

Broome County Brownfields Assessment Program: A Community Introduction

April 1, 2004

Answers to Frequently Asked Questions

What is a “brownfield”?

A brownfield (BF) is a piece of industrial or commercial real estate that is idle or underused, because the known or suspected presence of environmental contamination and the fear of cleanup liability is limiting the willingness or ability to sell, redevelop or expand the property.

The official definition under federal law is: “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.”

New York law (ECL § 27-1405.2) defines BF sites, subject to listed exclusions, as follows: A “brownfield” is “any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous waste, petroleum, pollutant, or contaminant.” Brownfield sites can pose environmental, legal, and financial burdens on a community and its taxpayers. Sites that are left vacant can diminish the property value of surrounding sites and threaten the economic viability of adjoining properties.”

What are the benefits of cleaning up and redeveloping a brownfield site? (from DEC website)

The cleanup and redevelopment of brownfield sites can bring viable businesses into a community. This in turn increases tax revenues to and employment opportunities for a community. Existing streets, water lines, sewerage systems and other infrastructure systems can be used and avoid the need for public and private investments in this area. Also, the demand on developing or expanding business on uncontaminated land is reduced.

What are the barriers to brownfield redevelopment? (from DEC website)

The impediments to potentially contaminated site redevelopment in New York are complex. The existing liability system may hold all owners of contaminated property liable for cleanup costs, regardless of when or how the property was acquired. This contributes to the reluctance of parties to purchase even minimally contaminated sites. The potential cost of cleanup, which may not be known at the time of purchase, is also a deterrent to parties wishing to build, relocate, or expand businesses. Lenders have been reluctant to extend credit for the purchase and cleanup of contaminated sites, fearing future liability issues. Consequently, financing the purchase of a brownfield site may be more difficult than financing the purchase of an uncontaminated or virgin greenfield site.

What are Phase I and II environmental site assessments?

Phase I assessments review a site’s operational history and proximity to potential contamination sources to determine whether “recognized environmental conditions” are likely to be present. If they are, a Phase II assessment may be done, which involves sampling and testing to determine whether soil and/or ground water contamination are actually present.

What is the scope of the U.S. EPA Brownfields Assessment grant awarded to Broome County?

Funding covers Phase I and II environmental site assessments and may include some remedial action and redevelopment planning.

Will the grant address all sites in the Broome County site inventory?

No. The county anticipates completing two to four Phase I site assessments and one to two Phase II site assessments.

Why waste time doing assessments? Why not just use the EPA money to clean up sites?

Not all underused commercial or industrial sites (the definition of a brownfield) are contaminated; the nature and extent of any contamination can differ widely. Assessment studies to identify the degree of contamination are a critical first step in pinpointing a problem, or the absence of a problem. Even where contamination is found, it is necessary to know the nature and extent of the problem to develop a cleanup plan. This then becomes a cost of doing business, like any other cost, and need not be an impediment to redevelopment and beneficial reuse of the brownfield site. The EPA grant is for \$200,000 over a 2-year period, with flexibility for time extension. The money can only be used for assessments under the terms of the grant, but even if it could be used for cleanups, it would not go very far if used for that purpose.

How are sites chosen for assessment under the EPA grant?

Sites must meet the EPA's eligibility requirements to be considered for site assessments under this grant. Sites chosen must be County-owned or provide a substantial public benefit if cleaned up and redeveloped. Sites must not be under any federal or state enforcement or corrective action order. Sites with exclusively petroleum-based contamination are not eligible, nor are sites where asbestos or lead is the primary contamination threat. (Future EPA grants will also encompass petroleum-only sites.) Sites that have been cleaned up are not eligible.

The County is focusing on sites the cleanup and redevelopment of which will further the recommendations of The BC Plan (Plan for Sustainable Economic Development prepared by AngelouEconomics, 2002). In particular, sites in key "gateways" along entry points to Greater Binghamton, and sites with the potential to be part of an interlinked "business park" system throughout the County. The County is also looking at tax-delinquent sites that they have been reluctant to foreclose on because of unknown environmental risks.

In addition, the Broome County Environmental Management Council, a citizen's environmental advisory board to County government, established a methodology to aid the County with site selection. Sites can be compared for their potential inclusion under this grant (and for later funding opportunities) through evaluation of considerations including environmental and health, land-use, legal and financial, and socio-economic factors.

Does it make a difference whether the brownfield site is owned by a local government or by a private party?

The issues are largely the same, but the process is different.

Privately-owned BF sites in New York must be cleaned up in most cases without the benefit of state funding, and with a liability release that protects only against future enforcement action by the State. The program for privately-owned BF sites is known as the "Brownfield Cleanup Program" (BCP). Most cleanups of such sites are done by prospective purchasers or redevelopers who are "volunteers" in the sense that they had nothing to do with any contamination present on the site. They get involved and are

willing to perform site cleanups only to the extent they are able to realize a financial return based on productively redeveloping the site. In the new law adopted last year by NYS, there are two distinct classes of applicants: “volunteers,” including innocent current owners who became involved with the site *after* any contamination occurred; and “participants,” who are legally responsible parties, including the site owner at the time of the disposal event(s) that resulted in contamination. Note that responsible parties associated with certain high-hazard sites, or who are subject to cleanup orders or enforcement actions under other DEC or U.S. EPA programs, are ineligible to participate in the BCP because such sites are excluded from the definition of a “brownfield.”

Municipally-owned BF sites in New York are covered by the 1996 Clean Water/Clean Air Bond Act under the Environmental Restoration Program, as amended by the new brownfields law. A municipality is now eligible to recoup up to 90 % of eligible investigation and on-site cleanup costs, and 100 % of off-site cleanup costs. When cleanups are completed to DEC’s satisfaction, the locality receives a liability release and indemnification that protects it against both future legal action by the state and claims by third parties. Municipalities that acquire ownership of contaminated sites because of tax foreclosures, or through other “involuntary” means, are also protected federal and state municipal liability exemptions.

What are federal “Superfund” sites? (from EPA website)

A Superfund site is any land in the United States that has been contaminated by hazardous waste and identified by the Environmental Protection Agency (EPA) as a candidate for cleanup because it poses a risk to human health and/or the environment.

All sites where releases or potential releases have been reported are listed in the Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS). It is the national database and management system EPA uses to track activities at hazardous waste sites considered for cleanup under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund.

Under federal law, the most hazardous contaminated sites identified by federal Superfund are listed on the National Priorities List (NPL). They are cleaned up either by the “responsible parties” (RPs) that caused or contributed to the contamination, or by the EPA, using a fund (the federal “Superfund”) created through a mix of industry fees and taxpayer funds.

What are State Superfund sites?

Under state law, contaminated sites that have the potential to adversely impact public health or the environment may be listed on the state Registry of Inactive Hazardous Waste Sites (“State Superfund”). Listed sites are classified based on the degree of risk they are believed to pose to health and the environment.

Under the State’s Superfund program, how do you determine if a site poses a risk to public health and the environment?

Suspected contaminated sites are investigated by means of a Preliminary Site Assessment or PSA to determine if hazardous waste is present and a significant threat to public health or the environment exists. The PSA is a three-step process that combines elements of Phase I and Phase II investigations: records searches, sampling/surveys, and groundwater testing and monitoring. (from DEC website)

Sites deemed to require environmental remediation (Class 1 and 2 sites) are then prioritized based on the degree of impact to human health and the environment. A site is assigned a priority of 1, 2, or 3, with sites ranked 1 receiving highest priority for cleanup. (Although numerous sites have been given a “Class 2” ranking, DEC has so far never rated a site “Class 1”.)

If the presence of hazardous waste and the degree of health or environmental threat can be documented, a site can be classified as follows: Class 1 (poses imminent danger), Class 2 (poses significant threat), or Class 3 (poses no significant threat). If hazardous waste is not found, a site is delisted from the state Superfund.

Following remediation, a site usually is reclassified from Class 2, which called for remedial action to protect public health or the environment, to Class 4 (requiring continued operation, maintenance and monitoring), or Class 5 (requiring no operation, maintenance and monitoring). If all hazardous wastes have been removed, the site may be delisted from the state Superfund.

Can a site be listed on both the federal Superfund and the state Superfund lists?

Yes

Can sites that have undergone cleanups or recent delisting from a Superfund registry be treated as brownfields?

Sites that have gone through the federal or state Superfund process and have been fully remediated and/or delisted may be treated as brownfield sites—e.g., for purposes of qualifying for brownfields-related financial incentives.

State Superfund sites (Inactive Hazardous Waste Sites) that have been determined to pose no significant threat (i.e., Class 3 and Class 5 sites) may also be treated as brownfield sites.

Federal Superfund (NPL) sites do not qualify as brownfield sites under either state or federal law. Nor do contaminated sites that are the subject of active federal or state enforcement action, or sites that are in the process of corrective action or closure under the federal Resource Conservation & Recovery Act (RCRA). [RCRA applies to active hazardous waste treatment, storage, and disposal facilities. Federal Superfund applies to inactive or abandoned hazardous waste sites.]

State Class 2 registry sites are only eligible for Voluntary/Brownfields Cleanup Program coverage where the cleanup volunteer is not a responsible party and, even then, only until July 1, 2005. Class 1 sites would not be eligible under any circumstances.

Many other sites that have never been part of the federal or state Superfund process meet the “brownfields” definition and may be eligible for available financial incentives.

Is the IBM-Endicott spill an example of a brownfield site?

No. The IBM spill has been and continues to be handled under state RCRA and Superfund laws. It is a cleanup by the responsible party under DEC enforcement oversight. (Its Registry listing was recently upgraded by DEC from “Class 4” to “Class 2.”) It also is not a voluntary cleanup of a low- or moderate-hazard site by an innocent third party (prospective purchaser or would-be redeveloper) that did not cause or contribute to the contamination, which is the typical brownfields scenario.