This panel will examine the current state of regulatory and financial incentives as well as market dynamics, financing considerations, and social equity concerns that help private developers and local governments collaborate to overcome the risk, limit the liability, and manage the cleanup costs associated with taking title to and redeveloping contaminated sites. Specific examples of successful and profitable projects and the community benefits they create will be discussed with an emphasis on landfills, golf courses, and gas stations. A comprehensive discussion of applicable Florida and federal rules and best management practices will be presented by a leading panel of Florida experts who will also provide a replicable, scalable, and easy-to-follow path for private development principals, local government planners, lenders, and other brownfield stakeholders. After this class, attendees will be well-positioned to evaluate, underwrite, structure, finance, acquire, and reuse brownfields sites of any type, in any location, and for any purpose.
Some horses need to be led to water, others have a built in GPS for it . . . . .

- Yesterday’s brownfields environment is not today’s brownfield environment
- Yesterday’s brownfield developers was accidental, incidental, or opportunistic
- Today’s brownfields developer is much more likely to be strategic or programmatic.
- Shift has created more opportunities for more categories of stakeholders, more leveraging of public and private capital, and improved bargaining power of historically weaker positioned parties
- Original brownfield fundamentals still apply – minimize exposure to risk of liability & maximize economic subsidy for incremental costs associated with construction and cleanup activities

"Mr. Semple, who wants to stimulate the economy, help the cities, and clean up the environment, I’d like you to meet Mr. Hobart, who wants to let the economy, the cities, and the environment take care of themselves. I’m sure you two will have a lot to talk about."
Brownfields Risk Proposition for Developers

- Environmental Regulatory Risk
  - “Standards Stability” Risk
    - Arsenic
    - Vaporized Chemicals
- Third Party Liability Risk
  - Cost Recovery Suits
    - “Judicial Variability” Risk
      - Ashley II vs. 3000 East Imperial
      - Adniolfe
    - Property Damage Suits
    - Toxic Tort Suits
- Financing Risk
- Direct Costs of Assessment & Remediation
- Risk of Impact to Design, Schedule & Budget
- Political and Reputational Risk
  - “Brownfields Enterprise” Risk
    - Local Government Variability
    - Shifting Incentives Landscape/Cubbard is Bare Syndrome
    - “Stigma Gorilla”
Bridging the Divide for the Developer: From Risk to Value

- Strong legal & technical team
- Agency collaboration
- Community/stakeholder support
- Emphasis on land planning, end use design, and end-user suitability and risk tolerance
- Plausible, practical, predictable exit strategy
- Sound, methodical legal, technical, and financial underwriting
- Proper transactional structure & use of releases and indemnities
- Leveraging of federal & state liability protections
  - Covenants not-to-sue, comfort letters, Cleanup Agreement Documents, guidance documents, statutory defenses & safe harbors
- Risk Based Corrective Action (Chapter 62-780 Rulemaking)
- Integration of cleanup & redevelopment
- Environmental insurance
- Everyone Wins – Environmental Justice & Social Equity Imperatives
Incentives as Roadmap from Risk to Value

**Florida Brownfield Program Benefits**

- Voluntary Cleanup Tax Credit
- Brownfield Redevelopment Bonus Tax Refund
- 100% Sales Tax Refund on Construction Materials
- Liability Protection for Developers & End Users
- Liability Protection for Lenders
- "Most Favored Nation Status"
- Targeted Brownfield Assessment & Remediation Grants through FDEP
- Loan Guarantee (50% vs. 75%)
# Voluntary Cleanup Tax Credits

<table>
<thead>
<tr>
<th>Tax Credit Type</th>
<th>Application Frequency</th>
<th>Maximum Credit for Costs Incurred after 12/31/2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Rehabilitation</td>
<td>Annually</td>
<td>50%  $500,000</td>
</tr>
<tr>
<td>No Further Action (i.e., SRCO)</td>
<td>Once</td>
<td>25%  $500,000</td>
</tr>
<tr>
<td>Affordable Housing</td>
<td>Once</td>
<td>25%  $500,000</td>
</tr>
<tr>
<td>Health Care Facility or Provider</td>
<td>Once</td>
<td>25%  $500,000</td>
</tr>
<tr>
<td>Solid Waste</td>
<td>Once</td>
<td>50%  $500,000</td>
</tr>
</tbody>
</table>
### Tax Refund Generation Scenarios

<table>
<thead>
<tr>
<th>FTEs</th>
<th>x $2,000.00 (QTI Bonus)</th>
<th>x $2,500.00 (Stand-Alone)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>$200,000.00</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>200</td>
<td>$400,000.00</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>350</td>
<td>$700,000.00</td>
<td>$875,000.00</td>
</tr>
<tr>
<td>400</td>
<td>$800,000.00</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

### Tax Refund Payout Scenarios for Every 100 FTEs (Stand-Alone Refund)

<table>
<thead>
<tr>
<th>FTE Creation Scenario</th>
<th>Total FTEs</th>
<th>Total Refund</th>
<th>Tax Refund Payout</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1</td>
<td>100 FTEs in 2015</td>
<td>$250,000.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>50 FTEs in 2015</td>
<td>$125,000.00</td>
<td>$0.00</td>
</tr>
<tr>
<td></td>
<td>50 FTEs in 2016</td>
<td>$125,000.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Totals for Scenario 2</td>
<td></td>
<td>$250,000.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Total Construction Budget</td>
<td>% as Eligible Building Materials</td>
<td>Total Eligible Building Materials Cost</td>
<td>Potential Refund on Average Sales Tax of 6.00%</td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------------------------------</td>
<td>----------------------------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100% Recovery</td>
</tr>
<tr>
<td>$30,000,000.00</td>
<td>30%</td>
<td>$9,000,000.00</td>
<td>$540,000.00</td>
</tr>
<tr>
<td>$30,000,000.00</td>
<td>25%</td>
<td>$7,500,000.00</td>
<td>$450,000.00</td>
</tr>
<tr>
<td>$30,000,000.00</td>
<td>20%</td>
<td>$6,000,000.00</td>
<td>$360,000.00</td>
</tr>
<tr>
<td>$50,000,000.00</td>
<td>30%</td>
<td>$15,000,000.00</td>
<td>$900,000.00</td>
</tr>
<tr>
<td>$50,000,000.00</td>
<td>25%</td>
<td>$12,500,000.00</td>
<td>$750,000.00</td>
</tr>
<tr>
<td>$50,000,000.00</td>
<td>20%</td>
<td>$10,000,000.00</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>$75,000,000.00</td>
<td>30%</td>
<td>$22,500,000.00</td>
<td>$1,350,000.00</td>
</tr>
<tr>
<td>$75,000,000.00</td>
<td>25%</td>
<td>$18,750,000.00</td>
<td>$1,125,000.00</td>
</tr>
<tr>
<td>$75,000,000.00</td>
<td>20%</td>
<td>$15,000,000.00</td>
<td>$900,000.00</td>
</tr>
<tr>
<td>Total of Eligible Cleanup Costs</td>
<td>CY 2014</td>
<td>CY 2015</td>
<td>CY 2016</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>$450K</td>
<td>$450K</td>
<td>$225K</td>
<td>N/A</td>
</tr>
<tr>
<td>$650K</td>
<td>$600K</td>
<td>$300K</td>
<td>$50K</td>
</tr>
<tr>
<td>$1.4M</td>
<td>$600K</td>
<td>$300K</td>
<td>$750K</td>
</tr>
</tbody>
</table>
## Monetization of Voluntary Cleanup Tax Credits for Generic Florida Brownfield Redevelopment Project

### 75% Realization

<table>
<thead>
<tr>
<th>Cleanup Scenarios</th>
<th>Total Eligible Cleanup Costs</th>
<th>Total Tax Credit Estimate</th>
<th>Secondary Market Yield</th>
<th>Total Cash Dollars Recovered</th>
<th>As % of Total Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1</td>
<td>$450,000.00</td>
<td>$337,500.00</td>
<td>$0.88/$1.00</td>
<td>$297,000.00</td>
<td>66%</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>$650,000.00</td>
<td>$487,500.00</td>
<td></td>
<td>$429,000.00</td>
<td></td>
</tr>
<tr>
<td>Scenario 3</td>
<td>$1,400,000.00</td>
<td>$1,050,000.00</td>
<td></td>
<td>$924,000.00</td>
<td></td>
</tr>
</tbody>
</table>

### 100% Realization

<table>
<thead>
<tr>
<th>Cleanup Scenarios</th>
<th>Total Eligible Cleanup Costs</th>
<th>Total Tax Credit Estimate</th>
<th>Secondary Market Yield</th>
<th>Total Cash Dollars Recovered</th>
<th>As % of Total Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1</td>
<td>$450,000.00</td>
<td>$450,000.00</td>
<td>$0.88/$1.00</td>
<td>$396,000.00</td>
<td>88%</td>
</tr>
<tr>
<td>Scenario 2</td>
<td>$650,000.00</td>
<td>$650,000.00</td>
<td></td>
<td>$572,000.00</td>
<td></td>
</tr>
<tr>
<td>Scenario 3</td>
<td>$1,400,000.00</td>
<td>$1,400,000.00</td>
<td></td>
<td>$1,232,000.00</td>
<td></td>
</tr>
</tbody>
</table>

## Development Cost “Windfall” from Monetization of Voluntary Cleanup Tax Credits for Generic Florida Brownfield Redevelopment Project at 75% and 100% Realization

<table>
<thead>
<tr>
<th>Total Eligible Cleanup Costs</th>
<th>Development Increment</th>
<th>Recovery Percentage</th>
<th>Total Tax Credit Estimate</th>
<th>Secondary Market Yield</th>
<th>Total Cash Dollars Recovered</th>
<th>As % of Total Cleanup Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,400,000.00</td>
<td>$750,000.00</td>
<td>75%</td>
<td>$562,500.00</td>
<td>$0.88/$1.00</td>
<td>$495,000.00</td>
<td>35.63%</td>
</tr>
<tr>
<td>$1,400,000.00</td>
<td>$750,000.00</td>
<td>100%</td>
<td>$750,000.00</td>
<td>$0.88/$1.00</td>
<td>$660,000.00</td>
<td>47.14%</td>
</tr>
</tbody>
</table>
## Sampling of Local Government VCTC Approvals

(As of June 2013)

<table>
<thead>
<tr>
<th>Applicant Name</th>
<th>Tax Credit Amount Approved</th>
<th>Awards Pending</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Orlando</td>
<td>$758,685.13</td>
<td>5</td>
</tr>
<tr>
<td>Tampa Port Authority</td>
<td>$666,754.12</td>
<td>2</td>
</tr>
<tr>
<td>City of Pompano Beach</td>
<td>$664,588.70</td>
<td>3</td>
</tr>
<tr>
<td>Pinellas County</td>
<td>$610,648.88</td>
<td>2</td>
</tr>
<tr>
<td>City of Gainesville dba Gainesville Regional Utilities</td>
<td>$500,000.00</td>
<td>1</td>
</tr>
<tr>
<td>City of Tallahassee</td>
<td>$334,568.18</td>
<td>2</td>
</tr>
<tr>
<td>City of Clearwater</td>
<td>$257,955.53</td>
<td>2</td>
</tr>
<tr>
<td>Escambia County Board of Commissioners</td>
<td>$233,088.45</td>
<td>2</td>
</tr>
<tr>
<td>City of St. Petersburg</td>
<td>$149,816.90</td>
<td>3</td>
</tr>
<tr>
<td>City of Daytona Beach</td>
<td>$125,703.13</td>
<td>2</td>
</tr>
<tr>
<td>Fort Pierce CRA Agency</td>
<td>$86,013.59</td>
<td>3</td>
</tr>
<tr>
<td>City of Pahokee</td>
<td>$83,292.24</td>
<td>2</td>
</tr>
<tr>
<td>Collier County CRA</td>
<td>$55,147.93</td>
<td>2</td>
</tr>
<tr>
<td>JEA</td>
<td>$23,704.55</td>
<td>2</td>
</tr>
</tbody>
</table>
New Markets Tax Credits and Brownfields

Total Eligible Capital Cost: $10 million

Federal Income Tax Credit: $3.9 million

Cash Proceeds: $3.315 million

Fees: $600,000.00

Equity Investment: $2.715 million

Post-Income Realization: $1.8 million
Florida Program Metrics

- 404 Designated Brownfield Areas (06/13/16)
  - Total: 265,872.49 acres
  - Largest: 14,190.37 acres (Hamilton County EZ Area)
  - Smallest 0.26 acres (Land South, North Miami, FL)

- 258 Sites with Executed BSRAs (06/03/16)
  - Total: 4,990.63 acres
  - Largest: 608.45 acres (Eastwood Village, Fort Myers)
  - Smallest: 0.28 acres (Car Pro, Clearwater)

- 88 SRCOs (06/13/16)
  - 38 SRCOCs

- Projected Capital Investment through 08/15: $2.7 Billion

- Confirmed/Projected New Direct & Indirect Jobs through 08/15: 75,000
Projects leveraged $17.79 per EPA dollar expended
- Total Dollars Leveraged: $20.96 billion
- Leveraged 108,924 jobs nationwide
- Can increase residential property values 5.1% to 12.8% when nearby brownfields are addressed
- Can increase overall property values within a one mile radius by $0.5 to $1.5 million
- Five pilot studies conducted on Environmental Benefits concluded
  - 32 to 57 percent reduction in vehicle miles traveled
  - 47 to 62 percent reduction for stormwater runoff
- Properties Assessed: 23,932
- Cleanups Completed: 872
- Acres Made Ready for Reuse: 59,149
- Accomplishment Report by State and Tribal Response Program Using CERCLA Section 128(a) Funding, Since FY 2006:
  - Made over 1,000,000 acres ready for reuse
  - Completed more than 99,450 cleanups
A Decade of Projected Capital Investment in Florida Brownfield Areas


<table>
<thead>
<tr>
<th>FDEP Annual Report</th>
<th>Preceding Calendar Year</th>
<th>First Six Months of Current Calendar Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-2013</td>
<td>$823,564,841</td>
<td>$107,405,000</td>
</tr>
<tr>
<td>2011-2012</td>
<td>$208,495,548</td>
<td>$388,404,123</td>
</tr>
<tr>
<td>2010-2011</td>
<td>$128,118,100</td>
<td>$76,052,285</td>
</tr>
<tr>
<td>2009-2010</td>
<td>$387,903,000</td>
<td>Not Reported</td>
</tr>
<tr>
<td>2008</td>
<td>$407,922,598</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>$129,050,000</td>
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<tr>
<td>2006</td>
<td>$207,750,000</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>$149,946,135</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>$224,407,858</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>$146,020,000</td>
<td></td>
</tr>
</tbody>
</table>
A Decade of Projected New Direct and Indirect Jobs Created in Florida Brownfield Areas


<table>
<thead>
<tr>
<th>FDEP Annual Report</th>
<th>Preceding Calendar Year</th>
<th>First Six Months of Current Calendar Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-2013</td>
<td>17,182</td>
<td>3,810</td>
</tr>
<tr>
<td>2011-2012</td>
<td>8,084</td>
<td>10,330</td>
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<tr>
<td>2010-2011</td>
<td>5,429</td>
<td>2,868</td>
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<tr>
<td>2009-2010</td>
<td>5,728</td>
<td>Not Reported</td>
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<tr>
<td>2008</td>
<td>8,105</td>
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<tr>
<td>2007</td>
<td>1,165</td>
<td></td>
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<tr>
<td>2006</td>
<td>838</td>
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<tr>
<td>2005</td>
<td>5,237</td>
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</tr>
<tr>
<td>2004</td>
<td>1,920</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>3,678</td>
<td></td>
</tr>
</tbody>
</table>
Golden Age of Brownfields & Design

EPA Brownfields Sustainability Pilot

EPA's Technical Assistance to Brownfields (TAB) Communities Program

Providing Technical Assistance to Communities Facing Brownfields Challenges

Conceptual Site Design for Sustainable Redevelopment
Green Avenue Sites, Greenville, SC

August 2009
Putting it Together: Integrating Remediation & Redevelopment

Brownfields Road Map to Understanding Options for Site Investigation and Cleanup
Fifth Edition

www.brownfieldstsc.org/roadmap

Brownfields Technology Primer: Vapor Intrusion Considerations for Redevelopment
Guilding in Green: Enhancing Sustainability Values & Performance

BROWNFIELDS AND URBAN AGRICULTURE:
Interim Guidelines for Safe Gardening Practices

Land Revitalization Fact Sheet
GREEN INFRASTRUCTURE

EPA is helping several communities explore opportunities for implementing green infrastructure on vacant land, brownfield, and green infrastructure projects. Green infrastructure projects are producing significant environmental benefits and helping to improve the sustainability of urban areas.

New Environmental Solutions
EPA's land revitalization initiatives are producing significant environmental benefits and helping to improve the sustainability of urban areas.

Rehabilitation Best Management Practices: Landfill Cover Systems & Energy Production

Green remediation best management practices for landfill cover systems and energy production.

Green remediation BMPs for addressing landfill gas issues:
- Designing and installing a cover system through approaches such as the EPA's Landfill Gas Mitigation and Energy Leasing Program (LAMP).
- Increasing landfill cover designs with systems of vegetation for generating energy from solar or wind resources or for other renewable uses.
- Moisturizing and maintaining a fluid cover through streamlined operation and maintenance (SOM) activities and automated equipment.

Landfills built to contain hazardous wastes are permitted by Subtitle C of RCRA (40 CFR 264/265), while those constructed for non-hazardous waste such as municipal solid waste (MSW) are covered by RCRA Subtitle D (40 CFR 258). In addition to RCRA requirements, closure and covering of a landfill or former waste area can be subjected to requirements of the Clean Air Act, Clean Water Act, and other federal, state, or local regulations. In cleanup programs such as Superfund, these regulations are applicable to parts of a remedy as applicable or relevant and appropriate requirements (ARRs).

Designing and Installing a Cover System
A Subtitle C or D conventional cover system also known as a barrier cover, is a lined system designed to contain the hazardous waste. The type of cover consists of a liner of compacted soil with permeability below that of the liner or the natural soils present on the Subtitle D, permeability no greater than 1 x 10^-7 cm/s. Since the late 1980s, a Subtitle C cover system often consists of a geomembrane, a corona-treated geocomposite, or other vapor barrier, resulting in equivalent permeability. Other layers for drainage or gas collection or to serve as a leachate barrier can be added. Green remediation BMPs for designing and installing a conventional cover system include:

- Designing a system that minimizes risk after the site's natural setting, to improve the system's long-term performance.
- Reducing total energy use and increasing the percentage of renewable energy.
- Reducing air pollutants and greenhouse gas (GHG) emissions.

In Region 8, EPA is working with cities such as Cincinnati and Cleveland on implementing green infrastructure projects. Both cities are participating in public works projects to reduce stormwater discharge and protect water quality. These communities are using green infrastructure projects to demonstrate their commitment to sustainable practices.

Many communities in the U.S. have separate sewer systems. One of the benefits of separating stormwater and sanitary sewer systems is that stormwater runoff is directed to a separate system, and wastewater is treated before being discharged into receiving waters. This reduces the amount of water entering sewers and helps to reduce the discharge of pollutants into water bodies. Examples of green infrastructure projects include rain gardens, swales, constructed wetlands, and permeable pavements.
Implementing Stormwater Infiltration Practices at Vacant Parcels and Brownfield Sites

U.S. Environmental Protection Agency
Office of Water
Office of Solid Waste and Emergency Response
Green Infrastructure Collaborative

Statement of Support
October 8, 2014

Green infrastructure uses vegetation, soils, and natural processes to manage water and create healthier urban environments. The scale of green infrastructure ranges from urban installations to large tracts of undeveloped natural lands and includes rain gardens, green roofs, urban trees, permeable pavements, rainwater harvesting, wetlands, protected riparian areas, and forests. Interconnected networks of green infrastructure allow rainwater to be absorbed and cleansed by soil and vegetation; to flow back into groundwater or surface water resources; or to be harvested and used as a water resource.

Significant advancements in green infrastructure have occurred in recent years. Communities across the country have greatly expanded the use of green infrastructure practices, most notably to address combined sewer overflows, reduce stormwater pollution in municipal separate storm sewer systems (MS4s), and prevent localized flooding. Green infrastructure continues to emerge as an approach to complement and enhance grey infrastructure and provide multi-benefit solutions that create resilient and sustainable communities.

PURPOSE

The purpose of this Statement of Support is to set a path forward for broadened national engagement in green infrastructure through a platform called the Green Infrastructure Collaborative (hereinafter referred to as “the Collaborative’). Operating as a networked-based learning alliance, the Collaborative will advance efforts to build capacity for green infrastructure implementation by providing a platform for national stakeholders to:

1. Leverage joint efforts to promote the multiple community benefits of using green infrastructure,
2. Share and build knowledge around emerging green infrastructure technologies and policy issues, and
3. Facilitate shared inquiry into the best ways to encourage adoption of green infrastructure technologies.

By joining the Collaborative, the signatory organizations commit to using this network to advance the adoption of green infrastructure as a means of supporting water quality and community development goals. These collective efforts will highlight the broad community benefits of green infrastructure including improved air quality, reduced energy use, mitigated climate change effects, and enhanced economic and social impacts. The Collaborative is intended to facilitate cooperation, coordination, and effective communication among the signatory organizations in a way that will encourage widespread adoption of green infrastructure where appropriate.

In addition to working cooperatively to advance green infrastructure, each of the organizations joining the Collaborative has additionally committed to undertake individual activities that support green infrastructure implementation.
Color Brown Reuse Blue:
Major Federal Design, Energy, and Economic Priority

http://www.epa.gov/owercpa/
Market Driver for Local Governments: Renewable Energy on Brownfields

- Released by NALGEP in February 2012
- Part I: Overview of renewable energy options for Brownfield site development & references for tools and resources for site screening
- Part II: Economic feasibility of project development
- Part III: Suggestions for how local governments can promote development of renewable energy projects on Brownfield sites in their communities
- Comprehensive Appendix: Publications, links, incentives, stakeholder and industry groups
Market Driver for Local Governments: Renewable Energy on Brownfields
Incorporating Climate Change into Redevelopment Projects

Considerations to think about when addressing climate adaptation in the ABCA:

- Review an authoritative resource to identify observed and potential changing climate conditions for the area in which the cleanup project is located.
- Given the pertinent climate change concerns, identify the site-specific risk factors.
- Include in your effectiveness evaluation how well each alternative can accommodate the identified climate change risk factors.
Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment

- Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601

**Defenses to Liability:**
- Bona Fide Prospective Purchasers
- Contiguous Property Owners
- Third-Party Defense
- Innocent Landowner Liability; and
- Common Elements Guidance
- Secured Creditor Exemption

**Liability Management Strategies:**
- Ready for Reuse Documentation
- Comfort Letters
- Prospective Purchaser Agreements
Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment

- Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601

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- Comfort Letters
- Prospective Purchaser Agreements
Protection of Tenants at Brownfield Sites under CERCLA

A tenant may enjoy bona fide prospective purchaser (“BFPP”) liability protection under CERCLA even if its owner never qualified as a BFPP if it complies with US EPA’s All Appropriate Inquiries requirements by conducting an ASTM-compliant Phase I Environmental Site Assessment before entering into the lease.
Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment


The U.S. Environmental Protection Agency (EPA) recognizes the overall environmental benefits of siting renewable energy projects on contaminated properties and developed this reference guide to provide answers to some common questions that developers of renewable energy projects on contaminated properties may have regarding potential liability for cleaning up these properties. This document addresses potential liability issues, summarizes available resources and policy tools, and facilitates these types of projects. The appendix lists EPA programs and reference documents that may be relevant to developers considering renewable energy projects on contaminated properties.

Key Messages for Developers of Renewable Energy Projects

The vast majority of contaminated properties requiring cleanup are most likely to be addressed by state cleanup programs. Generally, only contaminated properties with significant actual or potential public health and/or environmental impacts or those needing immediate attention are expected to warrant federal cleanup or enforcement under CERCLA or RCRA.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes several self-implementing landowner liability protections and generally limits federal CERCLA enforcement against parties who are cleaning up certain contaminated properties in compliance with a state response program. EPA approval is not required for these liability protections and limitations to take effect for parties who meet the statutory requirements.

The EPA has developed a variety of enforcement discretion policies and property-specific documents to encourage cleanups and facilitate contaminated property transactions and revitalization.

Not all leases trigger CERCLA liability for tenants (also referred to as lessees). To address concerns about potential CERCLA liability, the EPA issued enforcement discretion guidance and accompanying model comfort letters regarding the treatment of tenants under CERCLA’s Bona Fide Prospective Purchaser provision.

The EPA will work with developers on a renewable energy project to address potential lessee liability issues and to determine whether a property-specific document from the EPA may be needed.

The EPA encourages developers to consult with legal counsel and the appropriate state, tribal or local environmental protection agency before taking any action to acquire, cleanup, or redevelop contaminated property.

APPENDIX

Relevant EPA Programs and Reference Documents

RE-POWERING AMERICA’S LAND INITIATIVE PROGRAM SITE AND MAPPING TOOL

RE-POWERing America’s Land Initiative website

Renewable Energy Interactive Mapping Tool

CLEANUPS IN MY COMMUNITY SITE

Cleanups in My Community website

ENFORCEMENT AND LIABILITY PROGRAM SITES AND DOCUMENTS

Program Sites:

Brownfields and Land Revitalization Cleanup Enforcement website

Enforcement Tools that Address Liability Concerns for Brownfields and Land Revitalization webpage

Documents:


Fact Sheet: CERCLA Liability and Local Government Acquisitions and Other Activities, March 2011

Revitalizing Contaminated Sites: Addressing Liability Concerns (The Revitalization Handbook), June 2014

Report: Top 10 Questions to Ask When Buying a Superfund Site, May 2008

Fact Sheet: CERCLA Lender Liability Exemptions: Updated Questions and Answers, July 2007

Guidance and Fact Sheet: Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Continuous Property Owner, and Of Innocent Landowner Limitations on CERCLA Liability (Common Elements), March 2003

SUPERFUND PROGRAM SITES AND DOCUMENT

Program Sites:

Superfund Redevelopment website

Re-energizing Contaminated Land: Alternative Energy Reuse at Superfund Sites website

Document:

Considering Reasonably Anticipated Future Land Use and Reducing Barriers to Reuse at EPA-lead Superfund Remedial Sites, March 2010

Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment

Environmental Fact Sheet

EPA's Lender Liability Rule for Underground Storage Tanks

Background

Many underground storage tank (UST) owners and operators, particularly small businesses, need capital to make improvements to their facilities to comply with a broad spectrum of environmental regulations. EPA is particularly concerned about the ability of UST owners and operators to comply with federal UST upgrading and replacement requirements. The uncertainty of the liability of secured creditors (financial institutions and others who extend secured loans) regarding UST properties that they hold as collateral has had a chilling effect on lenders’ willingness to make loans to UST owners. This rule should remove a current barrier to the financing of UST facilities and result in greater capital availability for UST owners and operators. In addition, this rule supports the Clinton Administration’s Brownfields Economic Redevelopment Initiative, which is intended to demonstrate ways to return abandoned, contaminated urban sites to productive use and to ensure future development is done in a sustainable, environmentally sound manner.

Subtitle I of the Resource Conservation and Recovery Act (RCRA) contains a “security interest exemption” that provides secured creditors (“lenders”) an explicit statutory exemption from corrective action (cleanup) liability for releases from petroleum USTs. However, many lenders are unaware of the existence of this exemption, and many others are uncertain about its scope of coverage. Further confusion has resulted from various court cases regarding Superfund lender liability. In 1994, the D.C. Circuit Court of Appeals vacated EPA’s Superfund lender liability rule, which attempted to clarify the security interest exemption in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The court decision and EPA’s Superfund rule were limited to actions taken under CERCLA and do not affect today’s UST rule.

Action Taken

The UST-specific lender liability rule was published in the Federal Register on September 7, 1995. This final rule specifies conditions under which certain secured lenders may be exempted from RCRA Subtitle I regulatory requirements for petroleum underground storage tanks. Under the rule, a lender is eligible for an exemption only if the lender: 1) holds an ownership interest in an UST, or is in a property on which the UST is located, in order to protect its security interest; 2) does not engage in petroleum production, refining, or marketing; and 3) does not participate in the management or operation of the UST. A lender also must meet its UST(s) within 60 days after foreclosure, and either temporarily or permanently close the UST(s) unless there is a current operator at the site (other than the lender) who can be held responsible for compliance with UST regulatory requirements.

EPA believes that a lender holds only limited ownership rights when it takes possession of an UST property primarily to protect a security interest. These limited ownership rights do not rise to the level of full ownership sufficient to make the lender an "owner" of the UST(s) under RCRA Subtitle I, provided the lender meets the criteria specified in today’s rule (i.e., holds indicia of ownership primarily to protect a security interest without participating in management of an UST or engaging in petroleum production, refining, or marketing).

By foreclosing, a lender takes control of and responsibility for the UST, thus potentially subjecting it to all Subtitle I requirements that an "operator" must meet. Under today’s rule, however, a lender is exempt from the federal UST regulatory requirements as an operator if: 1) there is a current operator at the site who can be held responsible for compliance with Subtitle I regulatory requirements, or 2) the UST(s) are emptied within 60 days after foreclosure and the lender either temporarily or permanently closes the UST(s).

A lender who chooses to participate in management of or continue operation of its USTs through storage, filling, or dispensing of petroleum is not eligible for the regulatory exemption and faces potential UST regulatory responsibility for corrective action in the event of a release. The lender may also be responsible for compliance with all UST technical standards and financial responsibility requirements under Subtitle I of RCRA.

In contrast to operating an UST system, the rule allows a lender to participate in a wide range of administrative and financial management activities for USTs as well as to undertake activities to protect human health and the environment. Among the activities that a lender may perform without incurring liability under RCRA, Subtitle I are loan origination, loan policing and work out, foreclosure and sale of the UST or UST property, environmental inspections or audits, corrective action for release from USTs, and emptying and closing USTs.

The rule, titled "Underground Storage Tanks—Lender Liability," amends the Code of Federal Regulations at 40 CFR Parts 280 and 281. For additional information or for a copy of the Federal Register notice, including electronic access on the Internet or EPA’s CLU-IN system, contact EPA’s RCRA/Superfund Hotline, Monday through Friday, 8:30 a.m. to 5:30 p.m. EST. The national toll-free number for callers outside the Washington, D.C., service area is 1-800-424-9946, callers within the Washington, D.C., area must use 703-413-9410. For the hearing impaired, the number is TDD 1-800-553-7672, or 703-412-3323 (local).

Contact
“Brownfields properties often appraise at lower dollar amounts due to perceived or potential environmental risks or the often deteriorated condition of nearby properties”...but after site cleanup the properties start to turn around and appraise for higher amounts.
Ascendancy and Primacy of Grassroots Organizations & CBOs

Environmental Justice and the Green Economy

Creating community-based brownfield redevelopment strategies
Proper Understanding of Brownfields Equity Creation & Its Fair Distribution among Project Stakeholders as Key to Project Acceptance and Success
Air and Water Quality Impacts of Brownfields Redevelopment
A Study of Five Communities

Overview

A number of previous studies compared the environmental performance of specific brownfield redevelopments with similar projects built on undeveloped greenfield sites. These studies examined single brownfield/infill developments and entailed extensive site-specific analysis. The comparison sites generally accommodated the same number of residential units and commercial square footage, but typically occupied more acreage per employee or residence and were less location efficient. A review of 12 of these studies concluded that brownfield/infill development results in significant environmental benefits when compared to their greenfield counterparts. However, making broader quantitative assessments applicable to brownfield redevelopment around the country requires a methodology that is more easily transferable. This study tests an analytical approach to quantifying the environmental impacts of multiple redevelopment projects in a given municipal area in a manner that can be replicated in other regions. The method was applied to five cities and their surrounding areas—Seattle, WA, Baltimore, MD, Minneapolis-St. Paul, MN, Emeryville, CA, and Dallas-Fort Worth, TX.

Study Approach

For each of the five cities, all known brownfield sites that benefited from U.S. EPA Brownfields Program assistance and that have redevelopment completed or under way were identified. Most of these properties are in close-in, high density areas. The study also identified alternative development locations for each of the brownfield sites, based on prevailing development trends in the area. That is, it was assumed that had the development not occurred on the brownfield, it would have gone to these locations. The environmental performance of both sets of locations were measured and compared, using metrics such as vehicle use per capita, air pollutant emissions per capita, personal vehicle energy use per capita, and stormwater runoff and pollutant loads. The environmental performance measures were developed with data from regional transportation demand models, a watershed management model, and INDEX, a geographical information system (GIS)-based analytical tool.

Development on suburban/exurban sites consumes more acreage per resident or employee than urban core project areas. Most but not all of the alternative sites were located outside the urban core. The study assumed that these projects were sited on greenfields and would require 2.4 times the acreage typically used for development on brownfield sites. This assumption, believed to be conservative, is derived from factors drawn from literature on land use patterns by type of use as well as experience in the Puget Sound area. Nearly all alternative locations identified for this study would require more land to accommodate the same type of development on brownfield sites.

Five Municipal Areas Included in Study

The five municipal areas (see table) were selected based on several factors, including: the existence of a significant number of brownfield properties that met the aforementioned criteria, the availability of information about the status of redevelopment on the brownfield sites, the availability of data that could be used as indicators of local environmental performance, and a criterion stratification to provide precipitation profile diversity for the stormwater analysis.

<table>
<thead>
<tr>
<th>Municipal Areas Studied</th>
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<tbody>
<tr>
<td>City</td>
<td>No. of Brownfield Properties</td>
<td>Acreage</td>
<td>Planning Area</td>
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<tr>
<td>Dallas</td>
<td>25</td>
<td>57</td>
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<td>Emeryville</td>
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<td>Dallas-Ft Worth</td>
<td>25</td>
<td>200</td>
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<td>Total</td>
<td>132</td>
<td>1,085</td>
<td>6.03</td>
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</table>
Putting it Together: Design and Planning Case Studies

Land Revitalization SUCCESS STORIES

Building a Sustainable Future
A Report on the Environmental Protection Agency's Brownfields Sustainability Pilots
October 2009
Leveraging Federal Agency Resources & Financial Tools

Setting the Stage for Leveraging Resources for Brownfields Revitalization
The Brownfields Rose – “A Brownfield by Any Other Name . . .”

- New Port Richey Hits The Brakes On Brownfield Plan, Tampa Tribune, Eric Horchy, 11/06/2011

“All seven speakers who stepped to the podium Tuesday night voiced anxieties about potential negative perceptions that may come with making the city a brownfield, even the parts without contamination... In New Port Richey, the brownfield designation would be called the New Port Richey Economic Incentive Area, an attempt to circumvent the brownfield stigma.” [link](http://www2.tbo.com/news/news/2011/nov/05/pgnewo3-npr-hits-breaks-on-brownfield-plan-ar-300662/)

- Zephyrhills Meeting Erupts Over Brownfield, Tampa Tribune, Geoff Fox, 10/26/2011

“Councilman Lance Smith said environmental studies likely would be done on any property where a company wanted to move or expand, "whether it's designated as brownfield or not. If it is a brownfield, it could be easier getting assistance to get it cleared up," he said. "What's the downside? I don't like the stigma, either. I do think a different name would be better." There has been talk of calling the zone an Economic Incentive Area.” [link](http://www2.pascopress.com/business/business/2011/oct/28/wpnewso1-zephyrhills-meeting-erupts-over-airport-a-ar-298594/)

- Critics Attack Brownfield Idea, St. Petersburg Times, Lisa A. Davis, 10/26/2011


- City May Pursue ‘Blight’ Cash, ‘Brownfield’ Designation Could Bring State’s Millions To Orlando, Orlando Sentinel, Beth Kassab, 05/24/2004

Sherry Gutch, of the city's economic development department, said Orlando would prefer the program's name be changed to eliminate the stigma. In fact, Orlando changed the name of the city program in 2002 to Downtown Economic Enhancement District.” [link](http://articles.orlandosentinel.com/2004-05-24/news/0405240204_1_brownfield-downtown-area-surrounding-areas)
Brownfields & Property Values

  - “The analysis finds evidence of large increases in property values accompanying cleanup, ranging from 5.1% to 12.8%”

- “Using Spatial Regression to Estimate Property Tax Discounts from Proximity to Brownfields: A Tool for Local Policy-Making,” Journal of Environmental Assessment and Management (University of Cincinnati), January 2013
  - Assesses the discount in property values due to proximity to brownfields
  - Study included 6,800 properties within 2,000 feet of a brownfield
  - Concludes that City of Cincinnati can recapture $2,262,569 in annual revenue “that could presumably be recovered following brownfield cleanup.”

- The Effect of Voluntary Brownfield Programs Program on Nearby Property Values: Evidence from Illinois,” Institute for Environmental Science and Policy, University of Illinois, August 2012
  - “Sales prices increase by about 1 percent when a brownfield located 0.25 miles away is certified. Overall, the program has increased the average value of all properties within 1.5 miles of certified sites by about 2 percent. The results provide some evidence of larger effects, of about 4 – 5 percent.”
Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment

Analysis of Key Environmental Insurance Policy Provisions
(Content Provided by Mary Gerding, Hylant Insurance)

**ON-SITE COVERAGES**

**ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS**
- A coverage selection for pollution conditions that occurred prior to inception of insurance that are discovered during the policy term. Known pre-existing conditions are typically excluded but may be covered subject to negotiation with the carrier (provided adequate environmental characterization is available and adequate self-insured retention [SIR] can be determined).

**ON-SITE CLEAN-UP OF NEW CONDITIONS**
- A coverage selection addressing new on-site pollution conditions occurring from operations during the policy term.

**THIRD - PARTY CLAIMS FOR ON-SITE BODILY INJURY AND PROPERTY DAMAGE**
- A coverage selection addressing third party claims resulting from on-site exposures (illness, injury, personal property). Excludes Employees (Worker's Compensation Exposure).
Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment

Analysis of Key Environmental Insurance Policy Provisions (Content Provided by Mary Gerding, Hylant Insurance)

OFF-SITE COVERAGE

THIRD - PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM PRE-EXISTING CONDITIONS
- A coverage selection responding to a legal obligation to clean-up historical pollution that migrates off-site during the policy term. Known conditions are typically excluded but may be subject to carrier negotiation.

THIRD - PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS
- A coverage selection addressing new pollution conditions that migrate off-site during the policy term.

THIRD - PARTY CLAIMS FOR OFF-SITE BODILY INJURY AND PROPERTY DAMAGE
- A coverage selection addressing third party illness, physical injury, and property damage caused by pollution conditions migrating off-site. Property damage may include loss of use, loss of value and/or natural resource damage.
OTHER KEY POLICY TERMS

APPROACH TO KNOWN CONDITIONS
- Carriers are inclined to exclude known (identified) contamination (can't insure a burning house). Possible to negotiate to limit an exclusion by area, by media, by exposure. Approaches such as high SIR/deductible, insurance excess of indemnity and/or clean-up fund for known conditions can often be worked into the policy - requires adequate characterization and negotiation to expand coverage and limit exclusions.

BUSINESS INTERRUPTION
- This coverage enhancement is available to pay loss of revenue in the event that a pollution condition shuts down your operations. A 5-10 day waiting period is typical.

LEGAL DEFENSE AND EXPENSES
- Always included. Carrier has the right and duty to defend the Insured against a claim to which environmental insurance applies (subtracts from the insurance limits).

APPROACH TO ASBESTOS & LEAD BASED PAINT
Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment

Analysis of Key Environmental Insurance Policy Provisions

OTHER KEY POLICY TERMS

APPROACH TO NATURAL RESOURCE DAMAGES
- Many carriers include coverage for damage to natural resources within their property damage definition.

APPROACH TO FINES, PENALTIES
- Most carriers include coverage to pay for fines and penalties within the definition of Loss - unless criminal, intentional or prohibited by State law.

APPROACH TO ASBESTOS & LEAD BASED PAINT
- Most carriers will include coverage for asbestos/lead paint discovered in the soil or groundwater and third party bodily injury/property damage (with an O&M plan). Clean-up of asbestos and lead paint in or on any structure is excluded.
Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment

Analysis of Key Environmental Insurance Policy Provisions

KEY MARKETS FOR BROWNFIELDS TRANSACTIONAL RISK

- ACE Environmental
- Allied World
- Berkley
- Chubb Custom
- XL Environmental
- Zurich

Content for this and previous 4 slides graciously provided by Mary H. Gerding – Client Service Executive | Environmental Risk
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Comparison of Environmental Insurance Policy Premiums for Closed Gas Station Site with Off-Site Groundwater Contamination

<table>
<thead>
<tr>
<th>Insurance Company</th>
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<th>Insurance Company 2</th>
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<td><strong>Term</strong></td>
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<td><strong>Premium</strong></td>
<td>$96,000</td>
<td>$86,000</td>
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A Winning Brownfields Formula for Private or Public/Private Redevelopment Projects

- Begin at the End (Use)
  - “Field of Dreams,” in a Brownfields context, is a poor bet
- Three Boxes of Environmental Risk
  - Environmental Regulatory Risk
  - Third Party Environmental Legal Liability Risk
  - Construction Risk
    - Planning, Design, Permitting, Schedule, and Budget
- Strategy for Managing Environmental Regulatory Risk
- Strategy for Managing Environmental Legal Liability Risk
- Strategy for Integrating Remediation/Closure and Site Development/Construction
- Capital Stack
  - Non-Brownfield Financing
  - Brownfield Financing
- Brownfield Enterprise Issues
  - Local Government
    - Regulators
    - Community
  - Equity Creation and Fair Distribution
The Business Opportunity in Brownfields: Hiding in Plain Site

- Former Servico Landfill, West Palm Beach
- First operated in 1929
- 100,000+ cy of solid waste
- Ownership fatigue/distress
- Great agency partner (FDEP)
- Integrating design with remediation/closure
- Exit strategy locked in
The Business Opportunity in Brownfields: Hiding in Plain Site

“We love a great intersection like this; it’s sort of the gateway if you will into West Palm from the airport, which is another big signal for us. I’ve seen it both professionally and personally a number of times with my family on vacation.” Chris Gheysens, WaWa
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- Environmental Due Diligence
- Environmental Liability Analysis and Protection
- Hiring & Management of Qualified Environmental Consultants
- Brownfield Grants
- Brownfield Tax Incentives
- Brownfield Loan Guarantees
- Assistance with Securing Acquisition Financing & Placing Environmental Insurance
- Negotiation of Voluntary Cleanup Agreements & Covenants Not-to-Sue
- Integration of Cleanup and Construction Requirements
- Regulatory Approvals to Build on Contaminated Development Sites

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