply to claims of any other office, department or agency of the state. Except as may be agreed to by a third party, the CNS shall not release or otherwise affect a person's liability to third parties. Liability protection for lenders exists.

Financial incentives (grants, loans, tax provisions, etc.): Municipality-owned brownfields are eligible for low interest loans from Clean Water State Revolving Fund. EPA-capitalized Brownfields Cleanup Revolving Loan Fund (RLF) makes low-interest loans available to developers and municipalities for site cleanup activities. For Federal Fiscal Year 2010, NMED received \$1.84 million in American Recovery and Reinvestment Act (ARRA) RLF Funds. Targeted Brownfields Assessment (TBA) funds are available to NMED to conduct Phase I and II assessments at municipally-owned sites and Phase III limited remediation. New Mexico brownfield sites are eligible for federal tax incentives and Leadership in Energy and Environmental Design (LEED) credits toward sustainable sites for brownfields redevelopment.

Legislative or program site eligibility requirements: To be eligible for a voluntary remediation agreement an applicant must: 1) own the site; 2) operate a facility located on the site; 3) be a prospective owner of the site; or 4) be a prospective operator of a facility at the site. If the applicant is not the site owner, permission must be granted in writing by the site owner for site to be entered into the VRP.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): No information available

Tax incentives (abatements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: Risk-Based Corrective Action (RBCA)-like process in place, applicants chose from statewide soil guidelines, background concentrations, or a site specific RBCA-like process. The state has developed a "look up" process for soil contaminants.

Contaminants covered/excluded: Does not restrict on the basis of contaminants.

Use of long-term stewardship and institutional controls: Regulations allow use of post completion monitoring, engineering controls, remediation systems, post closure care, or an affirmation of future non residential land use.

New Mexico

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.nmenv.state.nm.us/gwb/NMED-GWQB-RemediationOversight.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA:
December 1999

Costs to enter program or fees for service: \$1,000 application fee, and payment to NMED for oversight charges at the rate of \$90/hour.

Funding source for administrative costs and staff: EPA grant and fees collected for NMED oversight of VRP projects.

Cleanup Activities

Sites currently in VCP: 28 active

Sites completed under VCP: 47 closed

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Enforcement shield, Certificate of Completion or Conditional Certification of Completion, Covenant Not to Sue, specialized attention from NMED staff, and liability release for lenders.

Public Participation

Public participation requirements (notice, comment periods, etc.): Before the voluntary remediation agreement becomes finalized, the applicant must: 1) make the proposed voluntary remediation agreement and preliminary work plan available for public inspection within ten days of the receipt of the conditional eligibility determination from NMED; and 2) notify the following entities and advise them of the proposed voluntary remediation agreement, the location where the proposed agreement and work plan can be reviewed, and the opportunity to submit comments to NMED: (a) any governmental agency potentially affected by the proposed agreement, (b) those parties that have requested notification, (c) the general public by posting a notice at the site, and by publishing a notice in a newspaper of general circulation in the state and a newspaper published in the area where the site is located (in the legal advertisements section of the newspaper, and if NMED determines, in both English and Spanish). Must include in the notice: name, location, description of the remediation activities, address to submit comments, address, and phone for questions.

Public participation activities (hearing, meetings, etc.):

The secretary shall provide a comment period of at least 30 calendar days following publication of the newspaper notice, during which any interested person may submit a request for public meeting. A public meeting will be held at the applicant's expense if the secretary determines that there is significant public interest. If a public meeting is held, the applicant must, at least 10 days before the meeting, mail a notice to all persons who have submitted written comments or a request for public meeting, and publish the notice in a newspaper of general circulation in the state and a newspaper published in the local area.

Statutory Authorities

- NMSA 1978, §74-4G-1 et seq, the Voluntary Remediation Act
- New Mexico Voluntary Remediation Regulations (20.6.3 NMAC)

Oklahoma

Oklahoma Department of Environmental Quality (DEQ)

REGION 6

General Information

Contact: Rita R. Kottke, Ph.D., Brownfields Program Manager

Address: Oklahoma Department of Environmental Quality (DEQ)
Land Protection Division
P.O. Box 1677
Oklahoma City, OK 73101-1677

Phone: 405 702 5157

Fax: 405 702 5101

Web site: <http://www.deq.state.ok.us/lpdnew/brownfindex.html>

Program Description (VCP, brownfields, or related)

The DEQ Brownfields Program provides a means for private parties and government entities to voluntarily investigate and if warranted, clean up properties that may be contaminated by pollution. The brownfield process includes a Memorandum of Agreement and Consent Order (MACO) for Site Characterization as well as a Consent Order for Remediation. The formal Brownfields Program provides specific state liability relief and protects the property from federal Superfund actions.

Brownfields definition: Abandoned, idled, or underused industrial or commercial facility or other real property at which expansion or redevelopment of the real property is complicated by pollution.

Program titles:

- DEQ Brownfields Program

Liability relief provisions: For completed brownfields actions, once the Certificate of Completion or Certificate of No Action Necessary has been issued, DEQ is prohibited from assessing administrative penalties or pursuing civil actions associated with the contamination that was the subject of the consent order against any lender, lessee, or successor or assign if that person is in compliance with any post-certification conditions or requirements as specified in the consent order, Certificate of No Action Necessary, or Certificate of Completion.

If the applicant knowingly submits false or materially misleading information, the consent order, Certificate of Completion, or Certificate of No Action will be voidable, and the offending party may be subject to administrative, civil, or criminal action.

An applicant to whom a Brownfields Certificate has been issued and the applicant's lenders, lessees, or successors

or assigns are not subject to civil liability with regard to the remedial actions taken by the applicant for environmental contamination caused by pollution as required by the consent order if the remedial action is not performed in a reckless or negligent manner.

In cases where an applicant conducts a voluntary brownfields remediation in conjunction with a party responsible for the contamination, the responsible party is also released from liability to the same extent as the applicant.

Release from liability does not apply to: 1) any environmental contamination and consequences thereof that the applicant causes or has caused outside the scope of the consent order or the certificate issued by DEQ; 2) any contamination caused or resulting from any subsequent redevelopment of the property; 3) existing contamination caused by pollution not addressed prior to issuance of the certificate; or 4) any person responsible for contamination who has not participated in the voluntary remediation.

Cost to participate in the program: Program participants must reimburse DEQ for its oversight costs.

Financial incentives (grants, loans, tax provisions, etc.):

- Brownfields projects in urban areas that have—or have submitted an application for—a storm-water discharge permit may be eligible for the Clean Water State Revolving Fund (CWSRF) administered by the Oklahoma Water Resources Board.
- The Oklahoma Quality Jobs Act provides quarterly incentive payments for 10 years to firms who locate their principle business on a minimum 10-acre site that qualifies as a National Priorities List (NPL) site, a Superfund removal site, an official Superfund deferral site, or has been determined by the Department of Environmental Quality to be contaminated by any substance regulated by a federal or state statute governing environmental conditions for real property pursuant to an order of the Department of Environmental Quality.
- Brownfields Cleanup Revolving Loan Fund (BCRLF) is available and provides low interest loans to clean up contaminated properties.

Legislative or program site eligibility requirements for Brownfields Program:

Ineligible parties are those who: 1) are responsible for corrective action on the real property under an EPA order or agreement; 2) are not in substantial compliance with a final state, federal, or court order relating to the management of pollution; or 3) demonstrate a pattern of uncorrected noncompliance.

Oklahoma

Oklahoma Department of Environmental Quality (DEQ)

Financial Elements

Assessment and cleanup funding (source, amount, relationship to Brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): DEQ provides Targeted Brownfield Assessments to public entities and nonprofit groups. Low interest loan programs are available for cleanup. Public and private entities may obtain low interest loans from the BCRLF. Also, municipalities may be eligible to receive CWSRF for the remediation of brownfield sites if contamination of the sites potentially impacts water quality.

Tax incentives (abatements, credits, etc.): Oklahoma Sales Tax Code exempts state sales tax on machinery, fuel, chemicals, and equipment used in cleanup projects.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): DEQ provides technical assistance to parties who wish to clean up and redevelop contaminated properties. Staff members have extensive experience in the cleanup and redevelopment of brownfield sites and can provide guidance to potential program participants.

Program Elements

Technical Elements

Methods/standards/controls: Risk-Based Corrective Action (RBCA)-type processes in place. Brownfields Programs feature a risk-based system based on the proposed future use of the site to determine if cleanup is needed and if so, provide cleanup goals for the chemicals of concern. DEQ uses a three-tiered approach: 1) sampling data is compared to screening levels; 2) if data are higher than screening levels, state will generate conservative default cleanup levels using EPA Risk Assessment Guidelines for Superfund (RAGS)-based methodology; or 3) applicants may choose to do a risk assessment with state oversight to determine adequate cleanup goals.

Contaminants covered/excluded: The State Legislature broadened the definition of brownfield sites by opening it up to all sites affected by pollution. However, the Brownfields Program will refer applicants to other agencies if the jurisdictional issues indicate that another agency could better serve the applicant.

Use of long-term stewardship and institutional controls (IC): Institutional controls (IC) are allowed if they adequately protect the public. DEQ has authority to implement land use controls, if necessary. DEQ is working to implement an institutional control geographic information system (GIS) database to accurately track the institutional controls in the state.

- **IC Tracking:** DEQ internally tracks active sites, and completed sites and sites scheduled for completion in the next year are added to the Brownfield Public Record. When the certificate is issued the site is entered into the IC database. When the IC database and new Web based dataviewer are added to the DEQ Web site, the public will be able to access information regarding brownfield sites and all the ICs in place on the properties.
- **IC Oversight:** DEQ oversees the project from site characterization to any required after-action, long-term monitoring. Participants must reimburse DEQ for its oversight costs.
- **IC Monitoring:** If long-term monitoring is required at a site, a plan must be in place for long-term management, including a plan for payment of associated expenses and a contingency plan if contamination does not diminish over time, prior to a Brownfield Certificate being issued.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.deq.state.ok.us/lpdnew/Brownfields/PublicRecordBrownfields.pdf>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: April 1999

Costs to enter program or fees for service: DEQ requires reimbursement of its oversight costs from the participant. Estimated oversight costs are negotiated in the consent orders and the participant is required to set up an account with DEQ to cover oversight expenses.

Funding source for administrative costs and staff: General administrative costs are currently funded by EPA grants.

Oklahoma

Oklahoma Department of Environmental Quality (DEQ)

REGION 6

Cleanup Activities

Sites currently in the site characterization phase with an option to pursue the Brownfields Program: 18

Sites currently in the formal brownfields certification process: 5

Sites completed under Brownfields: 6 Brownfields Certificates of No Action Necessary have been issued. 9 Brownfields Certificates of Completion have been issued.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): DEQ is prohibited from assessing administrative penalties or pursuing civil actions associated with the contamination that was the subject of the consent order against any lender, lessee, or successor or assign if that person is in compliance with any post-certification conditions or requirements as specified in the consent order, Certificate of No Action Necessary, or Certificate of Completion. EPA is barred from pursuing Comprehensive Environmental Response Compensation and Liability Act (CERCLA) enforcement actions on the property.

Public Participation

Public participation requirements (notice, comment periods, etc.): The Brownfields Program requires notice to the public of the availability of the project's Proposed Plan for public review and a 30-day public comment period. If someone from the public requests a meeting to discuss the plan, DEQ may hold a public meeting. Notice of the meeting must be published in a local paper 30 days prior to the meeting.

Public participation activities (hearing, meetings, etc.): The Brownfields Program allows for public meetings. Meeting proceedings are recorded and documented. The RLF requires a formal Community Relations Plan.

Statutory Authorities

Oklahoma Brownfields Voluntary Redevelopment Act (27A OS §2 -15 -101 through 110.

Oklahoma

Oklahoma Corporation Commission (OCC)

General Information

Contact: Patricia Billingsley, Brownfields Manager

Address: Oklahoma Corporation Commission (OCC)
Oil and Gas Conservation Division
Brownfields Program
P.O. Box 52000
Oklahoma City, OK 73152-2000

Phone: 405 522 2758, 405-522-2781

Fax: 405 522 0757

Web site: <http://www.occeweb.com>

Program Description (VCP, brownfields, or related)

The Oklahoma Corporation Commission's Voluntary Cleanup and Brownfields programs provide a means for public and governmental entities, nonprofits, development companies, and others to voluntarily investigate and, if warranted, clean up properties that may be contaminated with petroleum, produced water/brine, gasoline, diesel, or other deleterious wastes from oil and gas exploration and production (Oil and Gas E&P) or from leaking underground petroleum storage tank (PST) sites. The Brownfields Program also provides specific state liability relief and protects the property from federal Superfund actions. In addition, tax advantages and/or the state incentive program may be available to entities for sites that join the program.

Brownfields definition: Abandoned, idled, or underused real property at which expansion, redevelopment, or other productive or greenspace use of the property is complicated by Oil and Gas E&P related and/or underground petroleum storage tank (PST) pollution.

Program titles:

Oklahoma Corporation Commission Brownfields Program – this program is separate from the existing Oklahoma DEQ Brownfields Program.

Liability relief provisions: For completed brownfields actions, the OCC is prohibited from assessing administrative penalties or pursuing civil action associated with the contamination that is the subject of the agreement if the participant is in compliance with the site characterization or remediation.

For completed brownfields actions, once the Certificate of Completion (COC) or Certificate of No Action Necessary has been issued, OCC is prohibited from assessing administrative penalties or pursuing civil actions associated with the contamination that was the subject of the agreement against any lender, lessee, or successor or assign if that person is in compliance with any post-certification conditions or requirements as specified in the agreement, Certificate of No Action Necessary, or COC.

If the applicant knowingly submits false or materially misleading information, the agreement, COC, or Certificate of No Action will be voidable, and the offending party may be subject to administrative, civil, or criminal action.

An applicant to whom a COC or Certificate of No Action Necessary has been issued and the applicant's lenders, lessees, or successors or assigns are not subject to civil liability with regard to the remedial actions taken by the applicant for environmental contamination caused by pollution as required by the agreement if the remedial action is not performed in a reckless or negligent manner.

In cases where an applicant conducts a voluntary brownfields remediation in conjunction with a party responsible for the contamination, the responsible party is also released from liability to the same extent as the applicant.

Release from liability does not apply to: 1) any environmental contamination and consequences thereof that the applicant causes or has caused outside the scope of the agreement or the certificate issued by the OCC; 2) any contamination caused or resulting from any subsequent redevelopment of the property; 3) existing contamination caused by pollution not addressed prior to issuance of the COC or the Certificate of No Action Necessary; or 4) any person responsible for contamination who has not participated in the voluntary remediation.

Financial incentives (grants, loans, tax provisions, etc.):

The Oklahoma Quality Jobs Act provides quarterly incentive payments for 10 years to firms who locate their principle business on a minimum 10-acre site that qualifies as a National Priorities List (NPL) site, a Superfund removal site, an official Superfund deferral site, or a state voluntary cleanup/brownfields site. This incentive is only for sites also submitted to the ODEQ Brownfields Program.

- The Oklahoma Energy Resources Board (OERB) has a state-funded abandoned Oil and Gas E&P site cleanup program that can be accessed by qualified owners of Brownfields Oil and Gas E&P sites at no cost to the owners. OCC Brownfields Program refers sites to OERB.
- The state Petroleum Storage Tank (PST) Program's Federal LUST Trust Fund and State Indemnity funds can be accessed by qualified owners of Brownfields PST sites to pay most cleanup costs.
- The Federal Tax Relief and Health Care Act of 2006 extended until December 31, 2009 allows environmental cleanup costs to be deducted in the year incurred, rather than capitalized over time. The legislation also allows the deduction of expenses for the cleanup of petroleum products (crude oil, crude oil condensates, and natural gasoline), which had previously been ineligible.

Oklahoma

Oklahoma Corporation Commission (OCC)

REGION 6

Legislative or program site eligibility requirements for Brownfields Program: Ineligible parties are those who: 1) are responsible for corrective action on the real property under an EPA, DEQ, or other state agency order or agreement; 2) are not in substantial compliance with a final state, federal, or court order relating to the management of regulated substances; or 3) demonstrate a pattern of uncorrected noncompliance.

Eligible sites are those which: 1) are characterized or contaminated by petroleum or petroleum products and/or related materials such as produced water/brine or drilling mud; or 2) no responsible party can be ascertained and required to implement a cleanup of the contamination.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): OCC provides no-cost Electromagnetic (EM) sites surveys to public and private entities enrolled in the program, and plans to assist with Brownfields Targeted Site Assessments for public entities, quasi-governmental entities, and nonprofit groups.

The OERB provides no-cost-to-owner assessments and cleanups at sites it accepts.

Tax incentives (abatements, credits, etc.): Oklahoma Sales Tax Code exempts sales tax on machinery, fuel, chemicals, and equipment used in cleanup projects.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): OCC provides technical assistance to parties who wish to clean up and redevelop contaminated properties. Staff members have extensive experience in the cleanup and redevelopment of brownfield properties and can provide guidance to potential program participants.

Program Elements

Technical Elements

Methods/standards/controls: Risk-Based Corrective Action (RBCA)-type processes in place. Sites will be guided through the usual Oil and Gas or PST risk-based voluntary cleanup process. The program also issues the petroleum eligibility site certification letters for the state.

Contaminants covered/excluded: The OCC Brownfields Program is focused on helping entities to redevelop land that is contaminated with substances relating to oil and gas exploration and production of that derives from leaking underground storage tanks. This includes crude oil, saline produced water/brine, gasoline, and diesel. Hazardous waste sites other than oilfield and underground petroleum storage tank sites are handled by the Oklahoma DEQ Brownfields Program.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Institutional controls are one of the many choices that can be made at a site in order to protect the public.

Management & Implementation Elements

Costs to enter program or fees for service: OCC Brownfields Program charges no fees to eligible entities. However, a fee will be charged for non-brownfields eligible sites that enter the program.

Funding source for administrative costs and staff: General administrative costs are currently funded by EPA grants.

Cleanup Activities

Sites currently in VCP and Brownfields Program: 7 sites are currently enrolled.

Sites completed: One site has completed the program and been given its certificate of completion.

Sites inventoried as eligible: 130, with 83 added this year and 122 removed (*cleaned up by OERB*). An additional 611 sites have been assessed by field inspectors and rejected as possible BF sites (since the inception of the program).

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available.

Public Participation

Public participation requirements (notice, comment periods, etc.): The Brownfields Program requires notice to the public of the project for public review and a 30-day public comment period. If someone from the public requests a meeting to discuss the plan, OCC may hold a public meeting. Notice of the meeting must be published in a local paper 30 days prior to the meeting. Public participation at VCP sites depends upon public interest.

Public participation activities (hearing, meetings, etc.): The Brownfields Program allows for public meetings. Meeting proceedings are recorded and documented.

Statutory Authorities

OCC's Jurisdictional Authority" is covered in Sections 1-3-101(E)(1)(j), 1-3-101(E)(2) and 1-3-101(E)(5) of Title 27A of the Oklahoma Statutes.

Commission Brownfield Rules were finalized July 1, 2008 and can be found at OAC 165:10-101 through 10-10-14.

Texas

Texas Commission on Environmental Quality (TCEQ)

General Information

Contact: Ashley Forbes, VCP- Manager

Address: Texas Commission on Environmental Quality (TCEQ)
Voluntary Cleanup Program
MC 221
P.O. Box 13087
Austin, Texas 78711-3087

Phone: 512 239 0493

Fax: 512 239 1212

Web site: <http://www.tceq.state.tx.us/remediation/vcp/vcp.html>

Contact: Christine Whitney, Brownfields Program Manager

Address: TCEQ Brownfields Site Assessment Program
MC 221
P.O. Box 13087
Austin, Texas 78711-3087

Phone: 512 239 0843

Fax: 512 239 1212

Web site: <http://www.tceq.state.tx.us/remediation/bsa/bsa.html>

Program Description (VCP, brownfields, or related)

In Texas, many former industrial properties lie dormant or underutilized due to liability associated with real or perceived contamination. These properties are broadly referred to as brownfields. TCEQ in close partnership with EPA and other federal, state, and local redevelopment agencies, and stakeholders, is facilitating cleanup, transferability, and revitalization of brownfields through the development of regulatory, tax, and technical assistance tools.

Brownfields definition: No specific definition, but brownfields are described as properties with perceived contamination.

Program titles:

- Voluntary Cleanup Program (VCP)
- Innocent Owner/Operator Program (IOP)
- Brownfields Site Assessment Program

Liability relief provisions: After completion of the cleanup, parties will receive a Certificate of Completion (COC) from TCEQ, which states that all non-responsible parties are released from all liability to the state for cleanup of areas

covered. The IOP was created by House Bill 2776 of the 75th Legislature, and provides a certificate to an innocent owner or operator, under the Texas Health and Safety Code or Water Code, if their property has become contaminated as a result of a release or migration of contaminants from a source or sources not located on the property, and they did not cause or contribute to the source or sources of contamination. Like the VCP, the IOP can be used as a redevelopment tool or as a way to add value to a contaminated property by providing a certificate that confirms an innocent owner or operator is entitled to immunity from liability.

Financial incentives (grants, loans, tax provisions, etc.): None other than tax incentives described later.

Legislative or program site eligibility requirements:

Parties entering the VCP must submit an application, an environmental site assessment describing the contaminated area of concern, and a \$1,000 fee. Upon acceptance, the applicant must sign an agreement that describes the work schedule of events necessary to achieve cleanup, and confirms that the applicant has agreed to pay all VCP oversight costs. After completion of the cleanup, parties will receive a COC which states that all lenders and future landowners who are not responsible parties are released from all liability to the state for cleanup of areas covered by the certificate.

All sites are eligible for participation in the VCP, except the following:

- Sites subject to a permit concerning the remediation of the contaminant.
- Sites subject to a commission order concerning the remediation of the contamination.
- Sites listed on the National Priorities List (NPL) or formally proposed for listing.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): The Petroleum Storage Tank Remediation (PSTR) Fund is supported by a fee on gasoline and other fuels at bulk distribution facilities. The state uses this fund to reimburse responsible parties for the costs of corrective actions of releases from aboveground or underground storage tanks. Under the Brownfields Site Assessment Program, TCEQ will direct the completion of a limited number of federally funded site assessments for qualifying local governments and nonprofit groups in Texas. The Dry Cleaning Program is supported by fees on dry cleaning solvents and dry cleaning facilities. The program will perform corrective action of releases from dry cleaning facilities.

Texas

Texas Commission on Environmental Quality (TCEQ)

REGION 6

Tax incentives (abatements, credits, etc.): In addition to federal tax incentives (expense remediation expenditure), some local governments within the state offer ad valorem property tax abatements to attract brownfields cleanup and redevelopment. Senate Bill 1596 and House Bill 1239 of the 75th Texas Legislative Session added Section 312.211 to the Texas Tax Code. This section allows municipal or county taxing authorities to provide property tax relief for the development or redevelopment of certain brownfield properties that are located within a reinvestment zone and have been cleaned up through the VCP. To be eligible, the real property must: 1) be located in a reinvestment zone created under Section 311 of the Texas Tax Code; 2) not be in an improvement project financed by tax increment bonds; and 3) have received a COC from the VCP. The governing body must enter into a tax abatement agreement with the owner of the brownfield property. The governing body is allowed to exempt from taxation: 1) not more than 100% of the value of the property in the first year covered by the agreement; 2) not more than 75% of the value of the property in the second year covered by the agreement; 3) not more than 50% of the value of the property in the third year covered by the agreement; and 4) not more than 25% of the value of the property in the fourth year covered by the agreement.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Through its relationship with EPA, TCEQ is able to provide technical advice, education, and project partnering (including partnering with other federal and state agencies) for some brownfields redevelopment projects owned by local governments, or where the local government is playing a key role in the redevelopment. Other tools that may be available in the future to help pay for investigations and cleanups include the Brownfields Site Assessments and revolving loan funds/grants.

Program Elements

Technical Elements

Methods/standards/controls: The Texas Risk Reduction Program (TRRP) follows a Risk-Based Corrective Action process (RCBA) that allows for the use of engineering and institutional controls. A VCP applicant may use state developed cleanup levels or site-specific data to develop site specific cleanup levels.

Contaminants covered/excluded: All contaminants in soil and ground water OK, except those under the jurisdiction of the Texas Railroad Commission.

Use of long-term stewardship and institutional controls (IC): Institutional controls must be placed on a property record for a site that uses commercial/industrial risk-based standards, and for any property that relies on the use of physical control (e.g., cap or remediation system) to prevent exposure.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.tceq.state.tx.us/remediation/vcp/vcp.html#Database>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: May 1996

Costs to enter program or fees for service: \$1,000 application fee and applicant must reimburse TCEQ for the direct costs of oversight.

Funding source for administrative costs and staff: State remediation funds and EPA grant.

Cleanup Activities

Sites currently in VCP: Through June 2009, the VCP had received 2,093 applications representing dry cleaners, manufacturing facilities, shopping centers, warehouses, auto-related businesses, and other commercial and industrial enterprises.

Sites completed under VCP: Of these sites, 1,427 were issued Final Certificates of Completion.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): After completion of cleanup and receiving COC, innocent owner or operator is immune to liability.

Public Participation

Public participation requirements (notice, comment periods, etc.): No information available

Public participation activities (hearing, meetings, etc.): No information available

Statutory Authorities

- Texas Health and Safety Code, Chapter 361, Sec. 361.602.
- Voluntary Cleanup Program 30 Texas Administrative Code §333.
- VCP 30 Texas Administrative Code §350.
- Texas Risk Reduction Program (TRRP) effective September 23, 1999 (24TexReg7415).

Texas

Railroad Commission of Texas (RRC)

General Information

Contact: Aimee Beveridge, Voluntary Cleanup Program Manager

Address: Railroad Commission of Texas
PO BOX 12967
Austin TX 78711-2967

Phone: 512 463 7995

Fax: 512 463 2388

Email: aimee.beveridge@rrc.state.tx.us

Web site: <http://www.rrc.state.tx.us/environmental/environsupport/voluntarycleanup.php>

<http://www.rrc.state.tx.us/environmental/environsupport/brownfield/index.php>

Program Description (VCP, brownfields, or related)

In order to encourage redevelopment at abandoned oil and gas facilities, the Railroad Commission of Texas (RRC or Commission) offers assistance to governments, nonprofit organizations, tribes, universities, land developers, private landowners, and others through its Voluntary Cleanup Program (VCP) and Brownfields Response Program (BRP).

The RRC's VCP provides an incentive to remediate oil and gas related pollution by participants as long as they did not cause or contribute to the contamination. Applicants to the program pay a \$1,000 fee and reimburse the RRC for the direct costs of oversight. The RRC issues a Certificate of Completion (COC) that provides a release of liability to the state for a participant in exchange for a successful cleanup. The VCP program became effective on June 10, 2002.

The RRC's BRP provides technical and financial support with regard to the assessment and cleanup of petroleum brownfield properties on behalf of local governments, nonprofit organizations, and other brownfields recipients. Under the BRP, the RRC also waives the VCP fees for local governments. Targeted brownfield properties must also meet EPA brownfields petroleum exclusion criteria. The BRP became effective in the fall of 2003.

Brownfields definition: A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles

- Voluntary Cleanup Program (VCP)
- Brownfields Response Program (BRP)

Liability relief provisions: After completion of the cleanup, applicants receive a COC from the RRC, which states that all non-responsible parties are released from all liability provided by Chapter 91 Subchapter O, Texas Natural Resources Code.

The release from liability provided by this subchapter does not apply to a person who:

- Caused or contributed to the contamination at the site covered by the certificate;
- Acquires a COC by fraud, misrepresentation, or knowing failure to disclose material information;
- Knows at the time the person acquires an interest in the site for which the COC was issued that the certificate was acquired by fraud, misrepresentation, or knowing failure to disclose material information; or
- Changes the land use from the use specified in the COC if the new use may result in increased risks to human health or the environment.

Financial Incentives (grants, loans, tax provisions, etc.): See tax incentive section.

Legislative or program site eligibility requirements:

Parties entering the VCP must submit an application, prior environmental site assessments describing the contaminated area of concern, and a \$1,000 fee. The applicant must sign an agreement that describes the work schedule of events necessary to achieve cleanup and confirms agreement to pay all VCP oversight costs. Upon cleanup, the applicants receive a COC that embodies the release of liability to the state. In addition, applicants to the brownfields response program must also meet EPA petroleum exclusion requirements.

The following sites are not acceptable for the VCP or BRP:

- When the applicant is a responsible party.
- Sites are subject to a permit concerning the remediation of the contaminant.
- Sites subject to a Commission order concerning the remediation of the contamination.
- Sites listed on the National Priorities List (NPL) or formally proposed for listing.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Assessment and cleanup funding is provided free of charge to applicants through the BRP. VCP assessments and cleanups are applicant funded. Funding for the Oil Field Cleanup Program (OCP) comes from regulatory fees, permit fees and bond fees on oil and gas industry activities. The OCP is used to plug abandoned oil and gas wells and clean up orphaned and contaminated oil and gas facilities. Under the BRP, the RRC may utilize the OCP to clean up contamination at brownfield properties pending availability of funds.

Railroad Commission of Texas (RRC)

REGION 6

Tax incentives (abatements, credits, etc.): In addition to federal tax incentives (expense remediation expenditure), some local governments within the state offer ad valorem property tax abatements to attract brownfields cleanup and redevelopment.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Through its relationship with EPA, the RRC is able to provide technical advice, education, and project partnering (including partnering with other federal and state agencies) for brownfields redevelopment projects owned by local governments, or where the local government is playing a key role in the redevelopment.

Program Elements

Technical Elements

Methods/standards/controls: The Texas Risk Reduction Program Rule (TRRP) follows a risk-based corrective action process that allows for the use of engineering and institutional controls. All RRC sites are evaluated using the TRRP rule. A VCP applicant also may use risk-based site-specific data to develop site-specific cleanup levels with approval from RRC staff.

Contaminants covered/excluded: Applies to all contaminants in soil and ground water under the jurisdiction of the RRC.

Use of long-term stewardship and institutional controls (IC): Institutional controls must be placed on a property record for a site that uses commercial/industrial risk-based standards, and for any property that relies on the use of physical control (e.g., cap or remediation system) to prevent exposure. Under the BRP, an audit program is designed to ensure that land use is maintained for sites closed with an IC.

The following Web site includes a link to the RRC's inventory database of VCP and BRP sites. The excel list on the Web site allows one to view to the COC and institutional control document.

<http://www.rrc.state.tx.us/environmental/environsupport/voluntarycleanup.php>

Management & Implementation Elements

Voluntary Cleanup Program memorandum of agreement (MOA) with EPA: The TCEQ has a memorandum of understanding (MOU) with EPA as of May 1996.

Costs to enter program or fees for service: For the VCP there is a \$1,000 application fee and applicant must reimburse the RRC for the direct costs of oversight. There is no cost to applicants for the BRP, but in-kind leveraging of assessment cost or cleanup is encouraged.

Funding source for administrative costs and staff: Oil Field Cleanup Fund and EPA 128(a) grant.

Cleanup Activities

Sites currently in VCP: As of January 2010, 100 sites have been entered into the VCP and BRP, with 8 brownfields certificates and 42 VCP certificates granted. Presently there are 26 active VCP sites. The BRP has performed environmental site assessments and cleanups at over 23 targeted brownfields application sites since the inception of the program in 2004.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): After completion of cleanup and receiving a COC, the innocent owner or operator is immune to liability. To ensure public participation, all completed and active VCP and BRP sites are listed on the RRC Web page in perpetuity.

Public Participation

Public participation requirements (e.g., notice, comment periods, etc.): The location, size and status of all BRP and VCP sites are provided on the RRC's Web site. In addition, the RRC currently meets the public record requirements, required by the Brownfields Law, by maintaining a publicly accessible brownfields database.

Public participation activities (e.g., hearing, meetings, etc.): The RRC BRP staff present information on the BRP and VCP at environmental, legal and banking conferences as well as public meetings at rural and urban centers across the state.

Statutory Authorities

Chapter 91 Subchapter O, Texas Natural Resources Code.

General Information

Contact: Mel Pins

Address: Iowa Department of Natural Resources (DNR)
Wallace State Office Building
Des Moines, IA 50319

Phone: 515 281 8489

Fax: 515 281 8895

Email: mel.pins@dnr.iowa.gov

Web site: <http://www.iowabrownfields.com> (Iowa Department of Natural Resources)
<http://www.iowalifechanging.com/business/brownfields.html>
(Iowa Department of Economic Development Brownfields page)

Program Description (VCP, brownfields, or related)

Brownfields definition: Federal definition as of January 2002.

Program titles: Land Recycling Program (LRP), established in 1997, and Iowa Brownfield Redevelopment Program (est. 2004)

Liability relief provisions: Offers No Further Action (NFA), transferable to new owner.

Financial incentives (grants, loans, tax provisions, etc.)

- Grants for Phase I and Phase II assessment; 50% cleanup match up to \$25,000 – DNR
- Revolving loan fund with 60% loan, 40% forgivable loan terms - DNR
- Brownfield Redevelopment Tax Credits – Iowa Department of Economic Development
- Brownfield Assessment and Cleanup Grants of up to 25% - Iowa Department of Economic Development

Legislative or program site eligibility requirements:

- Funds are available to local governments, nonprofits, and area development corporations (must be non-responsible parties) that wish to acquire and redevelop brownfield sites.
- Any interested party may enroll in the Land Recycling Program, if they desire to receive regulatory liability protection for contamination that may be on properties they wish to acquire, or in cases where the property is their own and the site is not a National Priorities List (NPL) site or is not being addressed under a criminal or other civil court order.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- The Hazardous Waste Remedial (HWR) Fund may be used for administration, site investigation, emergency response, removals, remedial actions, operations and maintenance, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, studies and design, and grants to local governments. Seventy five percent of the Fund must be used for remediation at non-CERCLA sites and for CERCLA cost share.
- Iowa received funding through the CERCLA 128(a) State and Tribal Response Program Grant. Iowa's grant focuses on small and rural communities in the state; grant funds can be used for Phase I and Phase II due diligence site checks and small-scale cleanups at brownfield sites.
- Brownfields Cleanup Revolving Loan Fund (RLF), established through an FY04 EPA grant. Provides a total of \$250,000 to be distributed to eligible cleanup projects through flexible, and partially forgivable loan terms.

Tax incentives (abatements, credits, etc.): Brownfield redevelopment tax credits available through the Iowa Department of Economic Development, through legislation enacted in 2008. See www.iowalifechanging.com for more information.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls:

- State uses statewide, background, and site specific standards. Site specific standards are risk based.
- Cleanup decisions are made on a site by site basis. State regulations do provide cleanup goals for ground water and surface water. State cleanups may use promulgated Ground Water Action Levels based on lifetime health advisories, negligible risk levels, and Maximum Contamination Levels (MCLs) (Admin. Code §567.133), but these are not usually used for hazardous site cleanups. Risk assessment is used to determine applicable cleanup levels if ground water contamination exceeds action levels. There is no established risk range set out in state policy. Under the voluntary program detailed regulations are being developed to set out cleanup levels. Such cleanups will use risk assessment, background levels, ground water standards, and soil standards per state law.

Iowa

Contaminants covered/excluded: Any contaminant that has appropriate toxicity information available, and is not being addressed under separate authority.

Use of long-term stewardship and institutional controls (IC): Statutorily based environmental protection easement (EPE) is required for use with non-residential standards. May be possible to move the point of compliance with standards outside of area with an institutional control or appeal to a less restrictive standard with an institutional control. Use of an institutional control may not be allowed to address free product or “gross contamination.”

The following Web address is a direct link to the state’s public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.iowadnr.com/land/consites/index.html>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: June 2004

Costs to enter program or fees for service: For funding, the state will charge fees for oversight of enrollees in the state’s voluntary cleanup program (known as the Land Recycling Program). There is an initial \$750 application fee, and reimbursement of actual state oversight costs is capped at \$7,500.

Funding source for administrative costs and staff: The Contaminated Sites Section of the DNR is responsible for program administration. There are currently 12 full-time employees (FTE). Legal support is provided by 0.5 FTE attorneys in DNR’s Compliance and Enforcement Bureau. Sixty nine percent of funds for staff and administration are from federal grants, 5% are from the state cleanup fund, and 26% from Responsible Parties (RP) for oversight cost.

Cleanup Activities

Sites currently in VCP: 38 sites are currently enrolled in the Land Recycling Program. Several other sites are also listed with the state’s contaminated sites program.

Sites completed under VCP: 2009, 54 sites completed the VCP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): VCP participants receive a certificate of no further action if cleanup of affected areas and identified contaminants is completed to statewide standards, or if institutional or engineering controls are enacted in lieu of direct cleanup. The certificate provides future regulatory liability protection from both DNR and EPA for contaminants addressed within the VCP enrollment.

Public Participation

Public participation requirements (notice, comment periods, etc.): The voluntary cleanup law (455H) provides for public notice. But provisions for public comment, hearings, and meetings are handled as a matter of policy under both the enforcement and voluntary programs. Document availability requirements are established by a general statute.

Public participation activities (hearing, meetings, etc.): Ongoing, per site project. See above.

Statutory Authorities

- The Environmental Quality Act (EQA), Iowa Code Ch. 381–397 and 455B 423–431 (1972, as amended 1979, 1981, 1984, 1987, and 1991), establishes the Hazardous Waste Remedial Fund, provides cleanup and enforcement authorities for abandoned sites, establishes a priority list, allows for citizen suits and water replacement, provides for site registry, and restricts property transfers. Significant amendments concerning cleanup authority for abandoned and uncontrolled sites were enacted in 1979, 1981, and 1987. A 1984 amendment established the Hazardous Waste Remedial Fund.
- The Groundwater Protection Act, Iowa Code Ch. 455E (1987), establishes procedures and criteria for cleanup of ground water.
- The Groundwater Hazard Documentation Law, Iowa Code Ch. 558.69 (1987, as amended 1988), establishes disclosure requirements for real property transfers.
- The Land Recycling and Environmental Remediation Standards Act, Iowa Code Ch. 455H (1997), establishes a voluntary cleanup program for the state.

Kansas

General Information

Contact: Rick Bean, Chief, Remedial Section

Address: Remedial Section
Kansas Department of Health and Environment (KDHE)
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367

Phone: 785 296 1675

Fax: 785 296 7030

Email: rbean@kdhe.state.ks.us

Web site: <http://www.kdheks.gov/remedial/index.html>

Contact: Jerry Lineback, Unit Leader, Voluntary Cleanup Unit

Address: Remedial Section
Voluntary Cleanup and Property Redevelopment Program
Kansas Department of Health and Environment (KDHE)
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367

Phone: 785 296 2546

Fax: 785 296 7030

Email: jlineback@kdhe.state.ks.us

Web site: <http://www.kdheks.gov/remedial/vcp/index.html>

Contact: Deanna Ross, Unit Leader, Restoration and Long-Term Stewardship Unit (Contact Rick Bean)

Address: Remedial Section
Environmental Use Control Program
Kansas Department of Health and Environment (KDHE)
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367

Phone: 785 296 8064

Email: dross@kdhe.state.ks.us

Web site: <http://www.kdheks.gov/brownfields/index.html>

Contact: Doug Doubek, Unit Leader, State Response and Property Redevelopment Unit
Brownfields Program
Kansas Department of Health and Environment (KDHE)
Bureau of Environmental Remediation
1000 SW Jackson, Suite 410
Topeka, KS 66612-1367

Phone: 785 291 3246

Fax: 785 296 7030

Email: ddoubek@kdhe.state.ks.us

Web site: <http://www.kdheks.gov/brownfields/index.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles:

- Brownfields Targeted Assessment Program
- Voluntary Cleanup and Property Redevelopment Program (VCPRP)
- Environmental Use Controls Program

Liability relief provisions: Under KSA 65-34,169 and KAR 28-71-10, stakeholders performing cleanup of contaminated properties that meet the criteria in the law (low to medium priority sites with minimal risk) can receive a No Further Action determination from KDHE to provide some protection from potential liabilities. Adjacent property owners who did not contribute to the contamination may also receive protection from KDHE through such determinations.

Financial incentives (grants, loans, tax provisions, etc.): None

Legislative or program site eligibility requirements:

Brownfields Targeted Assessment Program:

- Eligible applicants—Any unit of government (e.g., city, town, county, municipality, nonprofit organization) may submit a property for assessment.
- Eligible properties—All types of properties may receive an assessment, with some exceptions. The primary focus is on industrial and commercial properties; however, residential areas may be considered under special circumstances. Properties subject to enforcement action associated with environmental contamination are not eligible (e.g., Superfund sites). Units of government may petition for exceptions.

Voluntary Cleanup and Property Redevelopment Program (VCPRP)—All eligible properties must contain an actual, threatened, or suspected release of a contaminant or be impacted or threatened by contaminants from an off-property source.

Properties that are not eligible to participate in the VCPRP include: 1) properties listed or proposed for listing on the federal National Priorities List (NPL); 2) properties that are currently subject to existing environmental enforcement action, order or agreement with local, state, or federal governmental agencies; 3) properties which have, or should have, a permit pursuant to the Resource Conservation and Recovery Act (RCRA) containing a corrective action component; 4) properties contaminated by oil and gas activities regulated by the Kansas Corporation Commission; and 5) properties that present immediate and significant risk to human health and the environment, including public and private drinking water supplies.

Kansas

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Brownfields Targeted Assessment Program
- Brownfields Cleanup Program
- Brownfields Cleanup Revolving Loan/Grant Program
- Kansas Agricultural Remediation Fund was created in July 2000 to assist in the investigation and remediation of qualifying properties with agricultural-related contaminants. The program provides direct reimbursement up to \$200,000, and low-interest loans up to \$300,000.

Tax incentives (abatements, credits, etc.):

No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

No information available

Program Elements

Technical Elements

Methods/standards/controls: Environmental Use Controls Program (same as institutional controls).

Contaminants covered/excluded: All contaminants and pollutants covered including lead, asbestos, and polychlorinated biphenyls (PCBs).

Use of long-term stewardship and institutional controls (IC): Use environmental use controls.

- **IC Tracking:** All ICs are tracked and a part of a computerized database for public viewing.
- **IC Oversight:** All ICs are enforceable by KDHE pursuant to the statute.
- **IC Monitoring:** All ICs are inspected on a regular basis to ensure compliance.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://kansas.kdhe.state.ks.us/pls/certop/ISearch>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: March 2001

Costs to enter program or fees for service: VCPRP applications must be submitted with \$200 nonrefundable application fee; initial deposit, not to exceed \$5,000 is required to cover KDHE's oversight costs including cost of labor associated with review of documents, studies and test

results, collection of split samples, laboratory analysis, and other costs. There are also costs to participate in the Environmental Use Control Program depending on the category of the site.

Funding source for administrative costs and staff:

An administrative rate is charged to the applicant and may be adjusted annually.

Cleanup Activities

Sites currently in VCP: As of December 31, 2008, the VCPRP received 502 applications with 335 properties currently active in either investigation or cleanup.

Sites completed under VCP: As of December 31, 2008, the VCPRP issued 167 No Further Action letters and 1,984 acres had been remediated.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No further action determination, streamlined process, and clearly defined cleanup standards provided early in the process.

Public Participation

Public participation requirements (notice, comment periods, etc.): Notice is required when a cleanup plan has been accepted by KDHE. Notice must specify the comment period, which is at minimum, 15 days. In addition, the cleanup plan must be made available by KDHE to the public upon request.

Public participation activities (hearing, meetings, etc.): Following the 15-day public comment period, a public information meeting may be held by KDHE if the comments warrant a meeting, or the voluntary party requests a meeting. The public information meeting shall provide the public with information about relevant activities at the property associated with the voluntary cleanup and property redevelopment program. Public information meetings shall be attended by a member of KDHE and the voluntary party or designated representative, or both.

Statutory Authorities

- Voluntary Cleanup and Property Redevelopment Act KSA 65–34, 161 et seq.
- Voluntary Cleanup and Property Redevelopment Program KAR 28–71—28–71–12.
- Environmental Use Controls, KSA 65–1,221 et seq.

Missouri

General Information

Contact: Jim Belcher

Address: Missouri Department of Natural Resources
(MoDNR)
Hazardous Waste Program
P.O. Box 176
Jefferson City, MO 65102-0176

Phone: 573 526 8913

Fax: 573 526 4817

Email: jim.belcher@dnr.mo.gov

Web site: www.missouribrownfields.com

Program Description (VCP, brownfields, or related)

Brownfields definition: Missouri defines a brownfield as a site that is or is perceived to be contaminated by hazardous substances.

Program titles: Brownfields/Voluntary Cleanup Program (BVCP) (1994)—Updated program name in 2003

Liability relief provisions: Certificate of Completion issued by the state. Any interested party can apply with property owner's permission. Includes risk-based cleanup criteria, tied to future land use, and institutional and/or engineering control provisions.

Financial incentives (grants, loans, tax provisions, etc.):

- Brownfields Remediation State Tax Credits provided through the Missouri Department of Economic Development can reimburse up to 100% of cleanup costs. The tax credits are based upon job creation or retention. The project has to be enrolled in the BVCP. The tax credits have a 20-year period and can be sold to other parties.
- Site Specific Assessments (SSA) are available through the BVCP to local governments and nonprofit organizations. Phase I and/or Phase II Environmental Assessments are provided free of charge via a state contract with approved environmental consulting companies as the vendors. The applicant does not have to own the property or have the intention to acquire the property. The SSA can be requested on behalf of a third party.
- Low-interest loans and grants are available through the Missouri Brownfields Cleanup Revolving Loan Fund (RLF). The Environmental Improvement and Energy Resources Authority (EIERA) manages the RLF. Applicants have to be the property owner and cannot be a viable responsible

party; they can be any entity including individuals and profit-making organizations. The project must be enrolled in the BVCP to qualify. An EPA 104(k) Competitive RLF grant funds the program.

- Low-interest loans for brownfields cleanup are available through the Missouri State Revolving Fund (SRF). The MoDNR Water Protection Program manages the fund. The loans are available to local governments, private and nonprofit entities, individuals, and citizen groups. To be eligible, a site has to have a water-related threat, either to surface or ground water.
- The Missouri State Historical Preservation Office (SHPO) state tax credit is a nationally leading program that is one of the largest providers of funds used for brownfields redevelopment in Missouri. The eligible project must be a structure on the national historical registry or be located within a designated historical district. The state tax credits can be sold and are in addition to federal tax credit programs.
- There is a broad range of grants, state tax credits, and loans available to address demolition, infrastructure building, and redevelopment. The Missouri Department of Economic Development manages most of the state programs and they are complimentary to similar federal programs provided by the Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA). The Missouri Department of Transportation also has programs to support redevelopment.

Legislative or program site eligibility requirements: Sites may not be eligible for the BVCP if:

- Site conditions constitute an imminent and substantial threat to public health or the environment.
- The site, or any part thereof, is or was a permitted or interim status hazardous waste management facility regulated under the Resource Conservation and Recovery Act (RCRA).
- The site or any part thereof, has been investigated for listing on the Superfund National Priorities List (NPL).
- The site, or any part thereof, is or was, the subject of an enforcement action, or the site warrants an enforcement action under RCRA; the Comprehensive Environmental Response Compensation and Liability Act (CERCLA); the Missouri Hazardous Waste Management Law; or any other federal or state environmental law or statute.
- Remediation has been initiated or completed since August 28, 1994 prior to applying for enrollment in BVCP.
- Contamination is a release from a petroleum storage tank that is eligible for cleanup under Missouri's Petroleum Storage Tank Insurance Fund.

Missouri

REGION 7

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Missouri's Drycleaner Environmental Response Trust (DERT) Fund provides for the investigation, assessment, and cleanup of dry cleaning facility sites. Only chlorinated material contamination is to be addressed. Eligible sites will have costs reimbursed after a \$25,000 deductible up to \$1,000,000 per incident. The DERT fund is managed by MoDNR as part of the BVCP Section.
- Missouri's Petroleum Storage Tank Insurance Fund (PSTIF) covers insured and other eligible petroleum sites with either under ground or above ground storage tanks. The fund will reimburse cleanup costs up to \$1,000,000 per incident after a \$10,000 deductible.

Tax incentives (abatements, credits, etc.): The Brownfields Redevelopment Program offers a menu of state tax credits for up to the entire amount of remediation costs; tax credits of between \$500-\$1300/year (for up to 10 years) for each new job created; capital investment tax credit of 2%; an income exemption of 50%; and a tax abatement for up to 15 years for local property taxes.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): None

Program Elements

Technical Elements

Methods/standards/controls:

- From 1998 to 2006, the BVCP has been using its guidance document, Cleanup Levels for Missouri (CALM), to establish cleanup levels. It is a Risk-Based Corrective Action (RBCA)-like process, in which applicants can select standards for residential (or unrestricted), commercial, or industrial uses.
- The BVCP is using the Missouri Risk-Based Corrective Action (MRBCA) Process for Petroleum Storage Tanks, which was released in February 2004, at sites which are contaminated with petroleum and related compounds.
- In 2006, MoDNR adopted the MRBCA guidance document that will cover non-petroleum hazardous contaminants. This new guidance replaces CALM.

Contaminants covered/excluded: The BVCP addresses petroleum, asbestos, lead paint, CERCLA hazardous substances, polychlorinated biphenyls (PCBs), and controlled substances contamination.

Use of long-term stewardship and institutional controls (IC):

- The BVCP recognizes that not all properties can be cleaned up to unrestricted use standards, as desirable as that would be. There are projects where the intended end use does not require the cleanup level to meet unrestricted use and the economics of doing so would prohibit the cleanup and redevelopment. Under the MRBCA guidance, the site remediation can be complimented by institutional and/or engineering controls. The most used institutional control is a restrictive covenant that is associated with and considered part of the property legal description. The covenant addresses restrictions of property usage. The covenant also documents the engineering controls in place and the cautions associated with working near or on the controlling feature.
- MoDNR is developing a long-term-stewardship system (LTS) to document and track the continued enforcement of institutional controls. The BVCP is providing the leadership for the LTS program, but it will address all remediated sites in Missouri regardless of which program provides oversight.
 - **IC Tracking:** Sites with LTS controls are listed on the BVCP Web site.
 - **IC Oversight and Monitoring:** Annual inspection visits by a BVCP project manager are required. LTS site owners are required to notify the BVCP prior to transforming the property to a new owner.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.dnr.mo.gov/env/hwp/docs/sitestatuslist.xls>

Management and Implementation Elements

Voluntary Cleanup Program MOA with EPA: September 1996

Costs to enter program or fees for service: Participants pay the oversight costs and overhead. The application fee is \$200 and up to \$5,000 initial deposit is made toward the costs. Oversight costs are charged on an hourly basis. After completion or withdrawal, any remaining deposit balance is refunded. The average cost per site is \$2,800.

Funding source for administrative costs and staff: The Missouri BVCP is administered by the MoDNR Division of Environmental Quality, Hazardous Waste Program with 16 full-time equivalent (FTE) staff. Other support agencies include the Geological Survey and Resources Assessment Division (GSRAD) and the Missouri Department of Health and Senior Services

Missouri

(DHSS). The Attorney General's Office provides legal support. The project management oversight fees cover only a portion of the BVCP cost. The balance of funding is through an EPA 128(a) State Response grant.

Cleanup Activities

Sites currently in BVCP: As of June 30, 2009, 955 applications have been received since program establishment in 1994. 95+ applications are processed annually (190 in 2008) and there are typically 300 active projects.

Sites completed under BVCP: 437 certificates of completion have been issued. The balance of 170+ sites are inactive, denied, or chose to voluntarily withdraw from the program.

Benefits (incentives to participate in the BVCP, covenants not to sue, etc.):

- Applicants receive assurance that their property has been cleaned up properly with the oversight of a state agency. The certificate of completion is an essential document when the applicant seeks financial institution support for redevelopment. A certificate of completion also protects the property owner from enforcement actions by either MoDNR or EPA for the contamination addressed by the cleanup.
- The State of Missouri and the communities the projects are located in benefit greatly. A 2006 study of the value of cleaned up projects profiled 50 redeveloped BVCP sites. Total investment on these 50 sites was \$2.2 billion: 11,053 full-time jobs were created; over 153 thousand tons of contaminated materials were removed; and 686 acres and 23 historic buildings were returned to profitable use.
- Participation in the BVCP program is one of the eligibility criteria for the Brownfields Remediation Tax Credits and the EIERA Program.

Public Participation

Public participation requirements (notice, comment periods, etc.): Public notice, comment, and document availability are required by statute (Chapter 610). In addition, the Missouri Hazardous Waste Management Law provides for appeals through the Hazardous Waste Management Commission, which may convene a public hearing if a resolution of appeals cannot be negotiated. Public meetings, availability sessions, fact sheets, and news releases are commonly used to provide information to the public, and to solicit input from the public.

Public participation activities (hearing, meetings, etc.):

- A Missouri Brownfields Conference is held annually with a targeted audience of local government officials and community involvement groups.
- Participate as a sponsor and exhibitor of many other conferences such as the Missouri Municipal League Conference, the Governor's Conference on Economic Development, the Missouri Mainstreet Downtown Revitalization Conference, and several others during the year.
- Brownfields workshops are offered and held statewide.
- Presentations are made at the annual and monthly meetings of several professional and community organizations, including Regional Planning Commissions.
- Participation in the Grant Writing Workshops hosted by U.S. Senator Claire McCaskill.
- Promotion of applications for EPA Brownfields 104(k) grant program including participation in EPA Region 7 workshops.

Statutory Authorities

- The Missouri Hazardous Waste Management Law, Mo. Rev. Stat. §§260.350–260.575 (1977, as amended in 1980, 1983, 1985, 1987, 1988, and 1993), authorizes the Hazardous Waste Remedial Fund and provides for a priority list, strict liability, site access, administrative order authority, penalties, and punitive damages.
- The Voluntary Cleanup Law (passed in 1993 as S.B. 80), Mo. Rev. Stat. §§260.565–575, provides authority for a voluntary cleanup program.

General Information

Contact: Nebraska Department of Environmental Quality (NDEQ)

Address: 1200 N Street, Suite 400
P.O. Box 98922
Lincoln, NE 68509

Phone: 402 471 2186/3388

Fax: 402 471 2909

Web site: <http://www.deq.state.ne.us/>

Program Description (VCP, brownfields, or related)

The Nebraska Voluntary Cleanup Program (VCP) was established by the Remedial Action Plan Monitoring Act (RAPMA) in 1995, as amended in 2004 and 2008. The VCP is a fee-based cleanup program for property owners, potential property buyers, facility owners, local governments, and other parties interested in voluntarily cleaning up contaminated properties under state oversight. The VCP utilizes a streamlined, results-based approach to environmental cleanup to facilitate the redevelopment and reuse of brownfield sites and provide an alternative approach to more traditional federal cleanup programs such as Superfund or the Resource Conservation and Recovery Act (RCRA) programs. All cleanups are performed in compliance with all state and federal environmental standards and substantive requirements. Upon successful completion of the cleanup activities, the state provides a determination of No Further Action (NFA).

Brownfields definition: No state definition; uses federal definition pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) § 101(39).

Program titles:

- Nebraska Voluntary Cleanup Program established by RAPMA
- Section 128(a) Assessment Program

Liability relief provisions: If at the completion of all cleanup activities, the applicant has remitted all applicable fees, has met the provisions and the objectives agreed to with NDEQ, and has complied with all state and federal environmental standards and substantive requirements, then NDEQ may issue a letter stating that no further action need be taken at the site related to the contamination for which the remedial action was conducted.

Financial incentives (grants, loans, tax provisions, etc.): No financial incentives available.

Legislative or program site eligibility

requirements: No eligibility requirements, open to all entities.

The statute (Neb. Rev. Stat § 81–15,181 to § 81–15,188) requires the following items:

- Application form and a nonrefundable application fee of \$2,000.
- Written agreement to provide reimbursement of NDEQ oversight costs, including submittal of a refundable initial deposit of \$3,000.
- Remedial action plan that conforms to all state and federal environmental standards and substantive requirements.
- Documentation regarding the investigation of land pollution or water pollution at the site, including, information indicating that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way.
- Project monitoring reports, and appropriate engineering, scientific, and financial feasibility data.
- Remedial action report documenting that the plan has been fully implemented.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

The VCP receives federal Section 128(a) funding from EPA to offer Section 128(a) assessments to communities at no cost.

Tax incentives (abatelements, credits, etc.): No tax incentives available.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No other forms of support available.

Program Elements

Technical Elements

Methods/standards/controls: The VCP developed a comprehensive guidance document that outlines the overall cleanup process and information requirements for the preparation and submittal of a remedial action plan. Full characterization of the nature and extent of contamination must be completed before applying to the program. The remedial action plan must consist of an investigation report which presents a conceptual site model based on a thorough investigation, and

Nebraska

a remedial action work plan which outlines the plan for cleaning up the site. The comprehensive guidance document also includes a three-tiered remediation goals protocol that considers human health risks, ground water use, and future land use.

Contaminants covered/excluded: Petroleum, asbestos, lead-based paints, and polychlorinated biphenyls (PCBs) all OK.

Use of long-term stewardship and institutional controls (IC): Institutional controls in accordance with the Nebraska Uniform Environmental Covenants Act are recommended.

- **IC Tracking:** Institutional controls are tracked as part of the Public Record required by the federal Section 128(a) funding.
- **IC Oversight:** NDEQ reviews and approves remedial action plans and performs oversight of implementation of the remedial action, including the implementation of institutional controls.
- **IC Monitoring:** NDEQ performs periodic monitoring of ongoing long-term operation, maintenance and monitoring activities, including monitoring of institutional controls.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.deq.state.ne.us/SuperFun.nsf/Pages/VCPPR>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: November 2006

Costs to enter program or fees for service: Application fee of \$2,000 and initial deposit of \$3,000. Legislation is being considered to reduce the fees and initial deposit.

Funding source for administrative costs and staff: The \$5,000 application fee pays for program administration and enhancement and indirect costs. The \$5,000 initial deposit pays for review and oversight of remedial action plans. If review and oversight costs exceed this initial deposit, NDEQ bills the applicant on a quarterly basis for any additional costs, pursuant to a written agreement with the applicant.

Cleanup Activities

Sites currently in VCP: Currently, 7 sites are active in the voluntary cleanup program.

Sites completed under VCP: 9 sites have successfully completed cleanup requirements under the voluntary cleanup program and have received NFA letters from NDEQ.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The VCP utilizes a streamlined, results-based approach to environmental cleanup to facilitate the redevelopment and reuse of brownfield sites and provide an alternative approach to more traditional federal cleanup programs such as the Superfund or RCRA programs.

Public Participation

Public participation requirements (notice, comment periods, etc.): Preliminary approval of the remedial action plan is public noticed for 30 days. Any person may submit written comments regarding the proposed remedial action during this comment period.

Public participation activities (hearing, meetings, etc.): Any person may also request or petition the Director of NDEQ, in writing, for a hearing. A hearing is held if the comments, request, or petition raise legal, policy, or discretionary questions of general application and significant public interests exists.

Statutory Authorities

Remedial Action Plan Monitoring Act (Neb. Rev. Stat § 81–15,181 to § 81–15,188).

General Information

Contact: Jeff Deckler
Remedial Programs Manager
(Brownfields and Voluntary Cleanup)
303 692 3387

Mark Walker
Voluntary Cleanup and Redevelopment
Program
Targeted Brownfields Assessments
303 692 3000

Dan Scheppers
Colorado Brownfields Revolving Loan Fund
Voluntary Cleanup Tax Credits
303 692 3398

Barbara Nabors
State Incentives for Redevelopment of
Contaminated Land in Colorado
303 692 3402

Address: Colorado Department of Public Health and
Environment (CDPHE)
Hazardous Materials and Waste Management
Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Phone: Brownfields Site Assessments
303 692 3311
888 569 1831

Colorado Brownfields Revolving Loan Fund
303 692 3398
888 569 1831

State Incentives for Redevelopment of
Contaminated Land in Colorado
303 692 3449
888 569 1831

Fax: 303 691 7878

Web site: <http://www.cdphe.state.co.us/HM/rpbrownfields.htm>

Program Description (VCP, brownfields, or related)

Brownfields definition: Abandoned, idled, or underutilized industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

Program titles: The Voluntary Cleanup and Redevelopment Program (VCP)

Liability relief provisions: Colorado statute provides that CDPHE will actively pursue a determination by EPA that a property in the VCP not be addressed under the federal act and no further federal action will be taken with respect to the property at least until the voluntary cleanup plan is completely implemented.

Colorado statute provides that voluntary cleanup plans are not enforceable against a property owner (unless the owner fails to implement the plan after initiating a voluntary cleanup). In addition, information provided by a property owner to support a voluntary cleanup plan or no action petition does not give CDPHE an independent basis to seek penalties from the property owner pursuant to state environmental statutes or regulations.

Financial incentives (grants, loans, tax provisions, etc.):

- Colorado Brownfields Revolving Loan Fund
- Colorado Contaminated Land Redevelopment Tax Credit

Legislative or program site eligibility requirements: Colorado Brownfields Cleanup Revolving Loan Fund. Brownfield sites statewide are eligible.

The Fund may be used at sites that are:

- Publicly-owned, either directly by a municipality or indirectly through a quasi-public entity such as a community development corporation; and/or
- Privately-owned by current or prospective commercial property owners, banks, developers, etc.

The Fund may not be used at any sites:

- Listed, or proposed for listing, on the National Priorities List (NPL).
- That have or should have Resource Conservation Recovery Act (RCRA) permits.
- Subject to an order under the Clean Water Act.
- Underground Storage Tank (UST) sites at which a removal action is required to be taken, according to regulation, within six months.
- Where a federal or state agency is planning or conducting a response or enforcement action.

Cleanups must be approved by the Colorado VCP in order to be eligible to receive a loan through this program.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Colorado Brownfields Revolving Loan Funds (see previous section)

Colorado

Targeted Brownfields Assessments

- The state performs targeted site assessments to characterize the nature and extent of site contamination. This characterization is at no cost to the property owner, and provides assistance in quantifying the need for and potential cost of cleanup. Sites are eligible if they are not on the NPL or under enforcement or other action by a government agency. For a private party to be eligible there must be a clear public benefit. Determinations on which sites will be assessed are done on a priority basis. The state follows EPA guidance on site characterization. A Sampling and Analysis Plan and Quality Assurance Plan that have been approved by EPA are followed.

State Cleanup Program

- Colorado has a small appropriation that is used to clean up contaminated sites. Sites are eligible if they are not listed on the NPL or under enforcement or other action by a government agency. Sites are screened and scored based on human health and environmental impacts and redevelopment potential.

Tax incentives (abatements, credits, etc.):

- Colorado Brownfields Revolving Loan Fund may be used for the purchase of environmental insurance.
- CDPHE supports an environmental resource hotline through the Colorado Brownfields Foundation.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

- Colorado Brownfields Revolving Loan Fund may be used for the purchase of environmental insurance.
- CDPHE supports an environmental resource hotline through the Colorado Brownfields Foundation.

Program Elements

Technical Elements

Methods/standards/controls: No formal Risk-Based Corrective Action (RBCA) or comparable/informal process in place; VCP applicants choose from various cleanup standards or perform risk assessments. State allows risk-based closures.

Contaminants covered/excluded: Petroleum, asbestos, lead paint, and polychlorinated biphenyls (PCBs) all OK.

Ground water standards must be met at property boundary.

Use of long-term stewardship and institutional controls

(IC): While Colorado does not have enforcement authority under its state Superfund program, the most recent amendments to the Hazardous Waste Sites Act authorize the use of environmental covenants that run with the land. (Colorado Revised Statutes (CRS) §§ Sec. 25–15–317 through 327.) CDPHE may use environmental covenants under the VCP if the owner requests it, however it is not

compulsory. If the property owner fails to comply with an environmental covenant, CDPHE may issue an order requiring compliance and may request that the Attorney General bring a suit to enforce the terms of the covenant.

- **IC Tracking:** Colorado is required to maintain an inventory of all sites and facilities at which hazardous substances have been disposed of in the state under the 2001 amendments to the Hazardous Waste Sites Act. As of July 1, 2001 the state is tracking institutional controls at state cleanup program sites, RCRA cleanup sites, federal facility sites, and VCP sites through the database. The primary users of the system are state officials, with local governments as secondary users. The database will eventually be made available to the public. Colorado is required to create and maintain a registry of all environmental covenants, including any modifications or terminations of the covenants under the 2001 amendments to the Hazardous Waste Sites Act.
- **IC Oversight and Monitoring:** Colorado's long-term stewardship provisions include monitoring, institutional controls, and enforcement

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.cdphe.state.co.us/HM/hmmmapapps.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: April 1996. The Memorandum of Agreement (MOA) outlines the following: responsibilities of the state to implement the Voluntary Cleanup and Redevelopment Act (allows owners of contaminated properties to voluntarily propose cleanup actions or petition for no further action determinations for eligible sites); forbearance actions of EPA with regard to liability once a contaminated site owner has entered into the remediation program; and the legal responsibilities of all parties during and upon completion of the remedial action.

Costs to enter program or fees for service: Application fee is \$2,000. Hourly review fee is \$85.

Funding source for administrative costs and staff: Funding for the VCP is provided by federal grants (20%) and fees gathered from the VCP program (80%).

Colorado

Cleanup Activities

Sites currently in VCP: From the program's inception through January 2009, there have been approximately 650 applications. Approximately 50 applications are processed each year.

Sites completed under VCP: No information available

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The VCP offers No Further Action determinations from the state upon completion and approval of cleanup; protection from Superfund liability under an MOA with EPA; and a state income tax credit.

Public Participation

Public participation requirements (notice, comment periods, etc.): Colorado has no formal public participation requirements. However, public notice is provided on an ad hoc basis for the voluntary program.

Public Participation requirements for the Colorado Brownfields Revolving Loan Fund:

- A Community Involvement Plan must be developed for each site receiving a loan through this program. The plan will be site specific and will, therefore, be developed only after a redevelopment project has been selected to receive monies from the Fund.

The following criteria will be used as the basis for developing specific plans:

- A spokesperson will be designated to inform the community of actions taken, respond to inquiries, and provide information.
- Prior to approval of the VCP application—the equivalent of an engineering evaluation/cost analysis (EE/CA)—interviews will be conducted with local officials, community residents, public interest groups, or other interested and affected parties, as appropriate.
- Prior to approval, a Community Relations Plan will be prepared based on community interviews and other relevant information. It will specify the community relations activities expected during cleanup.
- At least one local information repository will be established at or near the location of the cleanup action that includes public information related to the cleanup. The public will be informed of the repository and notice provided of the availability of the administrative record for public review.
- Notice will be published of availability of the Voluntary Cleanup Plan in a major local newspaper of general circulation.

- A 30-day opportunity will be provided for written and oral comments on the Cleanup Plan. Upon timely request, the public comment period will be extended by a minimum of 15 days.
- A written response to significant comments will be prepared.

Public participation activities (hearing, meetings, etc.):

No information available

Statutory Authorities

- Title 25–16–301, et seq., Voluntary Cleanup and Redevelopment Act.
- The Hazardous Waste Sites Act 25–16–101 et seq. (1985, as amended 1988, 1990, 2000, 2001 CRS 25–16–104.6).

Montana

General Information

Contact: Mike Trombetta

Address: Montana Department of Environmental Quality (DEQ)
P.O. Box 200901
Helena, MT 59620-0901

Phone: 406 841 5045

Fax: 406 841 5050

Email: mtrombetta@mt.gov

Web site: <http://www.deq.state.mt.us/statesuperfund/VCRA.asp>
<http://deq.mt.gov/StateSuperfund/vcra.asp>

Program Description (VCP, brownfields, or related)

Brownfields definition: Montana has no definition of brownfields in statute or regulation, and applies the EPA definition when necessary.

Program titles:

- Voluntary Cleanup and Redevelopment Act (1995)
- Brownfields

Liability relief provisions: Program offers closure letters; program can be used by any interested person with the property owner's permission to address all or a portion of a site.

Financial incentives (grants, loans, tax provisions, etc.):

- Loans available through state Board of Investments program may apply to brownfield sites.
- Controlled Allocation of Liability Act and orphan share fund offers reimbursement for expenditures beyond applicant's responsibility from an orphan share fund; level depends on available funding.
- Incentives for participation in the voluntary cleanup program include enforcement stays, mandated DEQ review times, and closure letters.

Legislative or program site eligibility requirements: Any person or entity is eligible to participate in the voluntary cleanup program, and all non-National Priorities List (NPL) sites are eligible, although the state is given discretion to reject applications.

In the brownfields program, projects must meet the following criteria to be eligible for Targeted Brownfields Assessment assistance:

- DEQ's assessment assistance must be crucial to the redevelopment or reuse of the site.
- Applicant must not have contributed to the contamination.
- Site must be contaminated or suspected to be contaminated with hazardous substances or petroleum products.
- Must be a clear benefit to the community.
- Site control and ownership transfer must not be an impediment.
- Must be adequate leveraged funds available for cleanup and redevelopment, and/or the site must have strong development potential.
- Petroleum sites must also meet EPA's petroleum site eligibility requirements.

In addition, DEQ has limited resources for site specific work and may not be able to conduct an assessment or cleanup with brownfields funding if the department is not already addressing the site.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): DEQ may receive funding from EPA each year to conduct a limited number of assessments or cleanups on eligible sites. DEQ uses one of its contractors to conduct the work at the site.

Tax incentives (abatements, credits, etc.): No tax incentives available.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No other form of financial support available, however DEQ may be able to direct interested parties to additional resources.

Program Elements

Technical Elements

Methods/standards/controls: Choice of cleanup levels for the voluntary cleanup program is available. Potential implementation of institutional controls.

Contaminants covered/excluded: All contaminants covered by the voluntary cleanup program, but must represent a release or threat of release to the environment. Under the brownfields program, threats to public health and the environment can be addressed.

Montana

Use of long-term stewardship and institutional controls (IC): For the Voluntary Cleanup Program (VCP), institutional controls allowed as appropriate.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: All applicants entering into the voluntary cleanup program must agree to reimburse the state for all administrative costs. Cost recovery is based on actual cost; there is no standard fee. No costs for the brownfields program.

Funding source for administrative costs and staff: Brownfields program is funded by Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 128(a) State and Tribal Response Program grant.

Cleanup Activities

Sites currently in VCP: 25 sites are currently in the VCP process, while a total of 135 applications have been submitted.

Sites completed under VCP: 28 sites have been “closed” under the VCP process by DEQ.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Closure letter
- Faster cleanup
- Enforcement stay

Public Participation

Public participation requirements (notice, comment periods, etc.): The state approves a voluntary cleanup plan and supervises a public comment process. The participant has five years to execute the plan and cannot deviate from the agreed course of action.

Public participation activities (hearings, meetings, etc.): There is a 30-day public comment period and upon written request to the DEQ by 10 or more persons, a group of 10 or more persons, or by a local governing body DEQ will hold a public meeting.

Statutory Authorities

- The Comprehensive Environmental Cleanup and Responsibility Act (CECRA), Mont. Code Ann. §§75–10–701 through 728, establishes the Environmental Quality Protection Fund and contains priority list, enforcement authority, natural resource damages (NRDs), citizen suit, and property transfer provisions.
- State Participation in CERCLA, Mont. Code Ann. §§75–10–601 through 631, establishes the Hazardous Waste/CERCLA Special Revenue Account and also contains priority list, enforcement authority, NRDs, citizen suit, and property transfer provisions.
- The Voluntary Cleanup and Redevelopment Act (VCRA), Mont. Code Ann. §§75–10–730 through 738 authorizes Montana’s voluntary cleanup program and contains property transfer provisions.
- In 1997, the state passed the Controlled Allocation of Liability Act (CALA), Mont. Code Ann. §§75–10–742 through 751. CALA establishes the orphan share state special revenue account to help pay cleanup costs at non-NPL sites. Montana also has statutory cleanup authority under the Water Quality Act, which provides for citizen suits and enforcement authority.

North Dakota

General Information

Contact: Curtis Erickson, Derek Hall

Address: North Dakota Department of Health
Division of Waste Management
918 East Divide Avenue
Bismarck, ND 58501-1947

Phone: 701 328 5166

Fax: 701 328 5200

Email: cerickso@nd.gov; dahall@nd.gov

Web site: <http://www.health.state.nd.us/WM>

Program Description (VCP, brownfields, or related)

Brownfields definition: North Dakota uses the same definition as defined in federal law.

Program titles: No formal program in place. All voluntary cleanups or remediation documents are reviewed and approved by the Department.

Liability relief provisions: The Department offers closure letters and No Further Action (NFA) letters. The Department may also give site specific responsibility exemptions or regulatory assurances provided certain activities are conducted.

Financial incentives (grants, loans, tax provisions, etc.): None.

Legislative or program site eligibility requirements: Any unit of government (e.g., city, town, county, municipality, nonprofit organization) may submit a property for assessment or cleanup.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): The state is using Targeted Brownfield Assessment grant funds to conduct site assessments, excluding petroleum sites, and Comprehensive Environmental Response Compensation and Liability Act 128(a) State and Tribal Response Program grant funds to conduct site assessments at petroleum sites and contamination removal activities at sites requiring contamination removal.

Tax incentives (abatements, credits, etc.): None

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): None

Program Elements

Technical Elements

Methods/standards/controls: Cleanup standards or goals are site specific.

Contaminants covered/excluded: Does not restrict on basis of contaminants.

Use of long-term stewardship and institutional controls (IC): Various institutional controls allowed, based on individual sites, future use, location, etc.

- **IC Tracking:** The Department, by law, is required to maintain a record of all institutional controls established.
- **IC Oversight:** The Department conducts oversight activities at all voluntary cleanup sites and has the authority to access any site.
- **IC Monitoring:** The Department has the authority to conduct monitoring at any site.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.ndhealth.gov/WM/Publications/BrownfieldsSitesInNorthDakota.pdf>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: At this time, the state does not charge any fees.

Funding source for administrative costs and staff: The state utilizes its Section 128(a) Response Program grant to fund program development and the oversight of brownfield projects.

North Dakota

Cleanup Activities

Sites currently in VCP: No information available

Sites completed under VCP: A number of sites have completed cleanup activities.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): A number of sites have been redeveloped for commercial/retail use and greenspace. Issuance of no further remediation or no further action letters.

Public Participation

Public participation requirements (notice, comment periods, etc.): No statutory requirement for public participation exists; the establishment of institutional controls or environmental covenants requires public notice.

Public participation activities (hearing, meetings, etc.): The establishment of institutional controls involving two or more property owners and an area larger than either one city block or ten acres must have a public hearing.

Statutory Authorities

North Dakota does not have a formal voluntary cleanup program for cleaning up non-National Priorities List (NPL) contaminated sites.

- The Hazardous Waste Management Act (HWMA), N.D. Cent. Code Chapter 23-20.3
- The Water Pollution Control Law (WPCL) N.D. Cent. Code Chapter 61-28.

South Dakota

General Information

Contact: Kim McIntosh

Address: South Dakota Department of Environment and Natural Resource (DENR)
Ground Water Quality Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501-3181

Phone: 605 773 3296

Fax: 605 773 6035

Email: Kim.McIntosh@state.sd.us

Web site: <http://denr.sd.gov>

Program Description (VCP, brownfields, or related)

Brownfields definition: The state uses the same definition for brownfields as defined in federal law.

Program titles: The state has adopted a formal brownfields program, Brownfields Revitalization and Economic Development Program, which is part of the state's Ground Water Quality Program within the DENR. The state assists local communities in obtaining federal brownfields funding and will enter into voluntary cleanup settlements on a case-by-case basis under state law (S. Dak. Codified Laws (SDCL) Chapter 34A–10–17). The state performs Targeted Brownfields Assessments (TBA) and will negotiated site-specific agreements. This law also requires that the state establish a Brownfields Revolving Loan Program.

Liability relief provisions: Legislation (SDCL Chapter 74:05:12) was passed to establish additional liability provisions for sites designated as brownfield sites by the state.

Financial incentives (grants, loans, tax provisions, etc.): No information available

Legislative or program site eligibility requirements: Administrative rules were drafted to outline the Brownfields Revolving Loan Program, the selection process for qualifying sites, and use of state brownfields funds.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): The state is using Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 128(a) State and Tribal Response Program grant (Response Program Grant) funds to conduct assessment of brownfield sites. These sites may include mine scarred lands, petroleum sites, and sites impacted by controlled substances. The state has not yet performed an assessment of a controlled substance site but may in the future.

Tax incentives (abatements, credits, etc.): No grants and loans are available at this time.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No state support for environmental insurance is available.

Program Elements

Technical Elements

Methods/standards/controls: The state will use existing ground water and soil standards as well as site specific risk based data. The state will also consider EPA Region 3 and Region 5 Risk-Based Concentrations when determining the need for a cleanup action.

Contaminants covered/excluded: The state regulates hazardous substances, hazardous wastes, toxic substances, petroleum, pesticides, metals, and other substances considered regulated substances under SDCL Chapter 34A–12.

Use of long-term stewardship and institutional controls (IC): The state allows the use of institutional controls (IC) on brownfield sites, spills, or releases both in the assessment and remediation phase of the project. The state's database (<http://denr.sd.gov/spills>) contains information on each site and provides a mechanism to track long-term institutional controls.

- **IC Tracking:** Institutional controls are recorded on deed notices and environmental covenants are tracked by DENR's database.
- **IC Oversight:** Oversight is provided on all assessment and cleanup projects.
- **IC Monitoring:** South Dakota does not perform field monitoring of ICs.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://www.sddenr.net/env_events/

South Dakota

REGION 8

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: The state does not charge parties to enter into the brownfields program or have fees for staff services.

Funding source for administrative costs and staff: The state utilizes its Section 128(a) Response Program Grant to fund program development and the oversight of brownfields projects.

Cleanup Activities

Sites currently in VCP: As of July 1, 2009, South Dakota has assisted in funding assessment or cleanup work on 30 brownfields projects.

Sites completed under VCP: Over 4,000 sites have received completion or closures letters through the state's program.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Covenants, technical assistance, and completion/closure letters.

Public Participation

Public participation requirements (notice, comment periods, etc.): State policy establishes provisions for public notice, public comment, and hearings/meetings. SDCL §1-40-31 provides for document disclosure for all DENR programs.

Public participation activities (hearing, meetings, etc.): Stakeholder meetings, Web notifications, public meetings, and city/county commission meetings.

Statutory Authorities

- The Regulated Substance Discharge Law, SDCL Chapter 34A-12 (1988, as amended 1989, and 1995), establishes the Regulated Substance Response Fund, which provides for a cleanup fund, strict liability, administrative order authority, civil injunctive relief, cost recovery, and liens.
- The Hazardous Waste Management Act, SDCL Chapter 34A-11 (1983, as amended in 1988, and 1995), establishes standards for treatment, storage and disposal of hazardous wastes, and provides for site access, civil and criminal penalties, and citizen suits.
- The Water Pollution Control Act, SDCL Chapter 34A-2 (as amended July 1, 1995), prohibits the degradation of all ground and surface waters of the state, establishes standards for ground water remediation, and imposes criminal and civil penalties for violations.
- The Environmental Protection Act, SDCL Chapter 34A-10 (as amended July 1, 1995), allows responsible parties to enter into voluntary compliance and settlement for cleanups.

General Information

Contact: Brent Everett, Superfund Branch Manager
Bill Rees
VCP/Brownfields
Section Manager

Address: Utah Department of Environmental Quality
(DEQ)
Division of Environmental Response and
Remediation (DERR)
168 North 1950 West, First Floor
Salt Lake City, UT 84116

Phone: 801 536 4100

Fax: 801 536 4242

Email: Beverett@utah.gov
Brees@utah.gov

Web site: <http://www.environmentalresponse.utah.gov/>

Program Description (VCP, brownfields, or related)

Voluntary Cleanup Program: The Utah State Legislature passed the Voluntary Release Cleanup Program statute in 1997. This legislation created the Voluntary Cleanup Program (VCP) under the UDEQ. The purpose of this program is to encourage the voluntary cleanup of sites where there has been a contaminant release threatening public health and the environment, thereby removing the stigma attached to these sites which blocks economic redevelopment. Voluntary cleanup of these sites will hopefully result in clearing the pathway for returning these properties to beneficial use.

Brownfields definition: The Utah Hazardous Substance Mitigation Act was amended in 2005 to expressly allow the Executive Director to issue Enforceable Written Assurances (EWA) to bona fide prospective purchasers, contiguous property owners, and innocent landowners. These terms are defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and incorporated in the Hazardous Substances Mitigation Act. The UDEQ will not bring an enforcement action under the Hazardous Substances Mitigation Act against the holder of an Enforceable Written Assurance, provided the holder continues to satisfy the ongoing obligations and reasonable steps associated with the written assurance. A total of 31 EWAs have been issued since 2006.

Program titles: Voluntary Cleanup Program

Liability relief provisions: Offers a Certificate of Completion (COC) with limited liability relief for non-responsible parties, future owners and lenders.

Financial incentives (grants, loans, tax provisions, etc.): No state financial incentives.

Legislative or program site eligibility requirements: All sites eligible except for: 1) a treatment, storage, or disposal facility regulated under the Resource Conservation and Recovery Act (RCRA); 2) that portion of a site that is on the National Priorities List (NPL); or 3) that portion of a site for which an administrative, state, or federal enforcement action is existing or pending against the applicant for remediation of the contaminants described in the application.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Program development is funded through CERCLA 128(a) State and Tribal Response Program grant funding for state response programs. Non site-specific administrative costs are in part funded out of state general funds. Site-specific oversight is paid for by the VCP applicant.

Tax incentives (abatements, credits, etc.): No state tax incentives. The UDEQ has issued letters to assist with Federal Tax Incentives.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): A VCP applicant may purchase private insurance.

VCP Program Elements

Technical Elements

Methods/standards/controls: A VCP applicant has a choice of cleanup standards including background values, generic risk-based levels, site-specific risk based levels not relying on institutional controls, site specific risk-based levels relying on institutional controls, and others based on consultation with UDEQ. A VCP applicant may perform a site-specific risk assessment.

Contaminants covered/excluded: Does not restrict on basis of contaminants.

Use of long-term stewardship and institutional controls (IC): Institutional controls may be allowed as part of a cleanup strategy—use and review is decided on a case-by-case basis.

- **IC Tracking:** Institutional controls and conditions of closure are defined in the COC. Institutional controls may also be defined in an environmental covenant developed in accordance with the Uniform Environmental Covenant Act. The COC and covenant are recorded on the property title upon successful completion of a voluntary cleanup. Recorded COCs and covenants are included on the DERR's Web page to augment the public record.

Utah

REGION 8

- **IC Oversight:** The UDEQ reviews and accepts all proposed remedies under the VCP prior to implementation. A site management plan may be necessary to manage engineering and/or institutional controls.
- **IC Monitoring:** The UDEQ actively manages post-remediation sites to ensure the remedy remains protective of human health and the environment.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.superfund.utah.gov/docs/VCPsiteslist.pdf>

<http://www.enviromap.utah.gov/>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: A \$2,000 application fee and an environmental assessment are required at time of application. The fee is used to cover UDEQ costs for eligibility assessment and review of the environmental assessment. Any monies remaining from the application fee are applied towards oversight. A voluntary cleanup agreement must be entered into between the UDEQ and the applicant before UDEQ can review work plans and reports. The agreement provides for reimbursement of UDEQ oversight costs by the VCP applicant.

Funding source for administrative costs and staff: State general fund (20%) and federal grants.

Cleanup Activities

Sites currently in VCP: 67 applications received to date.

Sites completed under VCP: Of the 67 applications: 32 COCs and 2 no further actions (NFA) were issued; 34 projects are active in site characterization, remedial action, and site management; 1 site was ineligible; and 12 projects were terminated.

Benefits (incentives to participate in the VCP covenants not to sue, etc.): Completion under the VCP results in the issuance of a COC that provides a limited release of liability for certain qualified applicants (e.g., non responsible parties). The VCP COC may also provide a mechanism to NFRAP sites on CERCLIS.

Public Participation

Public participation requirements (notice, comment periods, etc.): Utah Code (19-8-115) requires that the UDEQ make rules regarding provisions for public participation by, and notice to, affected property owners regarding voluntary cleanup decisions. Rules have not yet been promulgated.

Public participation activities (hearing, meetings, etc.):

Typically, a 30-day public comment period is required before the UDEQ will accept a work plan as final. Additional community involvement activities, such as public meetings, open houses, fact sheets, notices, and community interviews, may be recommended and required on a site-specific basis.

Statutory Authorities

- Utah Code, Title 19, Chapter 6.
- Utah Code, Title 19, Chapter 8.
- Utah Code, Title 57, Chapter 25.

Wyoming

General Information

Contact: Carl Anderson

Address: Wyoming Department of Environmental Quality (DEQ)
122 W. 25th Street,
Herschler Building,
Cheyenne, WY 82002

Phone: 307 777 7752

Web site: <http://deq.state.wy.us/volremedi/index.asp>

Program Description (VCP, brownfields, or related)

Enacted in the 2000 session of the Wyoming Legislature, the Voluntary Remediation of Contaminated Sites Law sets out a process that can be used by owners of contaminated sites, or by potential developers to reach decisions quickly about required remedial activities and put contaminated sites back into productive reuses. Beginning in 2005, DEQ created a Brownfields Assistance Program to help local governments facilitate investigation and cleanup of brownfields.

Brownfields definition: Rely on federal definition.

Program titles: Voluntary Remediation Program (VRP); Brownfield Assistance Program

Liability relief provisions: DEQ has three types of liability assurances: Covenants Not to Sue (CNTS), Certificates of Completion (COC), and No Further Action (NFA) letters.

Financial incentives (grants, loans, tax provisions, etc.): No financial incentives available

Legislative or program site eligibility requirements: To participate in the VRP, a person must submit an application to the DEQ that identifies the owner and provides a location and description of the site. The application shall also describe the site-specific conditions which the applicant believes satisfy one or more of the eligibility criteria of the law (WS 35-11-1602). No later than 45 days after receipt of the application, DEQ shall give written notice to the applicant containing DEQ's determination of the site eligibility for participation in the VRP. Eligible sites shall include sites which meet the following conditions:

- Sites, or portions of sites, where releases occurred before the effective date of this article; and:
 - The site, or portion of site, where the release occurred was not subject to the permit requirements of this act at the time of the release; or
 - The site is covered by an order of the department, council or by any court and entered with the consent of the person or entity.
- Sites, or portions of sites, where releases occurred on or after the effective date of this article and where the owner or operator is implementing a pollution prevention plan consistent with rules promulgated under this act.

- Waste management or disposal units that have been permitted under this act and the director determines that the release from the permitted unit, if restricted or prohibited by the permit, cannot be remediated in accord with the permit requirements because of technical impracticability.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): No information available

Tax incentives (abatements, credits, etc.): No tax incentives available.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No other forms of support available.

Program Elements

Technical Elements

Methods/standards/controls: Voluntary remediation standards; site-specific, risk-based standards; considerations in choice of remedy; alternate standards for soil or water; point of compliance; contamination from source not on site; alternate remediation standards for site contaminated from source not on site; and supplemental requirements.

Contaminants covered/excluded: Wide variety of contaminants are eligible.

Use of long-term stewardship and institutional controls (IC): Uses institutional controls.

- **IC Tracking:** Conducted as part of remedy agreement performance criteria; publicly available on VRP web site.
- **IC Oversight:** Conducted as part of remedy agreement performance criteria.
- **IC Monitoring:** Conducted as part of remedy agreement performance criteria.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://deq.state.wy.us/volremedi/sitelist.asp>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: March 2002

Costs to enter program or fees for service: \$500 application fee covers the first 10 hours of oversight. Additional oversight is billed at a rate of \$50/hour.

Funding source for administrative costs and staff: No information available

Wyoming

REGION 8

Cleanup Activities

Sites currently in VCP: 143

Sites completed under VCP: 60

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Participation in an integrative, flexible, risk-based cleanup process specifically designed to be responsive to local concerns and to support participants.
- Eligibility for a number of liability assurances including CNTS, COCs, and NFA letters.
- Allows use of non-residential (i.e., restricted use) cleanup levels for soil under certain circumstances. Participants are allowed to petition local governments to designate a non-residential use of control areas. These non-residential land use determinations can be used to support alternative, risk-based cleanup levels for soil that are appropriate for the designated land use. All sites not in the VRP must achieve levels that are safe for unrestricted site uses (generally residential uses), regardless of where a site is located.
- Participants may apply to DEQ for a determination that current technology cannot feasibly be used to clean up soil contamination to established levels. If DEQ makes such a determination, site-specific alternative soil cleanup levels that can be achieved with available technology would likely be established in combination with requirements to control exposures to residual contamination to ensure full protection of human health and the environment. Sites not in the VRP are not eligible for this approach.

Public Participation

Public participation requirements (notice, comment periods, etc.):

- Following any determination by DEQ that a site is an eligible site, or following the submission of any application to modify an existing remedy agreement, the owner or operator shall give written notice to all surface owners of record of land which is contiguous to the site, and to all known adjacent surface owners of record of land, and shall publish notice once per week for four consecutive weeks in a newspaper of general circulation in the county in which the site is located. The notice published in a newspaper shall be a display advertisement. The notice to individual landowners and the notice published in a newspaper shall identify the site, provide a summary of the criterion in WS 35-11-1602 which makes the site eligible for participation in the VRP under this article, describe the process for the public to request the development of a public participation plan under subsection (b) of this section, and provide a 30-day period for the public to request that a public participation plan be developed.

- For any eligible site where there is significant public interest as determined by the director after considering the factors enumerated in paragraphs (i) through (iii) of this subsection, the person who has submitted an application for participation, or the owner of the site, shall prepare and implement a public participation plan which shall be approved by the director. In preparing the plan, the applicant or owner shall consult with and consider the public participation needs of interested parties, including but not limited to contiguous surface owners of record and all known adjacent surface owners of record of land, local government, local economic development agencies or groups, and public interest groups. In determining whether there is significant public interest, the director shall consider whether there have been responses to the notice required under subsection (a) of this section requesting the development of a public participation plan by:
 - At least 25 individuals;
 - An organization representing at least 25 individuals; or
 - The governing body of a local government.
- Any owner or operator of an eligible site which is also subject to permitting or corrective action requirements of the hazardous waste rules and regulations promulgated under WS 35-11-503(d) shall prepare and implement a public participation plan which complies with those rules and regulations.
- At a minimum for any eligible site regardless of whether a public participation plan has been required, prior to entering into a remedy agreement, the owner shall give written notice of the proposed remedy agreement to all surface owners of record of land adjacent to the site, and publish notice once per week for four consecutive weeks in a newspaper of general circulation in the county in which the site is located. The notice shall be of a form and content prescribed by DEQ, and shall summarize the proposed remedy agreement, provide a description of the site, provide for a 30-day public comment period after the date of the last publication, and provide an opportunity for an oral hearing. An oral hearing on the proposed remedy agreement shall be held if DEQ finds sufficient interest. DEQ may enter into a remedy agreement following the public comment period or any hearing, whichever is later.

Public participation activities (hearing, meetings, etc.): See above.

Statutory Authorities

Voluntary Remediation Law, WS 35-11-1601

American Samoa

General Information

Contact: Matt Vojik, Technical Services Manger

Address: American Samoa Environmental Protection Agency (ASEPA)
PO Box PPA
Utulei Office Building
Pago Pago, American Samoa 96799

Phone: 684 633 2304
684 633 5801

Fax: 602 771 2302

Email: matt.vojik@asepa.gov

Web site: <http://asepa.gov>

Program Description (VCP, brownfields, or related)

The American Samoa State Response Program works to identify, evaluate, and address the risks posed by site-specific sources of environmental contamination. Through enforcement, outreach, technical assistance, and local partnerships, ASEPA encourages sustainable response, reuse, and redevelopment of brownfields.

Brownfields definition: Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles: American Samoa State Response Program

Liability relief provisions: N/A

Financial incentives (grants, loans, tax provisions, etc.): N/A

Legislative or program site eligibility requirements: ASEPA maintains an inventory of all potentially contaminated properties in the territory. Oversight and technical assistance are provided on a case-by-case basis.

Sites Not Eligible for Funding Without a Property-Specific Determination: N/A

Sites Not Eligible for Brownfields Funding and Not Eligible for a Property-Specific Determination: The majority of property in American Samoa is communally owned (registered to a family or village) or owned by the American Samoan Government (ASG). Property is not bought and sold, but is acquired under long-term lease agreements. Contamination often occurs on leased land, leaving the local community or government responsible and ineligible for funding.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Section 128(a), ASEPA is in the process of establishing program guidelines, legal authorities, and public awareness necessary to address contaminated properties.

Tax incentives (abatements, credits, etc.): N/A

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): N/A

Program Elements

Technical Elements

Methods/standards/controls: N/A

Contaminants covered/excluded: No exclusions.

Use of long-term stewardship and institutional controls (IC): Institutional controls are allowed.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: N/A

Costs to enter program or fees for service: N/A

Funding source for administrative costs and staff: CERCLA Section 128(a)

Cleanup Activities

Sites currently in VCP: N/A

Sites completed under VCP: N/A

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): N/A

Public Participation

Public participation requirements (notice, comment periods, etc.): Public notice and hearing through the interagency Project Notification and Review System.

Public participation activities (hearing, meetings, etc.): Public meetings, Web site, outreach, and local partnerships.

American Samoa

Statutory Authorities

- American Samoa Code Annotated (A.S.C.A.)
 - A.S.C.A Title 24 Chapter 1, Environmental Quality Act
 - A.S.C.A Title 24 Chapter 12, Pesticides
 - A.S.C.A Title 25 Chapter 46.4805, Pollution
 - A.S.C.A Title 25 Chapter 20, Solid and Industrial Waste and Refuse
- American Samoa Administrative Code (A.S.A.C.)
 - A.S.A.C Title 24 Chapter 1, Environmental Quality Commission
 - A.S.A.C Title 24 Chapter 7, Storage Tank Regulations
 - A.S.A.C Title 24 Chapter 8, Hazardous Waste and Materials Management
 - A.S.A.C Title 24 Chapter 6, Pesticide Regulation

Arizona

General Information

Contact: Juli Boles, Brownfields Program Manager

Tom Di Domizio, Voluntary Remediation Program (VRP) Manager

Address: Arizona Department of Environmental Quality (ADEQ)
1110 W. Washington Street
Phoenix, AZ 85007

Phone: Brownfields Assistance: 602 771 4170 or 800 234 5677 ext. 771 4170
Voluntary Remediation Program: 602 771 4229 or 800 234 5677 ext. 771 4229

Fax: 602 771 2302

Email: boles.juli@azdeq.gov
didomizio.thomas@azdeq.gov

Web site: <http://www.adeq.state.az.us/environ/waste/cleanup/brownfields.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: An abandoned or under-used property with an active redevelopment potential that is complicated by either real or perceived environmental contamination.

Program titles:

- ADEQ Brownfields Assistance Program
- ADEQ Voluntary Remediation Program (VRP)

Liability relief provisions: Prospective Purchaser Agreement (PPA). If the purchaser of the property did not contribute to the contamination at the site, potential Water Quality Assurance Revolving Fund (WQARF) and state Comprehensive Environmental Response Compensation and Liability Act (CERCLA) liability may be avoided through a written agreement with ADEQ. Pursuant to Arizona Revised Statutes (ARS) §49-285.01, ADEQ may enter into a PPA, which provides a written release and covenant not to sue for any potential WQARF liability for existing contamination, if certain statutory conditions are met. Although this statute also refers to providing immunity from contribution claims, which can only be provided through a court decree, ADEQ lacks the independent authority to prevent other parties from pursuing claims.

Financial incentives (grants, loans, tax provisions, etc.):

Site Assessment and Cleanup Grants – Through an EPA grant, funds are provided to perform environmental site investigation and cleanup activities if needed, for a qualifying brownfield property. The program is available to municipalities, prospective purchasers, and parties who would not be found liable for any existing contamination at the property. Information discovered during an investigation will be considered a public record and will be made available for review at ADEQ.

Legislative or program site eligibility requirements: The state's brownfields program covers sites that are abandoned or idled as well as underused industrial and commercial facilities where redevelopment is complicated by real or perceived environmental contamination by hazardous substances.

For a site to be considered a brownfield site, it must meet three criteria:

- It is an underutilized commercial or industrial site;
- It has redevelopment potential; and
- The site's redevelopment potential is complicated by known or perceived contamination with a hazardous substance as defined by CERCLA.

Anyone can participate in the VRP except those conducting:

- Remedial activities subject to corrective action at or closure of a facility, which has qualified for hazardous waste interim status or to which a hazardous waste permit has been issued.
- Remedial activities pursuant to a written agreement between the applicant and the director.
- Remedial activities subject to a judicial judgment or decree.
- Remedial activities required by an administrative order issued by the director prior to the submission of a VRP application.
- Remedial activities pursuant to a judicial action filed and served by the state prior to the submission of a VRP application.
- Remedial activities at a site listed on, or proposed to be listed on, the WQARF Registry.
- Corrective actions being taken pertaining to a regulated underground storage tank (UST) unless a waiver of state assurance fund reimbursement is completed.

Arizona

REGION 9

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VRP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- The Voluntary Remediation Fund is financed by transfers and user fees and may be used for program administration, remediation oversight, and document review.
- The VRP program receives all of its funding from fees and federal grants.

Tax incentives (abatements, credits, etc.): No tax incentives are available.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: The remedies for cleanups are selected on a site-by-site basis. With orphan sites, the state uses Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), and aquifer standards, which are equivalent to both water quality criteria and ground water standards. If responsible parties are conducting cleanup they may reach agreement with the state whereby the parties use a risk-based cleanup standard. The state applies risk assessment for: carcinogens/non-carcinogens (10-6 to 10-4 Hazard Index of less than or equal to 1); background levels; aquifer standards; MCLs/MCLGs; soil standards; and chemical specific health-based standards. Soil remediation standards may be site-specific (10-6 to 10-4 for carcinogens, Hazard Index of less than 1) or off-the-shelf (based on 10-6 for known carcinogens and 10-5 for others). The state uses the same standards for Resource Conservation Recovery Act (RCRA) and Leaking Underground Storage Tanks (LUST).

For the VRP, the state applies risk assessment for carcinogens and non-carcinogens (10-6 to 10-4 and a Hazard Index of less than or equal to 1), water quality criteria, ground water standards, soil standards, and chemical specific health-based standards. ADEQ meets with the Department of Water Resources (DWR) to examine the planned future land use. In addition, ADEQ will conduct public meetings in order to decide if it will perform a risk-based cleanup. For soil cleanups less stringent than residential use standards, a Declaration of Environmental Use Restriction (DEUR) is recorded after the cleanup (ARS §49-152 and 158).

Contaminants covered/excluded: Excluded—Crude oil and its fractions. Covered—Hazardous substances that are mixed with petroleum products; hazardous wastes as defined in the definition of hazardous substance in CERCLA and including those listed under RCRA; hazardous wastes that are ignitable, corrosive, reactive, or toxic.

Use of long-term stewardship and institutional controls (IC): Arizona has a long-term stewardship program for the state voluntary and brownfields cleanup programs that includes monitoring, institutional controls, review and reevaluation, and DEUR that run with the land.

- **IC Tracking:** The program maintains a database that tracks institutional controls and will be made available to the public via the ADEQ Web site. The database tracks both the implementation and monitoring of institutional controls at state cleanup program, VRP, brownfields, and federal facility sites. The primary users of this database are internal staff, property owners, and consultants.
- **IC Oversight and Monitoring:** The program provides oversight, review, reevaluation, and monitoring of ICs.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.azdeq.gov/databases/deursearch.html>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: Effective February 9, 2001, the VRP interim fee rules:

- Establish a \$2,000 non-refundable application fee.
- Establish an hourly VRP oversight rate of \$110 per hour.
- Provide for an initial deposit of \$4,000, to be submitted with the participant's work plan or request for an NFA determination.
- Provide for additional deposits of \$4,000, if an account drops below \$1,000.
- Provide small businesses with the opportunity to pay the application fee in installments under an agreement with the department.
- Provide for quarterly billing statements.

Funding source for administrative costs and staff: Fees and federal grants

Arizona

Cleanup Activities

Sites currently in VCP: 92

Sites completed under VRP: 152 complete, 1 pending (7 Phase I/II completed, 1 cleanup completed, and 1 cleanup in progress with Brownfields Section 128(a) grant funding)

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Faster cleanup of environmental contamination.
- Streamlined processing and interaction with ADEQ.
- Expedited review and approval of cleanup activities.
- No further action determinations for successfully remediated properties.

Public Participation

Public participation requirements (notice, comment periods, etc.): ARS §49–289.02 requires the director to give notice of remedial actions to affected communities.

ARS §49–289.03 states that the public will receive notice and be provided an opportunity to comment to the director regarding the following actions taken by the director:

- The placement of a site on the registry.
- The selection of a remedy.
- Entering into a PPA.
- Entering into a settlement with a responsible party.

The provision also requires the department to develop a community involvement plan, including the establishment of a community advisory board, for each site.

ARS §49–176 establishes the community involvement requirements for the VRP, including requirements for notice and opportunity for comment.

Public participation activities (hearing, meetings, etc.):

ARS §49–176(D) requires the director to consider written comments in response to a public notice providing an opportunity to comment or any public meeting held prior to approving a work plan pursuant to §49–177 or issuing an NFA determination pursuant to §49–181. The director may require the applicant to conduct a public meeting prior to approving a work plan for which notice is required pursuant to the statute.

Statutory Authorities

- The Environmental Quality Act, ARS, Title 49, Ch.2, §§281 to 298 (1986, as amended 1987, 1990, 1992, 1994, 1995, and substantially amended in 1997), establishes the WQARF and provides for strict and proportional liability, administrative orders, abatement and remedial actions, injunctive actions, water supply replacement, civil penalties, cost recovery, treble damages, and voluntary cleanups, and requires the ADEQ to set risk-based remediation standards for residential and nonresidential use. The 1992 Amendments, ARS, Title 49, Ch. 290 §10, Ch. 291 §8 and Ch. 300 §5, identify sources of Fund monies, authorize uses of the Fund, set forth remedial action criteria, and provide additional enforcement authority. ARS, Title 49, Ch. 295 (1992) provides for environmental lien authority. The 1997 amendments provided for a new registry, replacing the former priority list, changed the liability standard to proportional, and provided detailed authority for voluntary cleanups. The Environmental Liens (ARS §49–295) statute provides for enforcement authorities and contaminated property transfer and notice. Voluntary cleanups are provided for under the Greenfields Pilot Program, ARS, Title 49, §§153 to 157/1997 and the VRP (ARS §§49–171 to 188). The VRP also provides for brownfields and contaminated property transfer and notice. Brownfields are also provided for under the BCRLF Program (ARS §49-295).
- APC&EC Regulation 29—Brownfields Redevelopment

General Information

Contact: Barbara Cook, P.E.

Address: California Department of Toxic Substances Control (DTSC)
700 Heinz Avenue
Berkeley, CA 94710

Phone: 510 540 3825

Fax: 510 540 3819

Email: bcook@dtsc.ca.gov

Web site: <http://www.dtsc.ca.gov/SiteCleanup/Brownfields/>

<http://www.calepa.ca.gov/Brownfields/>

Program Description (VCP, brownfields, or related)

Two regulatory bodies within the California Environmental Protection Agency (Cal/EPA) oversee the cleanup of brownfields in California, the Department of Toxic Substances Control (DTSC) and the Regional Water Quality Control Boards (Water Boards). DTSC generally oversees the cleanup of hazardous substance releases, while the Water Boards generally oversee the cleanup of petroleum and other hazardous materials that could potentially affect water quality. While there is overlap in implementing these programs, the Water Boards generally address brownfields cleanups using their Spills, Leaks, Investigations and Cleanup Program (SLIC) or their Leaking Underground Storage Tank (UST) Cleanup Fund Program. DTSC generally addresses brownfields cleanups using programs under its Brownfields and Environmental Restoration Program. This survey focuses mainly on DTSC's cleanup programs.

Brownfields definition: Properties that are contaminated, or thought to be contaminated, and are underutilized due to perceived remediation costs and liability concerns.

Program titles:

- DTSC's Site Mitigation and Brownfields Reuse Program
 - Voluntary Cleanup Program (VCP)
 - The Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Program
 - Schools Team
 - Polanco Redevelopment Act and Redevelopment Agency Environmental Oversight Agreement Program (EOA)
 - California Land Reuse and Revitalization Act of 2004 (CLRRA)

- Water Boards' Site Assessment and Cleanup Programs
- Leaking Underground Storage Tank Cleanup Fund Program
- Spills, Leaks, Investigations and Cleanup (SLIC) Program
- Cal/EPA
 - Site Designation Program

Liability relief provisions: California's Lender Liability law (Health and Safety Code (HSC) 25548-25548.7) exempts lenders from liability under state and local laws and ordinances (but not from common law liability) provided they do not participate in the management of the property and did not directly contribute to the release or potential release of hazardous substances on the property. Lenders acquiring property through a foreclosure or its equivalent, must make a good faith effort to sell the property.

Residential property owners and owners of common areas within a residential common interest development are not liable for: 1) hazardous substance releases that occurred prior to their ownership of which they were unaware and had no reason to know about; and 2) a release of a hazardous substance to ground water underlying the property if the release occurred at a site other than the property.

CLRRRA (effective January 1, 2005) initiates a voluntary program that provides immunity from liability for response costs or damage claims to qualified innocent landowners, bona fide purchasers, bona fide ground tenants, and contiguous property owners of property in urban areas. Participants seeking to qualify for immunity must enter into an agreement that includes the preparation and implementation of a site assessment plan and, if necessary, a response plan. A certificate of completion is issued upon determining that all response actions have been satisfactorily completed in accordance with the agency approved response. This statute will repeal on January 1, 2010 but immunities granted will continue after that date if the person remains in compliance with the requirements. Currently, an amendment to this statute is moving through legislation to extend this date.

A Prospective Purchaser Agreement (PPA) is a legally binding agreement between DTSC or a Water Board and a prospective purchaser, which limits the purchaser's liability to either DTSC or the Water Board for known releases of hazardous substances or materials at the property in exchange for a commitment by the purchaser to undertake or fund some or all of the necessary site cleanup activities. The PPA does not provide liability protection from the federal government or from any additional contamination.

California

DTSC and the Water Boards also have general policies not to pursue enforcement for cleanup against prospective purchasers/tenants/lessors who become site owners or operators if all of the following conditions are met:

- They do not exacerbate or contribute to the existing contamination.
- Their operation will not result in health risks to persons on the site.
- They are not a responsible party (or affiliate) with respect to the existing contamination.
- They allow access for, and do not interfere with, remediation activities.
- Unauthorized disposal is not occurring on the site
- There are other viable responsible parties who are willing to conduct any necessary remediation.

The Polanco Redevelopment Act provides immunity from liability for redevelopment agencies that undertake and complete an action, or cause another person to undertake and complete an action, to remedy or remove a hazardous substance release on, under, or from property within a redevelopment project area. Upon proper completion of a removal or remedial action, this immunity from liability extends to subsequent property owners and operators and may extend to others involved in the redevelopment process. The immunity from liability is expressly not extended to persons who were responsible parties for the release. DTSC developed a program specific to redevelopment agencies exercising their authority under the Polanco Redevelopment Act. The Redevelopment Agency Environmental Oversight Agreement Program provides a standardized, menu-driven approach to streamline cleanup for these agencies by encouraging more effective integration with local processes.

A Site Designation program was created to minimize and/or eliminate the duplication of effort of state and local regulatory agencies involved in the oversight of site cleanup and to ensure approval by all participating agencies. A Site Designation Committee designates an appropriate administering agency that consults with other appropriate support agencies to ensure consistency in applying the other agencies' requirements. A certificate of completion is issued after a site cleanup has been completed. Once issued, the certification provides that no additional cleanup work (other than compliance with the certificate conditions) need be done absent special circumstances.

The Expedited Remedial Action Program (ERAP) (HSC 25396-25399.2) is a pilot program established in 1994. It utilizes the Site Designation process and therefore provides a certificate of completion following the cleanup. This program also provides a covenant not to sue to the participating responsible parties following completion of the cleanup.

Financial incentives (grants, loans, tax provisions, etc.):

- Targeted Site Investigation—Using grant funds provided by EPA through the State Response Program grant, the Targeted Site Investigation (TSI) program provides

funds for DTSC to perform environmental site investigations at no cost to the applicant. The TSI funds are intended to provide state and local governments, school districts, redevelopment agencies, or nonprofit organizations an opportunity to gain more information about a site's condition, which can directly affect decisions on property acquisition or cleanup strategy.

- The CLEAN Program, established in 2000, provides low-interest loans for site characterization (up to \$100,000) and site cleanup (up to \$2,500,000) to help developers, businesses, schools, and local governments accelerate the pace of cleanup and redevelopment at sites. Currently, there is about \$3 million funding available for this program. DTSC hopes to accept applications again in early-2010.
- DTSC, partnering with San Francisco and Los Angeles, received a competitive Revolving Loan Fund grant. The funds are available to assist entities in undertaking cleanup activities at eligible sites.
- DTSC received \$1.8 million dollars in federal American Recovery and Reinvestment (ARRA) federal stimulus funds. DTSC is accepting applications.
- ERAP provides funding for the portion of cleanup costs allocated to responsible persons who are deceased, cannot be identified or located, or are found to be insolvent. DTSC makes the allocation of liability at the time the remedial action plan is proposed.

Legislative or program site eligibility requirements: VCP—Most sites are eligible unless listed as a federal or state Superfund site, a military facility, a site that falls outside of DTSC's jurisdiction, or if another agency currently has oversight. The focus of the program is to help revitalize California's urban areas.

CLRR—To qualify for liability relief, there are specific eligibility requirements for both the property and for innocent landowner, bona fide purchasers, and contiguous property owners. A person must establish specific conditions to qualify including:

- Conducting All Appropriate Inquiries.
- Exercising appropriate care with respect to the release or threatened release.
- Providing full cooperation and site access to those conducting the response action.
- Complying with land use controls.
- Complying with requests for information.
- Providing all notices and satisfying reporting requirements.

CLEAN Program—There are eligibility requirements for the person applying for these low-interest loans and for the property where the loan will be utilized.

California

REGION 9

Eligible properties include: properties within enterprise zones; properties where redevelopment will meet specified requirements that will benefit local government and/or the local community; and properties being used to expand industrial or commercial facilities owned or operated by nonprofit corporations or small businesses.

Redevelopment Agency EOA Program—This program is only available to local redevelopment agencies for properties located within a Redevelopment Project Area, as defined by statute.

The Schools Team ensures the assessment and cleanup of proposed school property sites to a level that protects the students and faculty who will occupy the new school. All proposed school sites that will receive state funding for acquisition or construction are required to go through a rigorous environmental review and cleanup process.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): DTSC, partnering with San Francisco and Los Angeles, offers loans or subgrants to eligible shovel ready cleanup projects under its Brownfield Revolving Loan and ARRA funding. DTSC is accepting applications.

The CLEAN Program offers low-interest loans of up to \$2,500,000 for the cleanup or removal of hazardous materials at underused urban properties where redevelopment is likely to have a beneficial impact on the property values, economic viability, and quality of life of the surrounding community.

UST Cleanup Fund is administered by the State Water Resources Control Board. The Fund reimburses for allowable costs in the cleanup of releases from underground storage tanks.

The Toxic Substances Control Account (TSCA) is used for site investigation, studies and design, removal and remedial actions (prohibited until responsible parties (RPs) are given notice and opportunity to clean up), emergency response, operations and maintenance, state Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, program administration, and enforcement against RPs.

Reimbursement funding also comes from site specific reimbursement agreements as a result of consent agreements and may be used for site investigation and design, removals, operations and maintenance, long-term stewardship, and remedial actions.

VCP Agreements are fee-for-service programs which cover services ranging from an initial site assessment, to oversight and certification of a full site cleanup, based on the proponent's financial and scheduling objectives. The

VCP agreement specifies the estimated DTSC costs, scheduling for the project, and DTSC services to be provided.

The SLIC Program is the Water Board's VCP equivalent. Agreements require the applicant to pay for the cost of Water Board oversight of their activities.

Tax incentives (abatelements, credits, etc.): None

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The California Financial Assurance and Insurance for Redevelopment Program (FAIR Program) (HSC 25395.40-25395.45) is authorized by statute but implementation of the program has been unsuccessful to date. The objective of the FAIR Program is to lower the transaction costs of environmental insurance by providing a package of pre-negotiated and standardized policies to stimulate the cleanup and redevelopment of brownfields and other environmentally impaired properties throughout the state.

Program Elements

Technical Elements

Methods/standards/controls: The DTSC cleanup processes generally follow the federal National Contingency Plan (NCP) cleanup process. ERAP, the California Land Reuse and Revitalization Program, and the Redevelopment Agency EOA Program provide alternative cleanup approaches which do not require consistency with the NCP cleanup process. The following discussions relate to DTSC's cleanup processes. The Water Boards may also follow this process, but generally follow a less structured cleanup process developed under the Water Code.

DTSC follows EPA guidance for risk assessments and uses the federal risk management range with 10-6 as the point of departure. The state publishes chemical-specific toxicity factors that are useful in assessing potential risks and hazards from chemicals at sites. Cal/EPA developed screening levels for hazardous substances typically found at brownfield sites to assist developers and local governments in estimating the costs and extent of cleanup. Water Boards develop Basin Plans which set cleanup requirements for ground water and surface water within each basin. Recent legislation (AB 422) requires DTSC and the Water Boards to evaluate the potential for migration of chemicals into indoor air.

Cleanup plans are called Remedial Action Plans (RAPs) or Removal Action Workplans (RAWs) depending upon the capital costs of the recommended cleanup alternative. RAPs are generally used if capital costs for the proposed cleanup method are estimated to

California

be more than \$1,000,000 and use the nine federal criteria to evaluate alternatives in addition to six state criteria. RAWs are generally used if capital costs are estimated to be \$1,000,000 or less and use three evaluation criteria similar to the federal Engineering Evaluation/Cost Analysis (EE/CA) guidance.

Land use restrictions placing limits or requirements on future use of a property are required by regulations when properties are not remediated to unrestricted use criteria. DTSC is statutorily required to maintain a list of all land use restrictions recorded as a condition of cleanup to protect the public from unsafe exposures to residual contamination that is left in place. Deed Restricted Sites are posted on the DTSC Web site in the EnviroStor database to provide the public easy access to information on deed restrictions and affected sites.

All of the cleanup programs make a determination for sites within the program that do not pose an unacceptable risk. DTSC issues a no further action determination or certifies a site once the final remedy has been fully implemented. The Water Boards issue a no action letter or a no active cleanup letter at case closure. Both entities issue a certificate of completion following implementation of the final remedy for sites within the Site Designation Program.

Contaminants covered/excluded: DTSC generally regulates hazardous substances, consistent with the federal definition. Petroleum releases from non-underground storage tank releases may also be addressed. DTSC's Schools Team also addresses naturally-occurring chemicals. The Water Boards regulate hazardous materials which include petroleum hydrocarbons.

Use of long-term stewardship and institutional controls (IC): DTSC has a long-term stewardship program that covers all cleanup activities. The state allows institutional controls, monitors and enforces cleanups, and completes audits. Institutional controls include well drilling restrictions, easements, restrictive covenants, reversionary interests, deed restrictions, and notices placed on deeds. As mandated by state law, DTSC maintains a list of deed-restricted properties that is available on the Internet.

- **IC Tracking:** Institutional controls used by DTSC to notify the public include posting sites, publishing notices in newspaper, creating mailings for local residents, and maintaining the EnviroStor database. The state has a process outlined in statute to remove a deed restriction if a site is remediated to unrestricted use.
- **IC Oversight:** DTSC is currently utilizing the Terradex™ LandWatch system to give early notification of potential activities on properties subject to land use restrictions implemented as part of a final remedy for a site under DTSC oversight.
- **IC Monitoring:** In addition to deed restrictions, DTSC's regulations also require financial assurance for sites that are not cleaned to levels appropriate for unrestricted use. DTSC also requires the periodic review of site conditions to ensure that site conditions have not changed and that the remedy is still effective.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

http://www.envirostor.dtsc.ca.gov/public/deed_restrictions.asp

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: DTSC is obligated to recover its costs and does this through voluntary cleanup agreements, reimbursement agreements, contracts, and settlements. The Water Board SLIC program also requires reimbursement of staff costs.

Funding source for administrative costs and staff: For DTSC, TSCA (75%), federal grants (20%), and reimbursement monies (5%).

Cleanup Activities

Sites currently in VCP: DTSC staff conducts and oversees cleanup on an average of 500 hazardous substance release sites at any given time.

Sites completed under VCP: DTSC staff issued either certifications or no further action decisions on over 300 cleanups.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The VCP allows motivated parties who are able to fund the cleanup—and DTSC's oversight—to move ahead at their own speed to investigate and remediate their sites in keeping with DTSC processes and standards.

PPAs provide legal protection to purchasers or developers who are willing to clean up contaminated sites at their own expense, but are apprehensive about liability for existing contamination. Under a PPA, DTSC provides a covenant not to sue for existing contamination and provides for contribution protection.

The ERAP revises a liability scheme based on fair and equitable standards and provides indemnification protection through a covenant not to sue.

The Redevelopment Agency EOA Program allows redevelopment agencies to enter into agreements with DTSC for oversight and services under the Polanco Act, which unlike the VCP, does not designate these agencies as RPs. This program also allows redevelopment agencies to initiate investigative and/or cleanup work, while reserving their option to withdraw from the process without negative consequences.

CLRRRA provides broad liability relief from numerous statutes as well as immunity from non-agency claims for response costs or other damages.

Public Participation

Public participation requirements (notice, comment periods, etc.): DTSC publishes a Public Participation Guidance Manual to assist those cleaning up sites in conducting the required public participation activities. For each site undergoing site characterization and cleanup, DTSC assesses the community around the site to determine what their specific interests and needs are with respect to the site and how best to involve them in DTSC's decision-making process. Fact sheets, public notices, work notices, and responsiveness summaries (i.e., in response to comments received on remedy selection documents) are generally required to keep people informed. Anyone affected by a removal or remedial action must be provided with the opportunity to participate in DTSC's decision-making process. DTSC must develop and make available to the public, a schedule of activities for each site. These policies apply to both state Superfund and VCP sites.

The Porter-Cologne Act contains specific notice requirements including a requirement that the Water Boards must publish a list of sites where Methyl Tertiary Butyl Ether (MTBE) has been detected in ground water. For sites under CLRRRA, specific public participation requirements are described for the Water Boards.

The California Land Reuse and Revitalization Act specifies public participation requirements for both DTSC and the Water Board. Fact sheets, public notices, work notices, and responsiveness summaries (i.e., in response to comments received on remedy selection documents) are generally required to keep people informed. The Response Plan must undergo a 30-day public review and comment period.

Public participation activities (hearing, meetings, etc.): DTSC generally holds at least one public meeting before adopting a remedial action plan. The determination whether to require a public meeting at other times during the cleanup process is based upon an assessment of the specific needs of the surrounding community.

The Porter-Cologne Act contains requirements to notify interested persons of public hearings or meetings concerning a site. Water Boards have traditionally used their Board meetings to provide interested persons with an opportunity to comment on a project. For high interest sites, community meetings may also be held near the project location.

Statutory Authorities

California Health and Safety Code:

- The Hazardous Substance Account Act, Division 20, Chapter 6.8 §§25300 et seq. (1981, as amended in subsequent years) establishes the Site Mitigation Program and provides for cleanup funding, enforcement authority, priority list, long-term stewardship, voluntary cleanup, establishes the CLEAN Program (§§25395.20–25395.32), the FAIR Program (§25395.40–25395.45) and the Private Site Manager Program (§25395.1–25395.15).
- Division 20, Chapter 6.85 (HSC 25396–25399.2) establishes the ERAP.
- Division 20, Chapter 6.82 (§25395.60–25395.105) and Chapter 6.83 (§25395.110–25395.119) contains the liability protections contained in the CLRRRA.
- Community Redevelopment Law (Polanco Redevelopment Act), Division 24, Part 1, Chapter 4, Article 12.5, §33459–33459.8.
- Division 20, Chapter 6.65, §§25260–25268 of the California Health and Safety Code Unified Agency Review of Hazardous Release Sites (HSC 25260–25268) establishes the Site Designation Program and process.
- Environmental Review Process for Proposed New or Expanding School Sites: Education Code, sections 17210, 17210.1, 17213.1, and 17213.2

California Code of Regulations:

- Title 22, Chapter 390, §67391.1 contains regulations requiring land use covenants and financial assurance for sites not cleaned up to unrestricted residential cleanup standards.
- Title 22, Chapter 40, §§67401.3 and 67401.7 contain regulations for ERAP.
- Title 22, Chapter 47, §§68200-68214 contains regulations for the CLEAN Program.
- Title 22, Chapter 51, §§69000-69013 contains regulations for the Private Site Manager Program.
- Title 22, Chapter 51.5, §§69100-69105 contains regulations for Phase I Environmental Site Assessments conducted for potential school sites.

Commonwealth of the Northern Mariana Islands (CNMI)

General Information

Contact: Ray Masga

Address: Division of Environmental Quality (DEQ)
Site Assessment and Remediation Branch/
Brownfields Program
PO Box 501304
Saipan, MP 96950

Phone: 670 664 8500

Fax: 670 664 8540

Email: raymasga@deq.gov.mp

Web site: <http://www.deq.gov.mp>

Program Description (VCP, brownfields, or related)

The Site Assessment and Remediation Branch (SAR) is responsible for all environmental issues relating to the assessments and cleanups of site contamination in the CNMI as a result of the release of hazardous substances. SAR implements programs and enforces regulations which aim to ensure that contaminated sites are cleaned up to standards protective of human health and the environment. Overall, the SAR branch mission is to strengthen the DEQ's mandated responsibility to protect the public health and the environment in the CNMI from the threats posed by sites contaminated with hazardous substances. Under the Brownfields Program, DEQ has set up several projects which are intended to meet the program's requirements to establish and/or enhance DEQ's Response Program for contaminated sites in the CNMI.

Brownfields definition: The CNMI adopted the federal definition of "brownfields" included in Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002. Brownfield means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles: CNMI DEQ Site Assessment and Remediation Branch/Brownfields Program

Liability relief provisions: None

Financial incentives (grants, loans, tax provisions, etc.): None

Legislative or program site eligibility requirements:

Eligible properties are those sites identified under the Brownfields Law which includes the following:

- Sites contaminated by controlled substances
- Sites contaminated by petroleum or a petroleum product
- Mine-scarred lands

Sites Not Eligible for Funding Without a Property-Specific Determination:

- Facilities subject to planned or ongoing Comprehensive Environmental Response Compensation and Liability Act (CERCLA) removal actions.
- Facilities that are subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees, or to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA).
- Facilities subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- Facilities that are land disposal units that have filed a closure notification under subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.
- Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA.
- Portions of facilities for which funding for remediation has been obtained from the Leaking Underground Storage Tank (LUST) Trust Fund.

Sites Not Eligible for Brownfields Funding and Not Eligible for a Property-Specific Determination:

- Facilities listed (or proposed for listing) on the National Priorities List (NPL).
- Facilities subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.
- Facilities that are subject to the jurisdiction, custody, or control of the United States government. (NOTE: Land held in trust by the United States government for an Indian tribe is eligible for brownfields funding.)

Commonwealth of the Northern Mariana Islands (CNMI)

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): None

Tax incentives (abatements, credits, etc.): None

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):

- Section 128(a) Response Program Funding
- 104(k) ARC Funding:
 - \$200,000 Petroleum Assessment Grant (FY 2007)
 - \$200,000 Hazardous Substance Assessment Grant (FY 2008)

Program Elements

Technical Elements

Methods/standards/controls: CNMI Environmental Screening Levels.

Contaminants covered/excluded: Hazardous substance (including explosives constituents) and petroleum products.

Use of long-term stewardship and institutional controls (IC): Prescribed under the Harmful Substance Cleanup Regulations (Part 200 §65-40-220).

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: None

Costs to enter program or fees for service: None

Funding source for administrative costs and staff: Section 128(a) Response Program funding.

Cleanup Activities

Sites currently in VCP: None

Sites completed under VCP: None

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): None

Public Participation

Public participation requirements (notice, comment periods, etc.): Public Notice, Public Comment, Press Release, Public Records, Web site, Public Repository.

Public participation activities (hearing, meetings, etc.): Public meetings, Web site, Public Repository.

Statutory Authorities

The CNMI does not have regulatory authorities which fully equate to all CERCLA response authorities. It has limited CERCLA-like legal authorities that address environmental issues pertaining to site contamination:

- CNMI DEQ Environmental Protection Act (1980) as amended.
- Harmful Substance Cleanup Regulations (2001).
- Used Oil Regulations (2003).
- AST/UST Regulations (2005).
- Hazardous Waste Management Regulations (2008).

Guam

General Information

Contact: Roland Gutierrez
Guam Environmental Protection Agency
(GEPA)

Address: DSMOA/Brownfields Program
Guam Environmental Protection Agency
P.O. Box 22439 GMF
Barrigada, GU 96913

Phone: 671 475 1658

Fax: 671 475 8007

Email: Roland.Gutierrez@epa.guam.gov

Web site: <http://node.guamepa.net/programs/admin/dsmoa.html>

Program Description (VCP, brownfields, or related)

Guam EPA has recently begun addressing brownfield sites and works in partnership with the Guam Economic Development and Commerce Authority, the Port Authority of Guam, and the Guam International Airport Authority. It is their goal to identify and evaluate the risks posed by these properties and find solutions so that reuse and redevelopment is possible.

Brownfields definition: Brownfield means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The Brownfields Site definition is found in Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002.

Program titles: Guam Environmental Assessment & Remediation (GEAR) Program

Liability relief provisions: None

Financial incentives (grants, loans, tax provisions, etc.): No

Legislative or program site eligibility requirements:

The Brownfields Law identifies three types of properties that are specifically eligible for funding:

1. Sites contaminated by controlled substances
2. Sites contaminated by petroleum or a petroleum product
3. Mine-scarred lands

Sites Not Eligible for Funding Without a Property-Specific Determination

- Facilities subject to planned or ongoing Comprehensive Environmental Response Compensation and Liability Act (CERCLA) removal actions.

- Facilities that are subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees or to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA).
- Facilities subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- Facilities that are land disposal units that have filed a closure notification under subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.
- Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA.
- Portions of facilities for which funding for remediation has been obtained from the Leaking Underground Storage Tank (LUST) Trust Fund.

Sites Not Eligible for Brownfields Funding and Not Eligible for a Property-Specific Determination

- Facilities listed (or proposed for listing) on the National Priorities List (NPL).
- Facilities subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.
- Facilities that are subject to the jurisdiction, custody or control of the United States government. (NOTE: Land held in trust by the United States government for an Indian tribe is eligible for brownfields funding.)

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- 128(a) – \$400,000 for Brownfields Site Assessment and Cleanup (2004)
 - \$350,000 for Brownfields Site Assessment and Cleanup (2007)
 - \$350,000 for Brownfields Site Assessment and Cleanup (2009)
- 104(k) – \$200,000 for Hazardous Substance Site Assessment and \$200,000 for Petroleum Site Assessments (2006 – 2009)

Guam

Tax incentives (abatements, credits, etc.): None

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): None

Program Elements

Technical Elements

Methods/standards/controls: None

Contaminants covered/excluded: Petroleum, lead-based paint, asbestos

Use of long-term stewardship and institutional controls (IC): None

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: None

Costs to enter program or fees for service: None

Funding source for administrative costs and staff:
128(a) Grant and 104(k) Cooperative Agreement

Cleanup Activities

Sites currently in VCP: None

Sites completed under VCP: None

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): None

Public Participation

Public participation requirements (notice, comment periods, etc.): Public Notice, Public Comment, Press Release, Public Records, Web site, Public Repository

Public participation activities (hearing, meetings, etc.): Public meetings, Web site, Public Repository

Statutory Authorities

Guam does not have a law which fully equates to all CERCLA response authorities. It has partial and limited CERCLA-like legal authorities in three laws and an adopted RCRA subtitle C regulation:

- Environmental Trust Fund Law, 10 GCA §§ 45200-45203
- Article 1 of the Solid Waste Law, 10 GCA § 51101-51118.1
- Underground Storage Tank Law, 10 GCA §§ 76101-76120
- Adopted RCRA subtitle C regulation, 22 GAR §§ 30101-30113

Hawaii

General Information

Contact: Fenix Grange

Address: Hazard Evaluation and Emergency Response Office
Hawaii, State Department of Health (DOH)
919 Ala Moana Boulevard, Room 206
Honolulu, HI 96814

Phone: 808 586 4249

Email: fenix.grange@doh.hawaii.gov

Contact: Ruby Edwards

Address: Brownfields Cleanup and Redevelopment Office of Planning
Department of Business Economic Development and Tourism
P.O. Box 2359
Honolulu, HI 96804-2359

Phone: 808 587 2817

Email: redwards@dbedt.hawaii.gov

Contact: Mary Alice Evans

Address: Office of Planning
Department of Business Economic Development and Tourism
P.O. Box 2359
Honolulu, HI 96804-2359

Phone: 808 587 2802

Email: maevans@dbedt.hawaii.gov

Web sites: <http://www.hawaii.gov/dbedt/gis/brownfields/>
<http://www.hawaii.gov/doh/eh/heer/vrp.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Properties that are contaminated to the extent that some type of response action is needed before, or in conjunction with, future development.

Program titles:

- Voluntary Response Program (VRP)
- Fast Track Cleanup Process
- EPA Assessment Grant Programs
- EPA Cleanup Revolving Loan Fund programs
- EPA Job Training Grant Program

Liability relief provisions: The Hawaii Environmental Response Law states that a defendant may avoid liability where the real property on which the facility concerned is

located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and either: 1) at the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed on, in, or at the facility; 2) the defendant is a government entity which acquired the facility through involuntary transfer or acquisition; or 3) the defendant acquired the facility by inheritance or bequest.

The Hawaii Environmental Response Law also states that a prospective purchaser will qualify for an exemption from liability by: 1) entering into a voluntary response agreement with the department prior to becoming the owner or operator of the property that is the subject of the agreement; and 2) completing a voluntary response action and receiving a letter of completion from the DOH. Parties who purchase property from an owner who has completed a voluntary response action and received a letter of completion from the DOH will be exempt from future liability to the DOH as to the specific hazardous substances at issue in the voluntary response action.

The Hawaii Environmental Response Law was amended in 2009 to add a definition for "bona fide prospective purchasers" consistent with federal law and to limit liability for bona fide prospective purchasers who knowingly purchase contaminated property. The recent amendment makes the Hawaii Environmental Response Law consistent with federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) amendments enacted in 2002.

Financial incentives (grants, loans, tax provisions, etc.): Potential sources of leveraged state funds for the State of Hawaii Brownfields Cleanup Revolving Loan Fund include the Hawaii Capital Loan Program, Hawaii Innovation Development Program, Community-Based Economic Development Loan Program, and the nonprofit Hawaii Community Loan Fund.

County-administered Community Development Block Grants (CDBG) may also be leveraged.

Coalition partners work through existing planning and redevelopment programs to identify additional funding sources for brownfields cleanup.

Legislative or program site eligibility requirements: All sites are eligible except for:

- A site listed or proposed to be listed on the National Priorities List (NPL).
- Those sites with respect to which an order or other enforcement actions has been issued or entered under Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and is still in effect.
- A site where the United States Coast Guard has issued a federal Letter of Interest.
- A site that is subject to corrective action under Subtitle C of the Resource Conservation and Recovery Act (RCRA) and chapter 342J of the state's hazardous waste law.

Hawaii

- A site that poses an imminent and substantial threat to human health, the environment, or natural resources as determined by the director.

The requesting party must provide the DOH with written consent from the property owner to conduct the voluntary response action including any restrictions of property rights.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Assessment Grant program (EPA funded up to \$400,000 over two years).
- Cleanup Revolving Loan Fund program (EPA funded up to \$2,000,000 over five years).

Tax incentives (abatements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Job Training Grant programs to provide training for residents of communities affected by brownfields to facilitate cleanup of brownfields sites and prepare trainees for future employment in the environmental field. (Each EPA grant is funded up to \$200,000 over two years.)

Program Elements

Technical Elements

Methods/standards/controls: Hawaii uses a compilation of Environmental Action Levels (EAL) prepared by an in-house scientist. The EALs cover all environmental hazards, not just human health. The VRP requires that cleanup for carcinogens be to a cancer risk level of 10-6.

Contaminants covered/excluded: 150+ common contaminants are covered, including petroleum compounds, solvents, metals, pesticides, dioxins, Polychlorinated Biphenyls (PCB), PAHs, etc. Asbestos and lead-based paint evaluated separately.

Use of long-term stewardship and institutional controls (IC): Institutional controls allowed, primarily after active remediation has been conducted.

- **IC Tracking:** Hawaii does not have an IC tracking system
- **IC Oversight:** Hawaii does not provide IC oversight.
- **IC Monitoring:** Hawaii does not monitor ICs.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: \$1,000 application fee per request, \$100 per hour oversight charge (applied to a required \$5,000 deposit).

Funding source for administrative costs and staff: EPA, State of Hawaii Brownfields Cleanup Revolving Loan Fund.

Cleanup Activities

Sites currently in VCP: 28

Sites completed under VCP: 12

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Letter of completion, liability protection as previously described.

Public Participation

Public participation requirements (notice, comment periods, etc.):

- Title 10. Public Safety and Internal Security, Chapter 128D. Environmental Response Law, PART II. Voluntary Response Program (§§128D–31 et seq.).
- Hawaii Administrative Rules Chapter 11–451, the State Contingency Plan.

Public participation activities may be implemented by the DOH and required of responsible parties, in accordance with the state contingency plan, or any other state rule.

Within 10 days of receiving an application and processing fee, the department is required to:

- Post a sign at the site notifying the public of participation in the voluntary response program, the public's opportunity to comment, and how a copy of the application may be obtained.
- Send a brief summary of the application to the Hawaii Office of Environmental Quality Control for publication in the office's bulletin along with instructions for obtaining a copy of the application and commenting procedures to the department.

The Hawaii Administrative Rules also provide for the availability of the administrative record of the selection of a remedial action for public inspection, and mandates (within 60 days after initiation of onsite removal activity) the availability the administrative record of removal actions for public inspection.

Public participation activities (hearings, meetings, etc.): No information available

Statutory Authorities

- Title 10. Public Safety and Internal Security, Chapter 128D. Environmental Response Law, PART II. Voluntary Response Program (§§128D–31 et seq.).
- Hawaii Administrative Rules Chapter 11–451, the State Contingency Plan.

Nevada

General Information

Contact: Lisa Johnson

Address: Nevada Division of Environmental Protection (NDEP)
Bureau of Corrective Actions
901 S Stewart Street
Carson City, NV 89701

Phone: 775 687 9379

Fax: 775 687 8335

Web site: <http://ndep.nv.gov/bca/brownfld.htm>

Program Description (VCP, Brownfields, or related)

Nevada's Brownfields Program aims to reach out for opportunities to create partnerships that improve Nevadan's lives and the quality of their communities, and to be acknowledged as an agency that maximizes opportunities through the creative and efficient use of resources.

The Nevada State legislature passed the Voluntary Cleanup Program (VCP) in 1999. The VCP provides relief from liability to owners who undertake cleanups of contaminated properties under the oversight of the NDEP.

Brownfields definition: The term brownfields is used to describe abandoned, idled, or underused industrial or commercial properties taken out of productive use because of real or perceived risks from environmental contamination.

Program titles: Nevada Brownfields Program, VCP

Liability relief provisions: The VCP provides liability relief to: 1) current owners of contaminated sites; 2) prospective purchasers; 3) financial entities who hold an evidence of title to protect a security interest; or 4) a government entity which has received a parcel of real property through default.

The 2003 State Legislative Session resulted in the adoption of liability relief provisions for bona fide prospective purchasers and innocent landowners modeled on the federal Brownfields Law.

Financial incentives (grants, loans, tax provisions, etc.): The state received federal funds intended for use in encouraging brownfields redevelopment; the Nevada Brownfields Program manages these funds for use in a holistic approach to redevelopment where environmental concerns may present a barrier. Grants and low-interest loans are available for assessment and cleanup activities.

Legislative or program site eligibility requirements:

For VCP—Application and site characterization information.

For brownfields funding—Federal site eligibility criteria are used.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): State uses a portion of its Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Section 128 State Response Program funds to provide brownfields assessment and cleanup grants. Applications are accepted at any time, and project funding is made on a first-come, first-serve basis. Nevada also operates a \$2,000,000 Revolving Loan Fund targeted for cleanups conducted by private land owners and developers.

Tax incentives (abatements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls: Actions under the state VCP must be in compliance with the state's environmental professional certification program. Sampling at brownfields assessments and cleanups must be conducted consistent with a project-specific Quality Assurance Plan approved by EPA Region 9 and must meet Tier III data quality requirements with independent data verification.

This is achieved by following the Region 9 approved State of Nevada Brownfields Program Quality Assurance Program Plan (QAPP)
(http://ndep.nv.gov/bca/brownfield_qa_plan07.htm).

Contaminants covered/excluded: Asbestos, lead paint, polychlorinated biphenyls (PCBs) OK; petroleum OK, only if site does not qualify for reimbursement under the state's Petroleum Fund.

Use of long-term stewardship and institutional controls (IC): Institutional controls are utilized in the NDEP No Further Action letters.

- **IC Tracking:** Under Development
- **IC Oversight:** Under Development
- **IC Monitoring:** Under Development

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://ndep.nv.gov/bca/brownfld.htm>

Nevada

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees: For VCP, depends on type of property. Residential property fee is \$400. Commercial property: less than 1 acre (\$500), 1–25 acres (\$1,000), 26–100 acres (\$1,600), more than 100 acres (\$2,000).

Funding source for administrative costs and staff: CERCLA Section 128(a) State and Tribal Response Program Grant.

Cleanup Activities

Sites currently in VCP: 1 site in the program.

Sites completed under VCP: 1 site completed.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Liability relief provisions for bona fide prospective purchasers and innocent landowners modeled on the federal Brownfields Law.

Public Participation

Public participation requirements (notice, comment periods, etc.): Prior to the acceptance period of a remedial agreement between NDEP and the participant, a period of public comment and public meetings will be held to allow input from residents and businesses within the community where the cleanup is being undertaken. These activities will be coordinated by NDEP at no additional cost to the participant. Comments from the public will be incorporated as appropriate into the corrective action plan.

Public participation activities (hearings, meetings, etc.): No information available

Statutory Authorities

- Nevada Administrative Code 459.973–459.9743.
- Nevada Revised Statutes, Title 40, Chapter 459.

Alaska

General Information

Contact: John Carnahan, Brownfields Coordinator

Address: Contaminated Sites Program
Alaska Department of Environmental
Conservation (DEC) Division of Spill
Prevention and Response
610 University Avenue
Fairbanks, AK 99709-3643

Phone: 907 451 2166

Fax: 907 451 2155

Email: John.Carnahan@alaska.gov

Web site: <http://www.state.ak.us/dec/spar/csp/brownfields.htm>

Program Description (VCP, brownfields, or related)

DEC's Contaminated Sites Program (CSP) has developed resources to assist tribes, villages, cities, borough governments, and state agencies in identifying and assessing their brownfield sites. When appropriate, DEC's Reuse and Redevelopment (R&R) Program assists eligible applicants in applying for EPA Brownfields assistance and grants. The CSP provides technical assistance, performs site assessments, conducts cleanups, maintains a publicly accessible contaminated sites database, and tracks on institutional controls. The program objectives are to enable economic redevelopment of properties that are underutilized as a result of real or perceived environmental conditions, while providing adequate oversight and protection to human and ecological receptors. The program dedicates staff resources to work with government agencies, tribes, responsible parties, land owners, EPA, and developers to effectively facilitate environmental remedies commensurate with site conditions, leading to the reuse of contaminated properties.

Brownfields definition: Alaska has not adopted a definition of brownfields, but adheres to the general definition of brownfields as real property, where the continued use, expansion, or reuse or redevelopment may be complicated by the presence or perceived presence of a hazardous substance, pollutant, or contaminant.

Program titles:

Contaminated Sites Program (sub-programs within the CSP include):

- a. State/Private Cleanup Program
 - i. Reuse and Redevelopment Program (Brownfield Program)
- b. Federal Facilities Environmental Restoration Program
- c. Development and Implementation Program

Liability relief provisions: The principal tool for clarifying liability is the prospective purchaser agreement (PPA). PPAs have been negotiated for specific sites that meet appropriate criteria. A PPA is a legal instrument that must be negotiated through the Attorney General's office.

Financial incentives (grants, loans, tax provisions, etc.): No grants, loans, or other provisions are available at this time. The R&R Program provides limited assessment or cleanup services to eligible applicants through its DEC Brownfield Assessment program, which targets conditionally eligible brownfield sites that may be in public, private, or state ownership.

Legislative or program site eligibility requirements: The CSP is used for sites regulated under Alaska Administrative Code (AAC) 18 AAC 75, Oil and Other Hazardous Substances Pollution Control regulations, and 18 AAC 78, Underground Storage Tanks (USTs) regulations. Both sets of regulations use slightly different terminology; however, the term "contaminated site" is a generic term referring to both regulated UST and non-UST contamination. The program operates principally under a voluntary basis, with responsible parties moving forward in accordance with regulation, under CSP oversight, without legal agreements.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

DEC's R&R Program has a DEC Brownfield Assessment program which uses state and federal (EPA) funds to conduct assessments and cleanups at eligible properties in Alaska. Targeted properties are brownfield sites and state-owned sites for which there is a local or community interest in revitalizing. State funding is limited for use on state-owned properties or properties where the state has been identified as a potentially responsible or liable party.

- Site eligibility—DEC's R&R Program's federal assessment funding may only be used in association with properties that meet EPA Brownfields funding criteria. DEC will not fund cleanups at properties where the owner is responsible for the contamination. DEC has discretion in selecting areas to target for environmental assessment assistance and prefers to target properties that: are abandoned or publicly owned; have low or moderate contamination; suffer from the stigma of liability, or have a prospective purchaser willing to buy and pay for the cleanup of the property, if needed. The R&R Program has developed a site selection process guided by criteria used to help establish relative priorities among the properties in Alaska. The criteria include the following:
 - Property redevelopment has the potential to provide a high public benefit.

Alaska

- Property control and ownership transfer is not an impediment—preference will be given to sites that are publicly owned, either directly by a municipality or through a quasi-public entity such as a community development corporation.
- There is a strong municipal commitment—either financially, or through commitment of municipal resources for other components of the project.
- There is a clear municipal/community vision and support for property revitalization.
- There are adequate leveraged funds available for the cleanup and redevelopment, and/or the property has strong development potential (perhaps demonstrated by past or present developer interest).
- DEC assessment assistance is crucial to the property's redevelopment; lack of an assessment has proven to be an obstacle at the property.
- Existing information supports the potential for redevelopment and redevelopment will provide tangible benefits for the community.

If a public or nonprofit entity is aware of a brownfield site that is privately held but has potential for redevelopment that will offer significant public benefit, DEC will consider allocating assessment funds for the site.

- Eligible applicants—Public, quasi-public, or nonprofit entities (such as municipalities, tribal governments, and community development organizations) interested in redeveloping abandoned or underutilized properties.

Additionally, the R&R Program conducts assessments and cleanups on state-owned sites that have been identified as having high reuse potential, primarily in rural Alaska communities. The intent of the program is to target properties of importance to communities that may directly impact their economy. Sites typically include abandoned Territorial-era school sites, fuel storage locations, airport/business properties, and abandoned structures that are often centrally located in villages. By prioritizing such facilities through the R&R Program, the state benefits by reducing environmental liability, but also benefits by creating economic opportunities locally by creating more useable land/buildings for revitalization. Identifying beneficial reuse is key to successful R&R projects.

Tax incentives (abatement, credits, etc.): Alaska municipalities may provide that the tax increment from taxes levied on property in an improvement area may be used to pay principal and interest on bonds issues for the improvements in that area.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No current state brownfield programs or authorities currently available.

Program Elements

Technical Elements

Methods/standards/controls: See 18 AAC 75.375. Institutional controls discussed below.

Contaminants covered/excluded: None except asbestos and lead paint are excluded at this time; however, sites must be of a low- to medium-risk nature to be addressed through brownfields program oversight.

Use of long-term stewardship and institutional controls (IC): If all cleanup levels are achieved and no long-term monitoring or other conditions are placed on closure, DEC will identify a site as “cleanup complete without ICs” whereby any legal proceedings are closed. DEC recovers the cost of its oversight or damages from the responsible parties. The landowner gets official notice that the land can once again be used without restriction.

Complete cleanup is not always possible. In some cases, DEC may determine that active cleanup efforts at a site are no longer necessary, as long as institutional controls, such as land use and activity controls that are protective of human health and the environment are in place. The responsible person will be required to maintain such controls, which are set as conditions for closure determination of “cleanup complete with ICs.”

The department will, after consultation with each landowner of the site, determine whether the use of an institutional control is necessary, on a site-specific basis, if the department determines that controls are required to ensure:

- Compliance with an applicable cleanup level.
- Protection of human health, safety, or welfare, or the environment.
- Integrity of site cleanup activities or improvements.

Institutional controls may include: 1) installation and maintenance of physical measures, such as fences and signs, to limit an activity that might interfere with cleanup or result in exposure to a hazardous substance at the site; 2) implementation and maintenance of engineering measures, such as liners and caps, to limit exposure to a hazardous substance; 3) restrictive covenants, easements, notices of environmental contamination placed on an official property record, or other measures that would be examined during a routine title search, and that limit site use or site conditions over time or provide notice of any residual contamination; and 4) a zoning restriction or land use plan by a local government with land use authority.

Alaska

The use of land use and activity controls must, to the maximum extent practicable, be: 1) appurtenant to and run with the land so that the control is binding on each future owner of the site; and 2) maintained by each responsible person or owner of the site.

If the department determines any of the following are necessary to protect human health, safety, or welfare, or the environment, the department will require that institutional controls be designed to accomplish one or more of the following: 1) prohibit activities on the site that might interfere with the site cleanup, operation and maintenance, monitoring, or other response actions; 2) prohibit activities that might result in the release of a hazardous substance that was contained as a part of the site cleanup activities; 3) require written notice to the department of any proposal to use the site in a manner that is inconsistent with a restrictive covenant or other required measures; and 4) grant the department and its designated representatives the right to enter the property at reasonable times to evaluate compliance with the institutional control, including the right to take samples, inspect any cleanup actions ongoing at the site, and inspect records relating to the operation and maintenance of the institutional control.

If the department determines that financial assurance is necessary to ensure protection of human health, safety, or welfare, or of the environment, the department will require a responsible person to provide financial assurance sufficient to cover costs of operation and maintenance, including compliance monitoring and corrective measures, for any institutional control.

If the concentrations of all residual hazardous substances remaining at the site are subsequently determined to be below the applicable cleanup levels, the department will approve, at the owner's request, elimination of the institutional control.

- **IC Tracking:** The ability to both manage and track long-term oversight for contamination that poses limited risk to human health and the environment is an objective for the program. An institutional controls database and compliance tracking tools to accomplish this are under development at this time.
- **IC Oversight and Monitoring:** DEC's IC tracker was developed to help with oversight and monitoring of sites for which institutional controls have been established. DEC currently is tracking institutional controls on 1,464 sites, approximately 300 of which are active sites where the controls have been established to protect human health and the environment during ongoing cleanup actions.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.dec.state.ak.us/spar/csp/search/>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: There are no fees to enter program; however, the CSP is mandated to conduct cost recovery from responsible parties for oversight costs and any associated contracting services for site-specific activities.

Funding source for administrative costs and staff: Contaminated Sites Program - State of Alaska Response Fund; Federal Facilities - Contracting agreement with Department of Defense; R&R Program: CERCLA 128(a) State and Tribal Response Program Grant.

Cleanup Activities

Sites currently in VCP: DEC developed the SCP, as described above, in lieu of the VCP. Currently 156 sites are assigned to SCP status.

Sites completed under VCP: 99 closures have been recorded through the SCP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Incentives to responsible parties are under evaluation.

General Contaminated Sites Status: DEC's contaminated sites databases currently list 2,595 open or active sites, 2,738 closed sites, and 1,154 conditionally closed sites. Of these closed or conditionally closed sites, 303 were closed during calendar year 2007.

Public Participation

Public participation requirements (notice, comment periods, etc.): Site cleanup rules: purpose, applicability, and general provisions.

The department will seek public participation regarding activities conducted under the site cleanup rules, using methods that the department determines to be appropriate for seeking public participation.

Public participation activities (hearings, meetings, etc.): DEC uses public meetings, notifications, Web postings, and other media as determined appropriate for the issue of concern and target audience.

Statutory Authorities

- 18 AAC 75, Oil and Other Hazardous Substances Pollution Control
- 18 AAC 78, Underground Storage Tanks
- AS 46.08, Title 46: Water, Air, Energy and Environmental Conservation

General Information

Contact: Aaron Scheff
Brownfields Response Program Manager

Bruce Wicherski, PG
VCP Program Manager

Address: Department of Environmental Quality (DEQ)
Waste Management and Remediation Division
1410 N. Hilton
Boise, ID 83706

Phone: Aaron Scheff, 208 373 0420
Bruce Wicherski, 208 373 0426

Fax: 208 373 0154

Email: aaron.scheff@deq.idaho.gov
bruce.wicherski@deq.idaho.gov

Web site: <http://www.deq.state.id.us/Applications/Brownfields/>

Program Description (VCP, brownfields, or related)

Idaho's Land Remediation Act, or Voluntary Cleanup Program (VCP), is found in Idaho Code 39-7201 et seq., and DEQ's rules implementing the Act are located at IDAPA 58.01.18. The VCP allows for the remediation of hazardous substances and petroleum contaminated sites absent an enforcement action. Under the Program, DEQ and the participant enter into a Voluntary Remediation Agreement under which DEQ and the public review and comment on the proposed Cleanup Work Plan. Once approved by DEQ, the participant conducts the cleanup and DEQ reviews the results. If the cleanup is successful, DEQ issues a No Further Action letter, DEQ and the participant negotiate a Covenant Not to Sue (CNTS), lender liability protections are provided, and the site owner is afforded a tax exemption related to the increase in property value due to the cleanup.

In 2004, DEQ established its Brownfields Revitalization and Environmental Site Response Program. This Program facilitates the reuse of brownfield sites and works to develop Web tools, authorities, and guidance aimed at improving the efficiency of all DEQ remediation programs. DEQ is also a member of a seven-member coalition called the Reuse Idaho Brownfield Coalition (RIBC). RIBC is composed of DEQ and Idaho's six economic development districts, and manages a \$3,000,000 EPA brownfield cleanup revolving loan fund.

In 2006, Idaho passed into law the Community Reinvestment Pilot Initiative that provides \$1.5 million in funds for voluntary cleanups. The Community Reinvestment Pilot Initiative amended Idaho's existing VCP statute (the Land Remediation

Act) by creating a new financial incentive to draw private parties into the program. All participation is voluntary and all \$1.5 million is spent directly on cleanup. Ten privately-owned sites will be selected to participate in the Pilot program, ranked based upon rural location, abandoned/ blighted status (negative community impact), clear/strong reuse plans and elimination of public health risks. The private party funds and conducts the cleanup with DEQ oversight via the VCP. When cleanup is complete, DEQ reviews technical data to ensure cleanup goals are met and DEQ reviews the records of expenses the party incurred conducting the cleanup. DEQ reviews both and certifies both if acceptable/ reasonable. DEQ then reimburses the private party 70% of their 'certified cleanup costs,' up to \$150,000 per site.

Brownfields definition: Real properties, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Program titles:

- Voluntary Cleanup Program (Land Remediation Act)
- Brownfields Revitalization and Environmental Site Response Program (Brownfields Revitalization Program)
- Risk Evaluation Program (Risk-Based Cleanups)
- Community Reinvestment Pilot Initiative – amended Idaho's existing VCP statute (the Land Remediation Act)
- Reuse Idaho Brownfield Coalition (RIBC) brownfield cleanup revolving loan fund (BCRLF)

Liability relief provisions: Certificate of Completion (COC) and CNTS are available under Idaho's VCP. After receiving a COC, a party can receive a CNTS for any claim for environmental remediation under state law resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation work plan. The CNTS extends to any current or future owner or operator of the site or portion there of who did not cause, aggravate, or contribute to the release or threatened release.

During the implementation of an approved voluntary remediation work plan, the department will not bring an action, including an administrative or judicial action for any liability for remediation relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the work plan, against a person who entered into a voluntary remediation agreement and who is implementing the work plan.

Idaho law also provides lender liability protection.

Brownfields Assessments—DEQ's Brownfields Revitalization Program funds and conducts

Idaho

assessments at brownfield sites. Local governments can apply to have a site assessed under this program. Details on this program are on DEQ's Web site.

Voluntary Cleanup Program Tax Incentives—Sites are eligible for a property tax exemption (not to exceed seven years) that amounts to 50% of the remediated land value. The exemption may be granted only if the CTNS is in full force and effect for the entire period of exemption, and the site remains in the possession of the owner for the entire exemption period.

Financial incentives (grants, loans, tax provisions, etc.): The Community Reinvestment Pilot Initiative – DEQ reimburses a private party 70% of their 'certified cleanup costs,' up to \$150,000 per site. RIBC RLF loans and sub-grants. Tax incentives for participation in the VCP. See Financial Elements for more details.

Legislative or program site eligibility requirements: The VCP lists three reasons DEQ can reject a request to participate in the Program:

- Remediation is required under Idaho's Environmental Protection and Health Act, Idaho's Solid Waste Facilities Act, or Idaho's Hazardous Waste Management Act, or rules promulgated there under, or other applicable statutory or common law.
- The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment.
- The application to participate is not complete.

For the Brownfields Assessment Program, units of local governments, local redevelopment agencies, nonprofit organizations and other government entities created by the state legislature are eligible to participate in the program by submitting a completed questionnaire to DEQ. DEQ gives preference to sites where community-supported redevelopment plans are in place and where little or no site environmental information is available. The applicant must not have caused or contributed to any contamination at the site.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- The Community Reinvestment Pilot Initiative – DEQ reimburses a private party 70% of their 'certified cleanup costs,' up to \$150,000 per site. With this structure, the Pilot's benefit caps at a \$215,000 cleanup as follows: DEQ reimburses 70% (up to \$150,000) and the private party is responsible for the remaining 30% (\$65,000).
- RIBC RLF low interest loans and sub-grants for financing cleanup of Idaho brownfields.

- As discussed previously, local governments can ask that DEQ fund and conduct assessments at brownfield sites. DEQ's Underground Storage Tank (UST)/Leaking Underground Storage Tank (LUST) program also conducts assessments at certain LUST sites.

Tax incentives (abatements, credits, etc.): Federal incentive program and VCP tax incentive described previously.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Idaho's Petroleum Storage Tank Fund provides UST site owners with environmental insurance of \$1,000,000 per tank for \$100 per year, with a \$10,000 deductible.

Program Elements

Technical Elements

Methods/standards/controls: Participants in DEQ remediation programs, including the VCP, choose between cleaning to established state standards or cleaning to site-specific standards developed using DEQ's Risk Evaluation Manual and Software, or another DEQ-approved risk evaluation methodology.

Contaminants covered/excluded: DEQ's Risk Evaluation Manual and Software includes the 185 contaminants most frequently encountered in Idaho, with the ability to add additional contaminants on a site-specific basis.

Use of long-term stewardship and institutional controls (IC): Both the VCP and DEQ's Risk Evaluation Manual authorize the use of institutional controls (e.g., deed restrictions) when conducting and determining appropriate cleanup levels and conducting site cleanups. DEQ developed a model deed restriction for use under both of these programs, located in Appendix B of the Risk Evaluation Manual.

In addition, Idaho legislature passed the Uniform Environmental Covenants Act (UECA) in 2006.

- **IC Tracking:** Idaho tracks IC through deed restrictions.
- **IC Oversight and Monitoring:** Idaho provides oversight to participants in the VCP when they are conducting and determining appropriate cleanup levels and cleanups.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.deq.idaho.gov/Applications/WDI/?CFID=1646846&CFTOKEN=91450357>

Idaho

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: Participants must pay to DEQ two fees under the VCP: 1) a \$500 application fee; and 2) a \$2,500 fee for DEQ review of the remediation work plan and site activities conducted there under.

Funding source for administrative costs and staff: Other than EPA funding sources, none.

Cleanup Activities

Sites currently in VCP: 21 sites are currently participating in the VCP.

Sites completed under VCP: To date, 3 sites have been completed under the VCP.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Covenant Not to Sue; lender liability protections; and tax exemption (See previous section).

Public Participation

Public participation requirements (notice, comment periods, etc.): Before DEQ approves a proposed voluntary remediation work plan under this section, DEQ must:

- Notify local government units located in a county affected by the proposed voluntary remediation work plan.
- Provide that a copy of the proposed voluntary remediation work plan and a copy of the voluntary remediation agreement be placed in at least one public library in a county affected by the work plan.
- Notify by reasonable public notice potentially affected persons to request comments concerning the proposed voluntary remediation work plan.
- Provide a comment period of at least 30 days following publication of a notice under this section. During the comment period, interested potentially affected persons may do the following:
 - Submit written comments to the department concerning the proposed voluntary remediation work plan; or
 - Request a public hearing concerning the proposed voluntary remediation work plan.

Public participation activities (hearing, meetings, etc.): If DEQ receives a significant number of written requests from potentially affected persons, the department may hold a public hearing in the geographical area affected by the proposed voluntary remediation work plan on the question of whether to modify, approve or reject the work plan. All written comments and public testimony shall be considered by the department.

Statutory Authorities

- Idaho Land Remediation Act, Title 39 (§§39-7201 to 39-7210), Chapter 72, Idaho Code.
- Idaho Department of Environmental Quality, IDAPA 58.01.18, Idaho Land Remediation Rules.
- The Community Reinvestment Pilot Initiative (Idaho Code § 39-7211) – HB 728, a \$1.5 million fund for voluntary cleanups.
- Idaho Uniform Environmental Covenants Act (UECA) – Idaho Code, Title 55, Chapter 30 (Idaho Code, §§ 55-3001 et seq.).

Oregon

General Information

Contact: Gil Wistar, Brownfields Coordinator
Oregon Department of Environmental Quality
(ODEQ)

Address: 811 SW 6th Avenue
Portland, OR 97204

Phone: 503 229 5512

Fax: 503 229 6954

Email: wistar.gil@deq.state.or.us

Contact: Karen Homolac, Brownfields Program and
Policy Coordinator, Oregon Business
Development Department (OBDD)

Address: 775 Summer St. NE, Suite 200
Salem, Oregon 97301

Phone: 503 986 0191

Fax: 503 581 5115

Email: Karen.Homolac@state.or.us

Web site: <http://www.deq.state.or.us/lq/cu/brownfields/index.htm>

<http://www.deq.state.or.us/lq/cu/voluntarycu.htm>

<http://www.deq.state.or.us/lq/cu/cupathway/independent.htm>

Program Description (VCP, brownfields, or related)

The Voluntary Cleanup Program (VCP) has two pathways: the Voluntary Cleanup Pathway and the Independent Cleanup Pathway. The Voluntary Cleanup Pathway provides ongoing project support from an Oregon Department of Environmental Quality (ODEQ) project manager for No Further Action (NFA) determinations, preliminary assessment review, soil cleanup standards, report/document review, operable unit approach where a section of the site may be redeveloped while cleanup is still occurring on other sections, technical assistance and regulatory guidance, negotiated scope of work, budget estimates for ODEQ oversight costs, Prospective Purchaser Agreements (PPA), and public participation. The Independent Cleanup Pathway, in which an ODEQ project manager reviews site activities after they are completed and a report is prepared, is an alternative to the Voluntary Cleanup Pathway for sites ranked low or medium priority for further investigation or cleanup. The Site Response Program addresses sites of medium or high environmental priority that may require enforcement actions. Brownfield sites can be addressed through any of the cleanup program components.

Brownfields definition: Oregon uses the following working definition: brownfields are vacant or underused properties where expansion or redevelopment is complicated by actual or perceived contamination.

Program titles:

- Voluntary Cleanup Program (The Independent Cleanup Pathway or the Voluntary Cleanup Pathway)
- Prospective Purchaser Agreements (PPAs)
- Dry Cleaner Program
- Underground Storage Tank (UST) Cleanup Program

Liability relief provisions: ODEQ's VCP issues NFAs for sites demonstrated not to present unacceptable risk to human health or the environment. (Unacceptable risk is defined in statute—see Oregon Revised Statutes [ORS] §465.315.)

A PPA is a legally binding agreement between ODEQ and a prospective purchaser, which limits the purchaser's liability to ODEQ for environmental cleanup of the property in return for a commitment by the purchaser to undertake and/or fund site activities that provide a "substantial public benefit." The PPA is authorized through state statute and administrative rule to provide liability protection. It does not provide liability protection from the federal government or from any activities which may result in additional contamination after the property is purchased. A PPA must be negotiated with ODEQ prior to the purchase of the property.

Oregon also has a Dry Cleaner Program. In exchange for liability relief from cleanup costs, dry cleaners pay fees that go into a fund used to clean up solvent contamination at dry cleaner sites. The law protects dry cleaners, under specified circumstances, from individually having to pay for cleanup of releases caused by the use of dry cleaning solvents at their establishments.

Financial incentives (grants, loans, tax provisions, etc.): OBDD offers a variety of financial tools for cleanup and redevelopment activities at known or suspected contaminated sites, including those with petroleum releases. (See the list below under the "Financial Elements" heading for details.)

Funded through a grant with EPA, Site-Specific Assessments (SSA) may be conducted by ODEQ at publicly controlled brownfields where hazardous substance contamination, including petroleum, is suspected or known. Should an SSA reveal contamination above ODEQ's acceptable risk standards, ODEQ in some cases may use funds from the EPA grant to conduct limited removal activities.

Legislative or program site eligibility requirements:

For PPAs, the site must be contaminated with hazardous substances, including petroleum, and well enough characterized for ODEQ to know that remedial activities are necessary to protect human health and the environment. The contamination must not have been caused nor aggravated by the prospective purchaser and ODEQ must determine that a "substantial public benefit" will result from issuing the PPA. More generally, in order to be eligible for ODEQ brownfield

Oregon

consideration, site owners and operators must be willing partners in, and in some cases contribute resources to, site investigation, remediation, and redevelopment activities.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- EPA capitalized the Oregon Coalition Brownfields Cleanup Fund with \$2,040,000 (2004); the fund is available to provide grants and low-interest loans to eligible communities or the private sector for cleanup/non-time-critical removals per the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) §104(k). ODBB serves as lead agency and fund manager on behalf of a coalition of partners. ODEQ, through an intergovernmental agreement, serves as site manager for the program.
- Oregon Industrial Lands Site Assessment Initiative, funded through an EPA Site Assessment grant in 2005 (\$200,000 for hazardous substances), is managed by ODBB.
- State-funded Brownfields Redevelopment Fund managed by ODBB provides a direct loan and/or grant program that is available for any site where action is necessary to: 1) determine if a release has occurred; 2) determine if a release poses a significant threat to human health or the environment; or 3) remove contamination from the site. Sites with petroleum releases are eligible.
- State Special Public Works Fund, managed by ODBB, provides technical assistance grants and loans to municipalities for site assessments and cleanup on publicly-owned and privately owned industrial brownfield properties seeking certification through the state's Industrial Lands Program (see above). Loans for cleanup are also available for publicly owned industrial brownfield sites.
- Oregon Community Development Block Grants (CDBG), through ODBB, can be used to demolish abandoned, vacant, and deteriorated buildings, decommission underground storage tanks, clean debris, and perform site assessments and cleanups.
- The Oregon Capital Access Program, managed through ODBB, offers loan portfolio insurance for environmental actions and brownfield redevelopment projects.
- The Oregon Dry Cleaner Fund is administered by ODEQ and pays for assessment and cleanup at qualifying dry cleaner sites. To manage limited funding, sites are prioritized based on human health and environmental threat.
- The Drug Lab Asset Forfeiture Fund (or when the fund is depleted, cost reimbursement agreements with law enforcement agencies) is used for drug lab cleanup.

Tax incentives (abatements, credits, etc.): Federal Brownfields Tax Incentive (reauthorized by Congress to extend through 2009).

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Under an EPA grant, the Center for Creative Land Recycling (CCLR) in San Francisco is providing technical assistance to communities in Oregon and other western states that are tackling brownfields redevelopment projects. Formed in 1997, the CCLR is a nonprofit agency offering pro-bono technical assistance to support land recycling and brownfield redevelopment. Its goal is to “repair fractured communities and discourage urban sprawl through creative private, public and nonprofit partnerships,” according to CCLR. Its clients include municipalities, redevelopment agencies, nonprofit organizations, community groups, community development corporations, and affordable housing developers.

Program Elements

Technical Elements

Methods/standards/controls: Applicant has a choice of approach (i.e., removal or institutional controls), to protect public health and the environment. The same standard of site-specific acceptable risk, which includes protection of ecological receptors, must always be met.

Contaminants covered/excluded: Petroleum products (including methane), hazardous waste, lead paint, polychlorinated biphenyls (PCBs), and CERCLA contaminants can be addressed through the VCP.

Use of long-term stewardship and institutional controls (IC): In Oregon, institutional or engineering controls are used when risks of exposure to hazardous substances can be effectively blocked by having legal or administrative measures in place. Typically, institutional controls will be an element in the Record of Decision (ROD) and the Consent Order or other decision document. Most institutional controls will be recorded in county property records. Institutional controls will often complement some other aspect of the remedial action. For example, one may have an institutional control that complements an engineering control; the paper institutional control will prohibit disturbance (or require maintenance) of the physical engineered cap. Institutional controls may prohibit or restrict some actions, or they may require affirmative action.

- **IC Tracking:** Properties with institutional controls remain on ODEQ's public Environmental Cleanup Site Information (ECSI) database, Confirmed Release List, and Inventory – as long as the institutional control remains in effect.

Oregon

- **IC Oversight and Monitoring:** Monitoring and periodic review will be part of the institutional control to ensure that it is working. The extent and frequency of monitoring and periodic reports will vary with the project. There may be a certain amount of random monitoring of the institutional control (e.g., due diligence inquiries prior to property transfers), but periodic review by ODEQ should be a part of the institutional control and the selected remedy.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.deq.state.or.us/lq/cu/controls.htm>

<http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp?listtype=IIS&listtitle=Environmental+Cleanup+Site%20Information+Database>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: PPA application requires \$2,500 deposit to ODEQ to begin formal negotiation of the agreement. No deposit for VCP required with Intent to Participate Form, but \$5,000 deposit when project manager is assigned. \$1,500 deposit required under Independent Cleanup Pathway (ICP) after applicant receives cost recovery agreement (VCP deposits can be waived for public-sector participants). Once projects become active, ODEQ charges VCP and ICP participants on an hourly basis for project oversight.

Funding source for administrative costs and staff: The VCP and other components of the Environmental Cleanup Program are funded by direct cost recovery from project participants, by hazardous waste disposal fees, and through federal grants.

Cleanup Activities

Sites currently in VCP: 1,325 sites have entered the VCP since its inception in 1991 (data as of July 2009).

Sites completed under VCP: 751 No Further Action letters (data as of July 2009).

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): An NFA determination from ODEQ provides assurance to current and prospective owners, operators, lenders, and developers that environmental issues have been addressed in accordance with the Oregon environmental cleanup law (ORS §465.200).

Public Participation

Public participation requirements (notice, comment periods, etc.): Public notice and a 30-day public comment period are required by statute.

Public participation activities (hearing, meetings, etc.): A public meeting is required by statute if requested by 10 or more people or a group having 10 or more members.

Statutory Authorities

- Oregon Environmental Cleanup Laws (ORS §465.200).
- Hazardous Substance Remedial Action Rules (OAR 340-122-0010).

General Information

Contacts: Nnamdi Madakor, P.G., P.HG, VCP Statewide Coordinator

Address: Department of Ecology (Ecology)
Voluntary Cleanup Program (VCP)
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360 407 7244

Fax: 360 407 7154

Contacts: Dan Koroma, Brownfields Coordinator

Address: Department of Community,
Trade and Economic Development (CTED)
Brownfields Redevelopment Loan Fund
P.O. Box 42525
Olympia, WA 98504

Phone: 360 725 4062

Website: <http://www.cted.wa.gov> (CTED)

Contacts: John Means, Brownfields Program Planner and Grant Manager

Address: Department of Ecology (Ecology)
Voluntary Cleanup Program (VCP)
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360 407 7244

Fax: 360 407 7154

Website: <http://www.ecy.wa.gov/programs/tcp/cleanup.html> (VCP)

http://www.ecy.wa.gov/programs/tcp/brownfields/brownfields_hp.html
(Ecology's Brownfields)

<https://fotress.wa.gov/ecy/tcpwebreporting>
(Contaminated Sites Web Portal)

Program Description (VCP, brownfield, or related)

The development of Washington's brownfields program began with the adoption of the Model Toxics Control Act (MTCA), a citizen-mandated law originally enacted through a voter's initiative that governs cleanup of hazardous waste sites in Washington. Cleanup standards under MTCA include appropriate cleanup levels for industrial sites. The brownfields program itself is not defined by statute or rule, however, Washington State has a cooperative approach to brownfields cleanup and redevelopment. In addition to assistance, parties

conducting cleanups can seek private consultants, the state provides technical assistance, grants, and a revolving loan program.

Formal oversight, technical services, assessment, remedial action grants/loans, and a revolving loan program are available statewide through several channels:

- Washington State's Department of Ecology's (Ecology) Toxics Cleanup Program (TCP) provides oversight on cleanups through Agreed Orders and Consent Decrees, usually for high priority sites. Prospective purchasers of contaminated property may seek a Prospective Purchaser Agreement with Ecology under MTCA, which limits the liability of the purchaser for cleanup costs.
- Ecology's Voluntary Cleanup Program (VCP) is the primary program for most contaminated brownfield properties. Through the VCP, an individual may independently remediate contaminated land and obtain technical advice and assistance from Ecology. For a fee, Ecology can review independent cleanup plans and reports and provide written opinions on the adequacy of the remedial actions proposed or taken and described in the plan or report.
- Department of Community, Trade and Economic Development (CTED) manages a revolving loan fund and provides technical assistance to parties interested in redeveloping brownfield properties. Effective July 26, 2009, this agency is known as the Washington State Department of Commerce. Technical assistance in submitting applications for a revolving loan or coordinating site assessments and redevelopment is done in partnership with Ecology, King County/City of Seattle, City of Tacoma, and City of Spokane. Ecology provides site manager technical support to CTED for properties being cleaned up through the Brownfields Revolving Loan Program. In addition, Ecology provides remedial action grants and loans to help local governments investigate or expedite cleanup of contaminated sites.

Brownfield definition: Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance, pollutant, or contaminant. Note: for Ecology's purposes, this is a working definition only. Ecology's approach as to what constitutes a brownfield site in the context of Washington State's cleanup laws and policies is still in progress.

Program titles:

- Toxics Cleanup Program (TCP)
- Voluntary Cleanup Program (VCP)
- WA Coalition Brownfields Cleanup Revolving Loan Fund (RLF)

Washington

Tools for Use in Brownfields Development: The rules and regulations of MTCA provide several different ways in which parties involved in brownfields development can clean up contaminated sites. The following are examples of some of the MTCA tools which are available as part of Washington's brownfields program:

- Voluntary Cleanup Program – Persons who conduct independent remedial actions to investigate and clean up contamination at a property that has been contaminated by a hazardous substance may request informal site-specific technical consultations from Ecology under the VCP. They may request technical consultation (including assistance in identifying applicable regulatory requirements) and written opinions on the sufficiency of their cleanup under the law.
- Prospective Purchaser Agreements – The state may enter into a settlement with a person who proposes to purchase, redevelop or reuse a contaminated property. Some of the main criteria for these agreements are: the agreement will yield substantial new resources to facilitate cleanup; the agreement will expedite remedial action consistent with MTCA; redevelopment or reuse of the property is unlikely to contribute to the existing contamination, to interfere with remedial actions that may be needed at the site, or to increase health risks to persons at or in the vicinity of the site. The primary purpose of this agreement is to promote the cleanup and reuse of vacant or abandoned commercial or industrial commercial property. The Attorney General and Ecology may give priority to settlements that will provide a substantial public benefit.
- Covenants Not to Sue – Under state law, and subject to certain conditions and limitations, when ownership or operation of property is transferred, any Covenant Not to Sue and contribution protection given to the prior owner apply equally to successor owners and operators.
- Lender Liability Exemption – State law grants lenders an exemption from liability, subject to certain conditions and limitations, while they hold an ownership interest in a facility, primarily to protect a security interest.
- Contaminated Aquifer Exemption – State law provides an exemption from liability, subject to certain conditions and limitations, for owners of property where a hazardous substance has come to be located on the property solely as a result of migration of ground water from a source located off the property. Some examples of the conditions attached to this exemption are: the owner must demonstrate he/she did not contribute to the release of the hazardous substance, and the owner cannot interfere in the operation of remedial actions on the property.

Financial incentives (grants, loans, tax provisions, etc.): Some grants are available for public/private partnerships (e.g., remedial action grants). EPA-capitalized Brownfield Cleanup RLF available through CTED. Cleanup loan funds available through CTED are for private or public entities that are not potentially liable parties for hazardous waste sites, petroleum contaminated sites,

or methamphetamine contaminated sites. Limited site assessments are also available for sites with strong redevelopment potential. These sites must be selected by CTED and Ecology. Brownfield properties in rural areas may be eligible for other redevelopment assistance or revolving loan funds through other loan portfolio programs. Financial assistance includes:

- Brownfields Cleanup RLF – Up to \$1,000,000 for eligible sites (funded by EPA).
- Brownfields Project Assistance – For state and local governments to assist economic development projects (funded by US Department of Commerce, Economic Development Administration).
- Remedial Action Grants for local governments – Allocated for site cleanup.
- Integrated Planning Grants - For local governments to conduct investigative or other remedial work in preparation and planning for purchase and reuse of contaminated property
- Coastal Revolving Loan Fund and Coastal Technical Assistance Loan Fund – Available in coastal counties focus on job creation. \$150,000 and \$50,000 maximums respectively (funded by CTED).

And, incentives:

- Brownfields Federal Tax Incentive – Qualified taxpayers can deduct the cost of environmental remedial action in the year in which the cost is either paid or incurred. Site must be used for trade/business.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, meth labs, etc.): Interested persons may be eligible for grants or loans through several programs offered by Washington State. The Remedial Action Grant Program, the Brownfields Redevelopment Loan Fund, or the Brownfields Revolving Loan Fund are some of the options available. Remedial Action Grants Program helps local governments with the costs of cleaning up hazardous waste sites. RLF helps qualifying borrowers pay for cleanup of brownfields. RLF funds may be used at sites that are: 1) publicly-owned, 2) owned by a nonprofit, and 3) privately owned by current or prospective owners provided they did not cause contamination. Eligible site activities for RLF funds include prevention, abatement, or removal of hazardous substances.

Tax incentives (abatements, credits, etc.):

- Tax abatements
- Business and Occupation (B&O) tax credit for research and development of environmental technologies
- Federal Brownfields Tax Incentive
- Tax credits (certain business expansions)

Washington

Other forms of support: If a person is interested in the VCP, Ecology generally provides a free consultation to discuss the available options. The free consultation is usually limited to one hour and Ecology will not provide site-specific technical assistance during this time. Technical assistance is available for EPA Brownfields Assessment grants and State Integrated Planning Grants for brownfield redevelopment projects.

Program Elements

Technical Elements:

Methods/standards/controls: Applicant has a choice of cleanup standards, including risk-based standards, although they are not based on Risk-Based Corrective Action (RBCA).

Contaminants covered/excluded: Does not restrict on basis of contaminants.

Use of long-term stewardship and institutional controls (IC): Institutional controls are necessary as part of the cleanup if:

- Hazardous substances remain at the site at concentrations that exceed cleanup levels.
- Conditional points of compliance are established to measure compliance with cleanup levels.
- Cleanup levels are established based on land or resource uses that are not the uses that require the most protective cleanup levels (e.g., industrial land use).
- The department determines such controls are necessary to protect human health and the environment or the integrity of the cleanup.

Washington has sustainable land use planning requirements defined through the Growth Management Act (GMA) such as urban growth boundaries.

- **IC Tracking:** Institutional controls are tracked in the Integrated Site Information System (ISIS) Web reporting database.
- **IC Oversight:** When institutional controls are necessary, environmental covenants are usually used to impose those controls on a parcel of real property.
- **IC Monitoring:** Confirmation monitoring and five year reviews are also used and may provide a basis for reopeners in a Consent Decree or a basis for rescinding a VCP No Further Action (NFA) opinion for a site.

The following Web address is a direct link to the state's public database that maintains an inventory of sites, maps sites, and/or tracks institutional controls. This link also provides additional information regarding contaminated sites in the state.

<http://www.ecy.wa.gov/programs/tcp/sites/SiteLists.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: For VCP, monthly billing of charges incurred by Ecology during the previous month. Based on hourly rates of staff used to provide services..

Funding source for administrative costs and staff: Limited funding through CERCLA 128(a) State and Tribal Response Program Gant.

Cleanup Activities

Sites currently in VCP: 4,504 have entered the program.

Sites completed under VCP: 1,495 cleanups in progress; 1,714 NFA determinations.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): See Financial Incentives and Liability Relief Provisions.

Public Participation

Public participation requirements (notice, comment periods, etc.): Public participation is necessary at any site that is being formally overseen by Ecology under an Order or Consent Decree. Public participation is not a requirement for independent cleanups, including those conducted under the VCP. However, even for sites that were cleaned up independently, public participation is necessary before a site can be de-listed from Ecology's Hazardous Sites List. If cleanup occurs through a brownfields loan, a 30-day public comment period is required on the Analysis of Brownfields Cleanup Alternatives.

Public participation activities (hearing, meetings, etc.): Public hearings or meetings are held along with MTCA public comment periods when ten or more persons request it. Public meetings/hearings can also be held as a result of other aspects of a development or land use proposal in accordance with the laws applicable to a particular project.

Statutory Authorities

- Model Toxics Control Act, Chapter 70.105D RCW
- Model Toxics Control Act Regulations, Chapter 173-340 WAC
- Remedial Action Grants, Chapter 173-322 WAC
- Sediment Management Standards, Chapter 173-204 WAC (governing sediment cleanups)

General Programmatic Information

For more detailed information please refer to the specific state profile pages.

Region	State	Number of sites currently in VCP*	Number of sites completed under VCP*	Costs to enter program/fees for service	Contaminants Covered/Excluded	Site Eligibility Requirements	State Definition of Brownfields
REGION 1	CT	7,128	327		Does not restrict on basis of contaminants; petroleum, asbestos, lead paint, and PCBs all included	Eligible sites must be located in either a distressed community or a target investment community	
	ME	71	524		Petroleum and PCBs are included; asbestos and lead paint are excluded.		
	MA	3,800	33,455		Petroleum, asbestos, VOCs and PCBs are included; lead paint is excluded.	Anyone may participate in a voluntary cleanup	
	NH	49	21		Petroleum, asbestos, lead paint, and PCBs are all included	Any property contaminated with hazardous materials or oil is eligible, except sites that are being cleaned up through one of the state's petroleum reimbursement funds and sites that are under an environmental or corrective order	X
	RI	779	780	\$1,000 Remedial Action Approval fee	Petroleum and PCBs are included; lead-based paint from ind./com. properties also are covered, only in cases where they are in the environment and not on a structure	Although anyone is eligible, non-PRPs may obtain a covenant not to sue and protection from contribution actions.	X
	VT	16	10		Asbestos, lead paint, and PCBs are included; petroleum is included if not eligible under the PCF		X
REGION 2	NJ	18,000	5,521	Charge oversight fees based on staff time & may bill salary and overhead		Participation in VCP is open to all parties with some exceptions (publicly funded sites, sites under an enforcement action or court order).	X
	NY	1,332	247	State oversight costs are reimbursed by the party cleaning up the site. RPs must also pay past costs.	BCP—haz waste (including haz substances) & petro are covered. ERP—haz substances & petro are covered; lead paint is not. VCP—haz wastes, haz substances, and petro are covered.	Site owners, prospective purchasers, municipalities, and operators may participate. Participation by Class 2 sites and NPL sites is not allowed.	X
	PR			Under development	Under development	Under development	
	VI						
REGION 3	DE	170	113	No cost to enter into the BDP; Oversight costs are charged	Petroleum contamination is covered on brownfields sites; asbestos and lead paint contamination are covered if found in the soil.	Site must be a certified brownfields and the developer must not have any contractual or familial relationship with any PRP.	X
	DC	12	6	\$10,000 application fee	Has not identified particular contaminants that are to be excluded from the program under all circumstances.	Non-RPs are eligible; Any brownfields or site contaminated by haz substances that is not listed on NPL or subject to a current cleanup action.	X
	MD	432	205	Initial fee of \$6,000; additional fees are also included	PCBs, oil, petroleum (not exclusively, but along with other contaminants), paint, and asbestos (as long as they comply with all other applicable laws and regs) are eligible.	Any site that is contaminated or perceived to be contaminated is eligible, other than NPL sites, sites under active enforcement, or TSD facilities.	
	PA	1,843	3,172	\$250 for statewide health final report and \$500 for site-specific final report.	See list on LRP Web site		X
	VA	152	178	\$5,000 or 1% of the cost of remediation, whichever is less.	Petroleum, asbestos, lead paint and PCBs all eligible, if not regulated under another program.		X
	WV	193	85	Fee is calculated according to the size of the property.	No exclusions		X

* VCP includes all of the state's programs (e.g., response program, brownfields, etc.)

General Programmatic Information

For more detailed information please refer to the specific state profile pages.

Region	State	Number of sites currently in VCP*	Number of sites completed under VCP*	Costs to enter program/fees for service	Contaminants Covered/Excluded	Site Eligibility Requirements	State Definition of Brownfields
REGION 4	AL	80	212		Petroleum, asbestos, lead paint, PCBs are covered.	Property must not be on the NPL, currently undergoing response activities, or a RCRA site.	X
	FL	130	30		Petroleum and PCBs are covered; asbestos and lead paint accepted conditionally.	All sites are eligible, except those on the NPL	X
	GA	152	146	A non-refundable \$3,000 application review fee is required; additional fees may apply.	Petroleum, on-site hazardous substances that have not been released to the environment.	The property must have a pre-existing release; any lien filed under the state superfund against the property must be satisfied; and must not be on the NPL	
	KY	2		Application fees—Area of <3 acres (\$1,000); area >3 acres and <10 acres (\$2,500); and area >10 acres (\$3,500).	Petroleum and PCBs are covered (but petroleum releases are not eligible); asbestos and lead paint are covered if released in environment.	Any site is eligible, unless the site is: a licensed radioactive facility; on the NPL; a hazardous treatment facility; or subject to an enforcement action.	
	MS	178	597	\$2,000 application fee and \$75/hour administrative costs	Asbestos, lead paint, PCBs, and petroleum are covered.	Demonstrate that: the remediation will result in suitable use of site; party has the financial & technical resources to complete the task; current owner's approval; and pay for oversight costs.	X
	NC	153	451	\$2,000 for a brownfields agreement and \$500 for a NFA letter.	Exclusively petroleum contamination from USTs are ineligible	Any site may enter the VCP; Brownfields Program is statutorily restricted to non-causative prospective developers	X
	SC		174	No application fee; however, RPs and non-RPs must pay oversight costs.	Hazardous substances (including PCBs) are addressed, but not petroleum. Asbestos & lead-based paint can be addressed if it is an environmental exposure.	The eligibility requirements are set forth in the South Carolina Hazardous Waste Management Act.	X
TN	161	94	Participation fee has been waived; however, charged for oversight cost.	Petroleum, asbestos, and PCBs are covered. Lead paint is covered if other hazardous substances are present.	RPs are not eligible	X	
REGION 5	IL	959	3,923	User fees based on personnel costs, overhead, travel, lab costs, etc.	Petroleum and all hazardous substances are included.	Generally, any site not required to clean up under any other program (e.g., RCRA, Superfund) is eligible	X
	IN	862	556	Brownfields Program is free; VRP application fee is \$1,000 plus additional state costs.	Brownfields Program -- asbestos, lead paint, petroleum, and PCBs are covered. VRP -- petroleum and PCBs are covered; however, asbestos and lead paint are not.	Any site unless an enforcement action is pending, the site is a substantial and imminent threat, or a federal grant requires action.	X
	MI	200	10,000	\$750	Does not restrict sites from the VCP on the basis of contaminant; petroleum, asbestos, lead paint, PCBs are all covered.		X
	MN	507	3,000		Petroleum is allowed if not the sole contaminant; asbestos and lead paint only if there is a release to the environment; PCB sites are handled only if contamination resulted from a release prior to 1978.		
	OH	386	254	Fees range from \$1,000 to \$5,000 depending upon the site.	Hazardous substances, petroleum, asbestos, and lead paint are allowed; PCB sites are allowed only if contamination resulted from a release prior to 1978.	Any party is eligible for the VAP except for those already regulated under federal or state law.	X
	WI	4,500	22,700	\$250 application fee and \$75/hour for oversight	Petroleum, asbestos, lead paint, and PCBs are all covered.	Any party, including RPs are eligible. Any type of contamination site is eligible including LUST, hazardous waste, spills, etc.	X

* VCP includes all of the state's programs (e.g., response program, brownfields, etc.)

General Programmatic Information

For more detailed information please refer to the specific state profile pages.

Region	State	Number of sites currently in VCP*	Number of sites completed under VCP*	Costs to enter program/fees for service	Contaminants Covered/Excluded	Site Eligibility Requirements	State Definition of Brownfields
REGION 6	AR	65	23	A fee schedule has not been established for the program.	Petroleum sites are covered.	Non-RPs who do not own the property are eligible.	X
	LA	57	51	\$500; in addition, must reimburse DEQ for the actual direct costs of oversight.	No restrictions based on contaminants; petroleum, asbestos, lead paint, and PCBs are all covered.	Only Non-RPs are eligible	X
	NM	28	47	\$1,000 application fee and \$65/hour charges for oversight.	Does not restrict on the basis of contaminants.	To be eligible, an applicant must: own the site; operate the facility; be the prospective owner; or be a prospective operator of the facility.	X
	OK	18	5	Reimbursement of oversight costs.	All sites affected by pollution are covered.	To be eligible, the site must not be under a corrective action and is in compliance with court orders.	X
	TX	2,093	1,427	\$1,000 application fee and reimbursement for oversight costs.	All contaminants in soil and ground water are covered, except those under the jurisdiction of the Texas Railroad Commission.	All sites are eligible, except those commission orders, remediation permits, or listed on the NPL	
REGION 7	IA	38	54	\$750 application fee and oversight fees. Oversight fees are capped at \$7,500.	Any contaminant that has appropriate toxicity information available is covered.		
	KS	335	167	\$200 nonrefundable application fee and initial deposit, not to exceed \$5,000, to cover oversight costs.	Lead, asbestos, and PCBs are all covered.		X
	MO	300	437	\$200 initial deposit (application fee) and up to \$5,000 for oversight costs.	Petroleum, asbestos, lead paint, CERCLA hazardous substances, and PCBs are all covered.	All sites are eligible except those that pose and imminent threat to public health, RCRA sites, NPL sites, CERCLA enforcement, or release from a UST	X
	NE	7	9	\$5,000 application fee and a \$5,000 participation fee.	Petroleum, asbestos, lead-based paints, and PCBs are all covered.	No eligibility requirements, open to all sites.	
REGION 8	CO	50		\$2,000 application fee and \$85/hour for oversight.	Petroleum, asbestos, lead paint, and PCBs are covered. Ground water standards must be met at property boundary.	Publicly-owned, directly by a municipality or indirectly through a quasi-public entity and/or Privately-owned by current or prospective property owners, developers, etc.	X
	MT	25	28	VCP, participant must reimburse the state for all admin costs. Cost recovery is based on actual cost; there is no standard fee. No costs for the brownfields program.	All contaminants covered, but must represent a release or threat of release to the environment.	Any person or entity is eligible, and all non-NPL sites are eligible, although the state is given discretion to reject applications.	
	ND				Does not restrict on the basis of contaminants.		
	SD	30	4,000	Does not charge parties to enter into the brownfields program or have fees for staff services.	The state regulates haz substances, haz wastes, toxic substances, petro, pesticides, metals, and other substances considered regulated substances under SDCL Ch 34A-12.	Rules are being drafted.	
	UT	67	34	\$2,000 application fee and an environmental assessment are required at time of application.	Does not restrict on the basis of contaminants.	All sites are eligible except RCRA sites, NPL sites, or sites with and existing	
	WY	143	60	\$350 application fee (covers the first 10 hours of oversight) and \$35/hour rate for additional oversight.	Wide variety of contaminants are eligible.	Sites where the release occurred was not subject to a permit requirement or if the site is not under a court order are eligible.	

* VCP includes all of the state's programs (e.g., response program, brownfields, etc.)

General Programmatic Information

For more detailed information please refer to the specific state profile pages.

Region	State	Number of sites currently in VCP*	Number of sites completed under VCP*	Costs to enter program/fees for service	Contaminants Covered/Excluded	Site Eligibility Requirements	State Definition of Brownfields
REGION 9	AZ	92	152	\$2,000 non-refundable application fee, \$110/hour fee for oversight, plus additional costs.	Excluded—Crude oil. Covered—Hazardous substances mixed with petroleum products; CERCLA, including RCRA sites; haz wastes that are ignitable, corrosive, reactive or toxic.	Sites that meet the state brownfields definition.	X
	CA	500	300	DTSC is obligated to recover its costs and does this through voluntary cleanup agreements, reimbursement agreements, contracts, and settlements.	Generally regulates hazardous substances, consistent with the federal definition. Petro releases from non-USTs may also be addressed. School Property Evaluation and Cleanup Program also addresses naturally-occurring chemicals. The Water Boards regulate haz materials which includes petro hydrocarbons.	Most sites are eligible unless listed as federal/state Superfund site, a military facility, site falls outside of DTSC's jurisdiction, or if another agency currently has oversight.	X
	GU						
	HI	28	12	\$1,000 application fee and \$100/hour oversight fee.	Petroleum, asbestos, lead paint, PCBs are all covered.	All sites are eligible except NPL sites, sites with CERCLA enforcement actions, RCRA sites, and sites with a Letter of Interest from the US Coast Guard.	
	NV	1	1	Residential property fee is \$400. Commercial property: less than 1 acre (\$500), 1–25 acres (\$1,000), 26–100 acres (\$1,600), more than 100 acres (\$2,000)	Asbestos, lead paint, PCBs are covered; petroleum is covered, only if site does not qualify for reimbursement under the state's Petroleum Fund.	For VCP—application and site characterization information. For brownfields funding—federal site eligibility criteria are used.	X
REGION 10	AK	156	99	None	None excluded at this time, however, sites must be of a low- to medium risk to be addressed through brownfields program oversight.	DEC encourages the use of the SCP to clean up low-risk petro contaminated sites. And, Brownfields assessment funding may only be used at properties that meet EPA brownfields funding criteria.	X
	ID	21	3	\$500 application fee and \$2,500 fee for oversight.	DEQ's Risk Evaluation Manual and Software includes the 185 contaminants, with the ability to add additional contaminants on a site-specific basis.	All sites are eligible except those with a statutory required remediation under another Idaho program or that have conditions that pose an imminent threat to human health.	X
	OR	1,325	751	\$2,500	Petroleum, hazardous waste, lead paint, PCBs, and CERCLA contaminants are covered.	The site must be contaminated with haz substances, including petro, for which remedial activities are necessary to protect human health and the environment. The contamination must not have been caused nor aggravated by the prospective purchaser.	X
	WA	4,504	1,714	\$500 deposit plus hourly charges	Does not restrict on the basis of contaminants.		X

* VCP includes all of the state's programs (e.g., response program, brownfields, etc.)

Types of Financial Incentives & Insurance Mechanisms Available

For more detailed information please refer to the specific state profile pages.

Region	State	Grants	Bonds	Loans	Tax Abatement	Tax Credits	Environmental Insurance
REGION 1	CT		X	X	X	X	
	ME	X					
	MA		X	X	X	X	X
	NH			X			
	RI			X		X	
	VT	X		X		X	
REGION 2	NJ	X		X	X	X	
	NY		X	X		X	X
	PR				X		
	VI						
REGION 3	DE	X		X		X	
	DC	X		X		X	
	MD	X		X		X	
	PA	X		X		X	Pending
	VA					X	
	WV			X			
REGION 4	AL	X		X		X	X
	FL			X		X	
	GA				X		
	KY	X					
	MS	X	X			X	
	NC				X		
	SC	X			X	X	
	TN	X		X		X	
REGION 5	IL	X		X		X	
	IN	X		X	X	X	
	MI	X		X		X	
	MN	X		X			
	OH	X		X	X	X	
	WI	X		X		X	Under development

Types of Financial Incentives & Insurance Mechanisms Available

For more detailed information please refer to the specific state profile pages.

Region	State	Grants	Bonds	Loans	Tax Abatement	Tax Credits	Environmental Insurance
REGION 6	AR			X			
	LA			X		X	
	NM	X		X			
	OK			X			
	TX			X	X	X	
REGION 7	IA			X			
	KS			X			
	MO	X		X	X	X	
	NE						
REGION 8	CO	X		X		X	X
	MT	X		X			
	ND	X					
	SD	X					
	UT	X					
	WY	X					
REGION 9	AZ	X		X		X	
	CA	X		X			Under development
	GU						
	HI	X		X			
	NV	X		X			
REGION 10	AK						
	ID				X		X
	OR	X		X			
	WA	X		X	X	X	

Liability Provisions for State Response Programs

For more detailed information please refer to the specific state profile pages.

Region	State	VCP MOA with EPA *	Liability Provisions			
			Retroactive	Strict	Joint & Several	Other**
REGION 1	CT		X	X	X	
	ME			X	X	
	MA			X	X	
	NH			X	X	
	RI	X	X	X	X	
	VT			X	X	
REGION 2	NJ					X
	NY					X
	PR					X
	VI					
REGION 3	DE	X		X	X	X
	DC			X	X	
	MD	X	X	X	X	X
	PA	X	X	X	X	X
	VA	X				X
	WV					X
REGION 4	AL					X
	FL	X				X
	GA					X
	KY					X
	MS					X
	NC					X
	SC					X
	TN					X
REGION 5	IL	X				X
	IN	X				X
	MI	X	X		X	X
	MN	X	X	X	X	X
	OH	X				X
	WI	X				X

* To review a VCP MOA for a state, go to <http://www.epa.gov/brownfields/html-doc/statemoa.htm>

** Other includes proportional liability; liabilities obtained from No Further Action Letters, Restricted Use Agreement Orders, Covenants Not to Sue, etc.; and/or liabilities were not specified by the state.

Liability Provisions for State Response Programs

For more detailed information please refer to the specific state profile pages.

Region	State	VCP MOA with EPA*	Liability Provisions			
			Retroactive	Strict	Joint & Several	Other**
REGION 6	AR	X				X
	LA	X				X
	NM	X				X
	OK	X				X
	TX	X				X
REGION 7	IA	X			X	X
	KS	X				X
	MO	X				X
	NE					X
REGION 8	CO	X				X
	MT					X
	ND					X
	SD					X
	UT					
	WY	X				X
REGION 9	AZ					X
	CA					X
	GU					
	HI					X
	NV					X
REGION 10	AK					X
	ID					X
	OR					X
	WA					X

* To review a VCP MOA for a state, go to <http://www.epa.gov/brownfields/html-doc/statemoa.htm>

** Other includes proportional liability; liabilities obtained from No Further Action Letters, Restricted Use Agreement Orders, Covenants Not to Sue, etc.; and/or liabilities were not specified by the state.

Public Participation

For more detailed information please refer to the specific state profile pages.

Region	State	Public Record	Public Notice	Public Comment	Hearings/ Meetings	Citizen Group Grants
REGION 1	CT	X	X	X	X	
	ME	X				
	MA	X	X			
	NH	X				
	RI	X	X	X	X	
	VT	X	X	X	X	
REGION 2	NJ	X	X		X	
	NY	X	X	X	X	X
	PR		X		X	
	VI	X				
REGION 3	DE	X	X	X	X	
	DC	X	X	X		
	MD	X	X	X	X	
	PA	X	X	X	X	X
	VA	X	X	X		
	WV	X	X	X	X	
REGION 4	AL	X	X	X	X	
	FL	X	X	X	X	
	GA	X	X	X		
	KY	X	X	X	X	
	MS	X	X	X	X	
	NC	X	X	X	X	
	SC	X	X	X	X	
	TN	X	X	X	X	
REGION 5	IL	X				
	IN	X	X	X	X	
	MI	X	X	X	X	X
	MN	X	X	X	X	X
	OH	X				
	WI	X				

Public Participation

For more detailed information please refer to the specific state profile pages.

Region	State	Public Record	Public Notice	Public Comment	Hearings/ Meetings	Citizen Group Grants
REGION 6	AR	X	X	X	X	
	LA	X	X	X	X	
	NM	X	X	X	X	
	OK	X	X	X	X	
	TX	X				
REGION 7	IA	X	X	X	X	
	KS	X	X	X	X	
	MO	X	X	X	X	
	NE	X				
REGION 8	CO	X	X	X		
	MT	X	X	X		
	ND	X	X	X		
	SD	X	X	X	X	
	UT	X	X	X	X	
	WY	X	X	X	X	
REGION 9	AZ	X	X	X	X	
	CA	X			X	
	GU					
	HI	X	X			
	NV	X	X	X	X	
REGION 10	AK	X	X		X	
	ID	X	X	X	X	
	OR	X	X	X	X	
	WA	X		X		

Long-Term Stewardship & Institutional Controls

For more detailed information please refer to the specific state profile pages.

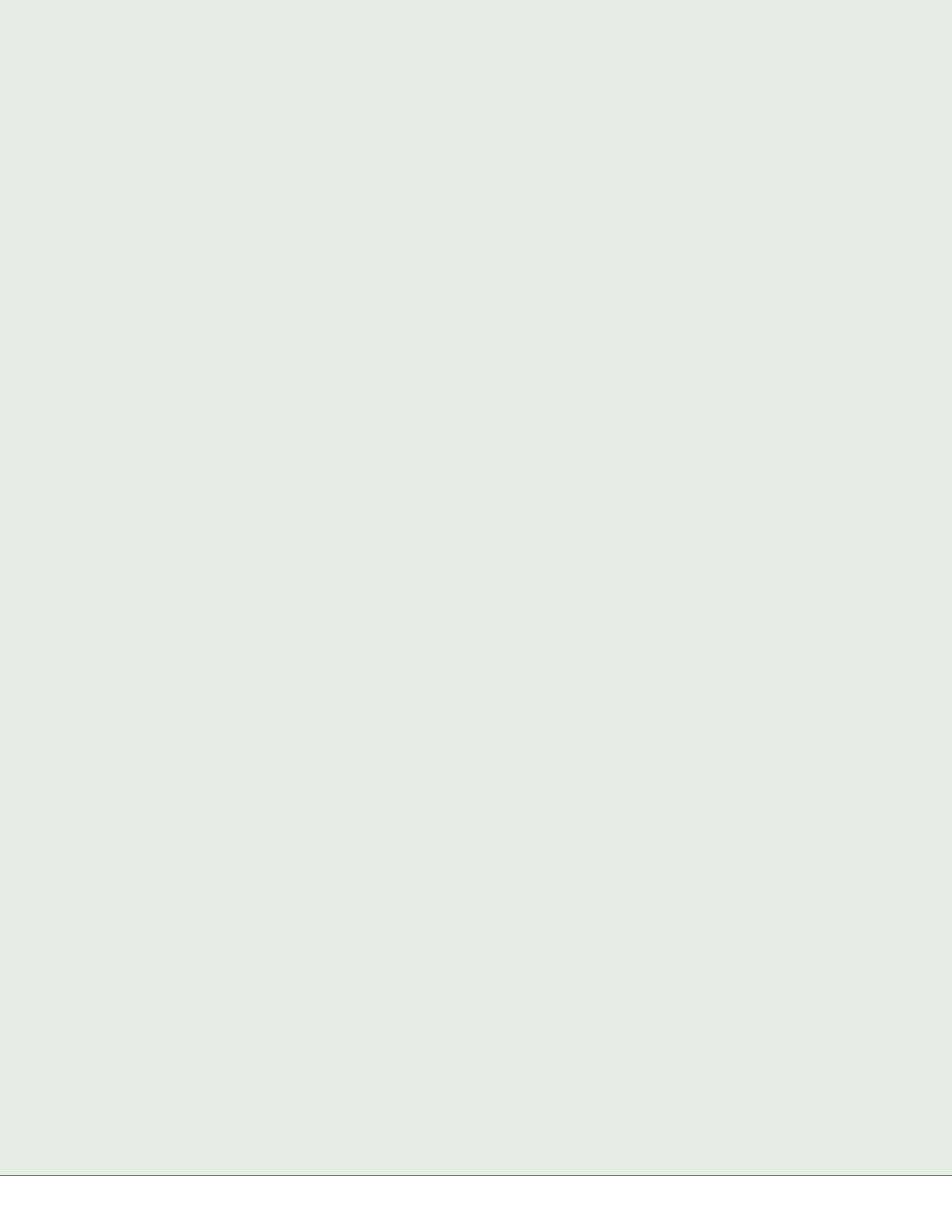
Appendix A

Region	State	Tracking	Long-term Stewardship and Institutional Controls		
			Oversight	Monitoring	Reopeners
REGION 1	CT	X	X	X	
	ME	X			
	MA	X	X	X	X
	NH	X	X		
	RI	X	X	X	
	VT				
REGION 2	NJ	X	X	X	
	NY	X	X	X	
	PR				
	VI				
REGION 3	DE	X	X	X	
	DC		X	X	
	MD	X	X	X	
	PA	X	X		X
	VA				
	WV	X	X	X	
REGION 4	AL	X	X		
	FL	X			
	GA	X	X	X	
	KY	X	X	X	
	MS	X		X	
	NC	X	X	X	X
	SC	X	X	X	
	TN	X		X	
REGION 5	IL	X	X	X	
	IN	X			
	MI	X			
	MN				
	OH	X		X	
	WI	X	X	X	

Long-Term Stewardship & Institutional Controls

For more detailed information please refer to the specific state profile pages.

Region	State	Tracking	Long-term Stewardship and Institutional Controls		
			Oversight	Monitoring	Reopeners
REGION 6	AR				
	LA	X			
	NM	X		X	
	OK	X	X	X	
	TX				
REGION 7	IA	X			
	KS	X	X	X	
	MO	X		X	
	NE	X	X	X	
REGION 8	CO	X	X	X	
	MT		X		
	ND	X	X		
	SD	X	X		
	UT	X	X	X	
	WY	X	X	X	
REGION 9	AZ	X	X	X	
	CA	X	X	X	
	GU				
	HI				
	NV				
REGION 10	AK	X	X	X	
	ID	X	X		
	OR	X	X	X	
	WA	X	X	X	X





United States
Environmental Protection
Agency

Office of Solid Waste and
Emergency Response

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