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## Brownfield Basics: An Issue Primer

The brownfield issue is plagued by a lack of quantitative data. 450,000 is the speculative, but generally agreed upon, figure for the total number of brownfields in the country. This figure includes former industrial sites, abandoned gas stations, dry cleaners, and commercial operations. However, no one knows how many brownfields are in each state, what percentage are rural and urban, how much brownfields make local economies suffer, or how much their redevelopment boosts those economies.

We *do* know that strategic brownfield redevelopment can clean up environmental hazards, remove neighborhood eyesores, create jobs, boost tax revenue, provide housing, and promote general economic health in local communities of all sizes. Redevelopment can produce win-win scenarios for both the economy and the environment.

### Introductory Terms

**brownfields** - The Environmental Protection Agency (EPA) defines brownfields as “abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.” Most states use this definition or a similar one.

**redevelopment** - Brownfields can be redeveloped for a wide variety of purposes. Successful redevelopment efforts have turned brownfields into retail sites, light industrial facilities, office parks, waterfront promenades, parks, schools, market-rate and low-income housing, stadiums, and transit centers.

**site assessment** - Technical experts determine the kind and content of site contamination in two phases: Phase I is a basic determination using historical records, maps, and other sources. Phase II involves actual sampling on site. Site assessments are needed to define the cleanup plan.

**tax incentive** - Tax code provisions (forgiveness of levy or reduction of taxes owed) that encourage private investment and lending at sites, particularly in situations where it might not ordinarily happen. Tax incentives often are used to help address market imperfections that are in the public interest.

**assessment pilot** - EPA uses a competitive process to select cities, tribes, counties, or other entities as recipients of pilot grants. Then these selected entities develop a brownfield reuse strategy and process, identify sites, and carry out site assessments at sites with reuse potential. Basically, the \$200,000 pilot grant award can be used for any pre-cleanup activity (including planning and community outreach), but not the cleanup itself.

**brownfield revolving loan fund** - EPA can provide communities (those that have been designated as pilots or have received targeted brownfield site assessments) with up to a million dollars to form a pool used to make loans for brownfield cleanup. This pool of money is replenished as loans are repaid, and the paid-back money is used to make new loans for cleanup. The public sector can jump start a lot of activity by providing the initial seed money for a loan pool that will sustain itself as it is repaid.

**showcase** - EPA's premiere brownfields program has designated 28 communities (in two rounds) that receive additional loans, funds, loans of federal staff, and access to sources of federal money.

**liability** - The Superfund law (CERCLA), which applies to brownfields, says that anyone ever associated with a contaminated site, at any point in time, is potentially responsible for paying for its cleanup, forever. In legal terms this is known as strict/joint/several liability. These people are the potentially responsible parties, or PRPs. In some situations, liability also can include non-PRPs, like banks, who would have to pay for cleanup if they had lost collateral on a loan due to contamination issues.

**finality** - Several legislative initiatives address bringing finality to the brownfield process, so that once a site is cleaned up the PRPs are no longer financially responsible for future cleanups if new evidence of contamination emerges. Yet these bills also allow for defined "reopeners," or limited situations in which the federal EPA could revisit sites if human health and the environment are threatened.

## **Barriers to Brownfield Reuse**

Developers and investors, cautious of environmental liability, have shied away from brownfield sites. Contaminated properties, which are subject to many environmental regulations and procedures, also are vulnerable to costly construction delays. Pollution concerns have led developers to pass up opportunities in urban centers for ones in rural and suburban areas (a.k.a. greenfields) where land is perceived to be less expensive and free from unknown liability. If these barriers to brownfield reuse are to be overcome, site reusers need funds to perform site assessment, funds to develop a cleanup plan, and funds to do the cleanup.

## **What State Programs Do**

States have addressed some of these barriers to brownfield reuse by designing their own programs and demonstrating that there are many different ways to reach the common goal of site cleanup and reuse. To date, about 16,000 sites have gone through state Voluntary Cleanup Programs (VCPs).

According to the Northeast-Midwest Institute's latest "State of the States" survey, 47 states (all but North Dakota, South Dakota, and Wyoming) have some sort of brownfield program in place. These state programs vary in terms of comprehensiveness, incentives, level of state liability relief granted, and overall effectiveness. They regulate differently and emphasize different types of reuse, whether industrial, commercial, housing, or open space. Some states are well positioned to take advantage of federal legislative initiatives, while others are not.

The federal EPA has signed a Memorandum of Agreement (MOAs) with 14 states in the past five years; the MOA is negotiated and signed by a state's Voluntary Cleanup Program and its regional U.S. EPA office. The MOA eliminates the "dual master" problem by giving added weight and sense of finality to the state's VCP, as long as the VCP meets certain EPA criteria. The MOA gives the state VCP credibility and autonomy; EPA has stated, in agency guidance, that it will not investigate or "second guess" sites that have successfully completed the state's program unless there is a compelling reason to do so – like previously unknown contamination that presents an imminent threat to health and the environment. What an MOA can mean, in practice, is that brownfield redevelopers are more willing to undertake a site cleanup without fear of federal liability and EPA enforcement action

As successful as state programs have been, however, federal activity broadens the brownfields horizon with respect to both process and financing, allowing more sites to be cleaned up and returned to productive use.

## What Federal Programs Can Do

The federal government has identified an array of programs and resources to help clean up and reuse brownfield sites. An Interagency Working Group, established by the Environmental Protection Agency in July 1996, enables more than 20 agencies to exchange information and coordinate activities in support of local brownfield cleanup efforts. Some agencies have been more active participants than others.

Even now, only two federal agencies specifically support “brownfields work” by name:

- The U.S. Environmental Protection Agency (EPA) has been the most active federal agency in promoting the redevelopment of brownfields and other underutilized contaminated properties. EPA’s Brownfields Action Agenda, announced on January 25, 1995, is divided into four broad, overlapping categories: brownfield pilots, clarification of liability and cleanup issues, partnerships and outreach, and job development and training. The EPA has a fiscal 2001 allocation of \$91.6 million to fund brownfield pilot assessment programs, RLFs, job training grants, and other activities.
- The U.S. Department of Housing and Urban Development (HUD) considers brownfields to be potential opportunities for neighborhood revitalization and economic development. HUD spends \$25 million annually for competitive grants through the Brownfields Economic Development Initiative (BEDI). Other programs provide resources for the renewal of economically depressed areas, notably, HUD’s Community Development Block grant Program (CDBG) and Section 108 Loan Guarantee Program.

Other federal agencies have shown a strong commitment to brownfield redevelopment through their existing programs, which are not brownfields programs per se:

- Long before the term “brownfields” was coined, the U.S. Department of Commerce’s Economic Development Administration (EDA) implemented programs to help economically distressed communities alleviate the adverse conditions created by unemployment, and it continues to provide funding to promote infrastructure development, business development, and economic revitalization, all key brownfield reuse goals.
- The U.S. Army Corps of Engineers aims to provide technical assistance in the assessment, clean-up, and redevelopment of brownfields where such assistance would improve water quality in streams, rivers, lakes, wetlands, and floodplains.

Several federal agencies also show potential as sources of funding for brownfield redevelopment, when such projects can fit program eligibility criteria:

- According to the U.S. Department of Transportation’s (DOT), “states, localities, and transit agencies are provided the flexibility to participate, where appropriate, in transportation projects that include the reuse of brownfield sites,” either for specific transportation facilities, or where part of the transportation solution is also part of the environmental solution (i.e., cleanup as part of roadway preparation).

- The U.S. Small Business Administration (SBA) offers programs and credit support that may be used by small businesses for projects that include a redevelopment component.

## **Why Legislation Is Needed**

Brownfield legislation entered the scene during the 104<sup>th</sup> Congress. In the 106<sup>th</sup> Congress, nearly 30 bills were introduced, co-sponsored by nearly 350 representatives and 70 senators. Those bills generally fell into three broad categories:

- tax incentives, such as tax credits or tax-exempt financing, which ease the cash flow or cost of capital for brownfield projects;
- direct capital attraction incentives, which grant money to states and cities to either directly finance cleanup or capitalize revolving loan funds to support cleanup; and
- liability clarifications and process related initiatives, which protect parties like innocent owners, prospective buyers, and adjoining property owners from having to pay for brownfield cleanup

Already in the 107<sup>th</sup> Congress, a number of bills have been introduced which also fall into these same categories. The bills garnering the most attention at this point are S. 350 and H.R. 324, which would provide grant money to states and communities and clarify liability in some situations. (See the institute's most recent Federal Legislative Update, at [www.nemw.org](http://www.nemw.org), for details).

A number of lawmakers have recognized that additional financing tools and existing program clarifications would complement these aforementioned provisions. These additional measures include: expanding the existing brownfield expensing tax incentive and creating new tax incentives; formalizing a brownfield role for the Economic Development Administration and the Small Business Administration; and making HUD's community development programs more responsive to brownfield needs in smaller cities.

## **Three Case Studies**

Brownfield "success stories" are the building blocks of future successes, showing that regulatory, financial, and perceptual issues can be overcome in ways that are both economically viable and environmentally responsible. Three short case studies illustrate the kind of success that brownfields, whether in urban, suburban, or rural settings, can achieve.

*Chicago* established its Brownfields Initiative in 1993 to tackle the city's estimated 2,000 brownfield sites. Since that time, Chicago has become a nationally recognized leader in the assessment, cleanup, and redevelopment of brownfields, institutionalizing the brownfield process more than any other American city. Chicago provides incentives for private-sector players to redevelop brownfields, and it also acts as a brownfield redeveloper itself, not hesitating to take on or take over sites difficult with significant potential benefits.

*Glen Cove*, New York, has achieved success by placing the brownfield issue front-and-center, with the mayor personally spearheading many of the town's efforts, mostly in the area of waterfront development. Glen Cove has found innovative ways to collaborate with county, state, and federal agencies to meet its brownfield needs.

*Cape Charles*, Virginia, is a small town that has used its local work force skills as a marketing tool to attract new users to sites. Cape Charles also has been very creative in forging partnerships to extend the town's very limited capacity to take on development projects and in giving them a brownfield focus.

## **Northeast-Midwest Institute: Mission and Brownfield Activities**

The Northeast-Midwest Institute is a Washington-based, private, non-profit, and non-partisan research organization dedicated to economic vitality, environmental quality, and regional equity for Northeast and Midwest states. Formed in the mid-1970's, it fulfills its mission by conducting research and analysis, developing and advancing innovative policy, providing evaluation of key federal programs, disseminating information, and highlighting sound economic and environmental technologies and practices. The Institute is unique among policy centers because of its ties to Congress through the Northeast-Midwest Congressional and Senate Coalitions. Co-chaired by Senators James Jeffords (R-VT) and Jack Reed (D-RI), and Reps. Marty Meehan (D-MA) and Jack Quinn (R-NY), the bipartisan coalitions advance federal policies that enhance the region's economy and environment.

The Northeast-Midwest Institute has been at the forefront of brownfield policy development and dissemination in the U.S. since the early 1990s, when it published the landmark *New Life for Old Buildings*. Throughout this decade, as part of its research agenda, the Institute has prepared dozens of detailed brownfield reuse case studies that have helped its constituencies better understand the challenges and opportunities of contaminated sites. In addition, the Institute is proud of a series of local brownfield forums it organized and co-sponsored beginning in 1992 and concluding in 1997. Forum sites included Chicago, Pittsburgh, East Chicago, Dearborn, Kalamazoo, Buffalo, New York City, Newark, Trenton, Oakland, Milwaukee, Lowell, and Cleveland. In each case, the Institute co-sponsored the forums with one or more Members of Congress and designed the day-long meetings to galvanize local interest in cleanup issues, rally support for brownfield reuse among prospective private reusers and pertinent public agencies, and obtain insights from local players on the best way for the federal government to be involved in such efforts. Currently, the Institute is focusing on brownfield financing, insurance, and "smart growth" practices, and it continues to participate in dozens of brownfield policy and "best practices" workshops and forums annually, for different EPA regions, HUD, and other organizations.