

Alabama

General Information

Contact: Larry Norris, Chief
Redevelopment Section

Brownfields Redevelopment and
Voluntary Cleanup Program (VCP)

Alabama Land Recycling Revolving Loan Fund
Program

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Environmental Protection (ADEM)
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Program Description (VCP, brownfields, or related)

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

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

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

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

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

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

- The property must not be a Resource Conservation and Recovery Act (RCRA) hazardous waste treatment, storage, or disposal facility subject to the permitting requirements of Alabama Administrative Code R. 335-14-8-.01 through 335-14-8-.08.

Financial Elements

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

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

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

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

Program Elements

Technical Elements

Methods/standards/controls: No formal Risk-Based Corrective Action (RBCA) or comparable/informal process in place; state uses EPA's Soil Screening Levels using Dilution Attenuation Factor (DAF) of 1, background, or EPA's Risk-Based Concentrations table, using the residential numbers for soil and below Maximum Contaminant Levels (MCLs) for ground water, at sites not using institutional controls.

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

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

- **IC Tracking:** A database that will track institutional controls at cleanup sites is under development as part of the voluntary and brownfields programs and will be adapted to other programs.
- **IC Oversight and Monitoring:** Sites using institutional controls are addressed through a site-specific risk assessment and must have a longer term enabling mechanism (such as a permit or order) defined in the settlement agreement to ensure that institutional controls are maintained.

Alabama

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

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

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

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

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

Cleanup Activities

Sites currently in VCP: Currently, 64 companies are responsible for the assessment and possible remediation of 64 sites under the voluntary cleanup program.

Sites completed under VCP: 45 companies have completed assessment and remediation activities on 200 sites.

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

Public Participation

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

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

Statutory Authorities

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

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

Florida

General Information

Contact: Kim Walker, Brownfields Liaison

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

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

Program Description (VCP, brownfields, or related)

Brownfields definition

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

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

Program titles: Brownfields Redevelopment Program

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

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

- Up to \$2,500 tax credit “brownfields bonus” per job created in a designated brownfields area for certain types of businesses.
- Loan guarantee program.
- Expedited permitting process.
- Sales tax credit on building materials used for the construction of certain redevelopment projects located in brownfield areas.
- Voluntary Cleanup Tax Credit (corporate income) of 50% on annual voluntary cleanup costs incurred, up to \$500,000 in tax credits per year.
- Enterprise Zone program.
- Local option sales surtax exemptions for sales made in urban infill/redevelopment areas.

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

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

Financial Elements

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

- DEP receives funding for its state response program (SRP) from EPA. A portion of these funds are used to fund site-specific assessments and limited cleanup of source areas for eligible applicants. Sites that receive these services are also encouraged to participate in the state Brownfields Redevelopment Program.
- Loan guarantee program provides limited guarantees for up to five years for primary lenders financing redevelopment projects in brownfield areas.
- Petroleum stations and dry cleaning establishments are eligible for participation in the Brownfields Redevelopment Program.

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Tax incentives (abatements, credits, etc.):

- State sales tax credit on building materials (purchased on or after July 1, 2000) used for the construction of a redevelopment project (e.g., housing or mixed-use project) located in urban high crime area, enterprise and empowerment zones, Front Porch Communities, and designated brownfields or urban infill area.
- Up to \$2,500 tax credit “brownfields bonus” per job created in brownfield areas for certain businesses. Legislature modified the “brownfields bonus” in 2002, making it available to companies that create jobs at any site within a designated brownfields area. Company now qualifies for a tax refund of at least 20% of the average wage of the jobs created, provided that they provide benefits to their employees, make a capital investment of at least \$2,000,000, and create at least 10 jobs. Companies in certain targeted industry categories that create at least 10 jobs automatically are eligible for the maximum award of \$2,500 per job, regardless of the amount of capital investment.
- Tax credit (corporate income) of 50% on voluntary cleanup activity that is essential to site rehabilitation, with a maximum of \$500,000 in tax credits, per site per year. The annual tax credit allocation is \$2,000,000. The Voluntary Cleanup Tax Credit program issued a total of \$7.4 million in tax credits since inception of the program in 1998.
- Enterprise Zone program provides a variety of incentives in cooperation with local governments to encourage economic growth and investment in zones: job creation tax credits, enterprise zone property tax credits, building material sales tax refund, business equipment sales tax refund, and electrical energy sales tax exemption.
- Local option sales surtax exemptions are available for sales made in urban infill and redevelopment areas.

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

Program Elements

Technical Elements

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

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

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

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

Use of long-term stewardship and institutional controls (IC): Institutional controls are key to a RBCA approach and are allowed in all cleanup program areas. The property owner must agree to the use of an institutional control such as a deed restriction or restrictive covenant on the property. DEP cannot compel their use.

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

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

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

Management & Implementation Elements

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

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

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

Funding source for administrative costs and staff: Funding for the Brownfields Redevelopment Program and brownfields staff comes from the state general fund. There is a brownfields coordinator in each of the six DEP district offices. The brownfields

Florida

coordinators oversee voluntary cleanup of brownfields sites. Funding for long-term stewardship is not allocated separately from other cleanup funds. Approximately one full-time equivalent (FTE) is designated for long-term stewardship. Sites that enter into voluntary cleanup outside the Brownfields Redevelopment Program are managed by other DEP staff. These staff are also funded by the state general fund.

Cleanup Activities

Sites in the Florida Brownfields Redevelopment

Program: As of February 2008, 114 sites have voluntarily entered into brownfield site rehabilitation agreements with DEP.

Sites completed under the Brownfields Redevelopment

Program: Currently, 20 sites have been issued final Site Rehabilitation Completion Orders (SRCOs) from DEP since the start of the program.

Benefits (incentives to participate in the VCP, covenants

not to sue, etc.): Cumulative totals for new job creation and capital investment attributable to the brownfields program from its start until December 31, 2007: 8,595 new direct jobs; 7,264 new indirect jobs; \$883,713,993 of capital investment in designated areas.

Public Participation

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

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

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

Statutory Authorities

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

General Information

Contact: Madeleine Kellam,
Brownfields Coordinator

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(DNR)
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Atlanta, GA 30334

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

Program Description (VCP, brownfields, or related)

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

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

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

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

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

Legislative or program site eligibility

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

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): No monetary grants or loans are provided for under the program; however, a limited amount of direct assistance, in the form of Targeted Brownfields Assessment, is provided to eligible entities subject to state criteria and available from Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 128(a) State and Tribal Response Program Grant funds (Response Program Grant).

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

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

Program Elements

Technical Elements

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

Georgia

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

Use of long-term stewardship and institutional controls

(IC): Georgia has promulgated institutional controls provisions for brownfield sites that are on the state Superfund list and that have not certified compliance with a residential risk reduction standard for soil and ground water.

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

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

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

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

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

Funding source for administrative costs and staff:

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

Cleanup Activities

Sites currently in Brownfields Program: 143

Sites completed under Brownfields Program: 82 (225 applicants to date; 82 of which have completed activities)

Benefits (incentives to participate in the Brownfields Program, covenants not to sue, etc.): Participants receive limitations of liability prior to purchase of property and can qualify for tax abatement following completion of cleanup. Participants have commented on the utility of the limitation of liability letters in securing private financing for redevelopment.

Public Participation

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

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

Statutory Authorities

- Hazardous Site Reuse and Redevelopment Act (OCGA §12-8-200, as amended).
- Hazardous Site Response Act (OCGA §12-8-90, as amended).
- General Provisions Regarding Ad Valorem Taxation of Property (OCGA §48-5-2, et seq).

General Information

Contact: Herb Petitjean

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Frankfort, KY 40601

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Program Description (VCP, brownfields, or related)

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

Program titles:

Kentucky Voluntary Cleanup Program includes:

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

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

Volunteers may apply to obtain a CNTS under the VERP.

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

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

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

- Kentucky tax incentives for bona fide prospective purchasers of qualified properties
- Kentucky Cabinet for Economic Development incentives
- Kentucky Division of Waste Management grants
- Kentucky Housing Corporation program
- Agricultural Warehousing Sites Cleanup Fund
- Clean Water State Revolving Loan Fund

- Kentucky Brownfield Program Web site
- Duke Energy reduced electrical rates program

Legislative or program site eligibility

requirements: Any party is eligible to enter VERP to receive a CNTS unless:

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

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

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

Financial Elements

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

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

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

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

Kentucky

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

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

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

Duke Energy, which serves Northern Kentucky, has a program that offers reduced electrical rates for companies that redevelop on qualified brownfields. E. ON U.S. (Louisville Gas and Electric and Kentucky Utilities) has applied to the Public Service Commission to offer a similar program.

Program Elements

Technical Elements

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

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

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

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

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

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

Contaminants covered/excluded: Petroleum and polychlorinated biphenyls (PCBs) are covered, but petroleum

releases are not eligible for CNTS if they fall under the UST program. Asbestos and lead paint are covered if released in environment and not part of a structure.

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

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

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

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

Kentucky

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

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

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

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

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

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

Funding source for administrative costs and staff:

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

Cleanup Activities

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

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

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

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): VERP establishes an efficient and predictable process for voluntary cleanups. It includes time limits for review of documents by the cabinet. Upon successful completion of a cleanup, the applicant receives a CNTS and expanded liability coverage. However, the majority of volunteers prefer to use the less formalized Notice of Completion option rather than VERP. They find it less onerous and feel that the Notice provides an adequate degree of liability protection.

Public Participation

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

- The applicant shall notify the local government units at the time of application and at the time that the corrective action plan is proposed.

- The applicant shall place notices in the newspaper of largest circulation in the county at the time of application and at the time that the corrective action plan is proposed.
- The applicant shall post a sign on the property stating that the site is undergoing remediation and providing information on where and when the corrective action plan is available for public review and comment.
- Copies of all relevant documents shall be placed in the local public library. Documents are also available from the Division of Waste Management file room as provided by Kentucky's Open Records Act, KRS 61.870–884.
- A comment period of at least 30 days shall follow publication of the notice of the submittal of a corrective action plan. During the comment period, any person may submit written comments to the cabinet concerning the corrective action plan and may request a public hearing. The cabinet may hold a public hearing if request is made.
- The cabinet shall consider all written comments and public testimony prior to taking any action.
- The public may appeal approval of a corrective action plan or issuance of a CNTS.

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

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

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

See comments under public participation requirements.

Statutory Authorities

Cleanup Statutes and Regulations

- KRS 224.01–400 – Reportable quantities and release notification requirements for hazardous substances, pollutants, or contaminants; Variation of requirements by administrative regulation; Emergency plan; Powers of the cabinet; Remedial action to restore environment; Lien of cabinets costs of cleanup; Defenses to Liability; Liability of financial institution acquiring property or serving as fiduciary.

Kentucky

- KRS 224.01–405 – Corrective action for release of petroleum or petroleum product from a source other than a petroleum storage tank.
- KRS 224.01–450 to 465 – No Further Remediation Letter.
- KRS 224.01–510 to 532 – Voluntary Environmental Remediation Act, including limits to suits or claims to compel remediation in excess of corrective action plan.
- 401 KAR 100:030 Remediation Requirements.

Environmental Covenant Act

- KRS 224.80 Environmental Covenants

Tax incentives

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

Methamphetamine contamination

- KRS 224.01-410 Standards and procedures for assessment and decontamination of inhabitable properties.
- KRS 198A.040 (29) Gives the Kentucky Housing Corporation the authority to establish a program to assist persons and families of lower and moderate income to help defray the cost of assessment and decontamination of methamphetamine contamination of inhabitable properties.

General Information

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Program Description (VCP, brownfields, or related)

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

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

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

Program titles:

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

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

Uncontrolled Sites/VEP Program—For sites with contamination left in place above unrestricted levels, a Restrictive Use Agreed Order has the following language: (a) the staff of the Commission has evaluated this Restrictive

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

Financial incentives (grants, loans, tax provisions, etc.): MDEQ conducts limited assessments (Phase I Environmental Site Assessments (ESAs), limited Phase II ESAs) for eligible entities (See federal Brownfields Law Subtitle A definition) on a competitive basis. During the 2005 legislative session, House Bill 1341 was passed by the Mississippi legislature and signed by the governor. The *Mississippi Brownfields Voluntary Cleanup and Redevelopment Incentives Act* contains a number of financial incentives for property owners and local governments to clean up and redevelop brownfield properties. The legislation also provides additional financial assistance to counties and municipalities. The Act expands eligible projects for financial assistance under the Local Governments Capital Improvements Revolving Loan Program under the jurisdiction of the Mississippi Development Authority to include remediation of brownfield sites and created the Local Governments Brownfields Redevelopment Grant Fund to include financial assistance for identification of brownfield sites, site assessments, and development of remedial action plans.

Legislative or program site eligibility

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

Financial Elements

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

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The Brownfields Voluntary Cleanup and Redevelopment Incentives Act expands eligible projects for financial assistance under the Local Governments Capital Improvements Revolving Loan Program to include remediation of brownfields sites and creates the Local Governments Brownfields Redevelopment Grant Fund to include financial assistance for identification of brownfield sites, site assessments, and development of remedial action plans. The maximum grant under this program is \$100,000, and requires a 25 percent local match. In addition, the legislation authorizes \$2.5 million in state general obligation bonds to be used by local governments for remediation of identified properties.

Tax incentives (abatements, credits, etc.): The Brownfields Voluntary Cleanup and Redevelopment Incentives Act provides an income tax credit for a property owner equal to 25% of the costs of remediating a brownfield property, with the annual credit capped at \$40,000, and the total credit not to exceed \$150,000. Any unused portion of the tax credit may be carried over into succeeding tax years. In lieu of the state income tax credit, the property owner may claim a job tax credit for each new employee created as a result of the cleanup and redevelopment of a brownfield site.

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

No information available

Program Elements

Technical Elements

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

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

Use of long-term stewardship and institutional controls (IC): The state statute promotes evaluation of institutional controls, and other remedial options for a site that can shut-off or eliminate exposure to contamination.

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

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

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

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: See Section 128(b) of Federal Brownfield Amendments for sites managed under the Mississippi Brownfields Program (i.e., the State Response Program).

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

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

Cleanup Activities

Sites currently in VCP: 206

Sites completed under VCP: 34

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Uncontrolled Site VEP allows accepted parties the opportunity to participate in a program that will expedite the evaluation of site information. The brownfields program offers liability protection before cleanup (at the point that a Brownfields Agreement is reached) eliminating the need for a No Further Action letter typically used after cleanup to unrestricted use.

Public Participation - MS Brownfields Program

Public participation requirements (notice, comment periods, etc.): If the department and a brownfields party reach a proposed agreement for the remediation of a Brownfields Agreement site, MDEQ must publish a public notice in a newspaper of general circulation in the county or counties in which the Brownfields Agreement site is located. The public notice shall: 1) describe the proposed agreement and site; 2) request public comment on the

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proposed agreement; and 3) provide the date and location of the commission's consideration of the proposed Brownfields Agreement. A copy of the proposed Brownfields Agreement shall be filed for public inspection.

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

Statutory Authorities

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

North Carolina

General Information

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VCP: [www.wastenotnc.org/sfhome/
ihsbrnch.htm](http://www.wastenotnc.org/sfhome/ihsbrnch.htm)

Program Description (VCP, brownfields, or related)

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

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

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

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

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

Program titles:

- Brownfields Program
- Inactive Hazardous Sites Voluntary Cleanup Program

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

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

Legislative or program site eligibility requirements: While any party may enter the state's VCP, the Brownfields Program and its specific benefits are statutorily restricted to non-causative prospective developers desiring to redevelop the brownfield property. The redevelopment project must be

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shown to have public benefit (e.g., jobs, tax base, community quality of life, greenspace) commensurate with the liability relief provided. An eligible prospective developer must be in substantial compliance with rules and regulations regarding environmental protection.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): Assessment and cleanup are funded by the brownfield applicant in the Brownfield Program and by the remediating party in the VCP. Note that the Inactive Hazardous Sites Program has a separate program for addressing non-permitted landfills that closed prior to 1983. A tax, which goes into effect in July 2008, funds the assessment and mitigation of these sites. Local governments can perform the assessment and get reimbursed if conducted under a plan approved by the Inactive Hazardous Sites Program. The state also has a program to address dry cleaning solvent releases. For those that qualify, the state funds the assessment and cleanup through a sales tax on dry cleaning.

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

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

Program Elements

Technical Elements

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

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

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

The VCP addresses only non-petroleum hazardous substance and pollutant contamination.

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

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

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

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

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

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

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

Funding source for administrative costs and staff: The Brownfields Program is funded through

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a CERCLA 128(a) State and Tribal Response Program Grant (Response Program Grant) cooperative agreement and also through its \$2,000 fee. The VCP is funded mostly through fees paid by remediators under the REC Program. Voluntary cleanup oversight staff are also funded by state appropriations, federal grants, and a coalition of responsible parties at former manufactured gas plant sites.

Cleanup Activities

Sites currently in VCP: Under the Brownfields Program, as of fourth quarter 2004, there are 112 sites. Redevelopment projects include manufacturing, commercial, residential, mixed commercial/residential, and greenspace uses. Approximately one third of these sites are in rural settings. All of these sites were initiated by prospective developers applying for entry into the Brownfields Program.

Under the VCP, currently 129 sites have approved voluntary assessments and/or cleanups underway.

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

A current total of 437 sites have completed all work and been assigned No Further Action status under the Inactive Hazardous Sites Program.

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

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

Public Participation

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

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

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

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

Statutory Authorities

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

General Information

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

Program Description (VCP, brownfields, or related)

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

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

Brownfield definition: Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Thus, South Carolina's VCP does not address petroleum contaminants.

Program titles: Brownfields/Voluntary Cleanup Program.

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

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

In 2002, the South Carolina legislature passed financial incentives to encourage brownfields redevelopment as amendments to the South Carolina Tax Code.

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

Legislative or program site eligibility requirements:

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

Financial Elements

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

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The South Carolina General Assembly created the Dry Cleaning Restoration Trust Fund (DCRTF) in 1995. The DCRTF money is collected from participating dry cleaners through annual fees, solvent surcharges, and special add-on sales taxes. Depending on the solvent type and the years of operation, some currently operating dry cleaning plants were allowed to opt out of participation in the Fund. The DCRTF can only be used at participating dry cleaning plants that meet specific eligibility criteria specified by law. Eligibility for the Fund transfers with the property. The fund may be used at former dry cleaning plants only if all RPs have participated in the Fund for all of their operating plants. All DCRTF assessment and remediation activities are performed by DHEC and are subject to a priority score assigned to the site. Lower priority sites may be redeveloped without restraints as long as DHEC is granted access to the site in the future for assessment and remediation once they become a priority.

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

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

Those incentives include:

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

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

Program Elements

Technical Elements

Methods/standards/controls: No formal Risk-Based Corrective Action (RBCA) process is in place for hazardous substances; state generally uses EPA Region 9 Preliminary

Remediation Goals (PRGs) and EPA Soil Screening Levels (SSLs) as remedial goals. Applicants can use PRGs and SSLs, background concentrations, and site-specific concentrations based on a site-specific risk assessment.

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

Contaminants covered/excluded: Under South Carolina's Brownfields/VCP law, hazardous substances are addressed, but not petroleum. Asbestos and lead-based paint can be addressed if there is an environmental exposure. Polychlorinated biphenyls (PCBs) are included as hazardous substances. Petroleum is addressed through the UST program or through DHEC's Bureau of Water, depending on the source of the contamination.

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

- **IC Tracking:** South Carolina maintains a database that tracks institutional controls at cleanup sites.
- **IC Oversight:** Parties owning sites that are not cleaned up for unrestricted use EPA Region 9 PRGs for residential use for surficial soils, EPA Soil Screening Levels for subsurface soils, and EPA Maximum Contaminant Levels (MCLs) for ground water or PRGs for tap water when MCLs are not established] must enter into a Restrictive Covenant with DHEC.
- **IC Monitoring:** DHEC monitors compliance with Restrictive Covenants by annual certifications and by performing inspections.

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

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

South Carolina

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

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

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

Cleanup Activities

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

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

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The protections provided by participating in the VCP, as well as the financial incentives, are outlined above. In addition, the state has seen much benefit from its brownfields redevelopment program, in that 142 properties have been or are being redeveloped as of December 31, 2007. These redevelopments include greenspace, housing developments, industrial, and mixed use (i.e., commercial, residential, and greenspace) developments with the primary redeveloped use as commercial.

Public Participation

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

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

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

- Hold a public meeting, if requested or deemed necessary. Generally, a public meeting is held for all properties being redeveloped for residential reuse.
- Non-RP must post a sign on the site stating: contact name, address, and telephone number.

Statutory Authorities

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

Tennessee

General Information

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Nashville, TN 37243-1538

Phone: 615 532 0912

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Web site: <http://www.state.tn.us/environment/dor/voap/>

Program Description (VCP, brownfields, or related)

Brownfields definition: Any abandoned, idle, underutilized, or other property whose reuse, growth, enhancement or redevelopment is complicated by real or perceived adverse environmental conditions.

Program titles: Voluntary Cleanup Oversight and Assistance Program (VOAP)

Liability relief provisions: Participants can receive a No Further Action (NFA) letter and release of liability under any statute administered by TDEC for investigation, remediation, monitoring, and/or maintenance of contamination identified and addressed in a voluntary agreement or consent order. With certain conditions and limitations, liability protection may extend to successors in interest or in title to the participant, contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries, or insurers. Third party contribution protection may be provided if certain notice requirements are met.

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

- Dry Cleaning Environmental Response Program Trust Fund (DCERPTF)—Can possibly be used to clean up eligible active and abandoned dry cleaning sites. In order to utilize the fund, fees, and deductibles are required by program participants.
- Tax Increment Financing (TIF)—Can be used by local governments that have jurisdiction over any part of a brownfields project.
- Federal Funds—Grants or loans from federal funds available to TDEC and any state funds used as a match to obtain federal funds in certain cases may be used by municipalities, counties, and/or other governmental instrumentalities to assess and clean up sites.

Legislative or program site eligibility requirements: By statute, parties that did not release, generate, or transport contamination to be addressed may enter into a voluntary agreement. While responsible parties (RPs) are not eligible to enter into voluntary cleanup agreements, they may enter into consent orders to conduct voluntary cleanups. Sites on or proposed for listing on the federal Superfund program's National Priorities List (NPL) may not be subject to a voluntary cleanup agreement or consent order without the concurrence of EPA.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): DCERPTF can be used to clean up eligible active and abandoned dry cleaning sites provided that the applicant pays all delinquent DCERP fees. A solvent surcharge paid by dry cleaners and suppliers and an annual business registration fee are the significant sources of funding.

Federal Funds—By statute, parties that did not release, generate, or transport contamination to be addressed may enter into a voluntary agreement. While responsible parties (RPs) are not eligible to enter into voluntary cleanup agreements, they may enter into consent orders to conduct voluntary cleanups. Sites on or proposed for listing on the federal Superfund program's National Priorities List (NPL) may not be subject to a voluntary cleanup agreement or consent order without the concurrence of EPA.

Tax incentives (abatements, credits, etc.): Tax increment financing (TIF) can be used by local governments that have jurisdiction over any part of a brownfields project.

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

Program Elements

Technical Elements

Methods/standards/controls: EPA Region 9 Preliminary Remediation Goals (PRGs) are used for initial screening. The criteria for selecting containment and cleanup actions, including monitoring and maintenance options to be followed under the VOAP, are identical to those under the hazardous substance cleanup program. No formal Risk-Based Corrective Action (RBCA) or comparable informal process is in place, but risk-based cleanups can be done via site-specific assessment with standards based on risk. Applicants can also request or develop standards based on future use.

Contaminants covered/excluded: Petroleum, asbestos, and polychlorinated biphenyls (PCBs) are covered. Lead paint is covered if other hazardous substances are present.

Tennessee

Statute covers hazardous substances, solid waste, or any other pollutant.

Use of long-term stewardship and institutional controls

(IC): Tennessee has a long-term stewardship program for voluntary sites. The 2001 amendments to the VOAP allow for enforceable land-use restrictions.

- **IC Tracking:** Tennessee does have a tracking system for institutional controls.
- **IC Oversight and Monitoring:** The state reviews sites on a site-specific basis at least every five years. The results of the reviews are available to the public.

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

<http://www.state.tn.us/environment/dor/pdf/promsite.pdf>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: Participants are charged a \$750 entry fee. Additional fees are charged per report or work product: Site Characterization—\$2,000; Remedial Action—\$2,500; Risk Assessment—\$2,000; Voluntary Agreement or Consent Order—\$3,000; Site Specific Ground Water Classification—\$2,000; Remedy Requirement Institutional Controls—\$500.

Additionally, participants are charged a \$3,000 annual assessment if they remain in the program longer than one year.

Funding source for administrative costs and staff: The VOAP receives funding from federal cooperative agreements, the state general fund, and the state cleanup fund. Certain oversight costs are recovered from participants.

Cleanup Activities

Sites currently in VCP: 127 enrolled in the VOAP.

Sites completed under VCP: 81 sites have received No Further Action letters.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Parties successfully completing the program are afforded liability protection under all statutes contamination addressed in a consent order or voluntary agreement. Additionally, parties may be eligible for third party contribution protection provided they conduct appropriate actual or constructive notice.

Public Participation

Public participation requirements (notice, comment periods, etc.): Upon entering into a voluntary agreement or consent order, participants are required by statute to notify all local governments having jurisdiction over any part of the subject property and all owners of adjoining properties by certified mail. If it is determined that a land use restriction is appropriate, a notice of land use restrictions must be mailed to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. Furthermore, if a participant desires to receive third party contribution protection, a notice summarizing the agreement must be published in a newspaper. In addition, a 30-day comment period must be provided for any interested party to respond.

Public participation activities (hearing, meetings, etc.): Public hearings and meetings occur on an ad hoc basis.

Statutory Authorities

For details visit: http://www.state.tn.us/environment/dor/pdf/voap_statute.pdf