

Illinois

General Information

Contact: Heather Nifong

Address: Bureau of Land, Illinois Environmental Protection Agency (IEPA)
1021 North Grand Avenue East
Springfield, IL 62794-9276

Phone: 217 785 9407

Fax: 217 524 1991

Email: Heather.Nifong@illinois.gov

Web site: <http://www.epa.state.il.us/land/cleanup-programs/>

Program Description (VCP, brownfields, or related)

Brownfields definition: Illinois defines a brownfield site or brownfields to be a parcel of real property, or a portion of the parcel, that has actual or perceived contamination and an active potential for redevelopment. Environmental Protection Act, Title 17, Section 58.2.

Program titles:

- Site Remediation Program (SRP) (1989, revised 1996) – Offers No Further Remediation (NFR) letter after cleanup meets the risk-based Tiered Approach to Correction Action Objectives (TACO)
- LUST Section – NFR letter
- Permit Section-Corrective Action Unit – No Further Action (NFA) letter

Liability relief provisions:

- Site Remediation Program (SRP) (1989, revised 1996)—Offers No Further Remediation (NFR) letter after cleanup meets the risk-based Tiered Approach to Correction Action Objectives (TACO)
- LUST Section—NFR letter
- Permit Section-Corrective Action Unit—No Further Action (NFA) letter

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

- Municipal Brownfields Redevelopment Grant Program
- Brownfields Cleanup Revolving Loan Fund
- Bank Participation Loan Program (Chicago)

Legislative or program site eligibility requirements:

Generally any site not required to clean up under any other program (e.g., Resource Conservation and Recovery Act (RCRA), Superfund) is eligible for the Illinois Site Remediation 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.):

- Municipal Brownfields Redevelopment Grant Program offers municipalities grants of up to \$240,000 for investigation and cleanup of brownfields. Sites must be enrolled in the Site Remediation Program and investigation/cleanup activities must be approved. The grant has a 70/30 match requirement.
- Brownfields Cleanup Revolving Loan Fund offers stipulated loans up to \$425,000 per site to municipalities to clean up former industrial commercial or industrial sites. Sites must be enrolled in the Site Remediation Program and investigation/cleanup activities must be approved. Municipality must own the site.
- Bank Participation Loan Program (in Chicago) offers up to \$250,000 or \$350,000 for commercial and industrial loans (respectively) that are matched by banks at 75% of prime rate, for terms from three to 15 years.

Tax incentives (abatements, credits, etc.): No information available

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

Program Elements

Technical Elements

Methods/standards/controls:

- Under TACO, applicant has a choice of cleanup standards. Remediation objectives generated by TACO are risk-based, site-specific, and derived from Risk-Based Corrective Action (RBCA) and EPA Soil Screening Levels (SSLs).
- The state uses background levels, water quality criteria, Maximum Contamination Level/Maximum Contamination Level Goals (MCLs/MCLGs), ground water standards, soil standards, and land use based standards to establish cleanup objectives. In Tier 1 of TACO, site evaluators compare site sample analytical results to baseline remediation objectives, contained in “look-up” tables. These objectives are based on simple, conservative models. In Tier 2, site evaluators take into account the physical and chemical properties of the contaminants, site-specific soil and ground water parameters, and the application of institutional controls and engineered barriers. Tier 3 is used to address those situations that site evaluators choose not to handle or cannot handle under the first two tiers. These situations can range from simple sites where physical barriers limit remediation, to complex

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sites where full-scale risk assessments or alternative modeling are applied. Cleanup standards are based on relative risks to human health with a 10–6 carcinogenic risk goal.

- The state uses deed restrictions and NFR letters as institutional controls to ensure that specified land uses are maintained in the future.

Contaminants covered/excluded: Petroleum and all hazardous substances are included. Institutional controls allowed under TACO and may include engineered barriers, ground water restrictions, highway authority agreements, and land-use restrictions.

Use of long-term stewardship and institutional controls (IC): Illinois assures the maintenance of land use controls through title searches, physical site inspections, and enforcement of any identified violations under the terms and conditions of the No Further Remediation letter.

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://epadata.epa.state.il.us/land/srp/>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: April 1995

Costs to enter program or fees for service: User fees based on personnel costs, overhead, travel, lab costs, etc. Fees on hazardous waste treatment/disposal fund state participation.

Funding source for administrative costs and staff:

- The IEPA, Bureau of Land, Division of Remedial Management administers the state brownfields and cleanup programs.
- The Site Remediation Program is funded through applicant user fees. Other remedial activities are funded through cost recovery actions, the solid waste tipping fees, and federal funding.

Cleanup Activities

Sites currently in VCP: 1,158 sites as of February 15, 2008 are in pursuit of completion letters.

Sites completed under VCP: Since 1989, 3,583 voluntary cleanup program (VCP) enrollments and 2,185 completion letters issued. In 2007, 277 sites enrolled; 339 completion letters issued.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available

Public Participation

Public participation requirements (notice, comment periods, etc.): The Site Remediation Program requires public participation at sites intended for use as schools. Public participation at other sites is recommended on an ad hoc basis.

Public participation activities (hearing, meetings, etc.): No information available.

Statutory Authorities

- The Environmental Protection Act, Title XVIII §58 (1970, amended every year from 1983, 1993, and 1995, 1996), establishes the Hazardous Waste Fund for state site cleanups and provides for enforcement, contaminated property transfer, and voluntary cleanups.

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General Information

Contact: Michele Oertel
EPA/Community Liaison & Outreach Coordinator
Indiana Brownfields Program

Address: Indiana Brownfields Program
100 N. Senate Ave., Rm 1275
Indianapolis, IN 46204

Voluntary Remediation Program
Office of Land Quality, Indiana Department of
Environmental Management (IDEM)
P.O. Box 6015
Indianapolis, IN 46206-6015

Phone: Indiana Brownfields Program:
317 234 0235

IDEM Voluntary Remediation Program:
317 234 0966

Fax: Indiana Brownfields Program: 317 234 1338
Voluntary Remediation Program:
317 234 0428

Email: moertel@ifa.in.gov
raharris@idem.in.gov

Web site: *Indiana Brownfields Program* <http://www.brownfields.IN.gov>

IDEM Voluntary Remediation Program <http://www.in.gov/idem/programs/land/vrp/index>

Program Description (VCP, brownfields, or related)

Brownfields definition: Indiana defines in statute a brownfield site as a parcel of real estate that:

- Is abandoned or inactive; or
- May not be operated at its appropriate use; and
- On which expansion, redevelopment, or reuse is complicated because of the presence or potential presence of a hazardous substance, a contaminant, petroleum, or a petroleum product that poses a risk to human health and the environment.

Program titles:

- Indiana Brownfields Program (1997)—Mechanism for state to partner with communities to promote cleanup and redevelopment. The main goal is to help communities identify and mitigate environmental barriers that impede local economic growth by offering government assistance

for the assessment, cleanup, and redevelopment or reuse of brownfield properties to revitalize communities. In 2005, the program was restructured under Indiana Finance Authority (IFA).

- IDEM Voluntary Remediation Program (VRP) (1993)—Main goal is to provide government approval for privately funded remediation projects, some of which may be considered brownfields.

Liability relief provisions:

Indiana Brownfields Program offers Comfort Letters and Site Status Letters to address environmental liability issues; highest forms of “comfort” or “closure” offered at this time. Sites remediated with federal or state brownfield funds may enter the IDEM VRP for a Certificate of Completion (COC) or Covenant Not to Sue (CNTS).

IDEM VRP offers highest form of liability protection through a COC issued by IDEM, followed by a CNTS from governor’s office; contaminated sites that are not subject to enforcement action or considered an imminent threat to human health may participate.

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

- Indiana Brownfields Program Trails and Parks Initiative (TPI) – via two EPA Assessment grants to Indiana.
- Brownfields Cleanup Revolving Loan Fund (BCRLF) – \$1 million EPA award to Indiana in 1997 with annual repayments to be used for future site assessments and possible loans.
- Federal Matching Grants – via State Environmental Remediation Revolving Loan Fund (ERRLF)
- Stipulated Site Assessment Grants (SAG) – via ERRLF
- Stipulated Remediation Grants (SRG) – via ERRLF
- Low-Interest Loans (LIL) – via ERRLF
- Petroleum Remediation Grants (PRG)
- IDEM Excess Liability Trust Fund (ELTF) – not specific to brownfields, for regulated tank owners who pay/have paid into the fund (ELTF recipients not eligible for PRG).

Legislative or program site eligibility requirements:

The Indiana Brownfields Program works under the directives of *Senate Enrolled Act 360 (1997)*, *House Enrolled Act 1909 (1999)*, *House Enrolled Act 1935 (2001)*, *Senate Enrolled Act 273 (2001)*, *Senate Enrolled Act 170 (2001)*, *Senate Enrolled Act 321 (2001)*, *Senate Enrolled Act 339 (2001)*, *federal HR 2869 (2001)*, *House Enrolled Act 1714*, and *Senate Enrolled Act 207*.

Entry to IDEM VRP is open to any site unless an enforcement action is pending, the site is a substantial and imminent threat, or a federal grant requires action. Responsible parties may apply. The Indiana Brownfields Program generally follows these standards in evaluating eligibility for technical assistance. However, assistance is not available to entities that caused or contributed to any site contamination.

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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.):

- EPA-capitalized Brownfields Cleanup RLF for \$350,000 (1997), increased in 2000 to \$1,000,000; available to provide low interest loan to eligible communities/private sector for cleanup/non-time critical removals per Comprehensive Environmental Response Compensation and Liability Act (CERCLA); the former Indiana Development Finance Authority (IDFA, now IFA) served as fund manager. In 2003, the maximum amount of funds were loaned to the City of South Bend for an abandoned landfill to be redeveloped into the Fredrickson Park Environmental, Educational Center. Indiana is the first state to loan RLF funds. Should another eligible project come to the state's attention and be proposed to EPA, additional federal RLF funds may be available for another loan.
- In 1997, state ERRLF (or the Brownfields Fund) established through legislation—\$10,000,000 over three years to eligible cities, towns, or counties (with funds having been reallocated to date); grants for assessments; loans for assessments or remediation (including demolition); applicants evaluated for several criteria, including ability to repay, matching funds available, and economic development potential; 50% allocated to jurisdictions with fewer than 22,000 people.
- On July 1, 1999, extra \$5,000,000 was added through legislation to the ERRLF for forgivable loans; 20% of the ERRLF loan may be forgiven for projects meeting community-determined economic development goals, with priority given to former gas station or underground storage tank (UST) sites, or facilities located within one-half mile of a child care center or school.
- ERRLF applicants may partner/co-apply with private entities that did not cause or contribute to any contamination. ERRLF loan recipients may re-loan money to an eligible private entity, with 20% of the loan forgiven if it meets criteria (noted in the first column); referred to as the third-party model.
- Changes/clarifications to the ERRLF program/incentive include: 1) allocation of funds to jurisdictions based on populations above or below 22,000 vs. 35,000; 2) Just In Time Funding where \$50,000 is available annually outside the normal grant rounds (but as part of the \$1,000,000 now available per calendar year) to fund Phase II site assessments only that would enable immediate economic development project needs. A city, town, or county must match these grant dollars one for one and must certify that a company or developer is imminently interested; 3) clarification that Small Acquisition Grants Initiative (SAGI) funding for remediation costs and retroactive funding

(reimbursement) for prior testing are not allowed; 4) increase in SAGI funds available (\$7,500 maximum for Phase I activities per site per round and \$50,000 for Phase II activities per site per round, totaling \$1,000,000 per year) and in funding rounds (from two to four per year); and 5) Community Revitalization Enhancement District (CRED) added as target area, increased emphasis on local matching funds and on local brownfields efforts.

- The Brownfields Petroleum Remediation Grant Incentive (PRGI) was a result of the 2001/2003 state budget transfer of \$9,000,000 from the IDEM Excess Liability Fund (ELF) to ERRLF for remediation of petroleum contamination at brownfield sites. In August 2002, PRGI implemented through IDFA/IDEM partnership. First state grants available for remediation of brownfield sites. Total of four grant rounds to date.

Tax incentives (abatements, credits, etc.):

- Brownfields Revitalization Zone tax abatements – available in locally designated “brownfields zones.”
- Tax waiver – Indiana Brownfields Program determines if site is a brownfield.

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

Program Elements

Technical Elements

Methods/standards/controls:

- Risk-based process (Risk-Based Corrective Action-like) in place. State's “Risk Integrated System of Closure” (RISC) non-rule policy, which allows for consistent, risk based standards among all IDEM cleanup programs, completed its one year transition period in February 2002, through which time either RISC or VRP standards could have been used.
- Indiana developed default risk-based closure criteria for soil and ground water and allows for site-specific risk assessments to determine alternative closure levels.
- For voluntary cleanup sites, the state employs water quality criteria, Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), ground water standards, and soil standards in conjunction with risk assessment to determine cleanup levels.
- Land use is considered in determining cleanup levels for state and voluntary cleanups. Future land uses are considered either residential or industrial. A party must control the site to select industrial use. Indiana uses restrictive covenants recorded on deeds as institutional controls for maintaining specified land uses.

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Contaminants covered/excluded:

- Both programs cover hazardous substances and petroleum. Default closure standards have been developed for approximately 150 common constituents, excluding asbestos and polychlorinated biphenyls (PCBs).
- In Indiana Brownfields Program, asbestos, lead paint, and PCBs are OK, as well as petroleum (for state and federally funded projects) now under the new brownfields definition.
- In VRP, petroleum and PCBs are OK; no asbestos or lead paint.

Use of long-term stewardship and institutional controls (IC):

Both programs generally view institutional controls as acceptable. Institutional controls are considered under RISC when determining remediation-type activities. Indiana Brownfields Program Comfort/Site Status Letters may indicate land-use restrictions as necessary. Institutional controls may be approved on a site-by-site basis. Land-use restrictions are enforced through Environmental Restrictive Covenants. Sites with institutional controls are tracked by each program, respectively, and are monitored as staff resources allow. While the VRP maintains its own institutional control database, an office-wide institutional control database is being developed that the VRP (and possibly the Indiana Brownfields Program) will eventually be linked to.

- **IC Tracking:** Tracked by individual programs. As part of new ERC process, IDEM is developing a “registry” that will track sites that get ERCs.
- **IC Oversight:** Policy is under development.
- **IC Monitoring:** Policy is under development.

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.in.gov/ifa/brownfields/2563.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: December 1995

Costs to enter program or fees for service:

Indiana Brownfields Program is free, and costs for services are currently not recovered from program participants.

VRP is funded through application fees of \$1,000 (municipalities are exempt) per site and through applicant agreements to pay additional state costs. State costs for voluntary cleanups generally range from \$5,000–\$20,000. VRP recovers costs for project administration, technical evaluation, confirmatory sampling, and travel.

Funding source for administrative costs and staff:

The Indiana Brownfields Program utilizes approximately 15 full-time equivalent (FTE) staff. The IDEM Office of Land Quality employs approximately 50 FTE staff in the VRP,

including science services/technical support staff (e.g., Chemists, Geologists, etc.). Legal support is provided by a total of four (primarily two) FTE attorneys in the Office of Legal Counsel. Staffing and administration are primarily funded by the state general fund, the state cleanup fund, and federal grants/cooperative agreements.

Cleanup Activities

Sites currently in VCP: As of February 2008, 689 VRP applicants and 737 Indiana Brownfields Program sites.

Sites completed under VCP:

- For the VRP, 552 active and completed sites.
- For the Indiana Brownfields Program, an approximate total of 173 Comfort Letters (10), Site Status Letters (80), Project Status Letters (71), and NFA Letters (12) issued; 393 grants awarded; 27 loans approved; and 42 Brownfields Environmental Assessment sites completed or referred (not currently offering these).

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Both programs—Facilitate property transfers and brownfields redevelopment thereby enhancing property values; are voluntary; provide technical assistance; conduct educational and outreach activities; utilize RISC closure levels for cleanup goals; and offer their respective “closure” documents.
- VRP is a fee-based program that offers a COC and CNTS through the governor’s office for sites that have been remediated through VRP; this is the highest level of liability protection offered for media, constituents, and areas addressed.
- The Indiana Brownfields Program offers financial, legal, and technical assistance. Participation in the Indiana Brownfields Program is at no cost. The program offers Comfort Letters and Site Status Letters to address liability issues as appropriate. While these documents do not provide the level of liability protection as a CNTS (i.e., release of liability), they often facilitate lending transactions and property transfers.

Public Participation

Public participation requirements (notice, comment periods, etc.):

- The Indiana Brownfields Program generally has no public participation requirements, except for federally funded projects (e.g., RLF) where such requirements may exist and with which the program must comply.
- VRP requires public notice. Hearings and meetings are held at IDEM’s discretion.

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

- While the Indiana Brownfields Program does not require such public meetings/notices, public participation is an

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important selection factor incorporated in all applications/request forms for receiving technical and financial assistance. There is one site in the program that received federal RLF loan funds where this was a requirement and where the community held several public meetings about the project.

- VRP requires that all remediation work plans (100% of sites) be placed on a 30-day public comment period in the IDEM file room, and in a repository (typically a public library) in the community where the subject property is located before formal work plan approval is granted. Public officials in the affected community (mayor and county health department) are notified when VRP accepts a project into the program, and again when the work plan is placed on public notice. In addition, the VRP Community Relations Plan requires that all program participants notify residents or community groups in close proximity to the subject property if impacts or activities at the site are likely to affect them.

Statutory Authorities

- The Hazardous Substances Response Trust Fund, IC §13-25-4 (1986, as amended 1987, 1988, 1989, and 1991), establishes a state cleanup fund and authorizes enforcement actions, and recovery of natural resource damages (NRDs).
- The Environmental Response Revolving Loan Fund (IC §13-19-5-5).
- The Responsible Property Transfer Law, IC §13-25-3 (1990), establishes disclosure requirements for contaminated property transfers.
- The Voluntary Remediation of Hazardous Substances and Petroleum, IC §13-25-5 (1993), establishes a voluntary cleanup program.
- The Brownfields Revitalization Zone Tax Abatement, IC §6-1.1-42 (1997), provides for tax rebates under the brownfields program.
- The Environmental Legal Actions Act, IC §13-30-9 (1997), establishes citizen suit authority.
- IDEM's petroleum response authority (IC §13-24-1).
- IDEM's leaking underground storage tank response authority (IC §13-23-13).
- The Brownfields Program also works under the directives of Senate Enrolled Act 360 (1997), House Enrolled Act 1909 (1999), House Enrolled Act 1935 (2001), Senate Enrolled Act 273 (2001), Senate Enrolled Act 170 (2001), Senate Enrolled Act 321 (2001), Senate Enrolled Act 339 (2001), Federal HR 2869 (2001), House Enrolled Act 1714, and Senate Enrolled Act 207.
- Legal Actions Act, IC §13-30-9 (1997), establishes citizen suit authority.
- Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC §9601.

Michigan

General Information

Contact: Susan Erickson

Address: Michigan Department of Environmental Quality (DEQ)
P.O. Box 30426
Lansing, MI 48909

Phone: 517 373 9540

Fax: 517 241 0858

Email: ericksos@michigan.gov

Web site: <http://www.michigan.gov/deqbrownfield>

Program Description (VCP, brownfields, or related)

Brownfields definition: Michigan's functional definition of brownfield is any contaminated or potentially contaminated property with a potential for redevelopment. In 103 of the state's urban areas ("qualified local unit of government"), this includes blighted and functionally obsolete properties as well as contaminated properties.

Program titles:

- Brownfield Redevelopment Grants and Loans
- Part 201 Cleanup and Redevelopment Program
- Part 213 Leaking Underground Storage Tank Program
- Brownfield Redevelopment Assessment Grants

Liability relief provisions: Completing a Baseline Environmental Assessment (BEA) and submitting it to DEQ prior to or within 45 days of purchase provides an exemption from liability for existing contamination; non-liable new owners must use due care when redeveloping the property; cleanup standards are land-use based. Covenants Not to Sue may be sought, but have largely been replaced with BEAs.

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

- Brownfield Redevelopment Grants and Loans are available to local units of government, Brownfield Redevelopment Authorities, and other eligible applicants for investigation and environmental cleanup of brownfield sites targeted for redevelopment.

http://www.michigan.gov/deq/0,1607,7-135-3311_4110_29262---,00.html

- A Brownfield Redevelopment Authority (BRA) can be created by county, city, township or village. A BRA can develop a brownfield plan for an area, or for specific properties targeted for redevelopment, and has tax-increment financing (TIF) and bonding authority to address

eligible environmental, and in some cases, infrastructure costs at sites in the brownfield plan. http://www.michigan.gov/deq/0,1607,7-135-3311_4110_23246---,00.html

- Michigan Business Tax (MBT) credits are available to developers of brownfield sites for up to 12.5% of eligible non-environmental costs, including site improvements, demolition, construction, equipment and other costs described below. Click on Brownfield Redevelopment at

<http://www.themedc.org/Products-Services/A-Z-Programs/Default.aspx>

- Brownfield Redevelopment Assessment Grants are available to local governments for brownfields with redevelopment potential. Staff of the DEQ conduct environmental assessments to determine site conditions prior to reuse or redevelopment of a brownfield.

http://www.michigan.gov/deq/0,1607,7-135-3311_4109_4217-9546--,00.html

- The DEQ works closely with the Michigan State Housing Development Authority's (MSHDA) Community Assistance Team and the Michigan Economic Development Corporation (MEDC) on tax-increment financing and economic incentive programs for brownfield redevelopment. Other economic development and jobs programs through MSHDA, MEDC and the Michigan Department of Transportation are frequently used at brownfield redevelopment sites, but are not specifically linked to brownfields redevelopment. The Michigan Land Bank Fast Track Authority also helps return blighted tax-reverted properties, some which are brownfield sites, to productive use. http://www.michigan.gov/deq/0,1607,7-135-3311_4110_23243-193969--,00.html
- Click here to be linked to a more detailed description of Michigan's brownfield incentives: http://www.michigan.gov/deq/0,1607,7-135-3311_4110_23243-193970--,00.html

Legislative or program site eligibility requirements:

- Brownfield Redevelopment Grants and Loans: Eligible applicants include local units of government and authorities or organizations created pursuant to state law, such as a BRA or a Downtown Development Authority. The local governing body must commit its full faith and credit for loans. An eligible property can be either known or suspected to be contaminated. Liability issues may result in a property or applicant being ineligible for a grant or loan.
- Brownfield Redevelopment Authorities: Any local unit of government can establish a Brownfield Redevelopment Authority. A BRA may adopt a brownfield plan to provide either TIF to reimburse developers for the costs of eligible activities, or MBT credits for qualified taxpayers for their eligible investments. In order to be eligible for either TIF reimbursement or MBT credits, the property must be in a BRA's brownfield plan.
- Brownfield Redevelopment Assessment Grants: Candidate properties are identified by a local unit of government and

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submitted to the Brownfields Coordination Committee, which determines the investigation priority among the candidate properties. Properties proposed for reuse as public facilities are eligible for investigation. Sites proposed for private redevelopment are higher priority if a developer has a strong interest in the property, and if the property has tax-reverted to the state or is under the control of the local unit government.

- Michigan Business Tax credits: Qualified taxpayers such as property owners, lessees or parties that have agreed to purchase or lease eligible property are eligible to claim a tax credit. The property can be:
 - A contaminated property in a qualified local unit of government;
 - Blighted or functionally obsolete property in a qualified local unit of government;
 - Contiguous to property that is contaminated, blighted or functionally obsolete in a qualified local unit of government;
 - A contaminated property, or property that is contiguous to contaminated property, and not in a qualified local unit of government; or
 - Tax reverted and owned or under the control of a land bank, or land bank fast track authority.

Financial Elements

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

- Property prioritized by communities for redevelopment can be addressed with Brownfield Redevelopment Grants and Loans. Ultimately, the goal of the Michigan DEQ's Brownfield Grant and Loan Program is to level the playing field between brownfield and greenfield sites, and provide incentives that encourage or leverage investment of funding by other public and private sources. However, in order to attract projects that maximize environmental benefits, brownfield grant and loan recipients are encouraged to incorporate green building standards, walkability, rain gardens and other storm water control measures into funded projects. The DEQ coordinates with other state agencies and communities to help identify project enhancements and complementary funding sources.

Both grants and loans pay for assessment and cleanup, but a project must have a committed developer to qualify for a grant, or to use grant or loan funds for demolition costs. A loan may be used when the site has redevelopment potential. Loans have a five-year grace period with no interest and no payments. After the fifth year, nominal interest (currently 2%) is charged on the loan balance. Loans can be repaid with TIF collected by a

BRA. Grants and loans can be made only to local units of government or quasi-government agencies like BRAs and local economic development corporations. Applications are accepted year-round to allow timely responses to developer timeframes.

The grant and loan program is funded with \$75,000,000 in bond proceeds. About \$26,000,000 was available from these programs at the end of 2007. However, the funding source for grants and additional loan appropriations is nearly exhausted. Grant funds are expected to be fully depleted and the loan program will subsist on loan repayments starting in 2009. The Brownfield Redevelopment Grant Program has existed in Michigan since 1992.

- The Superfund Section has a brownfield property investigation grant from the Superfund Program of the United States Environmental Protection Agency (EPA). The Brownfield Redevelopment Assessment grants supplement the state brownfields grants and outreach program. Utilizing these federal funds, DEQ staff provide 12 free investigations per year to local units of government and developers to evaluate properties for redevelopment. The brownfield assessments provide enough information to make remedial and due care decisions before a party commits to purchase and/or redevelop a property. While federal funds are used, a property is not entered into the Superfund evaluation or National Priorities List (NPL) nomination process unless specifically requested by the state.
- Sites prioritized by DEQ based on threat to public health and the environment and redevelopment potential are addressed based on available funding. The DEQ's Part 201 Cleanup and Redevelopment Program and Part 213 Leaking Underground Storage Tank Program conduct site investigation, studies and design, operation and maintenance, removal, and remedial action. The DEQ also uses available funding for federal Superfund program match and state program administration.

The Clean Michigan Initiative (CMI) is a \$675,000,000 bond issue approved by voters in November 1998. It included \$156,000,000 for brownfields cleanup; \$93,000,000 for cleanup of sites with acute hazards; and, as described above, and \$75,000,000 designated for Brownfield Redevelopment Grants and Loans. The CMI and its predecessor, the Environmental Protection Bond Fund, are now depleted, and the state has not identified a new funding source to replace them.

The Cleanup and Redevelopment Fund (CRF) is anticipated to be a consistent source of revenue for cleanup activities. The amount of CRF set aside for cleanups is 80% of 75% of the total amount of unredeemed deposits on carbonated beverage

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bottles. This has averaged between \$8,000,000 and \$14,000,000 a year, including interest.

The state recovers some funds from liable parties, but the amount varies widely. Recovered funds are returned to the cleanup program.

A very small percentage of the cleanup program budget is supported by general funds.

Tax incentives (abate­ments, credits, etc.): The MBT credit is available for up to 12.5% of eligible investment in development (not cleanup) costs made on an eligible property by a qualified taxpayer. For redevelopments designated as Urban Development Area Projects (UDAP), a credit of up to 20% for eligible costs is available until the end of 2010, then is reduced to 15%. An eligible property must be in an approved Brownfield Redevelopment Plan, and eligible development costs include site improvements, demolition, construction, restoration, alteration, building renovation or improvement, and addition of machinery, equipment, and fixtures. A UDAP includes projects located on eligible property in a downtown or traditional business district or traditional commercial corridor of one of the 103 qualified local units of government or a county seat. UDAPs typically include multistory, increased density, mixed-use or walkable community developments, sustainable and green redevelopment, or address areas with multiple parcel redevelopments and underserved commercial areas.

Renaissance zones are virtually free of all state and local taxes for businesses located within their boundaries. Many Renaissance Zones include brownfield properties. There are over 150 geographic areas in Michigan that are designated as renaissance zones.

<http://ref.michigan.org/medc/services/sitedevelopment/renzone/index.asp>

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

BRAs are created locally to develop and implement brownfield plans. Properties in a brownfield plan are eligible for TIF to reimburse developers for eligible activities, including environmental costs, demolition, and lead or asbestos abatement. In the 103 qualified local units of government, TIF can also be used for infrastructure improvements and site preparation costs. A project must be in a brownfield plan to qualify for the MBT credit. A BRA can issue bonds that are repaid with TIF. Finally, a BRA can also establish a local site remediation revolving fund to capture excess tax increment revenues for up to five years to conduct eligible activities on other properties in the brownfield plan.

Program Elements

Technical Elements

Methods/standards/controls: Risk-based standards in place for soils and ground water (although not a formal Risk-Based Corrective Action (RBCA)) in several land-use

categories—residential, commercial and industrial, and limited uses with institutional controls. DEQ may also approve site-specific criteria.

The DEQ employs background levels, water quality criteria, Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), ground water standards, and soil standards as generic cleanup levels, or uses site-specific risk assessment to determine cleanup levels. The DEQ uses a risk goal of 10–5 for carcinogens and a Hazard Quotient of 1 for non-carcinogens. Future land use assumptions are made based on probability of continued current use, current zoning, and future zoning or intended use as indicated by local governments. The DEQ uses deed restrictions and ordinances as institutional controls to maintain specified future land uses.

Contaminants covered/excluded: Does not restrict sites from the Voluntary Cleanup Program (VCP) on the basis of contaminant; petroleum, asbestos, lead paint, polychlorinated biphenyls (PCBs) all OK.

Use of long-term stewardship and institutional

controls: Institutional controls are accepted and, with respect to cleanup grants to communities, encouraged as cost saving as well as protection action.

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.mcgi.state.mi.us/environmentalmapper/>

<http://www.deq.state.mi.us/ustfields/>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: July 1996

Costs to enter program or fees for service: Fee of \$750 to request DEQ review and approval of BEAs.

Funding source for administrative costs and staff: Grant and loan programs are administered by the Environmental Science and Services Division of the DEQ. The brownfield programs are administered by one supervisor, one administrative assistant, and four professional staff. Technical expertise and support is provided by staff of the Remediation and Redevelopment Division (RRD) of the DEQ.

The RRD administers the hazardous substance cleanup program. The division employs 250 full-time equivalent (FTE) staff, and legal support is provided by eight FTE attorneys in the Department of the Attorney General, Natural Resources Division. Funding for staff and administration is provided by a combination of the funding sources described above.

Michigan

Cleanup Activities

Sites currently in VCP: At the end of 2007, there were ongoing activities at 400 sites where the DEQ is paying for response activities prioritized based on threat to public health and the environment.

There were grant and loan projects in progress at 56 brownfield sites in early 2008.

Voluntary cleanups undertaken without state funding assistance are not tracked by DEQ.

Sites completed under VCP: By late 2007, the DEQ had committed \$927 million at nearly 1,800 orphan sites for cleanup and redevelopment and provided oversight or assistance on more than 10,000 cleanup projects performed by liable parties. The DEQ has also addressed 12,000 leaking underground storage tank releases. From 1995 through late 2007, the DEQ received 4,397 BEA petitions, which are reviewed at a cost of \$750. An additional 6,742 disclosures were submitted without a fee or DEQ review.

Since 1992, the DEQ has awarded \$95 million to 228 brownfield grant and loan projects.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The DEQ estimates that its grants and loans have generated an estimated 18,000 jobs, helped over 300 businesses locate on redeveloped land, and stimulated \$3 billion in private investment. The private sector has invested approximately 20 private dollars per every dollar of grant funds.

BEAs protect new purchasers from liability for existing contamination. This has greatly facilitated redevelopment of brownfield properties statewide. A property purchaser who does not conduct a BEA before purchasing contaminated property will become status liable for cleanup.

Covenants Not to Sue are available but are uncommon due to the relative ease of conducting a BEA for liability protection.

Tax incentives through Brownfield Redevelopment Authorities and Michigan Business Tax Credits are available to encourage investment in brownfield property.

Public Participation

Public participation requirements (notice, comment periods, etc.): Michigan requires public notice, public comment, hearings/meetings, and provides for citizen groups where appropriate.

Public participation activities (hearings, meetings, etc.): No information available

Statutory Authorities

Part 201 of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, as amended (NREPA), establishes a state cleanup fund and provides enforcement authority, a priority list, Natural Resource Damage recovery, citizen suits, water replacement, contaminated property transfer requirements, and voluntary cleanups. Underground Storage Tanks are regulated under Parts 211 and 213 of NREPA. Brownfield Redevelopment Grants and Loans are funded under Parts 195, 196, and 201 of NREPA. http://www.michigan.gov/deq/0,1607,7-135-3307_4132---,00.html

Minnesota

General Information

Contact: Barbara Jackson

Address: Minnesota Pollution Control Agency (MPCA)
Remediation Division
520 Lafayette Road
St. Paul, MN 55155

Phone: 651 296 7212

Fax: 651 296 9701

Email: barb.jackson@state.mn.us

Web site: <http://www.pca.state.mn.us/cleanup/brownfields.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Brownfields are abandoned, idled or underused industrial and commercial properties where expansion or redevelopment is complicated by actual or suspected environmental contamination. The state brownfields programs provide assistance or legal assurances for parties seeking to investigate or cleanup contaminated property.

Program titles:

- Voluntary Investigation and Cleanup Program (VIC) (1988)
- Agriculture Voluntary Investigation and Cleanup Program (AgVIC) (1993)
- Petroleum Brownfields Program (PBP) (1992)
- Resource Conservation and Recovery Act Program (RCRA)

Liability relief provisions:

- VIC Program (1988) – Offers liability assurance ranging from No Further Action Letters to Certificate of Completion.
- AgVIC Program (1993) – Minnesota Department of Agriculture offers similar assurances as MPCA's VIC program for sites contaminated with agricultural chemicals.
- PBP offers site closure letters.

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

- Department of Employment and Economic Development (DEED) Contamination Cleanup and Investigation Grant Program; Minnesota Cleanup Revolving Loan Fund, and Redevelopment Grant Program
- MPCA Dry Cleaner Environmental Response and Reimbursement Account
- MPCA Petroleum Tank Release Cleanup Account
Minnesota Department of Agriculture (MDA) Agricultural Chemical Response & Reimbursement Account (ACRRA)

- MPCA Site-specific brownfields assessments
- Metropolitan Council in Twin Cities region offers brownfields project grants in seven-county area

Legislative or program site eligibility requirements:

State law imposes strict, joint and several liability standards on persons responsible for releases of hazardous substances to the environment, as appropriate, and may impose liability retroactively. The MPCA and MDA may impose civil penalties up to \$20,000 per day for failure to take formally requested cleanup actions. No punitive damages may be imposed. Liability assurances are offered to parties that investigate and/or clean up contaminated brownfield sites on a voluntary basis. The assurances provide protection from Superfund liability.

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.):

- Contamination Cleanup and Investigation Grant Program provides \$8 million annually for grants to cities for cleanup at sites with development potential; covers up to 75% of project costs.
- Dry Cleaner Reimbursement Fund reimburses current or former owners and operators for cleanup costs over \$10,000 at dry cleaning facilities that have entered the state's VIC program.
- MPCA approved Minnesota Environmental Response and Liability Act (MERLA) (i.e., state Superfund) project expenditures for FY09 of \$7,600,000, MERLA funds are used only when responsible persons fail to take requested cleanup actions or there are no financially viable or identified responsible persons for a release. Primary sources of MERLA funds are cost recovery and taxes. Minor sources are penalties, interest and occasional special appropriations. The MERLA fund may be used for site investigation, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, studies and design, operations and maintenance, removals, victim compensation, emergency response, grants to local government, remedial actions, program administration, natural resource restoration, and cost recovery.
Agricultural Chemical Response & Reimbursement Account may reimburse corrective action costs to an eligible person for 80% of costs greater than \$1,000 and less than or equal to \$350,000.
- MPCA has limited funds available for the assessment of brownfield property that is likely to be developed as greenspace.

Minnesota

Tax incentives (abatements, credits, etc.):
Legislature has limited tax increment financing.

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

Program Elements

Technical Elements

Methods/standards/controls: State uses a risk-based approach that considers planned property use. Minnesota employs surface water quality standards, ground water standards, and Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), in conjunction with risk assessments to determine cleanup levels. Minnesota has a tiered approach for providing risk-based guidance on acceptable soil concentrations (Soil Reference Values) for specific exposure categories. In order to calculate individual Soil Reference Values, a 10–5 risk level is used for carcinogens, and a Hazard Quotient of .2 is used for non-carcinogens. Site-specific risk assessments can also be done in order to select and apply cleanup values for sites.

Planned land use is considered in applying cleanup standards. A formal guidance document, *Guidance on Incorporation of Planned Property Use into Site Decisions*, identifies appropriate institutional controls for specific sites with residual contamination. Minnesota uses a variety of institutional controls including the following: environmental covenants, affidavits/notification and easements.

Contaminants covered/excluded: The VIC program will provide oversight of asbestos or lead if there is a release to the environment. Petroleum contamination mixed with MERLA contaminants is allowed in the VIC program but not if petroleum is the sole contaminant. The PBP provides oversight of petroleum brownfield sites.

MDA AgVIC program addresses contamination from agricultural chemicals only, which includes pesticides and fertilizers.

Use of long-term stewardship and institutional controls: Institutional controls are used for purposes such as managing residual contamination, maintaining response actions, and notifying future property owners of the presence of residual contamination. Minnesota had adopted the Uniform Environmental Covenants Act, Minn. Stat. ch 114E.

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.pca.state.mn.us/pca/srs/remSearch.cfm?sType=VIC&CFID=1413929&CFTOKEN=80733773>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: May 1995

Cost to enter program or fees for service: Hourly fee charged for MPCA and MDA staff time on projects.

Funding source for administrative costs and staff: The MPCA Remediation Division administers the state Superfund program. A total of 36 full-time equivalent (FTE) MPCA staff work on the Superfund and the VIC Programs. A total of 2.2 FTE staff work on the Superfund and AgVIC Programs at the MDA. Minnesota's Attorney General's Office provides legal support for the program with about two FTE attorneys. The state program receives funding from the state cleanup fund. Minnesota's federal grants include a Defense Summary Memorandum of Agreement (MOA) for federal facility cleanups.

Cleanup Activities

Sites: 507 are active in MPCA VIC. 220 sites are active in PBP 56 are active in MDA AgVIC.

Sites completed: Over 3,000 sites are completed in MPCA VIC. Approximately 2,300 sites are completed in PBP and 245 sites are completed in MDA AgVIC.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Over 3,000 jobs created and a \$3,000,000 increase in the tax base is attributable to brownfields assistance.
- Recent figures from DEED show 13,224 jobs will be created at DEED sites and 5,663 housing units will be created (1,178 deemed affordable housing). Tax-base increases are estimated at \$41,360,000.
- Approximately 5% of all brownfield sites have been reused for parks, open space or recreational facilities. Private leverage is estimated at almost \$1,000,000,000.

Public Participation

Public participation requirements (notice, comment periods, etc.):

Public participation activities (hearings, meetings, etc.): No information available

Statutory Authorities

The Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. §§115B.01–.20 (1983, as amended 1984, 1985, 1986, 1987, 1990, 1992, 1994, 1995, 1997, and 1998), establishes a state fund and provides for enforcement authorities, a state priority list, Natural Resource Damages (NRDs), and victim compensation.

General Information

Contact: Ohio Environmental Protection Agency (OEPA)
Amy Yersavich, Voluntary Action Program (VAP)

Tiffani Kavalek, Site Assessment & Brownfield Revitalization Program (SABR)

Ohio Department of Development (ODOD):
Amy Alduino, Office of Urban Development (UD)

Address: Voluntary Action Program or
Site Assessment & Brownfield Revitalization Program
Division of Emergency and Remedial Response
Ohio Environmental Protection Agency
P. O. Box 1049
Columbus, OH 43216-1049

Ohio Department of Development
Office of Urban Development
77 South High Street, 26th Floor
Columbus, OH 43215-6130

Phone: VAP/SABR: 614 644 2924
UD: 614 995 2292

Fax: VAP/SABR: 614 644 3146
UD: 614 466 4172

Email: amy.yersavich@epa.state.oh.us
Tiffani.kavalek@epa.state.oh.us
oud@odod.state.oh.us

Web site: VAP:
<http://www.epa.state.oh.us/derr/volunt/volunt.html>
SABR:
<http://www.epa.state.oh.us/derr/SABR/sabr.html>
UD: <http://www.odod.state.oh.us/ud/>

Program Description (VCP, brownfields, or related)

Brownfields definition: A brownfields is an abandoned, idled or under-used industrial or commercial property where expansion or redevelopment is complicated by known or potential releases of hazardous substances and/or petroleum.

Program titles:

- Voluntary Action Program (VAP)—created to give companies a way to investigate possible environmental contamination, clean it up if necessary, and receive a promise from the State of Ohio that no more cleanup is needed.
- Site Assessment & Brownfield Revitalization Program (SABR)—serves as the contact for brownfields or

contaminated sites not yet in any cleanup program (e.g., VAP, remedial response, Superfund, RCRA corrective action).

- Office of Urban Development (OUD)—assists communities in creating wealth from personal, business, and community successes. OUD works to identify the resources and financing necessary to enhance the economic viability of local communities.

Liability relief provisions: A person undertaking a voluntary action contracts with consultants certified by Ohio EPA to perform investigation and cleanup activities in this program. Once the cleanup is done, the Agency-certified consultant, a certified professional (CP), and a laboratory also certified by Ohio EPA, prepare a No Further Action letter (NFA) to demonstrate that proper investigation and cleanup activities were performed and that no further action is needed. If the data show that the work was properly conducted, Ohio EPA can issue a Covenant Not to Sue (CNTS), which promises the volunteer that the State of Ohio will not require further investigation or cleanup of the property.

In addition, U.S. EPA and Ohio EPA have entered into a Superfund Memorandum of Agreement (MOA) for the Voluntary Action Program, called the “MOA Track.” The MOA Track requires volunteers to follow the existing procedures for VAP sites and conduct additional steps. The MOA Track includes more Agency involvement, such as notice of entry into the program, approval of certain documents and work plans, and greater public involvement. Participants who conduct these additional steps have the added comfort of knowing that the cleanup is being conducted under a program that EPA has reviewed and determined to be adequate.

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

- Grant-funded technical assistance
- Clean Ohio Assistance Fund (COAF)
- Clean Ohio Revitalization Fund (CORF)
- Job Ready Sites (JRS) Program
- Brownfield Revolving Loan Fund
- Urban Redevelopment Loan Program
- Water Pollution Control Loan Fund
- Ohio Water Development Authority Loans
- Tax exemptions
- Tax credits

Legislative or program site eligibility requirements: Any property is eligible for the VAP except for those already regulated under federal or state law.

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.):

- Grant-funded technical assistance—<http://www.epa.state.oh.us/derr/vap/guidance/GrantTA/grantta.html>
- Clean Ohio Assistance Fund (COAF)—a \$10 million annual appropriation dedicated to brownfields redevelopment in eligible priority investment areas. Eligible applicants such as local governments, park and joint recreation districts, conservancy districts, soil and water conservation districts, and nonprofit organizations are eligible to receive grants for conservation projects from the Clean Ohio Fund. Applicants must provide a 25% local match. Applicants undertaking projects on properties located in an eligible area may expend the dollars on three activities: 1) Phase I and Phase II Assessments; 2) Brownfield Cleanup; 3) and Public Health Projects. (<http://www.odod.state.oh.us/ud/COAF.htm>)
- Clean Ohio Revitalization Fund (CORF)—part of a \$200 million dollar initiative approved by Ohio voters as part of the \$400 million Clean Ohio Fund. (<http://www.odod.state.oh.us/ud/CORF.htm>)
- Job Ready Sites (JRS) Program—designed to stimulate the development of large parcels of land and/or buildings that will be marketed to attract state economy-shifting development projects. The maximum grant award available per eligible site improvement project is \$5 million. Awarded grant amounts cannot exceed 75% of the total costs of improvements to eligible sites. (<http://www.odod.state.oh.us/edd/obd/jrs/>)
- Brownfield Revolving Loan Fund (RLF)—capitalized by a grant from EPA and offers below-market rate loans to assist with the remediation of a brownfield property to return it to a productive economic use in the community. (<http://www.odod.state.oh.us/ud/BCRLF.htm>)
- Urban Redevelopment Loan Program—removes development barriers from urban core property so private sector job opportunities can be created. (http://www.odod.state.oh.us/EDD/Loans_Grants.htm)
- Water Pollution Control Loan Fund—issues low-interest loans for water-related brownfield activities, for terms up to 20 years. (<http://www.epa.state.oh.us/defa/comguide.html>)
- Ohio Water Development Authority—extends loans to public or private entities for remediation of property. (<http://www.owda.org/owda-doc/program%20info/notesbf.pdf>)

Tax incentives (abatements, credits, etc.):

- Tax Abatement—upon issuance of a covenant not to sue from the Director of the Ohio EPA for a remedy under the Voluntary Action Program, the Department of Taxation will grant a tax exemption to the property (ORC 5709.87). The exemption, which is issued as an order by the tax commissioner, only covers the increase in the assessed value of land and the increase in the assessed value of improvements, buildings, fixtures, and structures that exist at the time the tax abatement order is granted. The Department of Taxation will send copies of the exemption order to the owner of the property and the County Auditor's

Office. The County Auditor's Office maintains the list of properties in the county that are subject to taxes and exemptions. The abatement lasts for 10 years.

- Ohio Enterprise Zone Program—<http://www.odod.state.oh.us/edd/ez/ezsummary.pdf>
- Brownfields Tax Incentive—<http://www.epa.gov/brownfields/bftaxinc.htm>

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

Program Elements

Technical Elements

Methods/standards/controls: See Ohio Administrative Code rule 3745–300–01 through 3745–300–15 at

<http://www.epa.state.oh.us/derr/Rules/rules.html>

Contaminants covered/excluded: Hazardous substances and/or petroleum. Sites contaminated with petroleum not from Underground Storage Tanks (USTs) are allowed entry into the VAP. In general, sites contaminated with polychlorinated biphenyls (PCBs) after 1978, and which exceed 50 parts per million (ppm), are excluded from the program without prior remediation/compliance. Sites containing asbestos and lead-based paint are eligible for the VAP.

Use of long-term stewardship and institutional controls (IC): Ohio EPA audits at least 25% of the properties taken through the VAP. Engineering controls are maintained through Operation and Maintenance (O&M) Agreements.

If the property's remedy relies on "activity and use limitations" (formerly known as use restrictions) to restrict property use, the volunteer must provide to the CP a "proposed environmental covenant" that complies with ORC §5301.82. The proposed environmental covenant—with its activity and use limitations—is a remedy to support the CP's issuance of an NFA letter.

- **IC Tracking:** ICs are tracked through the division's database (proclaims database).
- **IC Oversight and Monitoring:** OEPA inspects institutional controls (activity and use) every five years.

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.epa.state.oh.us/derr/SABR/Brown/BrownDtb/browndtb.html>

Ohio

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: July 2001

Costs to enter program or fees for service: The state charges a range of fees to cover its program administration, including program audits.

CP initial certification	\$ 2,500.00
CP renewal certification.....	\$ 2,000.00
Laboratories initial certification	\$ 5,000.00
Annual renewal fee for certified labs.....	\$ 3,000.00
Certification for additional parameter groups, analytes, or methods.....	\$ 500.00
NFA reviews:	
Option 1—Flat Fee	
Phase I NFA w/no releases identified.....	\$ 2,800.00
Phase I NFA with asbestos as the only contaminant of concern identified	\$ 5,900.00
NFA which includes a Phase II Assessment (also includes risk assessment, if applicable).....	\$12,000.00
NFA which includes an O&M Plan and Agreement ...	\$16,600.00
Variance from Applicable Standards (in addition to the other applicable NFA fees).....	\$22,400.00

Option 2—Pay-As-You-Go Option (PAYGO) allows the costs associated with the NFA Letter review be directly billed to the volunteer. The VAP charges a flat, nonrefundable fee to enter the program under this option. The volunteer submits an “Intent to Enter the VAP” letter to Ohio EPA along with the \$1,000 fee. VAP staff provide a cost estimate and a review schedule to the volunteer following the kick-off meeting. The estimate is based on the anticipated review time needed to review the documents. The current average hourly rate is \$78.55/hour.

In addition, the program may provide technical assistance at an hourly rate to any party participating in the program.

Funding source for administrative costs and staff:

U.S. EPA grant, State Environmental Protection Fee, and fees for service.

Cleanup Activities

Sites currently in VCP: 262 NFAs have been issued by CPs since the inception of the program in 1994. Of these, 17 were withdrawn by the CPs (only allowed early in the program), 15 were denied a covenant not to sue (CNS) by Ohio EPA, 14 did not request a CNS, and 31 are pending. In addition, 26 properties have provided notices of entry into the MOA Track.

Sites completed under VCP: 210 properties have received a CNS from Ohio EPA.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Receiving a CNS has been a major incentive; also, the creation of the COAF and the CORF as a source of funding for communities for site assessment and brownfields cleanup and remediation. The tax abatement has also been an incentive.

Public Participation

Public participation requirements (notice, comment periods, etc.): The VAP is a totally voluntary program thus, no public participation is required. The director’s final action issuing a CNS is publicly noticed. However, for the MOA with EPA, the CP and volunteer must follow a step-wise process. The first step is the notice of entry stage which requires submitting a Notice of Entry Form, setting up a document repository and public noticing the entry into the MOA Track. There is also a public notice step after the risk assessment and remedial action plan have been completed.

Public participation activities (hearing, meetings, etc.): N/A

Statutory Authorities

- The Ohio Revised Code (ORC) §3734 (Solid and Hazardous Waste Disposal) authorizes a cleanup fund and voluntary cleanup activities, and provides enforcement authorities.
- ORC §3745 (Environmental Protection Agency) authorizes enforcement activities and citizen suits.
- The ORC §3746 (Voluntary Action Program) provides for a cleanup fund, and authorizes property transfer provisions and a voluntary cleanup program.
- ORC §5301 (Environmental Covenants) establishes the requirements for imposing activity and use limitations at remediated properties.
- ORC §6111 (Water Pollution Control) authorizes enforcement activities.

General Information

Contact: Darsi Foss
Chief of the Brownfields and Outreach Section

Address: Wisconsin Department of Natural Resources (WDNR)
Remediation and Redevelopment
101 South Webster Street, Box 7921
Madison, WI 53707-7921

Wisconsin Department of Commerce
(Commerce)
5th Floor, 201 West Washington Avenue
Madison, WI 53707

Phone: WDNR: 608 267 6713
Commerce: 608 561 7714

Fax: WDNR: 608 267 7646
Commerce: 608 266 8969

Email: darsi.foss@wisconsin.gov

Web site: WDNR: <http://dnr.wi.gov/org/aw/rr/>
Commerce: <http://commerce.wi.gov/CD/CD-bfi-grants.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Wisconsin defines brownfields as abandoned, idled, or under-used industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

Program titles: All brownfields and voluntary cleanups are conducted in accordance with the Remediation and Redevelopment comprehensive one cleanup program, following the NR 700 rule series cleanup requirements. On June 3, 2006, Wisconsin Act 418 became effective; it contains additional incentives to promote the cleanup and reuse of contaminated properties.

Liability relief provisions: Program offers two primary forms of end-relief after cleanup is completed:

- Case closure letters—Per ch. NR 726 for traditional cleanup process.
- Certificates of Completion (COCs)— Voluntary Party Liability Exemption (1994; amended 1997, 1999, and 2006) process with an exemption from liability that is transferable to new owners.

Wisconsin also offers liability exemptions for lenders, local governments, and property owners impacted by contamination from off site.

Wisconsin Act 418 expanded the environmental liability protections that are already in place for local governments and private parties who enter DNR's Voluntary Party Liability

Exemption (VPLE) process, s. 292.15, Wis. Stats. The legislation broadens the types of properties which may be eligible for a VPLE to include waste disposal sites that are considered "unlicensed solid waste landfills."

Wisconsin Act 418 created a new environmental liability exemption for local governments that acquire title to properties where an "unlicensed solid waste landfill" is or may be present on the property. The new exemption in s. 292.24, Wis. Stats, is modeled on the spill law exemption created in 1994 for local governments that acquire properties through tax delinquency, for blight or slum purposes, condemnation, or other specified purposes.

Financial incentives (grants, loans, tax provisions, etc.): All the financial elements noted below are available to all properties regardless of regulatory status.

Legislative or program site eligibility requirements: Any party, including a responsible party (RP), is eligible to participate in the state's comprehensive cleanup process, NR 700. Any type of contamination site is eligible, including Leaking Underground Storage Tank (LUST), hazardous waste, and spill sites. In November 2006, WDNR and EPA Region 5 signed the nation's most comprehensive One Cleanup Program Memorandum of Agreement (MOA). This agreement clarifies that most contaminated properties in Wisconsin may be cleaned up using the state's NR 700 process. (See the OCP MOA at <http://dnr.wi.gov/org/aw/rr/cleanup/ocp.htm>)

Sites where a person elects to address the known environmental contamination go through the NR 700 process and receive a ch. NR 726 closure letter. This closure pathway comes with limited reopener provisions for the area on the site that was addressed. With respect to the VPLE process, after DNR approves environmental investigation and cleanup of the entire property, the voluntary party receives a COC and is protected from future liability. Since 2001, parties can use natural attenuation to get a COC if they pay an environmental insurance fee through state program. Wisconsin offers other specific liability exemptions:

- Lenders and representatives—Five situations in which lenders are exempt, including if a lender forecloses on a contaminated property.
- Local governments—Municipalities acquiring properties through means such as tax delinquency, blight elimination, or eminent domain are exempt from liability.
- Property owners whose contamination comes from off-site sources are exempt from liability. WDNR was given authority to issue a variety of assurance letters to clarify liability in various situations.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements,

Wisconsin

dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Land Recycling Loan Program—\$2,700,000 in present value subsidy (2007-2009 biennium) available for no-interest loans to municipalities, for site assessment, and cleanup; 0.5% service fee.
- Site Assessment Grant Program—\$3,400,000 (2007-2009 biennium) for grants to local governments for site assessment, investigation, demolition, and tank removal; requires 20% match.
- Brownfields Green Space and Public Facilities Grant Program—\$1,000,000 (2007-2009 biennium) available in grants to local governments for environmental remediation of brownfields that will be reused as greenspace, recreation areas, or used by a local government.
- Blight Elimination and Brownfields Redevelopment (BEBR) Grants—\$13,000,000 (2007-2009 biennium) for public or private use, for investigation, cleanup, and redevelopment; 20% to 50% match required. This includes both state funds and federal Community Development Block Grant (CDBG) funds.
- Dry Cleaner Environmental Response Fund—Funded through industry tax, will reimburse up to \$500,000 per facility to clean up solvent discharges.
- Environmental Fund—\$2.8 million available annually for state-funded cleanups at priority contamination sites including some brownfields.
- EPA-funded Revolving Loan and Grant Program—EPA awarded \$5,500,000 to the Wisconsin Brownfields Coalition for the Ready Reuse Initiative, which can fund remediation at petroleum and non-petroleum brownfield sites (in development). WDNR awards both loans and subgrants.

Tax incentives (abatements, credits, etc.):

- Development Zone Tax Credits – 50% of remediation costs in designated zones.
- Business Improvement Districts (BIDs) – use special tax assessments in designated districts to raise revenues for Phase I and II assessments, public improvements, redevelopment staff, and cleanup costs.
- Environmental Remediation Tax Increment Financing – Districts can be created by local governments to recoup investigation and remediation costs, with increment based on value-added of the clean site; eligible costs expanded in 1999 to include underground tanks, and container and asbestos removal.
- Federal Tax Deduction – for both petroleum and hazardous substance discharges. WDNR provides letter of eligibility to eligible parties.
- Counties (and Milwaukee) can cancel delinquent taxes if owner agrees to clean up contaminated property.
- Counties (and Milwaukee) can transfer tax-delinquent brownfields property to a new owner if the new owner agrees to complete cleanup.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The state has developed the Wisconsin Brownfields Insurance Program to provide insurance to businesses and local governments that are cleaning up and developing brownfields, at <http://dnr.wi.gov/org/aw/rr/rbrownfields/wbip.htm>

Program Elements

Technical Elements

Methods/standards/controls: Wisconsin has performance-based soil cleanup standards (NR 700 rule series) that apply to all cleanup sites, including VPLE sites. Risk-Based Corrective Action (RBCA)-like process is in place; applicants have a choice of cleanup standards for soil contamination—numeric values in regulation, site-specific cleanup standards, or risk-based performance standards. Ground water must meet enforcement standards or demonstrate that an adequate source control remedy has been conducted and that the plume is stable or receding.

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

Use of long-term stewardship and institutional controls (IC): Section 292.12, Wis. Stats., changed the way WDNR, Department of Agriculture, Trade and Consumer Protection (DATCP), and Commerce implement closures involving land use conditions to address residual contamination. The state agencies will no longer rely on the use of deed restrictions to ensure that land use conditions placed on a property at the time of closure are maintained over time. Instead, the agencies have specific statutory authority to place these land use conditions on a property, and the owner of the property (or another person who has a legally enforceable responsibility to comply with the requirements, e.g., through a contract) will be responsible for complying with the conditions set out by the state agency.

This change does not change the current environmental situations where the state has in the past and will continue to require land use conditions. Those three general situations are:

- Required maintenance of an engineering control.
- When a building or other structure inhibited full investigation of the contamination, requires an investigation of the extent of residual contamination and completion of any needed remedial actions, or if the building or other structure is removed after the conclusion of the remedial action.
- Impose limitations or other conditions related to the site (e.g., closure using industrial soil standards), in accordance with state agency rules, to ensure that conditions at the property remain protective and lead to appropriate redevelopment of the property.

This provision has two primary components:

- It clarifies that conditions, such as a requirement to maintain a protective barrier or an engineering control on

top of contaminated soil, are the responsibility of whoever is the current property owner (or another person with a legally enforceable responsibility to comply, e.g., a contract).

- The public is advised of these conditions through an Internet registry of properties with this type of closure approval, instead of looking for individual deed restrictions for each property. The registry will include detailed case closure letters that spell out the conditions that must be maintained to ensure that the residual contamination is properly managed. DNR will continue to conduct audits of a certain number of these properties with land use conditions.
- **IC Tracking:** Sites with continuing obligations, such as institutional or land use controls, are tracked using <http://dnrmaps.wisconsin.gov/imf/imf.jsp?site=brts2>
- **IC Oversight:** Each state regulatory agency has oversight for post-closure obligations.
- **IC Monitoring:** WDNR is auditing 50 sites per year that have continuing obligations associated with them, such as an engineered cap, by using its EPA Section 128(a) State Response Program funds.

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://dnr.wi.gov/org/aw/rr/clean.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: October 1995 and November 2006

Costs to enter program or fees for service: There are fees for most DNR oversight. Flat fees, per NR 749, range from \$500 to \$1,250 depending on the type of technical review requested in the traditional cleanup review process. The cost for VPLE is a \$250 application fee and an oversight fee for DNR staff of over \$80 per hour.

Funding source for administrative costs and staff: DNR staff who conduct program support and oversee cleanups are funded from a range of sources, including program fees, various EPA grants, and state funds.

Cleanup Activities

Sites currently in VCP:

- Over 9,000 sites are being cleaned up in the traditional cleanup program, seeking closure letters.
- Over 160 active sites are in the VPLE program, seeking certificates of completion.

Sites completed under VCP: Approximately 21,000 sites have received close-out letters and over 80 sites have received COCs.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Commerce grant program has assisted 152 brownfield projects by awarding \$59,545,000 in brownfields grants, which will result in:

- Converting over 1,500 acres of abandoned or underused environmentally contaminated sites into clean, viable properties.
- An increase of over \$1.5 billion in taxable property values.
- The creation of over 6,100 new jobs.

For WDNR's Site Assessment Grant (SAG) program:

- 352 grants awarded for \$11.6 million.
- Over 440 underground tanks removed.
- Over 450 structures and buildings removed.
- Over 148 Phase I assessments, 249 Phase II assessments and 251 site investigations conducted.
- 180 Wisconsin communities assisted.
- 1,185 acres of land addressed.

Public Participation

Public participation requirements (notice, comment periods, etc.): Established in ch. NR 714, Wis. Admin. Code.

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

Established in ch. NR 714, WAC, and varies from project to project depending on site-specific information and community interest.

Statutory Authorities

Wisconsin Statute chapter 292 includes the primary authority for environmental cleanups in Wisconsin including:

- Cleanup requirements for responsible parties (s. 292.11, Wis. Stats).
- Liability exemptions for local governments (s. 292.11(9)(e) and 292.23, Wis. Stats).
- Responsibilities for sites with residual contamination at closure (s. 292.12, Wis. Stats).
- Liability exemptions for contamination from off-site (s. 292.13, Wis. Stats).
- Liability exemption for voluntary cleanups (s. 292.15, Wis. Stats).
- Liability exemption for lenders and representatives (s. 292.21, Wis. Stats).
- Local government cost recovery cause of action (s. 292.33, Wis. Stats).

The cleanup standards and regulations are in the ch. NR 700 rule series of Wisconsin's Administrative Code and ch. NR 140 has the requirements for ground water cleanup. Chapter NR 168 has the requirements for the Brownfields Site Assessment Grant; ch. NR 173 contains the requirements for the Public Facilities and Greenspace Grant program.