

FLORIDA
BROWNFIELDS
REDEVELOPMENT
PROGRAM

ANNUAL REPORT
August 2019



Lofts at LaVilla, Jacksonville,
Duval County



**Environmental Justice
and the Green Economy**

A Vision Statement and Case Studies for Just and Sustainable Solutions



November 8, 2019
Omni Orlando Resort.
1500 Masters Boulevard
Orlando, FL

Michael R. Goldstein, Esq., Managing Partner
O: (305) 777-1682
C: (305) 962-7669
mgoldstein@goldsteinenvlaw.com

Evolving
Brownfields
Landscape in
Florida Creates
New
Opportunities for
Expanding
Services and
Growing
Revenues but
Greater
Professional Risk
for Environmental
Consultants



THE GOLDSTEIN
ENVIRONMENTAL LAW FIRM

BROWNFIELDS IN TEN

- 1. Business case for brownfields for your private sector clients
 - Reduces legal liability risk, reduces regulatory risk, maintains the integrity of approved remedial strategies; shields lenders from cleanup risk and legal liability risk; subsidizes cleanup costs, dramatically (67.5% or 90%); can turn certain redevelopment costs into environmental costs; refunds other development costs that are incurred for preferred end-uses; creates refund opportunities for job creation.

- 2. Business case for brownfields for your public sector clients
 - See Point No. 1

BROWNFIELDS IN TEN

- 3. Public policy case underlying the business case for brownfields case
 - Public subsidies through tax incentives, grants, low interest loans attract massive capital investment from the private sector. It's a great deal for the public and has saved untold billions of taxpayer dollars to clean up orphan sites and sites that would otherwise be mired in judicial litigation and administrative enforcement
 - Promotes infill development and sustainable, resilient design practices
 - Tends to result in conservation of open space for recreation and conservation and permeable space for aquifer recharge
 - Accelerates remediation, prioritizes public health, facilitates cooperation and collaboration
 - Provides protocols and mandates for community outreach, public participation, transparency in risk communication
 - Increases property values
 - Provides indirect but equally important environmental resource benefits beyond direct environmental benefits of accelerating cleanup and removing threats to public health
 - Has been the most effective vehicle in my lifetime for creating social equity and redressing disparate permitting and development practices in minority communities of color

BROWNFIELDS IN TEN

- 4. Business case for brownfields for consultants
 - Market continues to expand every year. Metrics bear this out.
 - If you're not in brownfields, you're losing not only the cleanup work to your competitors but ancillary professional services. Major gateway service to Geotech work, site civil, materials construction, general contracting
 - Private sector moves quicker, pays faster than state funded programs
 - Malpractice risk of not understanding, bringing liability management and cost reduction options to clients – “Under delivery risk”
 - Malpractice risk of not truly understanding the process or substance of brownfields and making representations that become part of a client's pro forma that don't bear out – “Over promising risk”
 - Professional gratification of doing good while doing well – don't miss out

BROWNFIELDS IN TEN

- 5. Two key milestones in environmental redevelopment since I last reported to you 12 months ago:
 - Stormwater design at contaminated sites to limit plume migration. There is a regulatory component to this, an engineering component, a modeling component, and a legal component. The easiest way to blow up 9 months and six figures worth of pre acquisition due diligence perfecting All defenses to environmental liability is by designing infiltration that loads stormwater into a contaminant plume and moves it into a previously unimpacted area.
 - Miami-Dade County, always on the leading edge of understanding the intersection between contamination cleanup and property reuse and transactions, has formalized, articulated, and socialized new policy that imposes a premium on thinking far into the future when recommending remediation strategies to clients. More than anything else that has occurred anywhere else in the state of Florida, this new policy is forcing our industry to reconsider the value and utility of conditional closures. It's the greatest area of malpractice risk, in our view, for consultants in the space if not properly understood.

BROWNFIELDS IN TEN

- 6. Biggest miss that we see on the consulting side in environmental redevelopment is the failure to make visible for clients the remediation like costs that are hiding behind site-specific construction activities. Redevelopment sites with contaminated soil and groundwater are unique in this sense because normal construction activities – construction dewatering, excavating soil for subsurface utilities or parking, installing stormwater features all generate contaminated media that must be handled, treated, or disposed of properly. If the consultants aren't in close and constant communication with the Geotechnical engineers and the civil engineers, these issues get missed and developers don't realize they are going to incur substantial cost premiums and enhanced permitting until it's late in the game.

BROWNFIELDS IN TEN

- 7. Federal, state, and local brownfield programs continue to demonstrate their institutional and cultural commitment to environmental redevelopment by delivering major subsidies for cleanup and lasting, effective mechanisms for shielding developers, end-users, and lenders from liability.
- 8. As a result of the previous point, even the highest-hanging fruit, Superfund and RCRA Corrective Action Sites are being acquired for redevelopment.
- 9. The story of Brownfields remains a Tale of Two Cities. Continues to be the worst of times for poor people. For communities of color. For those without representation. How do they get a fair shake? No public participation or community outreach requirement in 62-780, F.A.C., so where do we look for guidance?
- 10. For more . . .

BROWNFIELDS IN TEN

POINT 1: LESS RISK/MORE \$

■ Regulatory Environmental Liability

- Cleanup Costs – On-Site & Off-site
- Fines, Penalties, Natural Resource Damages
- Responsibility to File Plans & Reports
- Spending significant sums on consultants, lawyers, and contractors

■ Third Party Legal Environmental Liability

- Reimbursement Costs
- Diminution in Value
- Economic Damages
- Injunctive Relief
- Toxic Tort for Bodily Injury

■ Liability for Construction Risk

- Incremental Costs of Site Development
- Contractor Delay
- Project Delay

• Capital Risk

- Lender Concerns
- Investor Concerns
- Collateral Concerns
- Borrower Solvency Concerns

• Reputational Risk

- What are you trying to do to my property?
- What are you trying to do to my property values?
- What are you trying to do to my family?

UNDERSTANDING THE RULES - WHAT DOES IT MEAN TO BE LIABLE?

■ Sources of Liability

■ Statutory

- Federal – Superfund/RCRA
- State – Chapters 376 and 403, Florida Statutes
- Local – Chapter 24, Miami-Dade County Code (s 24-31(6) Civil Liability, Joint and Several)

■ Common Law

- Strict Liability for Ultra Hazardous Activity
- Negligence
- Nuisance
- Trespass
- Unjust Enrichment

(6) → Whenever a violation of this chapter occurs or exists, or has occurred or existed, any person, individually or otherwise, who has a legal, beneficial, or equitable interest in the facility or instrumentality causing or contributing to the violation, or who has a legal, beneficial, or equitable interest in the real property upon which such violation occurs or exists, or has occurred or existed, shall be jointly and severally liable for said violation regardless of fault and regardless of knowledge of the violation. This provision shall be construed to impose joint and severable liability, regardless of fault and regardless of knowledge of the violation, upon all persons, individually or otherwise, who, although said persons may no longer have any such legal, beneficial or equitable interest in said facility or instrumentality or real property, did have such an interest at any time during which such violation existed or occurred or continued to exist or to occur. This provision shall be liberally construed and shall be retroactively applied to protect the public health, safety, and welfare and to accomplish the purposes of this chapter. ¶

■ Adinolfe v. United Technologies Corp., 786 F.3d 1161 (11th Cir. 2014)

- Construing Florida law
- Personal injury and diminution claims could be brought under common law theories of nuisance, negligence, and strict liability *without physical incursion by contamination*
 - *Anticipated contamination* sufficient
- No minimum contaminant concentration required

FLORIDA BROWNFIELD PROGRAM LIABILITY PROTECTION FOR PROPERTY OWNERS & RESPONSIBLE PARTIES

§ 376.82(2), FLORIDA STATUTES

(a) Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, is relieved of:

1. Further liability for remediation of the contaminated site or sites to the state and to third parties.

2. Liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.

3. Liability for claims of property damages, including, but not limited to, diminished value of real property or improvements; lost or delayed rent, sale, or use of real property or improvements; or stigma to real property or improvements caused by contamination addressed by a brownfield site rehabilitation agreement.

Notwithstanding any other provision of this chapter, this subparagraph applies to causes of action accruing on or after July 1, 2014. This subparagraph does not apply to a person who discharges contaminants on property subject to a brownfield site rehabilitation agreement, who commits fraud in demonstrating site conditions or completing site rehabilitation of a property subject to a brownfield site rehabilitation agreement, or who exacerbates contamination of a property subject to a brownfield site rehabilitation agreement in violation of applicable laws which causes property damages.

**BROWNFIELD LIABILITY PROTECTION FOR
PROPERTY OWNERS & RESPONSIBLE PARTIES**
§ 376.82(2), FLORIDA STATUTES

(d) The liability protection provided under this section shall become effective upon execution of a brownfield site rehabilitation agreement and shall remain effective, provided the person responsible for brownfield site rehabilitation complies with the terms of the site rehabilitation agreement. Any statute of limitations that would bar the department from pursuing relief in accordance with its existing authority is tolled from the time the agreement is executed until site rehabilitation is completed or immunity is revoked pursuant to s. [376.80\(8\)](#).

BROWNFIELD LIABILITY PROTECTION FOR LENDERS

§ 376.82(4)(B), FLORIDA STATUTES

- (a) Lenders, including those serving as a trustee, personal representative, or in any other fiduciary capacity, in connection with a loan, are entitled to the liability protection established in subsection (2) if they have not caused or contributed to a release of a contaminant at the brownfield site.
- (b) Lenders who hold indicia of ownership of a parcel within a brownfield area primarily to protect a security interest or who own a parcel within a brownfield area as a result of foreclosure or a deed in lieu of foreclosure of a security interest and who seek to sell, transfer, or otherwise divest the parcel via sale at the earliest practicable time are not liable for the release or discharge of a contaminant from the parcel; for the failure of the person responsible for brownfield site rehabilitation to comply with the brownfield site rehabilitation agreement; or for future site rehabilitation activities required pursuant to a reopener provision established in subsection (3) where the lender has not divested the borrower of, or otherwise engaged in, decisionmaking control of the site rehabilitation or site operations or undertaken management activities beyond those required to protect its financial interest while making a good faith effort to sell the site as soon as practicable and when an act or omission of the lender has not otherwise caused or contributed to a release of a contaminant at the brownfield site.
- (c) The economic incentives that were granted to a person responsible for site rehabilitation by state or local governments shall not accrue to a lender who obtains ownership of the brownfield site by one of the methods described in this subsection. The economic incentives are abated during the lender's ownership, but they may be transferred and reinstated upon the sale of the brownfield site.

THE ESSENCE OF BROWNFIELDS LIABILITY MANAGEMENT – TURNING SWORDS INTO PLOUGHSHARES

- Defenses to Liability under Federal Law
 - Bona Fide Prospective Purchaser Defense
 - Owners of Property Impacted by Contamination from an Off-Site Source
 - Contaminated Aquifers
 - Contiguous Property Owners
 - Third Party Defense
 - Innocent Landowner Defense
 - Lender Liability Protections
 - Secured Creditor Defense
 - Underground Storage Tank Lender Liability Projection

- Defenses to Liability under State Law
 - Third Party Defense
 - Innocent Owner Defense
 - Petroleum & Drycleaner Program Defenses
 - Brownfield Defenses

- Defenses to Liability under Local Law
 - Chapter 24 – None
 - Chapter 27 – Vague/Untested

THE ESSENCE OF BROWNFIELDS LIABILITY MANAGEMENT – TURNING SWORDS INTO PLOUGHSHARES

- **Federal Administrative Opportunities for Liability Management**
 - **Comfort/Status Letter**
 - Superfund Comfort/Status Letter
 - Reasonable Steps Comfort/Status Letter
 - Renewable Energy Comfort/Status Letter
 - RCRA Comfort/Status Letter
 -
 - **Agreements/Covenants Not to Sue**
 - Bona Fide Prospective Work Agreements
 - Prospective Purchaser Agreements and Prospective Lessee Agreements
 - Windfall Lien Resolution Agreements
 - Contiguous Property Owner Assurance Letters and Settlements
 - **Other Regulatory Tools**
 - Ready for reuse Determinations
 - National Priority List Deletions
- **State Opportunities for Liability Management**
 - **Comfort Letters**
 - **Voluntary Cleanup Agreements/Covenants Not to Sue**

Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Contaminated Land Use and Reuse



THE REVITALIZATION HANDBOOK

Revitalizing Contaminated Lands: *Addressing Liability Concerns*



Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

June 2014

- Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq.

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

Enforcement

Enforcement Home

Enforcement Basics

National Enforcement Initiatives

Air Enforcement

Water Enforcement

Waste, Chemical and Cleanup Enforcement

Criminal Enforcement

Enforcement at Federal Facilities

Data and Results

Policy, Guidance and Publications

Enforcement Tools that Address Liability Concerns for Brownfields and Land Revitalization

EPA's Enforcement Office has developed a number of guidances and site-specific tools that address landowner liability concerns so that protective cleanups and revitalization can take place.

You will need Adobe Reader to view some of the files on this page. See [EPA's PDF page](#) to learn more.

Specifically, EPA developed enforcement discretion guidances that clarify potential liability and provide certainty and comfort to parties seeking to redevelop contaminated sites so that EPA is not involved in every contaminated property transaction.

EPA also developed site-specific tools to facilitate contaminated site transactions when perceived liability remains an obstacle and EPA involvement is critical.

These tools and guidance can be found on the [Brownfields and Land Revitalization cleanup policy and guidance database](#) or summarized in the [Revitalization Handbook](#).

Tools available through different environmental statutes:

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund)

On this page:

- [Comfort/status letters](#)
- [Bona Fide Prospective Purchaser \(BFPP\) doing work agreements](#)
- [Prospective purchaser agreements \(PPAs\) and prospective lease agreements \(PLAs\)](#)
- [Contiguous Property Owner \(CPO\) assurance letters and settlement agreements](#)
- [Windfall lien resolution agreements](#)

Elsewhere:

- [State Voluntary Cleanup agreements](#)
- [Ready for Reuse Determinations](#)
- [Partial Deletion from the National Priorities List \(NPL\)](#)

CREATING SAFE, RELIABLE, PREDICTIVE & INVITING CLIMATE FOR PRIVATE CAPITAL INVESTMENT IN CONTAMINATED LAND USE AND REUSE

Resource Conservation and Recovery Act (RCRA) Corrective Action

On this page:

- [Comfort/status letters](#)
- [Prospective purchaser agreements \(PPAs\) and prospective lease agreements \(PLAs\)](#)

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund)

Resource Conservation and Recovery Act (RCRA) Corrective Action

Underground Storage Tanks

On this page:

- [Comfort/status letters](#)
- [Prospective purchaser agreements \(PPAs\) and prospective lease agreements \(PLAs\)](#)

Elsewhere:

- [Underground Storage Tank Lender Liability Rule \(PDF\)](#) (24 pp, 283 K)
- [State Voluntary Cleanup agreements](#)

Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Contaminated Land Use & Reuse



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 5, 2012

MEMORANDUM

SUBJECT: Transmittal of "Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision" and Model Comfort/Status Letters for Lessees at Renewable Energy Projects

FROM: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance *Cynthia Giles*
Mathy Stanislaus, Assistant Administrator
Office of Solid Waste and Emergency Response *Mathy Stanislaus*

TO: Regional Administrators, Regions I-X

This memorandum transmits the "Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision" and three new model comfort/status letters for lessees involved in renewable energy development on contaminated property. These documents may be found on the Agency's website at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

The revised guidance and model letters were developed, in part, in response to issues raised through the EPA's *RE-Powering America's Land Initiative: Siting Renewable Energy on Potentially Contaminated Land and Mine Sites*. The RE-Powering America's Land Initiative is an effort by the EPA to identify the renewable energy potential of contaminated properties and provide resources for communities, developers, industry, state and local governments, and others interested in reusing these properties for renewable energy development. For more information, see the Agency's website at <http://www.epa.gov/renewableenergyland/>.

The revised guidance discusses the potential applicability of the bona fide prospective purchaser (BFPP) provision to tenants who lease contaminated or formerly contaminated properties and how the Agency intends to exercise its enforcement discretion to treat certain tenants as BFPPs under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The revised guidance addresses lessees who were not previously covered by Agency guidance because the owner of the property was not a BFPP. While the impetus for this effort is linked to renewable energy development, the updated enforcement discretion guidance applies broadly, across all industries.

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.



CERCLA, BROWNFIELDS, and LENDER LIABILITY

What is CERCLA?

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) authorizes the U.S. Environmental Protection Agency (EPA) to respond to human health and environmental hazards posed by hazardous substances at properties. Under CERCLA, EPA can require liable parties to conduct cleanups or EPA can conduct a cleanup and subsequently seek cleanup costs from liable parties. Section 107 of CERCLA defines a liable party as: (1) the current *owner and operator* of a contaminated property; (2) any *owner or operator* at the time of disposal of any hazardous substances; (3) any person who arranged for the disposal or treatment of hazardous substances, or arranged for the transportation of hazardous substances for disposal or treatment; and (4) any person who accepts hazardous substances for transport to the property and selects the disposal site.

Under Section 101(20)(A) of CERCLA, a person is an "owner or operator" of a facility (property) if that person: (1) owns or operates the facility; or (2) owned, operated, or otherwise controlled activities at that facility immediately before title to the facility, or control of the facility was conveyed to a state or local government due to bankruptcy, foreclosure, tax delinquency, abandonment, or foreclosure.

Are Lenders Liable for Contamination under CERCLA?

Banks that hold mortgages on property as secured lenders are exempt from CERCLA liability, if certain criteria are met. CERCLA Section 101(20) contains a secured creditor exemption that eliminates owner/operator liability for lenders who hold ownership in a CERCLA facility primarily to protect their security interest in that facility, provided they do not "participate in the management of the facility." Generally, "participation in the management" may apply if a bank exercises decision-making control over a property's environmental compliance, or exercises control at a level similar to that enjoyed by a manager of the facility or property. "Participation in management" does *not* include actions such as property inspections, requiring a response action to be taken to address contamination, providing financial advice, or renegotiating or restructuring the terms of the security interest. In addition, the secured creditor exemption provides that simply foreclosing on a property does not result in liability for a bank, provided the bank takes "reasonable steps" to divest itself of the property "at the earliest practicable, commercially reasonable time, on commercially reasonable terms." Generally, a bank may maintain business activities and close down operations at a property, so long as the property is listed for sale shortly after the foreclosure date, or at the earliest practicable, commercially reasonable time.

How Did the "Brownfields Amendments" Change CERCLA Liability?

In 2002, Congress passed the "Small Business Liability Relief and Brownfields Revitalization Act" (Brownfields Amendments). These amendments created a new landowner liability protection from CERCLA for bona fide prospective purchasers ("BFPP"). Prior to the Brownfields Amendments, a person who purchased property with knowledge of the contamination was subject to "owner or operator" liability under CERCLA. Since the enactment of the Brownfields Amendments, prospective landowners may now purchase property with knowledge of contamination and obtain protection from liability, provided they meet certain pre- and post-purchase requirements.

To qualify as a BFPP, a person must: (1) not be potentially liable for contamination on or at a property; (2) acquire the property after January 11, 2002; (3) establish that all disposal of hazardous substances

occurred before the person acquired the facility; (4) make *all appropriate inquiries* into previous ownership and uses of the property *prior* to acquiring the property; and (5) not be affiliated with a party responsible for any contamination.

In addition, after purchasing a property, to maintain BFPP status, landowners must comply with "continuing obligations" during their property ownership. To comply with the continuing obligations, BFPPs must: (1) provide all legally required notices with respect to the discovery or release of a hazardous substance; (2) exercise appropriate care with respect to the hazardous substances by taking reasonable steps to stop or prevent continuing or threatened future releases and exposures, and prevent or limit human and environmental exposure to previous releases; (3) provide full cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration; (4) comply with land use restrictions and not impede the effectiveness of institutional controls; and (5) comply with information requests and subpoenas. For more information on continuing obligations see: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf>

What is "All Appropriate Inquiries?"

"All appropriate inquiries" (AAI) is the process of evaluating a property's environmental conditions and assessing potential liability for any contamination. EPA issued standards and practices for conducting all appropriate inquiries (70 FR 66070) that became effective on November 1, 2006. The AAI requirements are a liability protection that may potentially claim protection from CERCLA liability as an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner. EPA recognizes the *ASTI 2005 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment* as fully compliant with the AAI final rule. For more information on the AAI requirements see: <http://www.epa.gov/brownfields/regneg.htm>

How Does AAI Apply to Lenders?

The AAI rule primarily applies to borrowers who want to claim protection from CERCLA liability as innocent landowners, bona fide prospective purchasers or contiguous property owners. The rule does not change the CERCLA liability exemption for banks that hold mortgages on property as secured lenders. The secured lender exemption is *not* conditioned upon a bank or lender undertaking AAI prior to issuing a mortgage or prior to the property being purchased by the borrower.

Although banks and lenders are afforded protection from CERCLA liability through the secured creditor exemption, banks may choose to further protect themselves from loss (due to decreases in the value of the property or collateral) by requiring that borrowers qualify for liability protections. Banks therefore may want to encourage their borrowers to comply with the provisions established for BFPPs and ensure that borrowers properly conduct AAI prior to acquiring a property.

It is important to note that it is still possible for a bank or lender to be liable for contamination on or at a property, if it is found to be acting as either an owner or operator of a contaminated property. See information above for an explanation of the secured creditor exemption and the definition of "participation in the management" of a property. Also, even if a financial institution qualifies for the secured creditor exemption from CERCLA liability, it is still possible that a particular state may have stricter laws governing lender liability for contaminated properties.

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

United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
5403W

EPA 510-F-95-004
September 1995

Office of Underground Storage Tanks

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, both prior to and after foreclosure, from compliance with all Subtitle I requirements as an UST "owner" and "operator" if the lender: 1) holds an ownership interest in an UST, or in a property on which the UST is located, in order to protect its security interest (a lender typically holds property as collateral as part of the loan transaction); 2) does not engage in petroleum production, refining, and marketing; and 3) does not participate in the management or operation of

over

Discussion

the UST. A lender also must empty 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, and 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 the 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 on and sale of the UST or UST property, environmental inspections or audits, corrective action for releases from USTs, and emptying and closing USTs.

Contact

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 7:30 p.m. EST. The national toll-free number for callers outside the Washington, D.C., service area is 1 800 424-9346; callers within the Washington, D.C., area must use 703 412-9810. For the hearing impaired, the number is TDD 1 800 553-7672, or 703 412-3323 (local).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 29 2019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements")

FROM: Susan Parker Bodine *Susan Parker Bodine*
TO: Regional Counsels
Superfund National Program Managers

I. Introduction

The U.S. Environmental Protection Agency recognizes that environmental cleanup can help promote reuse or redevelopment of contaminated, potentially contaminated, and formerly contaminated properties (collectively referred herein as "impacted properties") and thereby revitalize communities that may have been adversely affected by the presence of these impacted properties. The EPA also understands that parties interested in acquiring an impacted property for reuse and redevelopment, as well as parties that currently own an impacted property or land contiguous to an impacted property, may be concerned about the potential liabilities stemming from the presence of contamination to which they have not contributed.

Congress also understood these concerns, and in an effort to address them enacted the Small Business Liability Relief and Brownfields Revitalization Act ("Brownfields Amendments"), Pub. L. No. 107-118, in January 2002, which amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund)¹ to provide important liability limitations for landowners that qualify as: (1) bona fide prospective purchasers (BFPPs), (2) contiguous property owners (CPOs), or (3) innocent landowners (ILOs) (hereinafter, "landowner liability protections" or "landowner provisions"). Congress intended these provisions to be self-implementing, enabling private parties to save time and costs, in part, by reducing EPA involvement in most private party transactions. Despite the self-implementing nature of the qualified landowner liability protections, however, the EPA has continued to receive requests for more clarity on the specific statutory criteria for BFPPs, CPOs, and ILOs.

¹ 42 U.S.C. §§ 9601, *et seq.*

To achieve and maintain these statutory landowner liability protections, a landowner must meet certain threshold criteria and satisfy certain continuing obligations.² Many of the conditions are the same or similar under the three landowner provisions ("common elements").

This memorandum is intended to provide EPA personnel with general guidance on the common elements of the landowner liability protections to assist them in exercising their enforcement discretion, which at the same time may provide general information to landowners, developers, lenders, investors, or other third-party stakeholders who may wish to become involved with impacted properties. Specifically, this memorandum first discusses the threshold criteria of:

- Performing "all appropriate inquiries" into the previous ownership and uses of property before acquisition; and
- Demonstrating no "affiliation" with a liable party (for BFPPs and CPOs).³

The memorandum then discusses the common continuing obligations:⁴

- Demonstrating that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (for BFPPs and ILOs);
- Complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls (ICs);
- Taking "reasonable steps" with respect to hazardous substance releases affecting a landowner's property;
- Providing cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration;
- Complying with information requests and administrative subpoenas (for BFPPs and CPOs); and
- Providing legally required notices (for BFPPs and CPOs).

A chart summarizing the common elements and other statutory criteria applicable to BFPPs, CPOs, and ILOs is attached to this memorandum (Attachment A). Also attached is a "Reasonable Steps Categories and Examples" document (Attachment B), which identifies acts and omissions that courts have found to be indicative of "due care" or the lack thereof in evaluating the ILO affirmative defense. The attachment further includes limited discussion on "reasonable steps" identified by courts in evaluating BFPP status. Attachment B also lists some site-specific examples of reasonable steps from previously-issued EPA comfort/status letters.⁵

This guidance supersedes the EPA's 2003 interim guidance titled *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability* ("2003 Interim Common Elements

² See CERCLA §§ 101(40)(B)(i)-(viii) and 107(y) for BFPPs, 107(q)(1)(A) for CPOs, and 101(35)(A)-(B) and 107(b)(3) for ILOs.

³ While some common elements are only applicable to two of the three landowner liability protections (as indicated), there may be related obligations for the third category of landowner. See each of the common element's sections and Attachment A for a fuller explanation.

⁴ Certain obligations specific to the individual landowner liability protections are not listed here. Please see the statute and Attachment A for further information.

⁵ Attachment C ("Sample Federal Superfund Interest Reasonable Steps Letter") to the 2003 Interim Common Elements Guidance has been removed, as sample "reasonable steps" language is now included in the [Model Federal Superfund Interest Comfort/Status Letter](#) (see Section III B.3.c., below).

BROWNFIELDS IN TEN

POINT 1: LESS RISK/**MORE \$**

Tax Credit Type	Application Frequency	Maximum Credit for Costs Incurred after 12/31/2007	
Site Rehabilitation	Annually	50%	\$500,000
No Further Action (i.e., SRCO)	Once	25%	\$500,000
Affordable Housing	Once	25%	\$500,000
Health Care Facility or Provider	Once	25%	\$500,000
Solid Waste	Once	50%	\$500,000

VCTC RECOVERY SCENARIOS WITH AND WITHOUT AFFORDABLE HOUSING/PUBLIC HEALTH BONUSES

Analysis of Potential Voluntary Cleanup Tax Credit Recovery for Eligible Contamination Assessment and Remediation Costs (with and without Affordable Housing & Public Health Facility Tax Credit Bonus)

Total Eligible Costs of Cleanup	Total Years of Cleanup	Year 1		Year 2		Year 3		Cleanup Completion Bonus Tax Credit	Total Tax Credits w/o AH/PH Bonus	Total % w/o AH/PH Bonus	AH/PH Bonus	Total Tax Credits with AH/PH Bonus	Total % with AH/PH Bonus
		Eligible Costs	Tax Credit	Eligible Costs	Tax Credit	Eligible Costs	Tax Credit						
\$1.0M	1	\$1.0M	\$500K					\$250K	\$750K	75%	\$250K	\$1M	100%
\$1.0M	2	\$500K	\$250K	\$500K	\$250K			\$250K	\$750K	75%	\$250K	\$1M	100%
\$2.0M	1	\$2.0M	\$500K					\$500K	\$1M	50%	\$500K	\$1.5M	75%
\$2.0M	2	\$1.0M	\$500K	\$1.0M	\$500K			\$500K	\$1.5M	75%	\$500K	\$2M	100%
\$2.0M	3	\$1.25M	\$500K	\$500K	\$250K	\$250K	\$125K	\$500K	\$1.375M	68.75%	\$500K	\$1.875M	93.75%
\$3.0M	1	\$3.0M	\$500K					\$500K	\$1.0M	33.33%	\$500K	\$1.5M	50%
\$3.0M	2	\$2.0M	\$500K	\$1.0M	\$500K			\$500K	\$1.5M	50%	\$500K	\$2M	66.67%
\$3.0M	3	\$1.5M	\$500K	\$1.0M	\$500K	\$500K	\$250K	\$500K	\$1.75M	78.30%	\$500K	\$2.25M	75%

VCTC Cash-on-Cash Recovery Scenarios Secondary Market Purchase Price – .90/\$

Total Eligible Costs of Cleanup	Total Years of Cleanup	Total Tax Credits w/o AH/PH Bonus	Cash Net at 90%	% as Total Cost of Cleanup	Total Tax Credits with AH/PH Bonus	Cash Net at 90%	% as Total Cost of Cleanup
\$1.0M	1	\$750K	\$675,000.00	67.5%	\$1M	\$900,000.00	90%
\$1.0M	2	\$750K	\$675,000.00	67.5%	\$1M	\$900,000.00	90%
\$2.0M	1	\$1M	\$900,000.00	45%	\$1.5M	\$1,300,000.00	65%
\$2.0M	2	\$1.5M	\$1,300,000.00	65%	\$2M	\$1,800,000.00	90%
\$2.0M	3	\$1.375M	\$1,237,500.00	61.85%	\$1.875M	\$1,687,500.00	84.35%
\$3.0M	1	\$1.0M	\$900,000.00	30%	\$1.5M	\$1,300,000.00	43.3%
\$3.0M	2	\$1.5M	\$1,300,000.00	43.3%	\$2M	\$1,800,000.00	60%
\$3.0M	3	\$1.75M	\$1,575,000.00	58.3%	\$2.25M	\$2,025,000.00	67.5%

VCTC RECOVERY SCENARIOS WITH AND WITHOUT AFFORDABLE HOUSING/PUBLIC HEALTH BONUSES

**Analysis of Potential Voluntary Cleanup Tax Credit Recovery for Eligible Contamination Assessment and Remediation Costs
(with and without Affordable Housing & Public Health Facility Tax Credit Bonus)**

Total Eligible Costs of Cleanup	Total Years of Cleanup	Year 1		Year 2		Year 3		Cleanup Completion Bonus Tax Credit	Total Tax Credits w/o AH/PH Bonus	Total % w/o AH/PH Bonus	AH/PH Bonus	Total Tax Credits with AH/PH Bonus	Total % with AH/PH Bonus
		Eligible Costs	Tax Credit	Eligible Costs	Tax Credit	Eligible Costs	Tax Credit						
\$1.0M	1	\$1.0M	\$500K					\$250K	\$750K	75%	\$250K	\$1M	100%
\$1.0M	2	\$500K	\$250K	\$500K	\$250K			\$250K	\$750K	75%	\$250K	\$1M	100%
\$2.0M	1	\$2.0M	\$500K					\$500K	\$1M	50%	\$500K	\$1.5M	75%
\$2.0M	2	\$1.0M	\$500K	\$1.0M	\$500K			\$500K	\$1.5M	75%	\$500K	\$2M	100%
\$2.0M	3	\$1.25M	\$500K	\$500K	\$250K	\$250K	\$125K	\$500K	\$1.375M	68.75%	\$500K	\$1.875M	93.75%
\$3.0M	1	\$3.0M	\$500K					\$500K	\$1.0M	33.33%	\$500K	\$1.5M	50%
\$3.0M	2	\$2.0M	\$500K	\$1.0M	\$500K			\$500K	\$1.5M	50%	\$500K	\$2M	66.67%
\$3.0M	3	\$1.5M	\$500K	\$1.0M	\$500K	\$500K	\$250K	\$500K	\$1.75M	78.30%	\$500K	\$2.25M	75%

**VCTC Cash-on-Cash Recovery Scenarios
Secondary Market Purchase Price – .90/\$**

Total Eligible Costs of Cleanup	Total Years of Cleanup	Total Tax Credits w/o AH/PH Bonus	Cash Net at 90%	% as Total Cost of Cleanup	Total Tax Credits with AH/PH Bonus	Cash Net at 90%	% as Total Cost of Cleanup
\$1.0M	1	\$750K	\$675,000.00	67.5%	\$1M	\$900,000.00	90%
\$1.0M	2	\$750K	\$675,000.00	67.5%	\$1M	\$900,000.00	90%
\$2.0M	1	\$1M	\$900,000.00	45%	\$1.5M	\$1,300,000.00	65%
\$2.0M	2	\$1.5M	\$1,300,000.00	65%	\$2M	\$1,800,000.00	90%
\$2.0M	3	\$1.375M	\$1,237,500.00	61.85%	\$1.875M	\$1,687,500.00	84.35%
\$3.0M	1	\$1.0M	\$900,000.00	30%	\$1.5M	\$1,300,000.00	43.3%
\$3.0M	2	\$1.5M	\$1,300,000.00	43.3%	\$2M	\$1,800,000.00	60%
\$3.0M	3	\$1.75M	\$1,575,000.00	58.3%	\$2.25M	\$2,025,000.00	67.5%

BUYERS OF VOLUNTARY CLEANUP TAX CREDITS

Analysis of Florida Voluntary Tax Credit Program
Tax Credit Transferees as of August 2016

Company	Total Amount Transferred (As of August 2016)	Number Applications Transferred (As of August 2016)	Date of First Transfer	Date of Last Transfer
Nestle Holdings, Inc.	\$4,796,263.01	23	8/4/2010	9/2/2015
U.S. Bank National Association	\$3,987,417.89	25	11/24/2015	12/28/2015
Transitions Optical, Inc.	\$3,970,275.49	26	2/9/2007	9/17/2012
NIMCO US, Inc.	\$3,244,956.82	14	6/23/2013	6/13/2016
The Sherwin Williams Co.	\$3,208,069.51	32	8/15/2007	11/25/2015
Nordstrom, Inc.	\$2,109,815.61	17	8/10/2012	10/8/2015
DISH DBS Corporation	\$1,661,049.53	21	7/21/2011	5/26/2015
SWIMC, Inc.	\$1,362,749.88	7	10/5/2014	10/8/2015
Tiffany and Company	\$1,173,150.56	3	11/25/2015	
Bloomingdales, Inc.	\$1,121,303.63	12	9/13/2013	10/8/2015

Strong, consistent demand

Oversubscribed

\$8.2 million backlog; \$411,000 of the remainder already awarded

2 year wait

Overpromise, underdeliver risk

PICKING BF WINNERS IN FL – AFFORDABLE HOUSING

**Potential Scenarios for Sales Tax Refund on Eligible Building Materials
for Low and Moderate Income Construction on Brownfield Sites and in Brownfield Areas
Prepared by The Goldstein Environmental Law Firm, P.A.**

Total Construction Budget	% as Eligible Building Materials	Total Eligible Building Materials Cost	Potential Refund on Average Sales Tax of 6.00%		
			100% Recovery	85% Recovery	70% Recovery
\$30,000,000.00	40%	\$12,000,000.00	\$720,000.00	\$612,000.00	\$504,000.00
\$30,000,000.00	25%	\$7,500,000.00	\$450,000.00	\$382,500.00	\$315,000.00
\$30,000,000.00	20%	\$6,000,000.00	\$360,000.00	\$306,000.00	\$252,000.00
\$50,000,000.00	40%	\$20,000,000.00	\$1,200,000.00	\$1,020,000.00	\$840,000.00
\$50,000,000.00	25%	\$12,500,000.00	\$750,000.00	\$637,500.00	\$525,000.00
\$50,000,000.00	20%	\$10,000,000.00	\$600,000.00	\$510,000.00	\$420,000.00
\$75,000,000.00	40%	\$30,000,000.00	\$1,800,000.00	\$1,530,000.00	\$1,260,000.00
\$75,000,000.00	25%	\$18,750,000.00	\$1,125,000.00	\$956,250.00	\$787,500.00
\$75,000,000.00	20%	\$15,000,000.00	\$900,000.00	\$765,000.00	\$630,000.00

KEY FUNDING RESOURCE FOR JOB CREATION (FULL TIME EQUIVALENTS) IN DESIGNATED BROWNFIELD AREA

Job Creation Tax Refund Generation Scenarios Qualified Target Industry Bonus vs. Stand-Alone Refund

FTEs	x \$2,000 (QTI)	x \$2,500 (Stand-Alone)
100	\$200,000	\$250,000
200	\$400,000	\$500,000
300	\$600,000	\$750,000
400	\$800,000	\$1,000,000

Job Creation Tax Refund Payment Scenarios for Every 200 FTEs (Stand-Alone Refund)

FTE Scenarios	Total FTEs	Total Refund	Tax Refund Payment					
			2017	2018	2019	2020	2021	2022
Scenario 1	200 FTEs in 2017	\$500,000	\$0.00	\$125,000	\$125,000	\$125,000	\$125,000	\$0.00
Scenario 2	100 FTEs in 2017	\$250,000	\$0.00	\$62,500	\$62,500	\$62,500	\$62,500	\$0.00
	100 FTEs in 2018	\$250,000	\$0.00	\$0.00	\$62,500	\$62,500	\$62,500	\$62,500
Totals for Scenario 2		\$500,000	\$0.00	\$62,500	\$125,000	\$125,000	\$125,000	\$62,500

BROWNFIELDS IN TEN

POINT 2: EQUAL OPPORTUNITIES FOR LOCAL GOVERNMENTS:

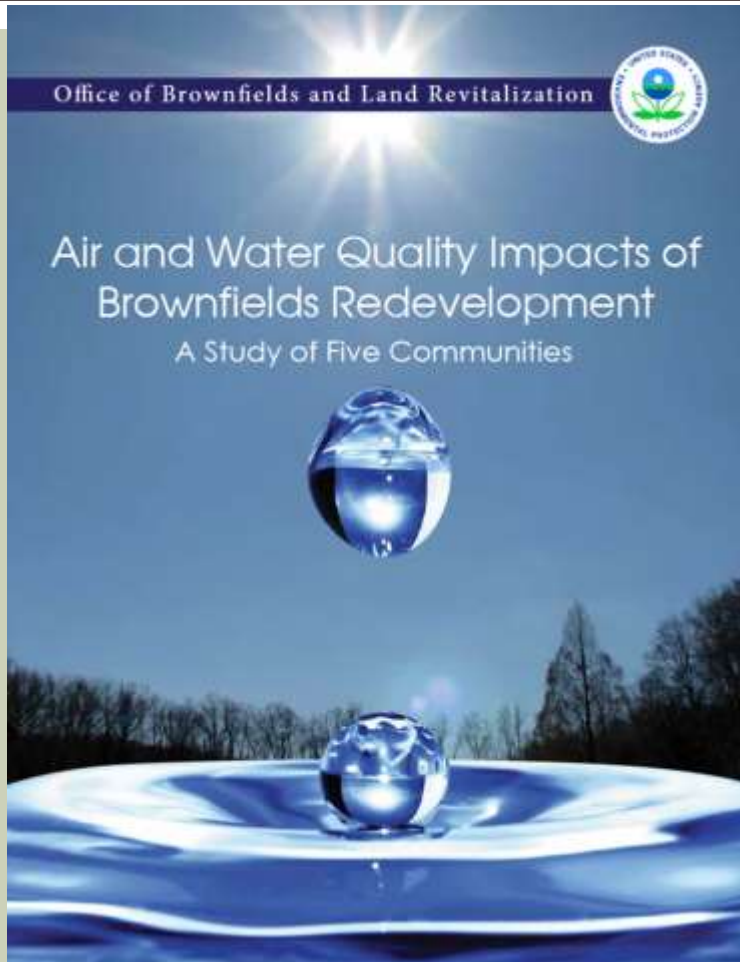
Florida Voluntary Cleanup Tax Credit Awards Local Government Entities Only As of August 2016	
Government Entity	Total Amount Awarded
City of Orlando	\$2,598,605.87
Fort Pierce Redevelopment Agency	\$1,597,140.19
Jacksonville Electric Authority	\$1,489,181.49
Tampa Port Authority	\$1,114,363.62
City of Clearwater	\$1,005,914.69
City of Gainesville	\$769,323.47
City of Pompano Beach	\$664,588.70
Pinellas County	\$610,648.88
Escambia County Board of County Commissioners	\$554,872.02
City of Tampa	\$550,075.86
City of Daytona Beach	\$504,323.36
City of Doral	\$500,000.00
City of Tallahassee	\$367,717.41
City of St. Petersburg	\$263,281.55
City of Winter Garden	\$218,587.47
Seminole County School Board	\$196,387.71
Delray Beach Community Redevelopment Agency	\$143,537.73
City of Casselberry	\$113,587.67
City of Pahokee	\$83,292.24
Collier County Community Redevelopment Agency	\$80,938.13
Community Redevelopment Agency for the City of Plant City	\$26,887.67
City of North Miami Beach	\$13,996.27
City of St. Petersburg Beach	\$6,054.07
Total Amount Awarded	\$13,473,306.07

BROWNFIELDS IN TEN

POINT 3: PUBLIC POLICY CASE

- “The Value of Brownfields Remediation,” Journal of the Association of Environmental and Resource Economists (2017).
 - **Cleaning up brownfield properties led to residential property value increases of 5 - 15.2% within 1.29 mile radius**
- “Brownfields Remediation: Impact of Local Residential Property Tax Revenue,” Journal of Environmental Assessment Policy and Management (2017)
 - An estimated \$29 to \$97 million in additional tax revenue for local governments in a single year after cleanup, 2 to 7 times more than the \$12.4 million EPA contributed to the cleanup of those brownfields
- “Estimating the Impacts of Brownfield Remediation on Housing Property Values,” Nicholas Institute for Environmental Policy Solutions at Duke University (2012)
 - **“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 (2013)
 - 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.”

BROWNFIELDS IN TEN POINT 3: PUBLIC POLICY CASE



Results of 5 pilot studies show a 32 - 57 percent reduction in vehicle miles traveled when development occurred at a brownfield site rather than a greenfield. Also show an estimated 47 -62 % reduction of stormwater runoff.

BROWNFIELDS IN TEN POINT 4: BUSINESS CASE FOR CONSULTANTS

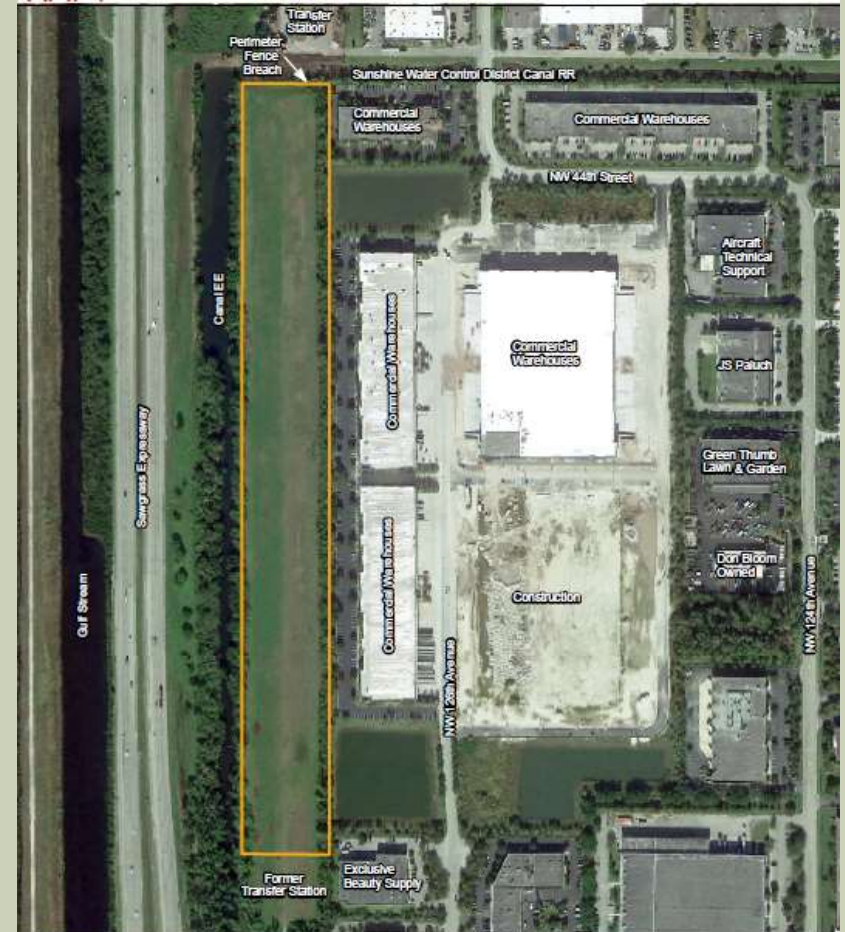


STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION,	IN THE OFFICE OF THE SOUTHEAST FLORIDA DISTRICT
Complainant,	
vs.	OQC Case No. 87-0269
CITY OF CORAL SPRINGS and FLORIDA NATIONAL PROPERTIES, INC.	
Respondents.	

CONSENT ORDER

Pursuant to the provisions of Sections 403.121(2) and 120.57(3), Florida Statutes (F.S.), and Florida Administrative Code (F.A.C.) Rule 17-103.110, this Consent Order is entered into between the State of Florida Department of Environmental Regulation ("Department"), Florida National Properties, Inc. ("Respondent Florida National") and the City of Coral Springs ("Respondent Coral Springs") to reach settlement of certain matters at issue among the



Legend

 Approximate Site Boundary

SITE LOCATION MAP

SITE: FORMER CITY OF CORAL SPRINGS LANDFILL
PARCEL ID # 434118000200
CORAL SPRINGS, BROWARD COUNTY, FLORIDA

MACRO BF ECONOMIC TRENDS

- Evolution of BF Developer
 - Opportunistic (Entrepreneurial)
 - Accidental
 - Strategic
 - Programmatic
 - Opportunistic (Private Equity)
- Best in Class BF Assets
 - Gas Stations
 - Landfills
 - Golf Courses
- BF Reuse
 - Residential - MF/Affordable Housing
 - Retail - Neighborhood
 - Retail - Big Box
 - Residential - MF/Market Rate
 - Industrial/Logistics
 - Recreation/Park



**Cleaning Up &
Repurposing
Contaminated
Golf Courses**

1ST ANNUAL CONFERENCE & EXHIBITION

MACRO BF ECONOMIC TRENDS

- Debt/Equity lock has been “picked”
 - Reign of “Fleet Factors” is over
 - Equity is chasing BF
 - General Equity Players & Family Foundations
 - 24 inquiries from private equity groups in '19
 - 21 inquiries from private equity groups in '18
 - 17 inquiries from private equity groups in '17
 - 14 inquiries in '16
 - 8 inquiries in '15
 - Stand-alone BF funds (14 in the past 6 months; 3 in the past 2 days)
 - Conventional lenders “get” BFs
 - Bank of America
 - Bank of the Ozarks
 - BB&T
 - City National Bank
 - Fifth Third Bank
 - John Hancock
 - JP Morgan
 - Mercantil Commerce Bank
 - Ocean Bank
 - Sabadel Bank
 - Seacost Bank
 - TD Bank
 - Wells Fargo

Lender Portfolio Program

Environmental Risk

Environmental Lender Portfolio Program

Hylant created this program specifically for lenders and has worked closely with lenders and the insurance underwriter to develop specific coverages and additional enhancements:

- Liability arising from a pollution condition associated with default ownership for distressed assets is transferred to an insurance product.
- Portfolios provide protection at a lower cost, based on the fact that the associated risks are being shared among a number of sites as opposed to a specific risk associated with a single site.
- Environmental liability insurance benefits are transferable to a new owner, ultimately adding to the future marketability of a distressed asset.

Key Coverage Elements of the Program

- Up to a five year policy term per asset with renewal options
- Insurance response for governmentally mandated clean-up orders
- Insurance response for third-party property damage claims (includes loss of use, diminution in value and natural resource damage)
- Insurance response for third-party bodily injury claims (includes medical monitoring, emotional distress, mental anguish)
- Legal defense costs
- Coverage add-back for known pollution conditions (responder liability) upon findings of no further action
- Stand-alone exit policy for future buyer
- Legacy coverage for lender when insured locations are sold

Protecting a lender from environmental liability and the risk that can be associated with Other Real Estate Owned properties is the goal of the Environmental Insurance Portfolio Program.

hylant.com

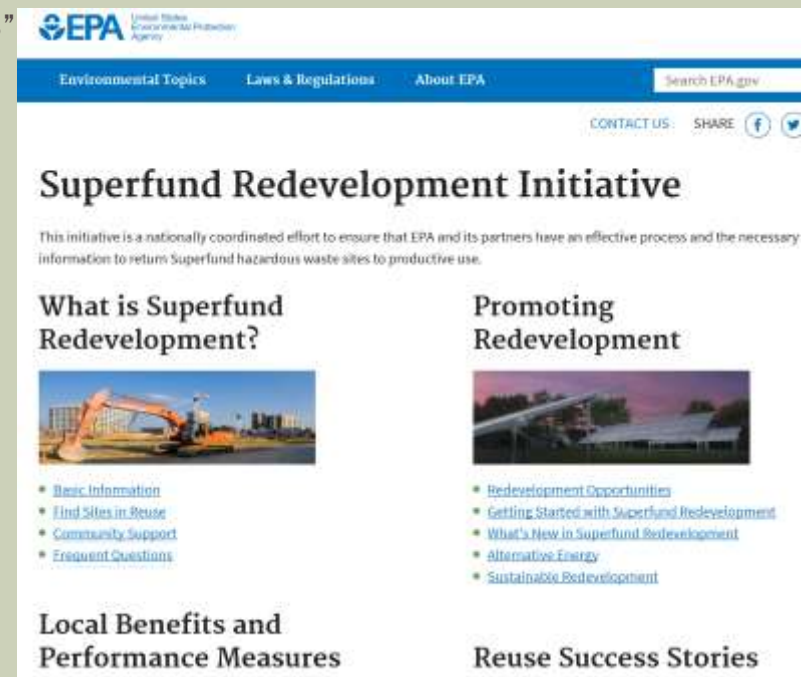
HYLANT

Branch | Networks | Tools
Work | Design | Software | Services | Support

Website | For All | Direct | Social | Email
Site | Content | Analytics | Tools | Performance
Training | Network

MACRO BF ECONOMIC TRENDS

- **Market Makers/Concept Normalizers**
 - EPA's National BF Conference
 - BF Listings
 - EB5 Program
 - Cycle of Regulatory Innovation/Enforcement De-escalation
 - Rise of "Superclass of Environmental Professionals"
 - **Opportunity Zones**
- **EPA and States Picking Winners/Losers**
 - RE-Powering Sites
 - Superfund Program Sites
 - Redevelopment of Gas Station Sites
 - FL: Five District Petroleum Cleanup Programs
 - FL: Background Anthropogenic
 - End Use: Health Care
 - End Use: Affordable & Work Force Housing





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 18 2018

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

Kirsten B. Wielobob
Deputy Commissioner for Services and Enforcement
CC:PA:LPD:PR (REG-115420-18), Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Subject: U.S. EPA Office of Brownfields and Land Revitalization Seeks Regulatory Clarifications and Improvements to Proposed IRS Rule Regarding "Investing in Opportunity Funds," REG-115420-18

Dear Ms. Wielobob:

On behalf of the U.S. Environmental Protection Agency's (EPA) Office of Brownfields and Land Revitalization (OBLR), thank you for the opportunity to comment on the Department of Treasury's Proposed Regulations §1400Z-2(a)-1, 2(c)-1, 2(d)-1, 2(e)-1 and Revenue Ruling 2018-29, regarding "Investing in Opportunity Funds." EPA's OBLR encourages the IRS to clarify and improve the proposed rule to better foster investment in blighted and contaminated properties, or "brownfield sites," in designated Opportunity Zones.

The "Investing in Opportunity Act" has the potential to spur investment in communities where neighborhoods have long been plagued by concentrated distress and those left behind by the economic recovery following the Recession. Many of these communities struggle with stagnation and lack of access to capital, in part due to the challenges of remediating and redeveloping their brownfield sites. A brownfield is a property where the presence or potential presence of a hazardous substance, pollutant, or contaminant from the property's former use complicates or inhibits the property's expansion, redevelopment, or productive reuse. Brownfield sites often stigmatize neighborhoods and perpetuate blight and socio-economic distress.

EPA's OBLR encourages the IRS to clarify in the final guidance that investments in the assessment, remediation, and redevelopment of brownfields properties located in Qualified Opportunity Zones (QOZs) are included within the scope of Qualified Opportunity Funds (QOFs). This clarification will provide an incentive to invest funds in the assessment, remediation, and reuse of brownfield properties. Assessing, remediating and redeveloping

Clarification Requests and Comments:

EPA's OBLR requests that the IRS make the following clarifications to the proposed guidelines. These clarifications will give Opportunity Fund investors confidence that QOF investment can be used to assess, clean up, and redevelop brownfields properties located in QOZs.

1. Brownfields Cleanup of Real Property Should Constitute "Original Use"

EPA's OBLR requests that the IRS clarify the definition of "Original Use" so that the term applies to property that is a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), which is the law that establishes the U.S. EPA brownfields program and guides brownfields considerations by many other federal departments and agencies. The IRS has used this definition of "brownfield" as well, under 26 U.S.C. Section 198(c), which permitted certain treatment of expenditures on "qualified environmental remediation" at a "qualified remediation site", which was defined as "any area . . . at or on which there has been a release (or threat of release) or disposal of any hazardous substance."

While most new investments assume that a property already meets applicable health and safety standards, brownfields properties are different in that they are complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

- Investment to assess and remediate environmental conditions at brownfield properties are required to make these properties financeable and developable.
- Essentially, all lenders and investors require environmental investigation and cleanup for properties which are brownfields to ensure they are safe for redevelopment.
 - Brownfields remediation can make previously unsuitable properties ready for investment by making them meet basic safety standards and safe for human health and the environment.
 - Making previously unsuitable properties located in QOZs ready for investment enables properties to "commence use" within the QOZ.

Defining "Original Use" to incorporate brownfields properties located in QOZs creates the best solution to enabling QOF investments in brownfields remediation and redevelopment. This clarification will address the concern that the 30-month window for substantial improvement is unrealistic for brownfields properties, which take longer than traditional vertical development projects due to the added challenges of contamination.

Example: A brownfields remediation firm purchases a contaminated brownfields property in a QOZ, where a former factory was once located, to remediate the land and sell the property for new use. This brownfield property should qualify as QOZ property under "original use."

2. Cleanup or Reuse of Vacant or Underutilized Property Should Constitute an "Original Use": EPA's OBLR requests that the IRS clarify the definition of "Original Use" so that the term applies to property that is vacant or underutilized for a period of

SUPERFUND OPPORTUNITIES

MAY 2008
EPA-330-F-08-001



Top 10 Questions to Ask When Buying a Superfund Site

Office of Enforcement and Compliance Assurance
Office of Site Remediation Enforcement

Office of Solid Waste and Emergency Response
Office of Superfund Remediation and Technology Innovation

The purpose of this document is to provide answers to some of the questions that a prospective purchaser may have when considering whether to purchase property at a privately owned Superfund site.

The U.S. Environmental Protection Agency (EPA) supports the reuse of Superfund sites and believes this document may be useful in clarifying some of the opportunities and issues associated with their reuse. For purposes of this document, a Superfund site is defined as any property on EPA's National Priorities List (NPL) where a hazardous substance has been released into the environment or has come to be located on or under. Thus, even if a property is not the source of the release of the contamination, it can be part of a Superfund site.¹



Information for Prospective Purchasers of Federally-Owned Superfund Sites

This document does not address the unique considerations associated with the purchase and transfer of real property on federally-owned Superfund sites (also known as federal facilities). While many of the questions and answers in this document are a useful starting point for prospective purchasers of property on federal facilities, Superfund cleanups at federal facilities are governed by CERCLA § 120 which has requirements specific to these facilities. For example, federal facility agreements between EPA and the current federal owner are required to address the clean up of these properties. A number of landowner liability issues unique to federal facilities are raised in the context of transfers of federal property and have been addressed by EPA guidance. While they warrant additional considerations, federal facilities are continuing to be cleaned up and purchased by local governments and developers and put back into reuse. Additional information on EPA's efforts to clean up federal facilities and make them available for reuse is available at <http://www.epa.gov/swerf/r/>.

¹ The Superfund program and the authority to clean up Superfund sites was created by the federal Superfund law which is officially known as the *Comprehensive Environmental Response, Compensation, and Liability Act* ("CERCLA"), 42 U.S.C. § 9601, *et seq.*

- AS THE PROPERTY OWNER, WILL I BE RESPONSIBLE FOR ONGOING OR FUTURE CLEANUP ACTIONS AT THE SITE?
- ARE THERE LIMITATIONS ON HOW I CAN USE THE SITE AND, IF SO, HOW CAN I FIND OUT WHETHER ANY PROPERTY USE RESTRICTIONS ARE IN EFFECT AND WHAT THEY ARE?
- DOES EPA USE LIENS THAT COULD AFFECT ME IF I ACQUIRE A SITE OR PROPERTY WITHIN A SITE AND HOW CAN I RESOLVE OR SETTLE AN EPA LIEN?
- COULD I ENCOUNTER PROBLEMS WHEN I TRY TO GET FINANCING TO BUY A SITE OR BORROW FOR IMPROVEMENTS AND HOW CAN EPA HELP?
- WHAT CAN EPA DO TO HELP A PROSPECTIVE PURCHASER DECIDE, AND CONVINCE LENDERS, TENANTS, AND OTHERS, THAT BUYING A SUPERFUND SITE IS A GOOD IDEA?

Enforcement

Enforcement Home

Enforcement Basics

National Enforcement Initiatives

Air Enforcement

Water Enforcement

Waste, Chemical and Cleanup Enforcement

Criminal Enforcement

Enforcement at Federal Facilities

Data and Results

Policy, Guidance and Publications

Types of Contaminated Sites

There are many different types of contaminated sites that you may encounter when redeveloping a property.

Site Type	Site Description
Superfund	Superfund sites are uncontrolled or abandoned sites or properties where hazardous waste or other contamination is located. A contaminated site is generally considered a "Superfund site" if the federal government is or plans to be involved in cleanup efforts. Many of these sites are listed on the National Priorities List (NPL) . [More information is available on the Agency's Superfund cleanup enforcement web pages .] Over 500 Superfund NPL sites alone are in reuse or are protective and ready for reuse. The Superfund Redevelopment Initiative (SRI) program offers guidance, tools, and services to help communities overcome obstacles to reuse at Superfund sites, including reuse assessments and reuse planning.
Brownfields	Brownfield sites are real properties, the expansion, development, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Generally, the federal government is not involved at brownfields. Rather, state and tribal response programs play a significant role in cleaning up and helping to revitalize these sites, frequently through state voluntary cleanup programs.
RCRA	Treatment, storage and disposal facilities regulated under the Resource Conservation and Recovery Act (RCRA) may have releases into the environment, thereby requiring cleanup. "RCRA brownfields" are RCRA facilities where reuse or redevelopment is slowed due to real or perceived concerns about actual or potential contamination, liability, and RCRA requirements.
USTs	Underground storage tank (UST) sites are sites that contain contamination from petroleum products or Superfund hazardous substances that were released from underground storage tanks.
Federal Facilities	Federal facility sites are properties owned or operated by the US Government that may contain environmental contamination from unexploded ordnance, radioactive waste, or other hazardous substances.
State Sites	Sites not addressed by EPA as Superfund or RCRA sites are often addressed by the state in which the site is located. State cleanup programs can vary considerably. Many states have a state Superfund program or state Brownfield program. States also have voluntary cleanup programs that address other contaminated sites.

FEDERAL BROWNFIELD ASSET TYPES

- High risk/high reward
- Excellent collaboration opportunities with federal and state regulators
- Tend to be larger sites; more "canvas" to work with
- Potential for catalytic projects

MACRO BF ECONOMIC TRENDS

- Worst in Class BF Assets
 - Drycleaning Sites
 - MGP Sites
 - RCRA Corrective Action Sites



INDUSTRY NEWS • COMMERCIAL REAL ESTATE

Formerly contaminated site in Miami-Dade sells to developer for \$21M

Jan 22, 2017, 3:00pm EST Updated Jan 22, 2017, 4:31pm EST

INDUSTRIES & TAGS: Commercial Real Estate, Construction

SHARE [Google](#) [Twitter](#) [LinkedIn](#) [Facebook](#) [Print](#)

Brian Borrelli
Senior Reporter
South Florida
Business Journal



A development site in North Miami Beach that underwent remediation to rid it of contamination has sold for \$21.14 million.

Attorneys **Kerry E. Rosenthal**, **Eduardo Rasco**, **Heather A. Scott** and **Melissa Grobman**, all of Rosenthal Rosenthal Rasco, and they represented the seller in the deal for the 17.8-acre site at 15780 W. Date Highway. It was sold by Moose 77 LLC, managed by **Vital Rosenthal**, to New North Equities, managed by **Hector Mendez** in Aventura and **Gabriel Busano** in Bay Harbor Islands. The buyer received a \$9.15 million mortgage from New Wave Loans Residential.

RELATED CONTENT

Grave Watch: Mapping out the major development projects

[Click for Reports](#) [Save Article](#) [Print](#)

SPONSOR **KNOX**

Samsung Knox.
The right defense for legal mobile solutions.



[Go to Samsung](#)

MACRO BF ECONOMIC TRENDS

- Worst in Class BF Assets
 - Drycleaning Sites
 - MGP Sites
 - RCRA Corrective Action Sites

- SWMU/AOC corrective action status table
- \$2,000 annual fee
- Review in Tallahassee through RCRA Program

MODEL -- Effective Date: DRAFT November X, 2017
Brownfield-Site-Rehabilitation-Agreement-(BSRA)-for-Resource-Conservation-and-Recovery-Act-(RCRA)-sites-and-Attached-Instructions

NOTE:

1. This model RCRA BSRA supersedes any previously drafted model RCRA BSRA. This model RCRA BSRA should be used as the template. If RCRA BSRA has been drafted with an earlier template, the Person Responsible For Brownfield Site Rehabilitation appropriate changes.
2. Remove the attached instructions (these instructions and associated with each attachment) and delete all language before finalizing the document.
3. Submit a completed electronic Word or Word-compatible draft RCRA BSRA with all attachments to the FDEP B Manager and the RCRA program (Tallahassee) for review letter or email which provides contact information for the RCRA BSRA for the PRFBBSR and indicate when the executed (for example, does it need to be executed by the calendar year or some other date). Please do not send the DEP Office of General Counsel (OGC).
4. The model includes optional language in a few places that Please work with the FDEP BF Program Manager and RC determine the correct language for your project.
5. The FDEP BF Program Manager will provide the Brownfield review of the draft BSRA.
6. The Department recommends that you use the Checklist: <https://bondadep.gov/waste/waste-cleanup/documents/bf-rehabilitation-agreement-checklist>, along with the instructions ensure the submission of a complete RCRA BSRA.
7. Due to the large number of BSRA's and amendments sub-annual year, the Department recommends that RCRA E amendments that need to be executed by the end of the submitted to the BF Program Manager and the RCRA Program October 1.

For FDEP use: 11/2017 Revised Model RCRA BSRA

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION IN THE OFFICE OF THE SOUTHEAST DISTRICT
OGC FILE NO. Insert OGC #
EPA ID NO. FL023446025
COOK LUMBER & TREATING INC.

VOLUNTARY CLEANUP AGREEMENT

This Voluntary Cleanup Agreement ("Agreement") is entered into between the State of Florida Department of Environmental Protection ("Department") and Insert Respondent's Name ("Respondent") to reach agreement on a rehabilitation schedule to conduct site rehabilitation pursuant to 376 and 403, F.S.; and to meet the requirements of an "enforceable document" under 49 C.F.R. 365.121. The parties agree to the following:

1. The Department is the administrative agency of the State of Florida having the power and authority to administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., Florida Statutes ("F.S."), and the rules promulgated in Chapters 62-730, 62-777 and 62-780, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this agreement.

2. Respondent is a "person" within the meaning of Sections 376.001(11), 403.031(5) and 403.703(22), F.S. Respondent is a "WHAT (an individual, a Florida corporation?) and owns real property located at 4965 Lantana Road, Lake Worth, Florida that is contaminated with (primarily) arsenic as a result of wood treating operations conducted by a prior property owner (Cook Lumber & Treating Inc.). The Respondent recorded title to the Source Property on Month Day, Year, and has volunteered to conduct site rehabilitation and to ensure that the rehabilitation meets the requirements of a "clean closure plan" as referenced in 403.721(1) F.S. The Respondent agrees that this document shall constitute an "enforceable document" as referenced in 49 C.F.R. 265.121.

3. Respondent intends to also enter into a Brownfield Site Rehabilitation Agreement with the Department.

4. Respondent shall comply with all Department rules regarding hazardous waste management. Respondent shall comply with all applicable sections in Chapter 62-730, F.A.C. and Title

BROWNFIELDS IN TEN POINT FIVE: KEY MILESTONE

1


~~FINAL~~-Revised DRAFT

Considerations for Stormwater Features at Conditionally Closed ~~within Contaminated Sites~~


Florida Department of Environmental Protection
Division of Waste Management
District & Business Support Program
Tallahassee, FL


October 19, 2019

Mon 10/28/2019 11:02 AM

 Dougherty, Brian <Brian.Dougherty@dep.state.fl.us>
Revised Draft - Considerations for Stormwater Features at Conditionally Closed Sites

ii - Dougherty, Brian

 Considerations_for_Stormwater_Draft_18Oct19_EditsShown.docx
195 KB

 Considerations_for_Stormwater_Draft_18Oct19_Clean.docx
10 KB


Good morning,
I have attached the most recent revision of the draft guidance document for construction or modification of stormwater features at conditionally closed sites. This revision incorporates a lot of suggestions from a lot of different reviewers (for which I am very grateful) and is, if I've done this right, much improved as a result. Because of the amount of markup and discussion I've include both the current mark up and a clean copy. Although the mark up copy is a bit difficult to read, it also has the margin comments and discussions that help explain the decisions made with regard to the text.

A few specific notes with regard to some of the most-discussed items:

1. This revision maintains the language that refers to not allowing the groundwater plume to move at all. Conditional closure is predicated on a stable or shrinking groundwater plume. Allowing the plume to be moved subsequent to closure jeopardizes that evaluation. Further, not every conditionally closed site includes restrictions on the entire property, so allowing plume to move around on a property could conceivably cause a plume to move beyond the control boundaries. Restricting movement to only within the control boundary does not really solve the problem because of the closure requirement for plume stability.
2. The language on siting of stormwater features within 500' of the groundwater plume was re-written. As previously written, this passage appeared to create a new requirement for siting stormwater features, which was not intended. The intent was to consider proximity to the groundwater plume when constructing a stormwater feature within the controlled area.
3. Added a question (on the marked-up copy) as to what the appropriate storm event(s) are for evaluating stormwater feature effects on the groundwater plume. The design criteria of 100-yr or 25-yr 24-hour events may be too extreme for proper long-term evaluation of effects on the groundwater plume.

As always, your comments, suggestions and questions are welcome. I'm available anytime to discuss and if you could get any comments back to me by the first week of January that would be great.

Thanks,
Brian

 **Brian J. Dougherty**
Florida Department of Environmental Protection
Division of Waste Management/District and
Business Support Program
Program Manager
Brian.Dougherty@FloridaDEP.gov
Office: 850-245-7503

98033192.DOCX 1

Don 10-19
Page 1/9



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

Design and Construction of Stormwater Management Systems at Contaminated Redevelopment Sites in Florida

Collection of Federal, State, and Local Regulatory Guidance Documents

-- Index --

THE GOLDSTEIN
ENVIRONMENTAL LAW FIRM

Enclosure	PDF Page	Document	Author	Date
A	3	Implementing Stormwater Infiltration Practices at Vacant Parcels and Brownfield Sites	U.S. Environmental Protection Agency - Office of Water and Office of Solid Waste and Emergency Response	July 2013
B	19	Design Principles for Stormwater Management on Compacted, Contaminated Soils in Dense Urban Areas	U.S. Environmental Protection Agency - Office of Solid Waste and Emergency Response	April 2008
C	24	Case Studies for Stormwater Management on Compacted, Contaminated Soils in Dense Urban Areas	U.S. Environmental Protection Agency - Office of Solid Waste and Emergency Response	April 2008
D	29	Guidance for Stormwater Management Systems within a Contaminated Site (Draft)	Florida Department of Environmental Protection - Division of Waste Management	December 11, 2018
E	37	Drainage Plans for Contaminated Sites	Miami-Dade County Department of Environmental and Regulatory Resources - Division of Environmental Resources Management	October 2017
F	39	Dewatering at Contaminated Sites	Miami-Dade County Department of Environmental and Regulatory Resources - Division of Environmental Resources Management	Issued March 10, 2010, updated October 2017
G	42	Standard Operating Procedures for Dewatering at or within One-quarter Mile Radius of Contaminated Site	Broward County Environmental Protection and Growth Management Department - Environmental Engineering and Permitting Division	December 1, 2009

BROWNFIELDS IN TEN

POINT FIVE: KEY MILESTONE 2

HWR-981

October 2, 2019

Page 2 of 2

- d. In the event that evidence of undocumented ground and/or groundwater contamination is encountered during construction, the responsible party or his designee is required to immediately notify Pollution Remediation Section (PRS) of DERM. The PRS can be contacted at (305) 672-6700.

Be advised that the scope of work provided by the PRS review is limited to evaluate the location of drainage systems in reference to contaminated areas. Additional approval from other departments, and/or sections and other governmental agencies having jurisdiction over the scope of work must be obtained, as applicable, prior to the implementation of the project (e.g., DERM Water Control, etc.).

In the event of contamination discovery, any portion of the site to be sold, transferred or dedicated (including for public right-of-way) shall be identified, and the receiving entity must be made aware of the contamination and accept any conveyance. If soil contamination, groundwater contamination, solid waste and/or methane is to be addressed via a No Further Action with Conditions (see Institutional Control Guidance at <https://www.miamidade.gov/environment/library/instructions/risk-based-corrective-action.pdf> and <https://floridadep.gov/waste/waste/content/institutional-controls-procedures-guidance>), each individual property owner will have to execute a restrictive covenant and each receiving entity must accept all applicable restrictions and responsibilities that are required following transfer of ownership. Please note that nothing stated herein may be interpreted to limit or restrict an engineer's or other professional's responsibility to prepare plans accurately and completely for proposed rights-of-way as well as any other projects or plans. For proposed dedications, any soil, groundwater or surface water contaminants or solid waste and/or methane must be disclosed to the receiving County or Municipality applicable department at the earliest stage possible; the presence of any such contamination and/or solid waste and/or methane impacts or a delay in disclosure of such contamination or impacts could result in the County declining to accept the proposed dedication, the need for the developer to reconfigure or change previously approved site plans, or other changes to the proposed development.

Any person aggrieved by any action or decision of the DERM Directory may appeal said action or decision to the Environmental Quality Control Board (EQCB) by filing a written notice of appeal along with submittal of the applicable fee, to the Code Coordination and Public Hearings Section of DERM within fifteen (15) days of the date of action or decision by DERM.

If you have any questions concerning the above, please contact Betsy Olmino of the Pollution Remediation Section at (305) 372-6760 (or via email: betsy.olmino@miamidade.gov).

Sincerely,



Wilbur Mayorga, P.E., Chief
Environmental Monitoring and Restoration Division
DERM

- Property interest transfer notification for contaminated sites in Miami-Dade County
- Call out of consent by acquiring party to restrictive covenant/stewardship obligations highlights risk associated with closing sale prior to recordation of covenant
 - Risk to client
 - Risk to consultant
- Conveyance of rights-of-way to Miami-Dade County (roads, parks, pump stations) subject to engineering controls/restrictions on groundwater extraction requires consent of applicable County Department – not likely except in very limited circumstances.

REVISITING VALUE PROPOSITION OF DEED RESTRICTED CLOSURES

Certain easement holders are reflexively refusing to sign consents (electric and water utilities)

Transactions can't always wait for DRCs to be recorded; unless new owners are contractually obligated to record, problems can arise

Off-site DRC grantors are always a question mark – “let the hostage taking begin”

County and state agencies are increasingly reluctant to take ownership of dedicated rights of way where they will be required to maintain ECs or comply with dewatering restrictions



Special requirements for knowledge and consent in Miami-Dade County: Public Works/Water and Sewer/Parks

BROWNFIELDS IN TEN

POINT 6: THE FOREST THRU THE TREES

Biggest miss that we see on the consulting side in environmental redevelopment is the failure to make visible for clients the remediation like costs that are hiding behind site-specific construction activities. Redevelopment sites with contaminated soil and groundwater are unique in this sense because normal construction activities – construction dewatering, excavating soil for subsurface utilities or parking, installing stormwater features all generate contaminated media that must be handled, treated, or disposed of properly. If the consultants aren't in close and constant communication with the Geotechnical engineers and the civil engineers, these issues get missed and developers don't realize they will incur substantial cost premiums and enhanced permitting until it's late in the game.

ENVIRONMENTAL REDEVELOPMENT COMPASS

NAVIGATING ECONOMIC OPPORTUNITY THROUGH CONTAMINATION RISK

- Estimating “Non-Remediation” Remediation Costs – the Incremental Costs of Construction (“ICCs”)
 - Soil exported for geotechnical, civil design, or utility installation reasons
 - Construction dewatering
 - Clean fill for engineering controls
 - Processing and removal of solid waste
 - Calculating volumes of Recovered Screen Material/Screened Solid Waste
 - Implications on Dynamic Compaction on Groundwater Monitoring Data
 - Methane & Other Chemical Vapor Barrier Systems



Environmental Protection and Growth Management Department
POLLUTION PREVENTION, REMEDIATION AND AIR QUALITY DIVISION
One North University Drive, Suite 203, Plantation, Florida 33324
954-519-1260 • FAX 954-765-4804

EAR SECTION STANDARD OPERATING PROCEDURE FOR DEWATERING (Revision 3, Effective December 1, 2009)

INTRODUCTION

As required by Broward County Code (Code), any person(s) wishing to conduct dewatering activities at or within a one-quarter-mile radius of a contaminated¹ site must notify and receive approval from the Broward County Environmental Protection and Growth Management Department (Department) prior to implementation. The County's notification requirements for these dewatering activities are outlined in Section 27-355(4) of the Code, which states:

*Prior to any persons conducting dewatering operations at or within a one-quarter-mile radius of a contaminated site, written notification shall be given to [the Department] and shall include, at a minimum:

- Justification for the need for dewatering;
- Water treatment and disposal plans;
- Effect of the dewatering and disposal procedures on the contaminant plume;
- Monitoring program; and
- Where required and authorized by Chapter 471, F.S. [Florida Statutes] or Chapter 492, F.S., applicable portions of dewatering plans shall be signed and sealed by a registered professional engineer or a registered professional geologist.*

Approval of such activities is required by Section 27-353(i) of the Code, which states:

Dewatering operations at or within a one-quarter-mile radius of a contaminated site shall not be conducted without [Department] approval.

APPLICABILITY

This Standard Operating Procedure (SOP) and the requirements detailed herein are applicable to dewatering operations within Broward County. "Dewatering" refers to any technique that is employed to lower groundwater level. These requirements apply solely to reviews that are conducted by Broward County Environmental Assessment and Remediation (EAR) Staff for the purpose of ensuring that dewatering operations at or within one-

ENVIRONMENTAL REDEVELOPMENT COMPASS

NAVIGATING ECONOMIC OPPORTUNITY THROUGH CONTAMINATION RISK

- Worst Environmental Practice for Contaminated Land Transactions: Rushing to judgment at the top of the due diligence investigation to give the client what it thinks it wants – a finding of no Recognized Environmental Conditions and a recommendation of no further investigation.
 - Agricultural sites and nurseries almost always warrant Phase II testing in a redevelopment context even in the absence of a smoking REC.
 - The ICCs associated with preparing former agricultural sites and nurseries for reuse when geotechnical or civil design criteria require soil exportation can be ruinous – and a source of consultant exposure to major professional negligence claims – if not properly accounted for. **We see this time and time and time again.**

ENVIRONMENTAL REDEVELOPMENT COMPASS

NAVIGATING ECONOMIC OPPORTUNITY THROUGH CONTAMINATION RISK

- “Quasi-Regulatory” Construction Management Documents for Contaminated Redevelopment Sites
 - Soil Management Plan
 - Construction Dewatering Plan
 - Air Monitoring Plan
 - Waste Relocation Plan
 - Health & Safety Plan

- Regulatory Guidance Varies

- Level of Regulatory Review Varies

- Standard of Care Varies

ENVIRONMENTAL REDEVELOPMENT COMPASS

NAVIGATING ECONOMIC OPPORTUNITY THROUGH CONTAMINATION RISK

- **“Quasi-Regulatory” Construction Management Documents for Contaminated Redevelopment Sites**
 - **Value for Client and Consultant – Undeniable**
 - Breaks down silos between environmental consultants, civil design team, general contractor and owner
 - Allows for better visualization and estimation of ICCs
 - Facilitates coordination and implementation of site development and construction work
 - Creates confidence for regulators
 - Creates confidence among – and accountability for – community stakeholders
 - Sound strategy for maintaining defenses to federal and state environmental liability based on post-closure activities

ESTIMATING INCREMENTAL CONSTRUCTION COSTS FOR REMOVAL OF ARSENIC IMPACTED SOIL AT CONTAMINATED REDEVELOPMENT SITES OF VARYING SIZE

Incremental Costs of Construction Removal & Replacement of 1 foot of Arsenic Impacted Soil				
Size of Site	1 acre	5 acre	10 acre	20 acre
Square Feet	43,560	217,800	430,560	861,120
Cubic Feet	43,560	217,800	430,560	861,120
Cubic Yards	1,613	8,065	16,130	32,260
Tons	2,259	11,295	22,590	45,180
Excavation & Loading	\$45,173	\$225,865	\$451,730	\$903,460
Transportation/Disposal	\$135,520	\$677,600	\$1,355,200	\$2,710,400
Clean Fill	\$45,173	\$225,865	\$451,730	\$903,460
Backfilling/Compaction	\$45,173	\$225,865	\$451,730	\$903,460
Total Cost – Removal	\$180,693	\$903,465	\$1,806,930	\$3,613,860
Total Cost – Replacement to Grade	\$90,346	\$451,730	\$903,460	\$1,806,920
Total Cost – Removal & Replacement	\$271,039	\$1,355,195	\$2,710,390	\$5,420,780

Values

1.3 multiplier for cu yds to tons

\$20/ton for media excavation & loading

\$60/ton for landfill transportation & disposal

\$20/ton for clean fill

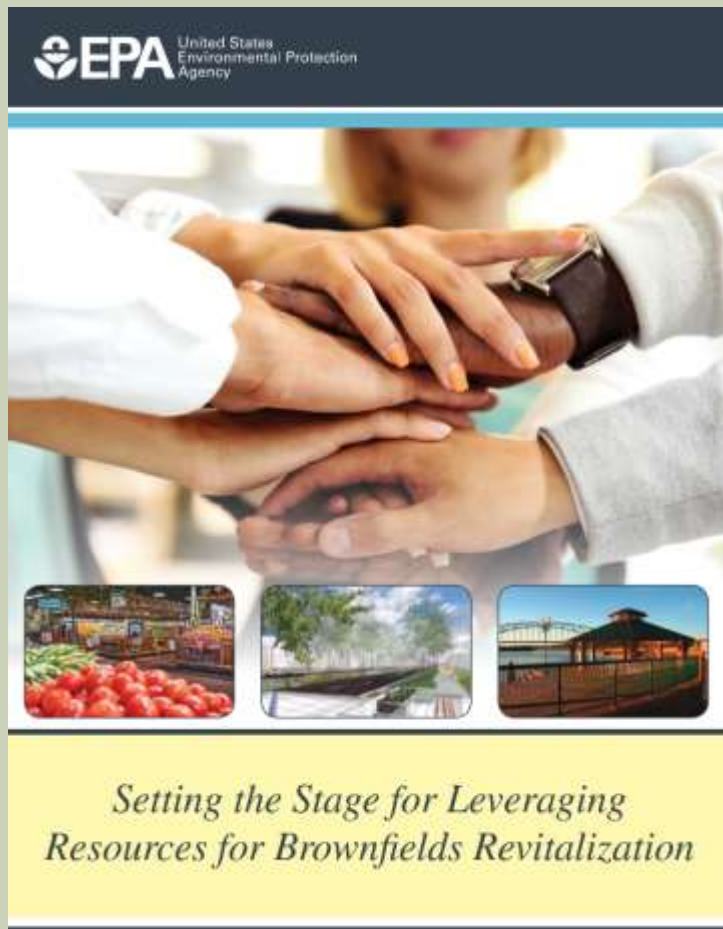
\$15/ton for clean fill backfilling & compaction



THE GOLDSTEIN
ENVIRONMENTAL LAW FIRM

BROWNFIELDS IN TEN

POINT 9: BUILDING MORE ETHICAL RELATIONSHIPS WITH EJ COMMUNITIES WHEN REDEVELOPING IN EJ COMMUNITIES



- This guide is intended to help local communities successfully leverage resources for brownfields and community revitalization.
- It focuses primarily on what communities can do before they solicit funding to organize themselves and make the preparations necessary for mounting a successful leveraging effort.
- The following sections of this guide provide:
 - A background on brownfields and the challenge of funding revitalization. *f*
 - A step-by-step guide to help localities organize efforts to pursue and secure funding from a variety of sources for brownfields and community revitalization. *f*
 - Success-story case studies showing how three communities successfully leveraged numerous sources of funding for brownfields and community revitalization.
 - An overview of assistance available from U.S. EPA for enhancing community capability to leverage available resources for brownfields projects.

SETTING THE TABLE FOR LEVERAGING RESOURCES

Step-by-Step Guide to Setting the Stage for Leveraging Brownfields Resources

This section of the guide provides a series of steps that local communities can take to become more successful at leveraging resources for brownfields revitalization projects.

The importance of being strategic and purposeful when leveraging funding for brownfields and community revitalization efforts cannot be overstated. Communities cannot depend on “pennies from heaven” to fund revitalization projects. Nor can they wait until a grant solicitation is issued to devise a plan and then rush to submit an application to the funding agency within the usual 30 to 60-day application period. Well-crafted plans are key. The most successful communities tend to be thoughtful, purposeful, and strategic when identifying, pursuing, leveraging, and using resources for brownfields revitalization.

The steps outlined here are based on the experiences of many communities that developed and implemented successful strategies to leverage funding for brownfields revitalization.

1. Organize a Project Team with Local Leadership from the Top, and Designate a Manager

Brownfield success is about people. The most successful localities establish brownfields project teams, led by strong leaders from local government. Project teams should include prominent local leaders, brownfields “champions,” and a cross-sector team representing key organizations and stakeholders (e.g., local chamber of commerce, local community development corporations, prominent business leaders, local civic organizations, philanthropy, and religious organizations). A task force or working group might include participants from within local government as well as other interested stakeholders (for example, landowners, developers, or neighborhood representatives). The also might include technical experts or consultants involved in the project. This project team can play

Key Steps in Successful Leveraging Strategies for Brownfields Projects

1. Organize a Project Team with Local Leadership from the Top, and Designate a Manager.
2. Articulate a Clear Community Vision and Identify Brownfields Revitalization Priorities.
3. Build and Maintain Local Stakeholder and Citizen Support.
4. Delineate Brownfield Project Components and Phases.
5. Create Estimates of Project Costs.
6. Identify the Best Funding Sources for Project Components and Phases.
7. Create a “Resource Roadmap” for Priority Projects.
8. Develop a Strategy for Matching-Share Contributions and Leverage Local Funding Sources.
9. Assess the Feasibility of Debt Financing.
10. Create a Briefing Sheet for Each Priority Project.
11. Seek State Backing.
12. Collaborate with Federal Agency Officials.
13. Prepare for Grant Writing.
14. Celebrate Success.

Leveraging Resources Beyond EPA Brownfields Grants

Success in leveraging resources for Brownfields revitalization is not limited to the very complex and large-scale revitalization projects undertaken by Dubuque, Iowa; Stamford, Connecticut; and Charles Town/Ranson, West Virginia, which are profiled in the case study examples in the next section of this guide. Here are a few examples of no-less-successful leveraging efforts undertaken by communities for smaller-scale projects:

The **Town of Coventry, Rhode Island** used EPA Brownfields state program funds, and Brownfields Assessment and Cleanup grants that were awarded to the Rhode Island Department of Environmental Management (RIDEM) to help assess and remediate a former unauthorized dump, the vacant Sandy Bottom property. The property was transformed into the Sandy Acres Recreational Area, which includes two acres of restored wetlands.

Leveraging: Coventry leveraged funds from the U.S. Fish and Wildlife Service to support flood plain expansion and improve the environment in Coventry; RIDEM funds for wetland restoration and park construction; and remediation funds from the Town’s sewer commission to install new sewer pumping station on property. The local public works and department of parks and recreation cleared trees and removed contaminated soils and solid waste from the property.

The **Earth Conservancy** used 12 EPA Brownfields Cleanup grants (totaling \$2.4 million) to leverage the resources necessary to reclaim nearly 2,000 acres of former mine-scarred coal lands in Luzerne County, Pennsylvania. These lands are being reused in a variety of ways, including open space, recreational trails, the site of a community college dormitory, for roadways, and for residential, commercial and industrial development.

Leveraging: The Earth Conservancy leveraged a range of resources including state funds from the Pennsylvania Department of Environmental Protection’s Growing Greener Program and from the Pennsylvania Department of Community and Economic Development. The Earth Conservancy also leveraged resources from the U.S. Department of Interior’s Office of Surface Mining Reclamation and Enforcement, and from local partnerships.

The **City of Fairborn, Ohio** used a Brownfields Cleanup grant to help remediate an old cement manufacturing plant and redevelop the property for use as the National Center for Medical Readiness at Calamityville, a realistic tactical training center for emergency disaster response medicine associated with Wright State University.

Leveraging: The former site owner donated the property to the City of Fairborn, which leveraged additional resources from Wright State University and the Clean Ohio Fund.

The **Ironbound Community Corporation in Newark, New Jersey** used its Brownfields Area-Wide Planning grant to develop a community-supported reuse plan that transforms a former vacant lot in the East Ferry Street neighborhood into a community garden and open-air market.

Leveraging: The Ironbound Community Corporation leveraged a range of resources for the project, including private funds to help with personnel costs at the site; a USDA Farmer’s Market Promotion Program grant; HUD Community Development Block Grant funds (provided via the City of Newark); an EPA Environmental Justice small grant; and an EPA Targeted Brownfields Site Assessment.

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



Office of Land and
Emergency Management
(51051)

EPA 560-K-16-003
August 2016
www.epa.gov/brownfields/

Brownfields Stakeholder Forum Kit

*A Guide to Organizing Stakeholder Forums
in Pursuit of Community Revitalization*

- EPA developed this Brownfields Stakeholder Forum Kit to enable communities to plan and sponsor effective brownfields stakeholder forums.
- It is intended to help localities and non-profit organizations engage stakeholders and establish partnerships to address brownfields and community revitalization issues in their communities.
- Stakeholder roundtables, or forums, are an excellent tool for helping local communities address complex, place-based, community revitalization and brownfields-related challenges. Stakeholder forums can be an effective way for communities to form partnerships to develop and implement strategies addressing specific brownfields challenges, and to identify sources of funding and garner support for revitalization goals.

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



Office of Land and
Emergency Management
(51051)

EPA 560-K-16-003
August 2016
www.epa.gov/brownfields/

Brownfields Stakeholder Forum Kit

*A Guide to Organizing Stakeholder Forums
in Pursuit of Community Revitalization*

Sample Agenda – This sample is based upon a forum held in Huntington, WV in December 2015. This sample is meant to be a reference only and can be customized.

Sample Forum Agenda

8:30AM	Registration
9:00-9:15AM	Welcome and Introductory Remarks <ul style="list-style-type: none"> ➤ Mayor or local political leader, state or federal representative, introduced by the Facilitator
9:15-10:15AM	Overview of the Site <i>Facilitator moderates a panel of local and regional leaders who present an overview of the subject site, area or neighborhood and discuss its history, recent uses, environmental issues, etc. This session also includes a discussion of the revitalization goals, challenges, and key initiatives for the site or area.</i>
10:15-10:30AM	Break
10:30AM -12:00PM	Discussion of Available Resources I – EXAMPLE: Role of Philanthropy in Community Revitalization <i>Facilitator introduces representatives from federal, state and regional agencies, philanthropies and private-sector stakeholder groups who discuss their technical expertise, funding, and other resources that may be tapped to support the effort. For the purposes of this example, local and national leaders in non-profit revitalization, philanthropy, and impact investing will discuss their potential role in community revitalization and collaboration with the public and private sectors.</i>
	<u>Moderator:</u> Facilitator or a Representative from a prominent local philanthropy <u>Panelists:</u> Various leaders of local philanthropies
12:00-1:15PM	Lunch with Speakers Forum <i>Facilitator introduces remarks from invited senior leaders of federal agencies</i>
1:30-3:20PM	Discussion of Available Resources II – EXAMPLE: Federal & State Agencies <i>Representatives from federal, state and regional agencies, philanthropies and private-sector stakeholder groups discuss their technical assistance, funding, and other resources that may be tapped to support the effort. For the purposes of this example, state and federal agency officials will identify strategies for inter-governmental and inter-agency coordination to help the City pursue its initiatives and overcome challenges. It may make sense to divide this discussion up into separate panels due to the high number of Federal and State Agencies.</i>
	<u>Moderator:</u> Forum Facilitator <u>Panelists:</u> <ul style="list-style-type: none"> <u>U.S. EPA Panel</u> <ul style="list-style-type: none"> ➤ EPA Regional representative <u>State Officials Panel</u> <ul style="list-style-type: none"> ➤ Representatives from various state Agencies <u>Federal Agencies Panel</u> <ul style="list-style-type: none"> ➤ Representatives from various Federal Agencies
3:20-3:35PM	Break
3:35-4:05PM	Interactive Session <i>An interactive session that allows participants to interact freely with panelists and other participants to ask questions, share additional information, or discuss issues of concern. This session could include a time for small group breakouts, or an interactive question and answer panel.</i>
	<u>Moderator:</u> Forum Facilitator
4:05-4:15PM	Wrap Up & Key Next Steps <ul style="list-style-type: none"> ➤ Mayor or local political leader, state or federal representative

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



United States
Environmental Protection
Agency

Office of Land and
Emergency Management
(51051)

EPA 560-K-16-003
August 2016
www.epa.gov/brownfields/

Brownfields Stakeholder Forum Kit

*A Guide to Organizing Stakeholder Forums
in Pursuit of Community Revitalization*

Sample Save the Date and Invitation Letters

Huntington MVD Forum – December 2015

Subject Line: SAVE THE DATE: Making a Visible Difference in Huntington, WV Cosponsored by the City of Huntington and the U.S. EPA

The City of Huntington and the U.S. Environmental Protection Agency will cosponsor a "Making a Visible Difference in Communities Forum" in Huntington, West Virginia on Tuesday, December 8, from 9:00 am to 4:30 pm at the Huntington Big Sandy Civic Center. The forum will bring together invited guests from federal, state and local agencies, community-based organizations and philanthropic organizations to focus attention on addressing community challenges and pursuing sustainable community solutions on brownfields, green infrastructure, Ohio River waterfront restoration, and economic and community revitalization in Huntington. A formal agenda, invitation, and information about registration will follow. If you would like to register for the forum, please visit the following registration page: [*insert registration link here*].

In the meantime, please do not hesitate to email me at yourname@webaddress.com if you have any questions. We look forward to seeing you in Huntington.

Huntington MVD Forum – December 2015

Subject Line: INVITATION: "Making a Visible Difference" Forum in Huntington, WV Cosponsored by City of Huntington and U.S. EPA

I am pleased to invite you to the "Making a Visible Difference in Huntington Forum" to be held on December 8 in Huntington, West Virginia. This forum will assemble partners from local, regional, state and federal government, together with not-for-profit, philanthropic, academic, and private sector leaders. The forum will provide an opportunity to discuss how inter-governmental, inter-agency, and public-private partnerships can help Huntington overcome economic and community challenges, and make progress on revitalization initiatives, particularly along the Ohio River waterfront and the Highlawn neighborhood. For background on Huntington and its community revitalization initiatives, please see the "Huntington Innovation Project" report at the following link, particularly information about Huntington's riverfront and brownfield revitalization efforts at pp. 24-29 of that report.
www.cityofhuntington.com/assets/pdf/document-center/COH_Proposal_FINAL.pdf

I have attached the December 8 forum draft agenda. Please note, EPA Region III Administrator Shawn Garvin will be in attendance to share introductory remarks in the morning and speak alongside his federal colleagues over lunch. To register to participate in the December 8 forum, please visit: [*registration link here*]. Registration closes on Monday, November 30.

We appreciate your participation, and look forward to seeing you in Huntington soon!

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



Office of Land and
Emergency Management
(51051)

EPA 500-K-16-003
August 2016
www.epa.gov/brownfields/

Brownfields Stakeholder Forum Kit

*A Guide to Organizing Stakeholder Forums
in Pursuit of Community Revitalization*

Chapter 8: Logistics - Room Setup

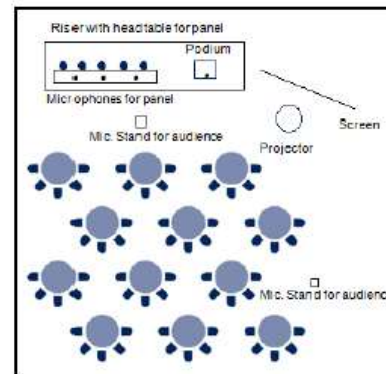
Logistics play a huge role in shaping attendees' opinions of an event. It is important for the event to be well organized and carefully planned to ensure that the meeting runs smoothly and participants are comfortable. Sloppy logistics can seriously affect the efficacy of the meeting. If people cannot see or hear speakers or if the room is not sized to accommodate participants, even the best agenda and more effective panels will not produce a good meeting. Poor planning can cause attendees to feel the forum is not very important, and that little care was given to its planning. While this may be far from the truth, it leaves a poor impression on attendees being asked to buy into a project.

Room Setup

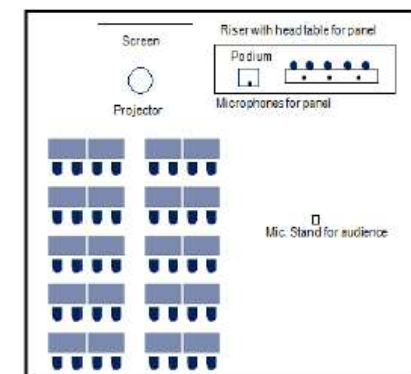
The type of room setup greatly depends on the events scheduled throughout the agenda, and what is most conducive for allowing the appropriate type and degree of participation between and among speakers, panelists, and forum participants. Small group discussions will work better with certain room configurations, such as rounds or crescent rounds, whereas classroom setups work better when the entire room is focused on speakers or presentations occurring at the front of the room.

Crescent rounds (shown below) generally work best to encourage forum participants to interact with each other and to participate in the forum. Crescent rounds are round tables with chairs set only on one side so that no one has to sit with his or her back to the speaker. If registration numbers are high, the standard full round setup or classroom setup (shown below) also will work. If available, putting speakers and panels on risers is a good idea to ensure that the audience can easily see all of the speakers.

Keep the room in mind when selecting a room setup. Crescent rounds/regular rounds require a bigger room than a classroom-style setup where participants are in rows with small tables in front of them. Also keep in mind any obstructions (pillars, walls, doors etc.) in the room that will affect the setup.



Crescent Round Setup



Classroom Setup

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



Office of Land and
Emergency Management
(51051)

EPA 560-K-16-003
August 2016
www.epa.gov/brownfields/

Brownfields Stakeholder Forum Kit

*A Guide to Organizing Stakeholder Forums
in Pursuit of Community Revitalization*

Forum Task List

Task	Deadline	Notes
Initial Planning Decisions: <ul style="list-style-type: none"> Organize Planning Committee. Identify a forum facilitator. Define forum goals and objectives. 	As soon as you decide to hold a forum.	
Customize this task list for your forum, with actual dates and send it to the Planning Committee. Discuss and confirm Task List.	At least three months in advance of the forum.	
Planning Committee Kickoff Call. Items to discuss: <ul style="list-style-type: none"> Planning team roles. Further discussion of forum goals and agenda topics. Identify potential speakers and panel participants Determining who to invite. Timeline of events. 	Hold initial call when Planning Committee is established, then hold at least monthly calls. Hold calls twice a month once forum is two months out.	If possible, try to plan a standing conference call, (e.g., every first Tuesday at 2:00 pm). This will make it easier and reduce the time spent scheduling planning calls.
Develop Agenda Begin drafting agenda. Finalize agenda.	<ul style="list-style-type: none"> As soon as planning begins. At least two weeks prior to forum. 	Get firm commitments from everyone listed on the agenda. Name several alternates in case there are speaker cancellations.
Identify Stakeholders to Invite Begin compiling invitation database. Finalize database.	<ul style="list-style-type: none"> Once planning begins. Seven weeks prior to forum. 	
Select and Book a Venue <ul style="list-style-type: none"> Inquire about places that will offer the space for free. Venue should be easy to find and travel to. Venue should be handicapped accessible. Venue does not need to be walking distance from a hotel. 	At least two months prior to forum.	
Book Hotel Room Block <ul style="list-style-type: none"> Room block should be requested for the government rate or the lowest possible rate you can receive. Hotel does not have to be walking distance to the venue, but it should be an easy commute. Reserve the block under the same name as the forum. 	Two months prior to forum.	If you are expecting only a few out of town participants, you can skip this step and simply make note of the best hotel for participants to stay on the registration website or in the invitation email.
Meeting Logistics Create logistics sheet containing venue and hotel information that participants will need.	At least six weeks prior to forum.	Have this information ready in time to send with the forum invitation.
Invitations Send invitations. Manage RSVPs. Send registration reminders.	<ul style="list-style-type: none"> Six weeks prior to the forum. As received. One month prior to registration deadline. One week prior to registration deadline. 	

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



Next Generation Cleanup Compendium of Examples

U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Washington, DC 20460
September 2016

Next Generation Compliance is an integrated strategy to increase compliance with environmental programs by using five interconnected components: more effective regulations and permits, advanced monitoring, electronic reporting, **expanded transparency**, and innovative enforcement

Transparency means making cleanup progress more visible to the public.

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



Next Generation Cleanup Compendium of Examples

U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Washington, DC 20460
September 2016

Making information public in this way can create an added incentive for responsible parties and facilities to meet their response obligations according to the agreed upon schedule.

Can also improve the accountability and performance of regulators by fostering public understanding of site progress and make regulatory decisions more visible and accessible, and can also make regulators more efficient as they can better access information to use and share.

Transparency also serves to increase public awareness, strengthening the role of the public in identifying concerns and potential violations that should be addressed by regulators or through direct stakeholder action.

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



Next Generation Cleanup Compendium of Examples

U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Washington, DC 20460
September 2016

- Provide online access to initial submissions and updates of deliverables to Community Advisory Groups, Technical Assistance Grant recipients and their advisors, and other entities to provide them with a reasonable opportunity for review and comment.
- Hold monthly community outreach meetings and develop a TEDx talk
- Maintain a Facebook group page
- Activate a listserv, or electronic information distribution system, to quickly provide the public with timely information on project developments
- Create project websites containing project background information, frequently asked questions, project updates and news, as well as a digital library project documents and links to the partner agencies and news
- Post a summary on Site's webpage after every major negotiation outlining what had been discussed.



GETTING RISK COMMUNICATION RIGHT: Helping Communities Plan at Superfund Sites



September 2019



WHY IS EFFECTIVE RISK COMMUNICATION IMPORTANT?

People perceive risk through very individual lenses. There are many factors that can influence how we perceive risk, including prior knowledge and experience, uncertainties, and lack of control. **Effective risk communication is based on an understanding that risk means different things to different people.** Risk communication provides an opportunity for the Agency and the community to exchange information, facilitates community participation in the decision-making process, helps the site team understand and appreciate the community's perception of risk, and helps establish mutual trust and a productive relationship between the EPA and the community. Community members often have important information that can help improve the accuracy of the site characterization and the baseline human health risk assessment.

Local community knowledge can help the site team:

- Identify beneficial future land uses based on community needs and interests.
- Better understand the site's history and the type and extent of contamination.
- More accurately characterize exposure pathways due to site-specific community behavior.
- Identify unique ways in which the community uses local resources, such as consuming high quantities of one type of food (e.g., fish from a contaminated river) or using plants grown near the contaminated site in food, medicinal remedies, or traditional practices.
- Become aware of whether certain segments of the community may have a disproportionate burden of exposure or environmental health effects due to race/ethnicity, national origin, or income compared to other nearby communities (i.e., issues related to environmental justice).

Enhancing our risk communication and community involvement efforts during post-construction and long-term stewardship will help to:


- Build and maintain relationships with local officials and key community members.
- Plan for changing conditions in the community and/or the site and how to address those changes.
- Ensure that local officials and the community know who to contact with questions and concerns.
- Engage developers, local officials, and the community to identify redevelopment opportunities for the site.

While the Superfund program has a robust toolkit for engaging communities and communicating risk, post-construction and long-term stewardship activities at certain sites can present unique challenges that will benefit from enhanced, tailored outreach. As site conditions change it may become necessary to address new community concerns that arise.

Scenarios that may benefit from enhanced risk communications:



- New development near the site (homes and businesses)
- Discovery of a new contaminant
- Routine operation and maintenance, repairs, or an emergency response
- Weather events that may impact the integrity of the cleanup
- Ongoing community involvement and interest in site activities

ASCENDANCY AND PRIMACY OF GRASSROOTS ORGANIZATIONS & CBOS



REUSE


Creating community-based brownfield redevelopment strategies



EPA 231-K-10-005
February 2013
www.epa.gov/smartgrowth
www.epa.gov/environmentaljustice

CREATING EQUITABLE, HEALTHY, AND SUSTAINABLE COMMUNITIES:

Strategies for Advancing Smart Growth, Environmental Justice, and Equitable Development



Office of Sustainable Communities
Office of Environmental Justice

BROWNFIELDS IN TEN POINT 10: MORE, SO MUCH MORE . . .

BROWARD COUNTY BROWNFIELD REDEVELOPMENT PROGRAM
2018 ANNUAL REPORT



Broward County Board of County Commissioners
3000 E. Dade Blvd., Suite 1000, Fort Lauderdale, FL 33305
www.broward.org

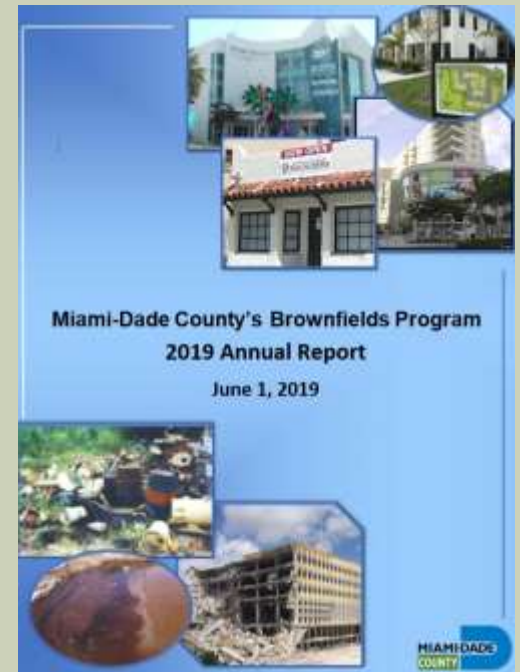
ENVIRONMENTAL PROTECTION COMMISSION of
HILLSBOROUGH COUNTY

2019 BROWNFIELDS PROGRAM ANNUAL REPORT



Liberty Tampa Brownfield Site,
From Parking Lot to Hotel

JUNE 2019



Brownfields2019
SUSTAINABLE COMMUNITIES START HERE

LOS ANGELES, CA

DECEMBER 11-13, 2019

WITH PRE-CONFERENCE PROGRAMMING DECEMBER 10

LOS ANGELES CONVENTION CENTER

QUESTIONS/ANSWERS



Unearthing Opportunity Everywhere.

We'll help you see through our eyes.



THE GOLDSTEIN
ENVIRONMENTAL LAW FIRM

(305) 777-1680 • GOLDSTEINENVLAW.COM

Special Emphasis on Cleanup and Reuse of Former Fueling Stations, Landfills, Automobile Dealerships, Golf Courses, and Agricultural Sites

- 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