Brownfields State of the States in 2004

by Charles Bartsch

State response and revitalization programs are becoming more prominent, as both the public sector and the private market acknowledge and act on both the responsibilities and the opportunities given to states in the federal Brownfield Revitalization Act. Since that law took effect in January 2002, many different—but equally effective—approaches have been put into place to meet the multiple challenges and common objectives of brownfield reuse. Several states have adopted sweeping new legislative changes to encourage cleanups. For example, in October 2003, after years of legislative effort, *New York* adopted a statutory Brownfield Cleanup Program that authorizes $135 million in assessment and cleanup funding assistance; it includes an innovative area-wide planning initiative, the Brownfield Opportunity Areas program. In 2004, *South Dakota* became the 49th state to adopt a formal brownfields program; its authorizing legislation requires the state to establish a brownfields revolving loan fund, and directs state staff to help South Dakota's predominantly rural communities seek brownfield project funding.

"State of the States"—General Themes

More states have adopted the federal definition of "brownfield," included in the Brownfield Revitalization Act, as their own—real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Several states emphasized that conforming to this broader definition has given their own programs more flexibility, and opened them up to more sites. While the majority of states do not allow responsible parties to take advantage of their voluntary cleanup programs, similar to the federal program, more are moving towards permitting responsible-party involvement. In fact, a growing number of states—nearly a dozen, including *Wisconsin, North Carolina, Minnesota, Nebraska,* and *Oklahoma*—do allow anyone to participate.

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This shift reflects the approach being taken by the federal Environmental Protection Agency (EPA). In addition, a growing number of states are starting to link financial resources available through programs set up to address specific needs—like discarded tires or abandoned dry cleaners—to broader brownfield site remediation efforts. For example, *Kansas*—through its Agriculture Remediation Fund—focuses on properties with agriculture-related contaminants. Others, like *Tennessee*, are encouraging local governments to use traditional public financing tools like tax increment finance to address brownfield sites.

The cost to a site volunteer of participating in a state response program continues to vary widely. Some states require flat fees of as little as $500; others charge hourly costs (ranging from $50 to $85 or more per-hour) based on state staff time needed. A few states have defined alternative cost methodologies, such as a percentage of the cost of remediation; *Nevada*, for example, bases its fees on site size. And there is no question that there now is greater reliance on federal funds to meet state staffing and administration needs. This increased reliance underscores the importance of the sizable increase in federal funding for state response programs (to $50 million) authorized in the recent brownfields law.

Finally, one theme is woven through many state efforts of the past two years—creativity in meeting needs and stimulating reuse. *Wisconsin*, for example, allows site owners to get a certificate of completion if they use natural attenuation as part of the cleanup remedy, as long as they pay

for environmental insurance through the state's program. The state also now links property tax forgiveness and expedited tax foreclosure for brownfield sites to the willingness to complete site cleanup under the auspices of the state's voluntary response program. *New York's* new brownfields program authorizes an array of cleanup and redevelopment tax credits, including site preparation credits and an environmental remediation insurance tax credit. *Florida* offers low-interest loans to redevelopment agencies and non-profit corporations to purchase contractor liens, tax certificates, and similar claims, to expedite site reuse. And *Indiana* has adopted a "just in time" Phase II site assessment program, offering $50,000 grants to expedite projects at sites where a company or developer is "imminently interested."

"State of the States"—Specific Program Provisions

Financing Incentives

In 2003 and 2004, states devoted significant attention to the types of brownfield financing they offer; today, diverse offerings are available across states, including the following:

- *Rhode Island* now offers tax credits for renovation of historic mill buildings;
- *Massachusetts* is one of several states with a "brownfields redevelopment fund" that offers low- or no-interest loans for site assessment and cleanup;
- *Massachusetts* and *Wisconsin* have established insurance programs to offer site owners access to volume discounted policies; *California* is currently exploring a redevelopment insurance program;
- Owners of petroleum contaminated sites in *Maine* can tap the state's Groundwater Fund for help with investigation and cleanup; the fund is capitalized with fees on each barrel of oil entering the state;
- *New Jersey* site owners can enter into redevelopment agreements that offer state tax rebates to cover up to 100 percent of cleanup costs;
- *Indiana* has a new $9 million Brownfields Petroleum Remediation Grant Incentive program;
- *New Mexico* is one of a handful of states to make a direct link between brownfield financing needs and Clean Water State Revolving Fund resources;
- *Florida* links tax incentives to job creation on brownfield sites, and reserves 30 percent of its Quick Response Training program funding for employees of businesses that locate in locally-designated brownfield areas; and
- *Texas* is one of several states that have adopted property re-valuation tax abatements, allowing redeployed brownfield sites some breathing time before taxing them at their new, increased value.

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Technical Program Incentives

Virtually all states have cleanup standards that acknowledge the site's end use. Some are pegged to type of use—residential, commercial, or industrial. Others are connected to use limits—unrestricted use, site-specific restricted use, etc. Several, like *Maryland*, provide a "menu" of cleanup options that use a RBCA-like process. Most states also allow the use of institutional controls, often linked to type of use. Other technical or process incentives that states now offer include the following.

- *Virginia* has developed a Brownfields Manual which intends to make its program "business oriented" and "user friendly;"
- A new *Delaware* law, signed in August 2004, more closely ties the state's revamped Brownwnfield Redevelopment Program to economic development efforts and job creation goals; and
- *Florida* remains the only state that requires a formal local-government designation of brownfield areas, which trigger access to the states wide range of brownfield reuse incentives.

Public Participation Requirements

All states have some type of public involvement requirements, but these vary in scope and practical value. Some states, like *Maryland*, now require the state environmental agency to post information about voluntary cleanup applications and site cleanup plans on agency web sites; *Arizona* intends to adopt a similar posting requirement for its data base of sites that use institutional controls. A few states target participation requirements to specific program elements; *Colorado* requires a formal "community involvement plan" for any site seeking assistance through its state brownfields revolving loan fund. Others require direct notification of adjoining property owners or other clearly impacted parties.

Other Provisions

States have embraced the federal Brownfield Revitalization Act in different ways. Many, like *Oklahoma*, have revised their site eligibility and other response program criteria to mirror federal provisions. *Florida* modified its definition of a brownfield to match the federal definition, while retaining a separate definition of "brownfield area" which is used for state program

eligibility and funding. Others, like *Virginia*, have developed response guidance to take advantage of new federal statutory provisions. A few states, like *Idaho*, have established new brownfield response and technical assistance programs in addition to their voluntary cleanup programs.

Several states, such as *Nevada*, have emphasized that liability relief for prospective purchasers included in federal law has been important to state and local officials trying to market brownfield sites. *Indiana* and *New Mexico* have noted that the broader federal definition, which could include facilities like abandoned schools and hospitals as well as petroleum-contaminated sites, will give communities more flexibility in using brownfield initiatives to help meet community development goals.

Several states identified a critical challenge raised by the new law, namely, that sites that were publicly owned prior to the date of enactment cannot now qualify for EPA brownfield grants. Other states noted that enforcement and inventory requirements could be concerns, depending on how the procedures for doing so were clarified in guidance.

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Program Benefits

Finally, more states are reporting significant returns on their public investment stemming from site participation in their voluntary response programs or taking advantage of their incentives. A sample of what is attributable to these program efforts:

- *Rhode Island* saw more than $80 million in new property value generated from 97 businesses that have located on brownfield sites;
- *Wisconsin* attributed more than 4,000 new jobs to 88 brownfield projects;
- *Minnesota*, which has one the nation's oldest programs, estimates that more than its VCP has leveraged almost $1 billion in private investment, including construction of nearly 5,700 housing units; and
- *Florida* claims cumulative creation of 3,274 direct jobs and 2,60 indirect jobs, as well as $172 million in new investment in its designated brownfield areas, through the end of 2003.

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