

State Brownfields and Voluntary Response Programs:

An Update from the States

The “State Brownfields and Voluntary Response Programs: An Update from the States” explores the evolving landscape of state environmental, financial, and technical programs designed to promote brownfields cleanup and reuse. The U.S. Environmental Protection Agency’s (EPA) goal for this analysis was to develop a concise, user-friendly synopsis of the programs and tools that are available through state programs. The information contained in this report was gathered from state response program contacts and state response program Web sites.

State programs continue to be at the forefront of brownfields cleanup and redevelopment, as both the public and private markets recognize the responsibilities and opportunities of state response programs in ensuring protective and sustainable cleanups. The increasing number of properties entering into state programs emphasizes the states’ growing role in brownfields cleanup. State programs are continuing to adapt to meet the changing needs of property owners and communities. Many different—but equally effective—approaches are available to meet the multiple challenges and common objectives of brownfields reuse. Several states recently passed legislative changes to establish new programs, while other states adopted new regulations to enhance their program and encourage cleanups.

Elements in the Analysis

This update looks at several components of state brownfields/response programs.

Program Description lays out the basics of each state’s voluntary response program and any other brownfields-related cleanup programs. It defines each state’s definition of “brownfields,” provides program titles, discusses liability relief provisions, and identifies program requirements.

Financial Elements provides an explanation of assessment and cleanup funding, tax incentives, and other forms of brownfields redevelopment support available under state programs, such as environmental insurance. Typically, the applicability of specific programs comes down to a state agency’s interpretation of which brownfields properties and activities are eligible for any particular assistance program. This update includes information on programs directly available through state voluntary response programs, as well as other incentive programs identified as being applicable to brownfields reuse efforts. The update includes information on funding sources, funding amounts, eligibility requirements, and a program’s focus on special types of properties, such as dry cleaners or petroleum properties.

Program Elements provides information on the technical elements of individual state programs. It includes information on applicable cleanup methods and standards, contaminants covered or excluded under state programs, requirements governing institutional controls, and state approaches to long-term stewardship. Administrative elements also are discussed, such as program costs, fees for service, and sources of funding for program staff and operations.

A major part of the update is the review of **Cleanup Activities**. To the extent that states provided the **necessary** data, the update contains information on the number of properties that entered and/or subsequently completed a state’s voluntary cleanup program, as well as data on program benefits, including economic impacts (e.g., jobs created; housing units developed; tax revenues added to the local economy; and businesses and investment value created).

The update also includes information on:

- Public participation requirements
- Programmatic statutory authorities
- Contact information for each state program



General Themes

Focus Shifting to Cleanup and Reuse

More states are channeling resources to properties with a clearly identified end use or economic development activity. Thinking is shifting from a cleanup only mentality to a cleanup and reuse strategy. For example, **Connecticut** established a centralized Office of Brownfield Remediation and Development (OBRD) in the Department of Economic and Community Development in 2006, and OBRD was expanded in 2007 to be the primary office managing and administering State Brownfield funding. The primary regulatory programs used as the vehicle for brownfield remediation are the state's Property Transfer, Urban Sites Remedial Action, and Voluntary Remediation Programs. This shift in thinking reflects the approach encouraged by the federal EPA.

Long-Term Stewardship

Increasingly, states are developing long-term stewardship programs to track and monitor institutional controls (ICs). States recognize that every property cannot be cleaned up to unrestricted use standards and that there are many projects where the intended end use does not require the cleanup level to meet such standards. Many states require ICs and other land use restrictions to be recorded on deeds and restricted covenants. In addition, states are developing compliance tracking tools or incorporating IC tracking into their existing contaminated sites databases. In **New York**, institutional controls and engineering controls are allowed in all its cleanup programs. In addition, environmental easements may be required for the protection of public health and the environment and to achieve the state's requirements for remediation at contaminated sites. **Kentucky** adopted legislation that mirrors the Uniform Environmental Covenant Act (UECA) to assure that protective measures are implemented at properties where residual contamination remains at a property following cleanup. Many states noted that including institutional controls as a part of their programs results in more cleanups and more properties being reused. State program officials also note that the use of institutional controls can lower the cost of cleanups.

State-Led Assessment and Cleanup Activities

In addition to the increasing number of properties entering into state programs, many states are using Section 128(a) State and Tribal Response Program funding provided by EPA's Brownfields program to conduct site-specific activities. **Mississippi** uses Section 128(a) funding to conduct limited scope assessments for eligible entities on a competitive basis. **North Dakota** uses Section 128(a) funds to conduct site assessments at petroleum sites and cleanup activities at sites requiring contamination removal. Many states are using their Section 128(a) funding to conduct assessment and cleanup activities for small and rural communities that do not have



the capacity to manage brownfields grants, underscoring the importance of the federal funding for state and tribal response programs.

Enrollment Costs for Voluntary Response Programs Vary

The cost to a participating property owner to enroll in a state response program varies widely. Some states require flat fees of as little as \$500; others charge hourly rates (ranging from \$50 to \$85 or more per hour) based on the level of state staff time needed. A few states use alternative cost methodologies, such as a percentage of the cost of cleanup; **Nevada**, for example, bases its fees on property size. States often rely on federal funds to meet state staffing and administration needs.

Linking Financing to Specific Needs

A growing number of states are linking the availability of state financial resources to cleanups that address specific needs, such as discarded tires or abandoned dry cleaners. For example, **Kansas**, through its Agriculture Remediation Fund, focuses on properties with agricultural contaminants. **South Dakota** has a livestock cleanup fund in place that pre-dates its brownfields response program. Other states such as **Tennessee** are encouraging local governments to use traditional public financing tools such as tax increment financing to address brownfields.





Creativity

Finally, one theme woven through many state efforts over the past two years is the need to be creative in finding ways to meet the needs of individual properties to stimulate redevelopment and reuse. For example, **Wisconsin** amended its Environmental Remediation Tax Incremental District (ER TID) law to provide incentives to promote the cleanup and reuse of contaminated properties by making ER TIDs more consistent with other Wisconsin TIDs; expanding its environmental liability protections for parties who enter the Department of Natural Resources' (DNR) Voluntary Party Liability Exemption (VPLE) process; and creating a new environmental liability exemption for local governments that acquire title to properties with an "unlicensed landfill" on the property. **Florida** offers low-interest loans to redevelopment agencies and nonprofit corporations to purchase contractor liens, tax certificates, and similar claims to expedite site reuse. And **Indiana** adopted a "just in time" Phase II site assessment program, offering \$50,000 grants to expedite projects at sites where a company or developer is "imminently interested."

Specific Findings

This state program update contains ideas, examples, and strategies that a state may want to explore as it considers enhancing its brownfields program.

Recently, states devoted significant attention to the types of public record and institutional control databases they maintain. As a result, diverse databases are used across states, including the following:

- **Virginia** modified its Voluntary Response Program (VRP) database to record institutional control information for each site, including restrictions on ground water use, residential use, excavation, and additional site specific controls. A report was generated for both completed and active

VRP sites and is now available on the Virginia Department of Environmental Quality Web site.

- **Kansas** upgraded its public record to one that is interactive. Its public record can now easily be searched by site name, county, city, river basin, district, or section/township/range. The search generates a list with site name, address, city, and county. More extensive site information, including a site narrative, actions completed, environmental use controls (if any), interactive mapping, aerial photo, color photo(s) of the site for some properties, etc., is available by clicking on the site link.
- **North Carolina** created an interactive map of projects taking place throughout the state. The Web site demonstrates the program's scope, while allowing the public, government officials, and potential developers to access information on sites in their area of interest. Once fully complete it will include background on the site, site activity, contaminants found, cleanup plans, and photographs.
- **California** developed a new Web site for hazardous waste sites. Since 2003, EPA provided \$350,000 through the Section 128(a) State and Tribal Response Program to develop and launch this new system called EnviroStor. The site makes the "public record" truly public and easy to navigate. It also provides important site documents such as deed restrictions in PDF format.

Virtually all states have cleanup standards that acknowledge the end use of the property. Some are linked to type of use—residential, commercial, or industrial. Others are connected to use limitations such as unrestricted use or property-specific restricted use.

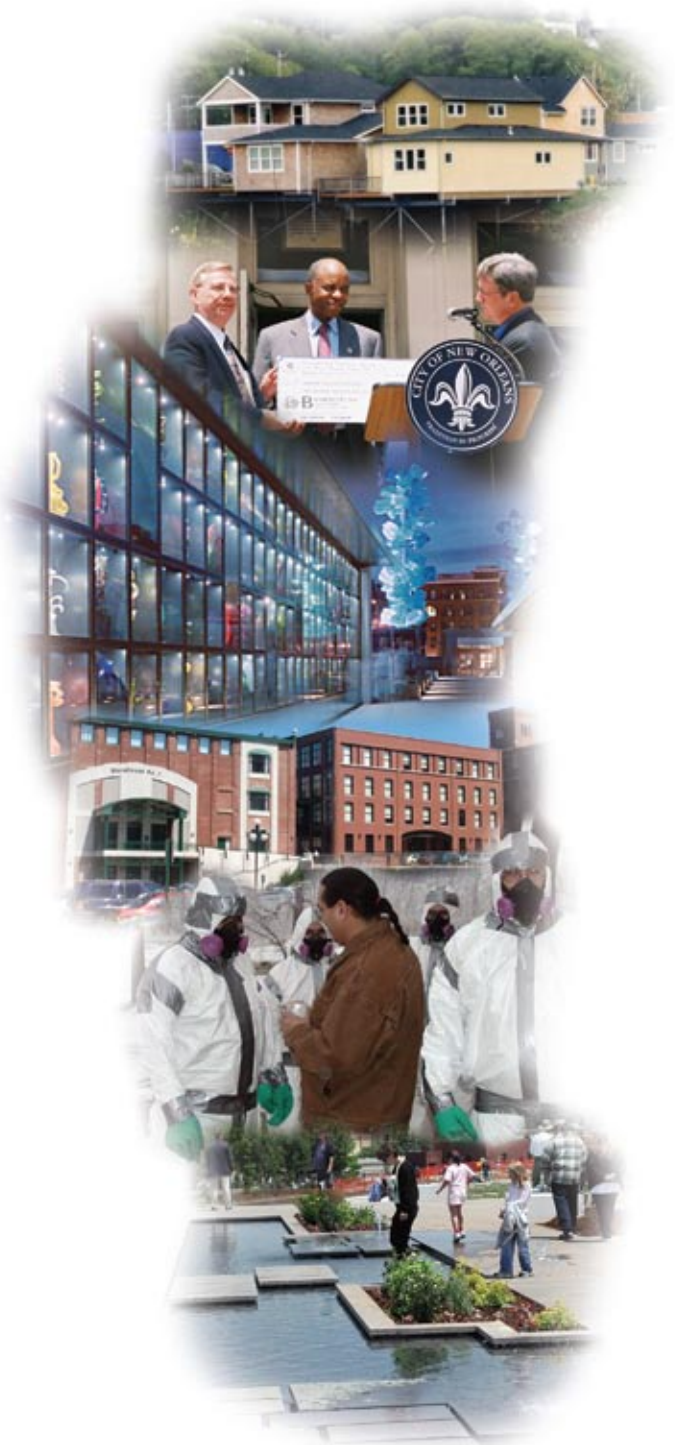
Several state programs, including **Maryland's**, provide a "menu" of cleanup options that use a Risk-Based Corrective Action (RBCA) type process. Most states also allow for the use of institutional controls that often are linked to a property's particular reuse.

Other examples of state activities reported this year include:

- **Georgia**, through a contract with the University of Georgia, developed the "Georgia Brownfields Academy." The Academy is an initiative to enlarge and enhance the state-wide network of service providers who can serve as first points of contact for a range of brownfields redevelopment questions and potential opportunities.
- **New Jersey** coordinated training on basic real estate principles for 225 staff from the Site Remediation and Land Use Regulation programs. The purpose was to provide information on how decisions made by the New Jersey Department of Environmental Protection staff can affect the economics of brownfields redevelopment projects.
- **Montana** is assisting three to four communities in the development of petroleum site inventories. Each community will then be able to use its individual inventory as a prioritization tool for petroleum sites in advance of seeking assessment and cleanup assistance.

Finally, more states are reporting significant **benefits** stemming from property participation in their voluntary response program. A sample of these program efforts is as follows:

- **Rhode Island** saw approximately \$109,000,000 in property value increase from 133 businesses that are located on brownfields sites.
- **Wisconsin** attributed more than 6,100 new jobs to 152 brownfields projects.
- **Missouri** conducted a study of the value of 50 redeveloped sites that were cleaned up under their Brownfields/Voluntary Cleanup Program. The total investment on these 50 sites was \$2.2 billion; 11,053 full-time jobs were leveraged; more than 153 thousand tons of contaminated materials were removed; and 686 acres and 13 historic buildings were returned to profitable use.
- **Florida** claims its program resulted in the cumulative creation of more than 8,595 direct jobs and 7,264 indirect jobs, as well as \$883,713,993 in new investment in its designated brownfields areas, through the end of 2007.



As the update indicates, elected officials and state program staff across the country are working to make certain that their programs reflect local government brownfields redevelopment needs and take advantage of opportunities to tie brownfields cleanup and redevelopment assistance with regulatory incentives. Increasingly, states across the country are using and maintaining ICs as a part of environmental cleanup remedy decisions and tracking ICs to ensure the long-term protectiveness of public health and the environment.