



Revitalizing Contaminated Sites: Addressing Liability Concerns



The Revitalization Handbook

May 2008

U.S. Environmental Protection Agency
Office of Site Remediation Enforcement



Cover photo capturing revitalized area provided by the Office of Superfund Remediation and Technology Innovation, Office of Solid Waste and Emergency Response, U.S. EPA. The Davie Landfill is now the Vista View Park, which includes walking trails, bike trails, horse trails, picnic shelters, and a catch-and-release fishing pond. Visit <http://www.epa.gov/superfund/programs/recycle/index.html> for more information on Superfund Redevelopment.

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Preface

The U. S. Environmental Protection Agency's (EPA) Office of Site Remediation Enforcement (OSRE) implements the enforcement of EPA's hazardous waste cleanup laws, including Superfund (also known as the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA), the corrective action and underground storage tank cleanup provisions of the Resource Conservation and Recovery Act (RCRA), and the Oil Pollution Act (OPA). The main objective of the cleanup enforcement program is to ensure prompt site cleanup and the participation of liable parties in performing and paying for cleanups in a manner that ensures protection of human health and the environment.

Congress passed the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (Public Law 107-118) (hereinafter, the Brownfields Amendments), which modified Superfund and further promoted the cleanup, reuse and redevelopment of sites by addressing liability concerns associated with unused or under-utilized property. One important mission of OSRE is to provide guidance on the liability protections available to property owners and other categories of potentially liable parties as a result of the Brownfields Amendments and other provisions of the hazardous waste cleanup laws. OSRE has played, and continues to play, a key role in the reuse and revitalization of contaminated sites, including brownfield sites, by providing such guidance and developing tools that will assist parties seeking to clean up, reuse or redevelop contaminated properties.

Over the years, OSRE has highlighted these efforts through a series of handbooks, most recently the *Brownfields Handbook: How to Manage Federal Environmental Liability Risks* (2002). This 2008 edition of the handbook,

Revitalizing Contaminated Sites: Addressing Liability Concerns (The Revitalization Handbook) is a compilation of enforcement tools, guidance, and policy documents that are available to help promote the cleanup and revitalization of contaminated sites.

While OSRE intends this handbook to be useful for years to come, it recognizes that developments in the brownfields area will yield new policy and guidance documents. Please refer to the Agency's Web site (<http://www.epa.gov/compliance/cleanup/revitalization>) for new and updated documents.

OSRE looks forward to the challenge of protecting human health and the environment through the cleanup and subsequent revitalization of contaminated property.

Purpose and Use of This Handbook

This handbook summarizes the statutory and regulatory provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 (CERCLA, commonly known as Superfund) and the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992 (RCRA), as well as the policy and guidance documents most useful in managing environmental cleanup liability risks associated with the revitalization of contaminated sites. It is designed for use by parties involved in the assessment, cleanup, and revitalization of sites, and provides a basic description of the tools parties can use to address liability concerns.

There are a number of things a party may want to consider before revitalizing contaminated property. For example, a party should determine the end use of the property, and should collect and consider information on past uses and potential contamination. In particular, if the party intends to purchase the property, it should consider whether it needs to conduct certain inquiries to take advantage of CERCLA liability protections, such as the bona fide prospective purchaser protection. Should the party need information or have concerns about cleanup or liability protection, it should identify the most appropriate level of government to consult about cleanup and liability protection. Some parties will find that they can proceed directly to their reuse activities. Others may want to pursue private mechanisms such as indemnification or insurance tools (*see Private Tools text box on page 27*), or work at the state level and make use of existing state tools, programs, or incentives such as the state voluntary cleanup program. If contamination on the property warrants EPA's attention under CERCLA or RCRA, the party should first determine if EPA or the state is

taking or plans to take action at the property. After determining where the property fits in the federal or state cleanup pipeline, a party may use this handbook to help decide which tool or tools are most appropriate for addressing potential CERCLA or RCRA liability risks.

Both CERCLA and RCRA are designed to protect human health and the environment from the dangers of hazardous waste, though these two programs address different parts of the hazardous waste problem. The RCRA programs focus on how wastes should be managed to avoid potential threats to human health and the environment. CERCLA, on the other hand, applies primarily when mismanagement has already occurred, resulting in releases of hazardous substances to the environment.

Though many prospective purchasers, developers, and lenders report hesitation about getting involved with brownfield properties because they fear that they might be held liable under CERCLA or RCRA, the vast majority of brownfield properties will never require EPA's attention under CERCLA, RCRA, or any other federal law. Accordingly, parties' fears of federal involvement -- to the extent that they impact an entity's decision to get involved with a brownfield site -- rather than actual EPA practice, are the primary obstacles to the redevelopment and reuse of brownfields. EPA hopes that this handbook will assist in eliminating or reducing any such fears.