

Arizona

General Information

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Program Description (VCP, brownfields, or related)

Brownfields definition: An abandoned or under-used property with an active redevelopment potential that is complicated by either real or perceived environmental contamination.

Program titles:

- ADEQ Brownfields Assistance Program
- ADEQ Voluntary Remediation Program (VRP)

Liability relief provisions: Prospective Purchaser Agreement (PPA). If the purchaser of the property did not contribute to the contamination at the site, potential Water Quality Assurance Revolving Fund (WQARF) and state Comprehensive Environmental Response Compensation and Liability Act (CERCLA) liability may be avoided through a written agreement with ADEQ. Pursuant to Arizona Revised Statutes (ARS) §49-285.01, ADEQ may enter into a PPA, which provides a written release and covenant not to sue for any potential WQARF liability for existing contamination, if certain statutory conditions are met. Although this statute also refers to providing immunity from contribution claims, which can only be provided through a court decree, ADEQ lacks the independent authority to prevent other parties from pursuing claims.

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

Targeted Site Assessment and Cleanup Grants – Through an EPA grant, funds are provided to perform an environmental site investigation, and cleanup activities if needed, for a qualifying brownfield property. The program is available to municipalities, prospective purchasers, and parties who

would not be found liable for any existing contamination at the property. Information discovered during an investigation will be considered a public record and will be made available for review at ADEQ.

Legislative or program site eligibility requirements: The state's brownfields program covers sites that are abandoned or idled as well as underused industrial and commercial facilities where redevelopment is complicated by real or perceived environmental contamination by hazardous substances.

For a site to be considered a brownfield site, it must meet three criteria:

- It is an underutilized commercial or industrial site;
- It has redevelopment potential; and
- The site's redevelopment potential is complicated by known or perceived contamination with a hazardous substance as defined by CERCLA.

Anyone can participate in the VRP except those conducting:

- Remedial activities subject to corrective action at or closure of a facility, which has qualified for hazardous waste interim status or to which a hazardous waste permit has been issued.
- Remedial activities pursuant to a written agreement between the applicant and the director.
- Remedial activities subject to a judicial judgment or decree.
- Remedial activities required by an administrative order issued by the director prior to the submission of a VRP application.
- Remedial activities pursuant to a judicial action filed and served by the state prior to the submission of a VRP application.
- Remedial activities at a site listed on, or proposed to be listed on, the WQARF Registry.
- Corrective actions being taken pertaining to a regulated underground storage tank (UST) unless a waiver of state assurance fund reimbursement is completed.

Financial Elements

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

- The Voluntary Remediation Fund is financed by transfers and user fees and may be used for program administration, remediation oversight, and document review.
- The VRP program receives all of its funding from fees and federal grants.

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

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

Program Elements

Technical Elements

Methods/standards/controls: The remedies for cleanups are selected on a site-by-site basis. With orphan sites, the state uses Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), and aquifer standards, which are equivalent to both water quality criteria and ground water standards. If responsible parties are conducting cleanup they may reach agreement with the state whereby the parties use a risk-based cleanup standard. The state applies risk assessment for: carcinogens/non-carcinogens (10-6 to 10-4 Hazard Index of less than or equal to 1); background levels; aquifer standards; MCLs/MCLGs; soil standards; and chemical specific health-based standards. Soil remediation standards may be site-specific (10-6 to 10-4 for carcinogens, Hazard Index of less than 1) or off-the-shelf (based on 10-6 for known carcinogens and 10-5 for others). The state uses the same standards for Resource Conservation Recovery Act (RCRA) and Leaking Underground Storage Tanks (LUST).

For the VRP, the state applies risk assessment for carcinogens and non-carcinogens (10-6 to 10-4 and a Hazard Index of less than or equal to 1), water quality criteria, ground water standards, soil standards, and chemical specific health-based standards. ADEQ meets with the Department of Water Resources (DWR) to examine the planned future land use. In addition, ADEQ will conduct public meetings in order to decide if it will perform a risk-based cleanup. For soil cleanups less stringent than residential use standards, a Declaration of Environmental Use Restriction (DEUR) is recorded after the cleanup (ARS §49-152 and 158).

Contaminants covered/excluded: Excluded—Crude oil and its fractions. Covered—Hazardous substances that are mixed with petroleum products; hazardous wastes as defined in the definition of hazardous substance in CERCLA and including those listed under RCRA; hazardous wastes that are ignitable, corrosive, reactive, or toxic.

Use of long-term stewardship and institutional controls (IC): Arizona has a long-term stewardship program for the state voluntary and brownfields cleanup programs that includes monitoring, institutional controls, review and reevaluation, and DEUR that run with the land.

- **IC Tracking:** The program maintains a database that tracks institutional controls and will be made available to the public via the ADEQ Web site. The database tracks both the implementation and monitoring of institutional controls at state cleanup program, VRP, brownfields, and federal facility sites. The primary users of this database are internal staff, property owners, and consultants.

- **IC Oversight and Monitoring:** The program provides oversight, review, reevaluation, and monitoring of ICs.

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.azdeq.gov/databases/deursearch.html>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service:

Effective February 9, 2001, the VRP interim fee rules:

- Establish a \$2,000 non-refundable application fee.
- Establish an hourly VRP oversight rate of \$110 per hour.
- Provide for an initial deposit of \$4,000, to be submitted with the participant's work plan or request for an NFA determination.
- Provide for additional deposits of \$4,000, if an account drops below \$1,000.
- Provide small businesses with the opportunity to pay the application fee in installments under an agreement with the department.
- Provide for quarterly billing statements.

Funding source for administrative costs and staff:

Fees and federal grants

Cleanup Activities

Sites currently in VCP: 101

Sites completed under VRP: 120 complete, 3 pending (7 Phase I/II completed, 1 cleanup completed, and 1 cleanup in progress with Brownfields Section 128(a) grant funding)

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

- Faster cleanup of environmental contamination.
- Streamlined processing and interaction with ADEQ.
- Expedited review and approval of cleanup activities.
- No further action determinations for successfully remediated properties.

Public Participation

Public participation requirements (notice, comment periods, etc.): ARS §49-289.02 requires the director to give notice of remedial actions to affected communities.

ARS §49-289.03 states that the public will receive notice and be provided an opportunity to comment

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to the director regarding the following actions taken by the director:

- The placement of a site on the registry.
- The selection of a remedy.
- Entering into a PPA.
- Entering into a settlement with a responsible party.

The provision also requires the department to develop a community involvement plan, including the establishment of a community advisory board, for each site.

ARS §49–176 establishes the community involvement requirements for the VRP, including requirements for notice and opportunity for comment.

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

ARS §49–176(D) requires the director to consider written comments in response to a public notice providing an opportunity to comment or any public meeting held prior to approving a work plan pursuant to §49–177 or issuing an NFA determination pursuant to §49–181. The director may require the applicant to conduct a public meeting prior to approving a work plan for which notice is required pursuant to the statute.

Statutory Authorities

- The Environmental Quality Act, ARS, Title 49, Ch.2, §§281 to 298 (1986, as amended 1987, 1990, 1992, 1994, 1995, and substantially amended in 1997), establishes the WQARF and provides for strict and proportional liability, administrative orders, abatement and remedial actions, injunctive actions, water supply replacement, civil penalties, cost recovery, treble damages, and voluntary cleanups, and requires the ADEQ to set risk-based remediation standards for residential and nonresidential use. The 1992 Amendments, ARS, Title 49, Ch. 290 §10, Ch. 291 §8 and Ch. 300 §5, identify sources of Fund monies, authorize uses of the Fund, set forth remedial action criteria, and provide additional enforcement authority. ARS, Title 49, Ch. 295 (1992) provides for environmental lien authority. The 1997 amendments provided for a new registry, replacing the former priority list, changed the liability standard to proportional, and provided detailed authority for voluntary cleanups. The Environmental Liens (ARS §49–295) statute provides for enforcement authorities and contaminated property transfer and notice. Voluntary cleanups are provided for under the Greenfields Pilot Program, ARS, Title 49, §§153 to 157/1997 and the VRP (ARS §§49–171 to 188) The VRP also provides for brownfields and contaminated property transfer and notice. Brownfields are also provided for under the BCRLF Program (ARS §49-295).
- APC&EC Regulation 29—Brownfields Redevelopment

General Information

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Program Description (VCP, brownfields, or related)

Two regulatory bodies within the California Environmental Protection Agency (Cal/EPA) oversee the cleanup of brownfields in California, the Department of Toxic Substances Control (DTSC) and the Regional Water Quality Control Boards (Water Boards). DTSC generally oversees the cleanup of hazardous substance releases, while the Water Boards generally oversee the cleanup of petroleum and other hazardous materials that could potentially affect water quality. While there is overlap in implementing these programs, the Water Boards generally address brownfields cleanups using their Spills, Leaks, Investigations and Cleanup Program (SLIC) or their Leaking Underground Storage Tank (UST) Cleanup Fund Program. DTSC generally addresses brownfields cleanups using programs under its Site Mitigation and Brownfields Reuse Program. This survey focuses mainly on DTSC's cleanup programs.

Brownfields definition: Properties that are contaminated, or thought to be contaminated, and are underutilized due to perceived remediation costs and liability concerns.

Program titles:

- DTSC's Site Mitigation and Brownfields Reuse Program
 - Voluntary Cleanup Program (VCP)
 - The Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Program
 - School Property Evaluation and Cleanup Program
 - Polanco Redevelopment Act and Redevelopment Agency Environmental Oversight Agreement Program (EOA)
 - California Land Reuse and Revitalization Act of 2004 (CLRRA)

- Water Boards' Site Assessment & Cleanup Programs
- Leaking Underground Storage Tank Cleanup Fund Program
- Spills, Leaks, Investigations and Cleanup (SLIC) Program
- Cal/EPA
 - Site Designation Program

Liability relief provisions: California's Lender Liability law (Health and Safety Code (HSC) 25548-25548.7) exempts lenders from liability under state and local laws and ordinances (but not from common law liability) provided they do not participate in the management of the property and did not directly contribute to the release or potential release of hazardous substances on the property. Lenders acquiring property through a foreclosure or its equivalent, must make a good faith effort to sell the property.

Residential property owners and owners of common areas within a residential common interest development are not liable for: 1) hazardous substance releases that occurred prior to their ownership of which they were unaware and had no reason to know about; and 2) a release of a hazardous substance to ground water underlying the property if the release occurred at a site other than the property.

CLRRA (effective January 1, 2005) initiates a voluntary program that provides immunity from liability for response costs or damage claims to qualified innocent landowners, bona fide purchasers, bona fide ground tenants, and contiguous property owners of property in urban areas. Participants seeking to qualify for immunity must enter into an agreement that includes the preparation and implementation of a site assessment plan and, if necessary, a response plan. A certificate of completion is issued upon determining that all response actions have been satisfactorily completed in accordance with the agency approved response. This statute will repeal on January 1, 2010 but immunities granted will continue after that date if the person remains in compliance with the requirements.

A Prospective Purchaser Agreement (PPA) is a legally binding agreement between DTSC or a Water Board and a prospective purchaser, which limits the purchaser's liability to either DTSC or the Water Board for known releases of hazardous substances or materials at the property in exchange for a commitment by the purchaser to undertake or fund some or all of the necessary site cleanup activities. The PPA does not provide liability protection from the federal government or from any additional contamination.

DTSC and the Water Boards also have general policies not to pursue enforcement for cleanup against prospective purchasers/tenants/lessors who become

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site owners or operators if all of the following conditions are met:

- They do not exacerbate or contribute to the existing contamination.
- Their operation will not result in health risks to persons on the site.
- They are not a responsible party (or affiliate) with respect to the existing contamination.
- They allow access for, and do not interfere with, remediation activities.
- Unauthorized disposal is not occurring on the site
- There are other viable responsible parties who are willing to conduct any necessary remediation.

The Polanco Redevelopment Act provides immunity from liability for redevelopment agencies that undertake and complete an action, or cause another person to undertake and complete an action, to remedy or remove a hazardous substance release on, under, or from property within a redevelopment project area. Upon proper completion of a removal or remedial action, this immunity from liability extends to subsequent property owners and operators and may extend to others involved in the redevelopment process. The immunity from liability is expressly not extended to persons who were responsible parties for the release. DTSC developed a program specific to redevelopment agencies exercising their authority under the Polanco Redevelopment Act. The Redevelopment Agency Environmental Oversight Agreement Program provides a standardized, menu-driven approach to streamline cleanup for these agencies by encouraging more effective integration with local processes.

A Site Designation program was created to minimize and/or eliminate the duplication of effort of state and local regulatory agencies involved in the oversight of site cleanup and to ensure approval by all participating agencies. A Site Designation Committee designates an appropriate administering agency that consults with other appropriate support agencies to ensure consistency in applying the other agencies' requirements. A certificate of completion is issued after a site cleanup has been completed. Once issued, the certification provides that no additional cleanup work (other than compliance with the certificate conditions) need be done absent special circumstances.

The Expedited Remedial Action Program (ERAP) (HSC 25396-25399.2) is a pilot program established in 1994. It utilizes the Site Designation process and therefore provides a certificate of completion following the cleanup. This program also provides a covenant not to sue to the participating responsible parties following completion of the cleanup.

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

- Targeted Site Investigation—Using grant funds provided by EPA through the State Response Program grant, the Targeted Site Investigation (TSI) program provides funds for DTSC to perform environmental site investigations at no cost to the applicant. The TSI funds are intended

to provide state and local governments, school districts, redevelopment agencies, or nonprofit organizations an opportunity to gain more information about a site's condition, which can directly affect decisions on property acquisition or cleanup strategy.

- The CLEAN Program, established in 2000, provides low-interest loans for site characterization (up to \$100,000) and site cleanup (up to \$2,500,000) to help developers, businesses, schools, and local governments accelerate the pace of cleanup and redevelopment at sites. Currently, there is no new funding available for this program. DTSC hopes to accept applications again in late-2008.
- DTSC, partnering with San Francisco and Los Angeles, received a competitive Revolving Loan Fund grant DTSC anticipates that RLF funding may be available as early as spring 2008.
- ERAP provides funding for the portion of cleanup costs allocated to responsible persons who are deceased, cannot be identified or located, or are found to be insolvent. DTSC makes the allocation of liability at the time the remedial action plan is proposed.

Legislative or program site eligibility requirements:

VCP—Most sites are eligible unless listed as a federal or state Superfund site, a military facility, a site that falls outside of DTSC's jurisdiction, or if another agency currently has oversight. The focus of the program is to help revitalize California's urban areas.

CLRRRA—To qualify for liability relief, there are specific eligibility requirements for both the property and for innocent landowner, bona fide purchasers, and contiguous property owners. A person must establish specific conditions to qualify including:

- Conducting All Appropriate Inquiries.
- Exercising appropriate care with respect to the release or threatened release.
- Providing full cooperation and site access to those conducting the response action.
- Complying with land use controls.
- Complying with requests for information.
- Providing all notices and satisfying reporting requirements.

CLEAN Program—There are eligibility requirements for the person applying for these low-interest loans and for the property where the loan will be utilized. Eligible properties include: properties within enterprise zones; properties where redevelopment will meet specified requirements that will benefit local government and/or the local community; and properties being used to expand industrial or commercial facilities owned or operated by nonprofit corporations or small businesses.

Redevelopment Agency EOA Program—This program is only available to local redevelopment agencies for properties located within a Redevelopment Project Area, as defined by statute.

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The School Property Evaluation and Cleanup Division ensures the assessment and cleanup of proposed school property sites to a level that protects the students and faculty who will occupy the new school. All proposed school sites that will receive state funding for acquisition or construction are required to go through a rigorous environmental review and cleanup process.

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.): DTSC, partnering with San Francisco and Los Angeles, received a competitive Revolving Loan Fund grant DTSC anticipates that RLF funding may be available as early as spring 2008.

The CLEAN Program offers low-interest loans of up to \$2,500,000 for the cleanup or removal of hazardous materials at underused urban properties where redevelopment is likely to have a beneficial impact on the property values, economic viability, and quality of life of the surrounding community.

UST Cleanup Fund is administered by the State Water Resources Control Board. The Fund reimburses for allowable costs in the cleanup of releases from underground storage tanks.

The Toxic Substances Control Account (TSCA) is used for site investigation, studies and design, removal and remedial actions (prohibited until responsible parties (RPs) are given notice and opportunity to clean up), emergency response, operations and maintenance, state Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, program administration, and enforcement against RPs.

Reimbursement funding also comes from site specific reimbursement agreements as a result of consent agreements and may be used for site investigation and design, removals, operations and maintenance, long-term stewardship, and remedial actions.

VCP Agreements are fee-for-service programs which cover services ranging from an initial site assessment, to oversight and certification of a full site cleanup, based on the proponent's financial and scheduling objectives. The VCP agreement specifies the estimated DTSC costs, scheduling for the project, and DTSC services to be provided.

The SLIC Program is the Water Board's VCP equivalent. Agreements require the applicant to pay for the cost of Water Board oversight of their activities.

Tax incentives (abatements, credits, etc.): None

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

The California Financial Assurance and Insurance for Redevelopment Program (FAIR Program) (HSC 25395.40-

25395.45) is authorized by statute but implementation of the program has been unsuccessful to date. The objective of the FAIR Program is to lower the transaction costs of environmental insurance by providing a package of pre-negotiated and standardized policies to stimulate the cleanup and redevelopment of brownfields and other environmentally impaired properties throughout the state.

Program Elements

Technical Elements

Methods/standards/controls: The DTSC cleanup processes generally follow the federal National Contingency Plan (NCP) cleanup process. ERAP, the California Land Reuse and Revitalization Program, and the Redevelopment Agency EOA Program provide alternative cleanup approaches which do not require consistency with the NCP cleanup process. The following discussions relate to DTSC's cleanup processes. The Water Boards may also follow this process, but generally follow a less structured cleanup process developed under the Water Code.

DTSC follows EPA guidance for risk assessments and uses the federal risk management range with 10-6 as the point of departure. The state publishes chemical-specific toxicity factors that are useful in assessing potential risks and hazards from chemicals at sites. Cal/EPA developed screening levels for hazardous substances typically found at brownfield sites to assist developers and local governments in estimating the costs and extent of cleanup. Water Boards develop Basin Plans which set cleanup requirements for ground water and surface water within each basin. Recent legislation (AB 422) requires DTSC and the Water Boards to evaluate the potential for migration of chemicals into indoor air.

Cleanup plans are called Remedial Action Plans (RAPs) or Removal Action Workplans (RAWs) depending upon the capital costs of the recommended cleanup alternative. RAPs are generally used if capital costs for the proposed cleanup method are estimated to be more than \$1,000,000 and use the nine federal criteria to evaluate alternatives in addition to six state criteria. RAWs are generally used if capital costs are estimated to be \$1,000,000 or less and use three evaluation criteria similar to the federal Engineering Evaluation/Cost Analysis (EE/CA) guidance.

Land use restrictions placing limits or requirements on future use of a property are required by regulations when properties are not remediated to unrestricted use criteria. DTSC is statutorily required to maintain a list of all land use restrictions recorded as a condition of cleanup to protect the public from unsafe exposures to residual contamination that is left in place. Deed

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Restricted Sites are posted on the DTSC Web site in the EnviroStor database to provide the public easy access to information on deed restrictions and affected sites.

All of the cleanup programs make a determination for sites within the program that do not pose an unacceptable risk. DTSC issues a no further action determination or certifies a site once the final remedy has been fully implemented. The Water Boards issue a no action letter or a no active cleanup letter at case closure. Both entities issue a certificate of completion following implementation of the final remedy for sites within the Site Designation Program.

Contaminants covered/excluded: DTSC generally regulates hazardous substances, consistent with the federal definition. Petroleum releases from non-underground storage tank releases may also be addressed. DTSC's School Property Evaluation and Cleanup Program also addresses naturally-occurring chemicals. The Water Boards regulate hazardous materials which include petroleum hydrocarbons.

Use of long-term stewardship and institutional controls (IC): DTSC has a long-term stewardship program that covers all cleanup activities. The state allows institutional controls, monitors and enforces cleanups, and completes audits. Institutional controls include well drilling restrictions, easements, restrictive covenants, reversionary interests, deed restrictions, and notices placed on deeds. As mandated by state law, DTSC maintains a list of deed-restricted properties that is available on the Internet.

- **IC Tracking:** Institutional controls used by DTSC to notify the public include posting sites, publishing notices in newspaper, creating mailings for local residents, and maintaining the EnviroStor database. The state has a process outlined in statute to remove a deed restriction if a site is remediated to unrestricted use.
- **IC Oversight:** DTSC is currently utilizing the Terradex™ LandWatch system to give early notification of potential activities on properties subject to land use restrictions implemented as part of a final remedy for a site under DTSC oversight.
- **IC Monitoring:** In addition to deed restrictions, DTSC's regulations also require financial assurance for sites that are not cleaned to levels appropriate for unrestricted use. DTSC also requires the periodic review of site conditions to ensure that site conditions have not changed and that the remedy is still effective.

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.envirostor.dtsc.ca.gov/public/deed_restrictions.asp

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: DTSC is obligated to recover its costs and does this through voluntary cleanup agreements, reimbursement agreements, contracts, and settlements. The Water Board SLIC program also requires reimbursement of staff costs.

Funding source for administrative costs and staff: For DTSC, TSCA (75%), federal grants (20%), and reimbursement monies (5%).

Cleanup Activities

Sites currently in VCP: DTSC staff conducts and oversees cleanup on an average of 720 hazardous substance release sites at any given time.

Sites completed under VCP: DTSC staff issue either certifications or no further action decisions on an average of 215 cleanups per year.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): The VCP allows motivated parties who are able to fund the cleanup—and DTSC's oversight—to move ahead at their own speed to investigate and remediate their sites in keeping with DTSC processes and standards.

PPAs provide legal protection to purchasers or developers who are willing to clean up contaminated sites at their own expense, but are apprehensive about liability for existing contamination. Under a PPA, DTSC provides a covenant not to sue for existing contamination and provides for contribution protection.

The ERAP revises a liability scheme based on fair and equitable standards and provides indemnification protection through a covenant not to sue.

The Redevelopment Agency EOA Program allows redevelopment agencies to enter into agreements with DTSC for oversight and services under the Polanco Act, which unlike the VCP, does not designate these agencies as RPs. This program also allows redevelopment agencies to initiate investigative and/or cleanup work, while reserving their option to withdraw from the process without negative consequences.

CLRRRA provides broad liability relief from numerous statutes as well as immunity from non-agency claims for response costs or other damages.

Public Participation

Public participation requirements (notice, comment periods, etc.): DTSC publishes a Public Participation Guidance Manual to assist those cleaning up sites in conducting the required public participation activities. For each site undergoing site characterization and cleanup, DTSC assesses the community around the site to determine what their specific interests and needs are with respect to the site and how best to involve them in DTSC's decision-making process. Fact sheets, public notices, work notices, and responsiveness summaries (i.e., in response to

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comments received on remedy selection documents) are generally required to keep people informed. Anyone affected by a removal or remedial action must be provided with the opportunity to participate in DTSC's decision-making process. DTSC must develop and make available to the public, a schedule of activities for each site. These policies apply to both state Superfund and VCP sites.

The Porter-Cologne Act contains specific notice requirements including a requirement that the Water Boards must publish a list of sites where Methyl Tertiary Butyl Ether (MTBE) has been detected in ground water. For sites under CLRRRA, specific public participation requirements are described for the Water Boards.

The California Land Reuse and Revitalization Act specifies public participation requirements for both DTSC and the Water Board. Fact sheets, public notices, work notices, and responsiveness summaries (i.e., in response to comments received on remedy selection documents) are generally required to keep people informed. The Response Plan must undergo a 30-day public review and comment period.

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

DTSC generally holds at least one public meeting before adopting a remedial action plan. The determination whether to require a public meeting at other times during the cleanup process is based upon an assessment of the specific needs of the surrounding community.

The Porter-Cologne Act contains requirements to notify interested persons of public hearings or meetings concerning a site. Water Boards have traditionally used their Board meetings to provide interested persons with an opportunity to comment on a project. For high interest sites, community meetings may also be held near the project location.

Statutory Authorities

California Health and Safety Code:

- The Hazardous Substance Account Act, Division 20, Chapter 6.8 §§25300 et seq. (1981, as amended in subsequent years) establishes the Site Mitigation Program and provides for cleanup funding, enforcement authority, priority list, long-term stewardship, voluntary cleanup, establishes the CLEAN Program (§§25395.20–25395.32), the FAIR Program (§25395.40–25395.45) and the Private Site Manager Program (§25395.1–25395.15).
- Division 20, Chapter 6.85 (HSC 25396–25399.2) establishes the ERAP.
- Division 20, Chapter 6.82 (§25395.60–25395.105) and Chapter 6.83 (§25395.110–25395.119) contains the liability protections contained in the CLRRRA.
- Community Redevelopment Law (Polanco Redevelopment Act), Division 24, Part 1, Chapter 4, Article 12.5, §33459–33459.8.
- Division 20, Chapter 6.65, §§25260–25268 of the California Health and Safety Code Unified Agency Review

of Hazardous Release Sites (HSC 25260–25268) establishes the Site Designation Program and process.

- Environmental Review Process for Proposed New or Expanding School Sites: Education Code, sections 17210, 17210.1, 17213.1, and 17213.2

California Code of Regulations:

- Title 22, Chapter 390, §67391.1 contains regulations requiring land use covenants and financial assurance for sites not cleaned up to unrestricted residential cleanup standards.
- Title 22, Chapter 40, §§67401.3 and 67401.7 contain regulations for ERAP.
- Title 22, Chapter 47, §§68200–68214 contains regulations for the CLEAN Program.
- Title 22, Chapter 51, §§69000–69013 contains regulations for the Private Site Manager Program.
- Title 22, Chapter 51.5, §§69100–69105 contains regulations for Phase I Environmental Site Assessments conducted for potential school sites.

Guam

General Information

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Program Description (VCP, brownfields, or related)

Guam EPA has recently begun addressing brownfield sites and works in partnership with the Guam Economic Development and Commerce Authority, the Port Authority of Guam, and the Guam International Airport Authority. It is their goal to identify and evaluate the risks posed by these properties and find solutions so that reuse and redevelopment is possible.

Brownfields definition: Brownfield means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The Brownfields Site definition is found in Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002.

Program titles: Guam Environmental Assessment & Remediation (GEAR) Program

Liability relief provisions: None

Financial incentives (grants, loans, tax provisions, etc.): No

Legislative or program site eligibility requirements:

The Brownfields Law identifies three types of properties that are specifically eligible for funding:

1. Sites contaminated by controlled substances
2. Sites contaminated by petroleum or a petroleum product
3. Mine-scarred lands

Sites Not Eligible for Funding Without a Property-Specific Determination

- Facilities subject to planned or ongoing Comprehensive Environmental Response Compensation and Liability Act (CERCLA) removal actions.

- Facilities that are subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees or to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA).
- Facilities subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- Facilities that are land disposal units that have filed a closure notification under subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.
- Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA.
- Portions of facilities for which funding for remediation has been obtained from the Leaking Underground Storage Tank (LUST) Trust Fund.

Sites Not Eligible for Brownfields Funding and Not Eligible for a Property-Specific Determination

- Facilities listed (or proposed for listing) on the National Priorities List (NPL).
- Facilities subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.
- Facilities that are subject to the jurisdiction, custody or control of the United States government. (NOTE: Land held in trust by the United States government for an Indian tribe is eligible for brownfields funding.)

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.):

- 128(a) – \$400,000 for Brownfields Site Assessment and Cleanup (2004)
 - \$350,000 for Brownfields Site Assessment and Cleanup (2007)
 - \$350,000 for Brownfields Site Assessment and Cleanup (2009)
- 104(k) – \$200,000 for Hazardous Substance Site Assessment and \$200,000 for Petroleum Site Assessments (2006 – 2009)

Tax incentives (abatements, credits, etc.): None

Guam

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

Program Elements

Technical Elements

Methods/standards/controls: None

Contaminants covered/excluded: Petroleum, lead-based paint, asbestos

Use of long-term stewardship and institutional controls (IC): None

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: None

Costs to enter program or fees for service: None

Funding source for administrative costs and staff: 128(a) Grant and 104(k) Cooperative Agreement

Cleanup Activities

Sites currently in VCP: None

Sites completed under VCP: None

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): None

Public Participation

Public participation requirements (notice, comment periods, etc.): Public Notice, Public Comment, Press Release, Public Records, Web site, Public Repository

Public participation activities (hearing, meetings, etc.): Public meetings, Web site, Public Repository

Statutory Authorities

Guam does not have a law which fully equates to all CERCLA response authorities. It has partial and limited CERCLA-like legal authorities in three laws and an adopted RCRA subtitle C regulation:

- Environmental Trust Fund Law, 10 GCA §§ 45200-45203
- Article 1 of the Solid Waste Law, 10 GCA § 51101-51118.1
- Underground Storage Tank Law, 10 GCA §§ 76101-76120
- Adopted RCRA subtitle C regulation, 22 GAR §§ 30101-30113

Hawaii

General Information

Contact: Fenix Grange

Address: Hazard Evaluation and Emergency Response Office
Hawaii State Department of Health (DOH)
919 Ala Moana Boulevard, Room 206
Honolulu, HI 96814

Phone: 808 586 4249

Email: fenix.grange@doh.hawaii.gov

Contact: Ruby Edwards

Address: Brownfields Cleanup and Redevelopment Office of Planning
Department of Business Economic Development and Tourism
P.O. Box 2359
Honolulu, HI 96804-2359

Phone: 808 587 2817

Email: redwards@dbedt.hawaii.gov

Contact: Mary Alice Evans

Address: Office of Planning
Department of Business Economic Development and Tourism
P.O. Box 2359
Honolulu, HI 96804-2359

Phone: 808 587 2802

Email: maevans@dbedt.hawaii.gov

Web sites: <http://www.hawaii.gov/dbedt/gis/brownfields/>
<http://www.hawaii.gov/doh/eh/heer/vrp.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Properties that are contaminated to the extent that some type of response action is needed before, or in conjunction with, future development.

Program titles:

- Voluntary Response Program
- EPA Assessment Grant Programs
- EPA Cleanup Revolving Loan Fund programs
- EPA Job Training Grant Program

Liability relief provisions: The Hawaii Environmental Response Law states that a defendant may avoid liability where the real property on which the facility concerned is

located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and either: 1) at the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed on, in, or at the facility; 2) the defendant is a government entity which acquired the facility through involuntary transfer or acquisition; or 3) the defendant acquired the facility by inheritance or bequest.

The Hawaii Environmental Response Law also states that a prospective purchaser will qualify for an exemption from liability by: 1) entering into a voluntary response agreement with the department prior to becoming the owner or operator of the property that is the subject of the agreement; and 2) completing a voluntary response action and receiving a letter of completion from the DOH. Parties who purchase property from an owner who has completed a voluntary response action and received a letter of completion from the DOH will be exempt from future liability to the DOH as to the specific hazardous substances at issue in the voluntary response action.

Financial incentives (grants, loans, tax provisions, etc.): Potential sources of leveraged state funds for the State of Hawaii Brownfields Cleanup Revolving Loan Fund include the Hawaii Capital Loan Program, Hawaii Innovation Development Program, Community-Based Economic Development Loan Program, and the nonprofit Hawaii Community Loan Fund.

County-administered Community Development Block Grants (CDBG) may also be leveraged.

Coalition partners work through existing planning and redevelopment programs to identify additional funding sources for brownfields cleanup.

Legislative or program site eligibility requirements: All sites are eligible except for:

- A site listed or proposed to be listed on the National Priorities List (NPL).
- Those sites with respect to which an order or other enforcement actions has been issued or entered under Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and is still in effect.
- A site where the United States Coast Guard has issued a federal Letter of Interest.
- A site that is subject to corrective action under Subtitle C of the Resource Conservation and Recovery Act (RCRA) and chapter 342J of the state's hazardous waste law.
- A site that poses an imminent and substantial threat to human health, the environment, or natural resources as determined by the director.

The requesting party must provide the DOH with written consent from the property owner to conduct the voluntary response action including any restrictions of property rights.

Hawaii

Financial Elements

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

- Assessment Grant program (EPA funded up to \$400,000 over two years).
- Cleanup Revolving Loan Fund program (EPA funded up to \$2,000,000 over five years).

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

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Job Training Grant programs to provide training for residents of communities affected by brownfields to facilitate cleanup of brownfields sites and prepare trainees for future employment in the environmental field. (Each EPA grant is funded up to \$200,000 over two years.)

Program Elements

Technical Elements

Methods/standards/controls: Hawaii uses a compilation of Environmental Action Levels (EAL) prepared by an in-house scientist. The EALs cover all environmental hazards, not just human health. The VCP requires that cleanup for carcinogens be to cancer risk level of 10-6.

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

Use of long-term stewardship and institutional controls (IC): Institutional controls allowed, but not encouraged.

- **IC Tracking:** Hawaii does not have an IC tracking system.
- **IC Oversight:** Hawaii does not provide IC oversight.
- **IC Monitoring:** Hawaii does not monitor ICs.

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://hawaii.gov/health/environmental/hazard/records.html>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees for service: \$1,000 application fee per request, \$100 per hour oversight charge.

Funding source for administrative costs and staff: EPA, State of Hawaii Brownfields Cleanup Revolving Loan Fund.

Cleanup Activities

Sites currently in VCP: 25

Sites completed under VCP: 11

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Letter of completion, liability protection as previously described.

Public Participation

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

- Title 10. Public Safety and Internal Security, Chapter 128D. Environmental Response Law, PART II. Voluntary Response Program (§§128D-31 et seq.).

Public participation activities may be implemented by the DOH and required of responsible parties, in accordance with the state contingency plan, or any other state rule.

Within 10 days of receiving an application and processing fee, the department is required to:

- Post a sign at the site notifying the public of participation in the voluntary response program, the public's opportunity to comment, and how a copy of the application may be obtained.
- Send a brief summary of the application to the Office of Environmental Quality Control for publication in the office's bulletin along with instructions for obtaining a copy of the application and commenting procedures to the department.

The Hawaii Administrative Rules also provide for the availability of the administrative record of the selection of a remedial action for public inspection, and mandates (within 60 days after initiation of onsite removal activity) the availability the administrative record of removal actions for public inspection.

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

Statutory Authorities

- Title 10. Public Safety and Internal Security, Chapter 128D. Environmental Response Law, PART II. Voluntary Response Program (§§128D-31 et seq.).
- Voluntary Response Program Administrative Rules Chapter 11-451, the State Contingency Plan.

Nevada

General Information

Contact: Lisa Johnson

Address: Nevada Division of Environmental Protection (NDEP)
Bureau of Corrective Actions
901 S Stewart Street
Carson City, NV 89701

Phone: 775 687 9379

Fax: 775 687 8335

Web site: <http://ndep.nv.gov/bca/brownfld.htm>

Program Description (VCP, brownfields, or related)

Nevada's Brownfields Program aims to reach out for opportunities to create partnerships that improve Nevada's lives and the quality of their communities, and to be acknowledged as an agency that maximizes opportunities through the creative and efficient use of resources.

The Nevada State legislature passed the Voluntary Cleanup Program (VCP) in 1999. The VCP provides relief from liability to owners who undertake cleanups of contaminated properties under the oversight of the NDEP.

Brownfields definition: The term brownfields is used to describe abandoned, idled, or underused industrial or commercial properties taken out of productive use because of real or perceived risks from environmental contamination.

Program titles: Nevada Brownfields Program, VCP

Liability relief provisions: The VCP provides liability relief to: 1) current owners of contaminated sites; 2) prospective purchasers; 3) financial entities who hold an evidence of title to protect a security interest; or 4) a government entity which has received a parcel of real property through default.

The 2003 State Legislative Session resulted in the adoption of liability relief provisions for bona fide prospective purchasers and innocent landowners modeled on the federal Brownfields Law.

Financial incentives (grants, loans, tax provisions, etc.): The state received federal funds intended for use in encouraging brownfields redevelopment; the Nevada Brownfields Program manages these funds for use in a holistic approach to redevelopment where environmental concerns may present a barrier. Grants and low-interest loans are available for assessment and cleanup activities.

Legislative or program site eligibility requirements:

For VCP—Application and site characterization information.

For brownfields funding—Federal site eligibility criteria are used.

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.): State uses some of its Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Section 128 State Response Program funds to provide brownfields assessment and cleanup grants. Applications are accepted at any time, and project funding is made on a first-come, first-served basis. Nevada also operates a \$2,000,000 Revolving Loan Fund targeted for cleanups conducted by private land owners and developers.

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: Actions under the state VCP must be in compliance with the state's environmental professional certification program. Sampling at brownfields assessments and cleanups must be conducted consistent with a project-specific Quality Assurance Plan approved by EPA Region 9 and must meet Tier III data quality requirements with independent data verification.

Contaminants covered/excluded: Asbestos, lead paint, polychlorinated biphenyls (PCBs) OK; petroleum OK, only if site does not qualify for reimbursement under the state's Petroleum Fund.

Use of long-term stewardship and institutional controls (IC): Institutional controls are utilized in the NDEP No Further Action letters.

- **IC Tracking:** Under Development
- **IC Oversight:** Under Development
- **IC Monitoring:** 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://ndep.nv.gov/bca/brownfld.htm>

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: No

Costs to enter program or fees: For VCP, depends on type of property. Residential property fee is \$400. Commercial property: less than 1 acre (\$500), 1–25 acres (\$1,000), 26–100 acres (\$1,600), more than 100 acres (\$2,000).

Nevada

Funding source for administrative costs and staff:
CERCLA Section 128(a) State and Tribal Response Program Grant.

Cleanup Activities

Sites currently in VCP: 1 site in the program.

Sites completed under VCP: 1 site completed.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Liability relief provisions for bona fide prospective purchasers and innocent landowners modeled on the federal Brownfields Law.

Public Participation

Public participation requirements (notice, comment periods, etc.): Prior to the acceptance period of a remedial agreement between NDEP and the participant, a period of public comment and public meetings will be held to allow input from residents and businesses within the community where the cleanup is being undertaken. These activities will be coordinated by NDEP at no additional cost to the participant. Comments from the public will be incorporated as appropriate into the corrective action plan.

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

Statutory Authorities

- Nevada Administrative Code 459.973–459.9743.
- Nevada Revised Statutes, Title 40, Chapter 459.