

EPA Region 3

Voluntary Cleanup Program (VCP) and Brownfields Development Program (BDP)

Delaware Department of Natural Resources and Environmental Control (DNREC)
Division of Air and Waste Management
Site Investigation and Restoration Branch
391 Lukens Drive
New Castle, DE 19720-4801
<http://www.awm.delaware.gov>

Program Overview

- Brownfields Program
- Cost to Enter the Program: Oversight fees
- MOA with EPA Region 3
- Liability Relief Provisions
- Tax Incentives
- Brownfields Advisory Committee (BAC)

Contact(s): James Poling
james.poling@state.de.us
302-395-2600

Program

In 1990, Delaware enacted its Hazardous Substance Cleanup Act (HSCA) to deal with sites potentially contaminated with hazardous substance releases in the state that will not be addressed under the federal Superfund program. Three major programs are administered under the HSCA. They are the Voluntary Cleanup Program (VCP), the Brownfields Development Program (BDP), and the HSCA Enforcement Program.

http://www.awm.delaware.gov/SIRB/Pages/Voluntary_Cleanup_Program.aspx

<http://www.awm.delaware.gov/SIRB/Pages/Brownfields.aspx>

http://www.awm.delaware.gov/SIRB/Pages/SIRB_HSCA_program.aspx

- **Funding Source(s) for the Program:** The majority of funding for administrative and staff costs come from the federal grants (35%) and the Hazardous Substances Cleanup Act Fund (HSCAF) (49%). Oversight cost reimbursements (10%) and state general fund (6%) comprise the balance.
- **Cost to enter program or fees for service:** There is no cost to enter into the BDP and the VCP. There are oversight costs for investigative or remedial activities for DNREC staff time. To fund the state's VCP oversight, participants are required to remit an initial deposit up to a maximum of \$5,000. Additional deposits will be requested based on the oversight cost estimate as the site cleanup progresses. Any deposit funds not expended by the state are returned to the participant.
- **Sites Enrolled in VCP:** As of November 2010, there are 170 sites in the VCP and 125 sites in the BDP.
- **Sites Completed under VCP:** As of November 2010, 113 sites were completed under the VCP and the BDP.

Financial Elements

ASSESSMENT AND CLEANUP FUNDING

A variety of grants, loans, and technical assistance are available to assist with brownfields reuse projects.

<http://www.awm.delaware.gov/SIRB/Pages/SIRBLoansGrants.aspx>

INCENTIVES

- Tax credits of \$650/year per new job created related to cleanup and redevelopment (\$900/year in poverty areas).
- Participants receive tax credits based on the size of investment and number of new employees brought to the site. Grants of up to \$25,000 are available for site investigation and cleanup. In addition, low interest loans up to \$250,000 are also available for brownfield sites. About 700 sites have been identified for inclusion in the program, with cleanup underway at 96.

LIABILITY RELIEF PROVISIONS

The BDP offers complete liability protection for existing contamination to qualified brownfield developers provided that they enter into a Brownfields Development Agreement (BDA), and agree to clean up the contamination as specified in the Final Plan of Remedial Action approved by the Department prior to development of the site. Once the remedy is in place, the developer may request and receive a Certificate of Completion of Remedy (COCR) which provides liability protection as long as the requirements of the COCR are followed. The BDP offers liability protection for geographic or environmental media specific operable units identified within the site.

BROWNFIELDS REDEVELOPMENT AUTHORITIES (OR SIMILAR)

The Brownfields Advisory Committee (BAC) represents the public and community interest in Delaware's Brownfield Program by providing advice and assistance to DNREC's Division of Air & Waste Management. The BAC is comprised of consultants, developers, local business men and women, and representatives from the Division of Air & Waste Management.
<http://www.awm.delaware.gov/BAC/Pages/BACPortal.aspx>

Program Elements

METHODS/STANDARDS/CONTROLS

Risk-based cleanup standards of 1.0x10⁻⁵ for carcinogenic risk and a Hazard Index of 1.0 for non-carcinogenic risks are used. DNREC provides guidance on the investigation and remediation of sites.

CONTAMINANTS COVERED

Hazardous substances as defined in HSCA are covered. In addition, petroleum contamination is covered on brownfield sites; asbestos and lead paint contamination are covered if found in the soil.

INSTITUTIONAL CONTROLS (IC)

Institutional controls/land-use controls are allowed, including Uniform Environmental Covenants, operation and maintenance plans, and Ground Water Management Zones (GMZs). GMZs prevent the use of ground water and encourage development by allowing low levels of contamination to remain in the ground water while preventing exposure.

- **IC Tracking:** DNREC uses a database to track sites with ICs. This database is in the process of being improved.
- **IC Oversight:** DNREC performs inspections on a regular basis of the sites that have O&M requirements.
- **IC Monitoring:** DNREC reviews O&M reports for sites with O&M controls.

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.awm.delaware.gov/SIRB/Documents/Certified%20BF%20List_2010_November.pdf

Program Highlights

The Delaware's Department of Natural Resources and Environmental Control (DNREC) used Section 128(a) Response Program funding to conduct a Phase I Environmental Site Assessment (ESA) at the Wiley Cork property in Wilmington. The ESA indicated unacceptable levels of arsenic and PAHs in the soil as well as high levels of iron and manganese. The human health risk assessment indicated that the cumulative risk from the presence of arsenic and PAHs was above DNREC's risk management level. The plan for redevelopment includes the demolition and renovation of some of the structures on the property and the construction of a parking lot. The property will be redeveloped by the New Destiny Fellowship to build a community center, which will include a bank, food service, and a social needs assistance center.

Other Land Programs

Underground Storage Tanks (USTs) Program

<http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/ust>

Superfund Program

<http://www.nav.dnrec.delaware.gov/DEN3>

District of Columbia

Voluntary Cleanup Program (VCP) District of Columbia Department of the Environment

1200 First Street NE, 5th Floor
Washington, DC 20002
<http://www.ddoe.dc.gov>

Contact(s): James Sweeney
james.sweeney@dc.gov
202-535-2289

Program Overview

- Brownfields Program
- Cost to Enter the Program: \$10,000
- Liability Relief Provisions
- Possible Tax Incentives

Program

On June 15, 2001, the *Brownfield Revitalization Amendment Act of 2000* became effective. The Act established the Voluntary Cleanup Program (VCP) and a brownfields program, and provides for long-term stewardship of sites that have been cleaned up under these programs. The Act also authorized tax and other incentives for development of contaminated property, and amended provisions of the *Tax Increment Financing Authorization Act of 1998*, *National Capital Revitalization Corporation Act of 1998*, and the *District of Columbia Community Development Act of 1975* to incorporate and support the cleanup and redevelopment of contaminated property. As of February 2011, the tax incentive portion of the act had not yet been implemented.

http://ddoe.dc.gov/ddoe/cwp/view,a,1209,q,495015,ddoeNav_GID,1486,ddoeNav,%7C31375%7C31377%7C.asp

- **Funding Source(s) for the Program:** Appropriated funds and federal brownfields grants
- **Cost to enter program or fees for service:** The application fee to enter the District's VCP is \$10,000.
- **Sites Enrolled in VCP:** As of February 2011, 20 sites are enrolled in the program.
- **Sites Completed under VCP:** As of February 2011, eight sites were completed since the program's inception.

Financial Elements

ASSESSMENT AND CLEANUP FUNDING

Participants may receive grants (subject to the availability of funds in the Clean Land Fund), loans, and tax credits to offset real property taxes and business franchise taxes.

INCENTIVES

Participants may receive tax credits to offset real property taxes and business franchise taxes.

LIABILITY RELIEF PROVISIONS

The Brownfield Revitalization Amendment Act of 2000 authorizes a civil penalty of up to \$50,000 and strict, joint, and several liability for the unlawful release of any hazardous substance. It does not authorize punitive damages or retroactive liability.

Program Elements

METHODS/STANDARDS/CONTROLS

The District is developing hazardous substance cleanup standards. The District Department of the Environment (DDOE) must publish cleanup standards for contaminated properties under the VCP that include ground water, surface water, and soil standards. Until these cleanup standards are published, the VCP will use the District's Water Pollution Control Act ground water standards and federal Regional Screening Levels (RSL). For petroleum related contaminants DDOE uses the District's LUST program standards.

INSTITUTIONAL CONTROLS (IC)

The Brownfield Revitalization Amendment Act of 2000 authorizes DDOE to create, maintain, and disseminate records, informational systems, and educational materials that are necessary to protect public health and the environment at contaminated properties cleaned up under the Act. IC-related activities under DDOE may include:

- **IC Tracking:** The Brownfield Revitalization Amendment Act of 2000 authorizes DDOE to create an institutional control tracking process.
- **IC Oversight:** The Brownfield Revitalization Amendment Act of 2000 authorizes DDOE to create an institutional control oversight process.
- **IC Monitoring:** The Brownfield Revitalization Amendment Act of 2000 authorizes DDOE to create an institutional control monitoring process.

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://ddoe.dc.gov/ddoe/cwp/view.a,1209,q,495666.asp>

Program Highlights

How often do over forty thousand people and the President of the United States attend the grand opening of a completed voluntary cleanup project? It happened at the opening day ceremonies for the 2008 Washington Nationals baseball season on March 30, 2008. Nationals Park, the nation's first Leadership in Energy & Environmental Design (LEED) Silver Certified professional sports stadium, is the largest voluntary cleanup project in the District of Columbia. With oversight from the District Department of the Environment (DDOE), a Section 128(a) Response Program grantee, over 350,000 cubic yards of contaminated soil were removed from the former industrial area. Ground water filtration and treatment will continue through a state-of-the-art ground water collection system operating beneath the stadium.



March 30, 2008 - Opening Day Ceremonies at Nationals Park

Other Land Programs

Underground Storage Tanks (USTs) and Leaking Underground Storage Tanks (LUST) Program

http://ddoe.dc.gov/ddoe/cwp/view.a,1209,q,494854,ddoeNav_GID,1486,ddoeNav,%7C31375%7C31377%7C.asp

Brownfields Redevelopment Initiative Voluntary Cleanup Program (VCP)

Maryland Department of the Environment (MDE)
1800 Washington Boulevard, Suite 625
Baltimore, MD 21230-1719
<http://www.mde.state.md.us/Pages/Home.aspx>

Contact(s): James Carroll
JCarroll@mde.state.md.us
410-537-3459

Program Overview

- Brownfields Program
- Cost to Enter the Program: \$6,000
- MOA with EPA Region 3 (February 1997)
- Liability Relief Provisions
- Tax incentives

Program

The Brownfields Revitalization Incentive Program was established in February 1997 as part of Maryland's Smart Growth policy. This program is intended to promote economic development, especially in distressed urban areas, by identifying and redeploying underutilized properties. Reusing real property makes efficient use of existing infrastructure while providing an alternative to developing open space that contributes to urban sprawl.

http://www.mde.state.md.us/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp_brownfields/default.aspx

Established by the state legislature in 1997, Maryland's Voluntary Cleanup Program (VCP) is administered by the Maryland Department of the Environment (MDE) Land Management Administration's Land Restoration Program (LMA's LRP) to provide state oversight for voluntary cleanups of properties contaminated with hazardous substances.

http://www.mde.state.md.us/programs/Land/MarylandBrownfieldVCP/MDVCPInformation/Pages/programs/landprograms/errp_brownfields/vcp_info/index.aspx

- **Funding Source(s) for the Program:** State general fund (10%), the state cleanup fund (10%), and federal grants (80%)
- **Cost to enter program or fees for service:** An initial fee of \$6,000 is collected from each participant, although the fee is ultimately based on the actual cost of state oversight.
- **Sites Enrolled in VCP:** As of November 2010, 432 sites have been accepted into the VCP.
- **Sites Completed under VCP:** As of November 2010, 205 sites totaling approximately 3,028 acres have been completed.

Financial Elements

ASSESSMENT AND CLEANUP FUNDING

A variety of grants, loans and technical assistance are available to assist with brownfields reuse projects.

http://www.mde.state.md.us/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp_brownfields/bf_info/bffunding.aspx

INCENTIVES

Tax credits may be extended to 10 years in designated Enterprise Zones (EZs); incentive available in jurisdictions which agree to contribute 30% of the increase to the state's Brownfields Revitalization Incentive Fund.

LIABILITY RELIEF PROVISIONS

- VCP offers Certification of Completion (COC) or No Further Requirements Determination; sites contaminated after October 1, 1997, listed on the National Priorities List (NPL), or under active enforcement are not eligible.
- Maryland has strict, joint, and several liability designations, but provides for apportionment where there is a reasonable basis for determining a party's contribution. Under state law, the state program may impose liability for cleanup of substances disposed of before the date program was enacted. State has civil penalty authority up to \$25,000 per violation. Punitive damages are not available.
- Through the VCP, certain purchasers who did not cause or contribute to contamination may limit their retroactive liability upon purchase of the property. Amendments effective October 1, 2004 clarify that a person who is not a "responsible person" because he meets one of the statutory exclusions is entitled to "inculpable person" status. The new law also ensures liability protection.

Program Elements

METHODS/STANDARDS/CONTROLS

VCP provides a menu of cleanup options: uniform risk-based standards; site-specific risk assessment; federal/state soil standards or water quality standards; federal/state maximum contaminant levels (MCLs); and other federal/state standards. Site-specific risk assessments follow a Risk-Based Corrective Action (RBCA)-like process.

http://www.mde.state.md.us/programs/Land/MarylandBrownfieldVCP/Pages/programs/landprograms/errp_brownfields/forms/index.aspx

CONTAMINANTS COVERED

Polychlorinated biphenyls (PCBs) and oil (as of October 1, 2004) are OK; other contaminants accepted conditionally—petroleum (not exclusively, but along with other contaminants); and paint and asbestos (as long as they comply with all other applicable laws and regulations).

INSTITUTIONAL CONTROLS (IC)

Institutional controls are allowed and are included in the No Further Requirements Determination (NFRD) or COC. The state notes that institutional controls “probably have resulted in more cleanups and more properties reused” and “also have probably lowered the cost of cleanups.”

- **IC Tracking:** Institutional Controls/Land Use Controls (IC/LUCs) are tracked by the Maryland Department of the Environment’s Land Restoration Program. These documents are also recorded in the land records and sent to Miss Utility. Both programs are currently engaged in updating the GIS-based website to ensure that sites with IC/LUCs are readily available to the general public.
- **IC Oversight:** When the Voluntary Cleanup Program (VCP) issues NFRDs or COCs with LUCs, the enforcement of the IC/LUC falls to the VCP through follow-up inspections.
- **IC Monitoring:** Other IC/LUCs associated with No Further Action (NFA) letters issued by the Controlled Hazardous Substance Enforcement Division are enforced by the Department and recorded with the land records.

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.mde.state.md.us/programs/Land/MarylandBrownfieldVCP/mapping/Pages/programs/landprograms/errp_brownfields/mapping/index.aspx

Program Highlights

The MDE Land Restoration Program (LRP) used Section 128(a) Response Program funding to make advances to its Geographic Information System (GIS) website. The previous website was limited in its functionality and was not adequately serving internal and external end-users’ needs. The initial phase of upgrades to the website included streamlining the data structure to allow for a more user-friendly public website and data entry portal for LRP staff. The software employed in the upgrade is consistent with Governor O’Malley’s iMap initiative to reduce reprogramming costs. This approach allows for the cohesive development of a public mapping site that can integrate important programmatic elements. Once the baseline mapping site is functional, LRP plans to integrate the public mapping site data directly into Maryland iMap and develop the associated Web-based mapping system such that real-time data can be available to the public through Maryland iMap.

Other Land Programs

Oil Pollution and Tank Management Programs

http://www.mde.state.md.us/programs/Land/OilControl/Pages/programs/landprograms/oil_control/index.aspx

Hazardous Waste Program

http://www.mde.state.md.us/programs/Land/HazardousWaste/HazardousWasteHome/Pages/programs/landprograms/hazardous_waste/home/index.aspx

Land Recycling and Cleanup Program

Pennsylvania Department of Environmental Protection (DEP)
P.O. Box 8471
Harrisburg, PA 17105-8471
<http://www.depweb.state.pa.us> (keyword "Brownfields")

Contact(s): Troy Conrad
tconrad@state.pa.us
717-783-7816

Program Overview

- Brownfields Program
- Cost to Enter the Program: Fees for services
- MOA with EPA Region 3 (April 2004)
- Liability Relief Provisions
- Brownfields Reimbursement Program
- Brownfields Development Area (BDA) Initiative

Program

Pennsylvania's Land Recycling Program—its Voluntary Cleanup Program—familiarily known as Act 2, encourages the voluntary cleanup and reuse of contaminated commercial and industrial sites. The Land Recycling Program (LRP) is built on four cornerstones that break down redevelopment obstacles: uniform cleanup standards; liability relief; standardized reviews and time limits; and financial assistance.

http://www.portal.state.pa.us/portal/server.pt/community/brownfield_redevelopment/10306

- **Funding Source(s) for the Program:** State cleanup fund provides 100% of administrative costs.
- **Cost to enter program or fees for service:** \$250 for statewide health final report, background final report and site-specific reports except final; \$500 for site-specific final report; no fee for Special Industrial Areas (SIA) reports; not required for regulated tank cleanups; and if combined reports are submitted, multiple fees apply.
- **Sites Enrolled in VCP:** As of December 31, 2010, 1,227 sites are currently enrolled in the program.
- **Sites Completed under VCP:** As of December 31, 2010, 3,636 sites have been completed under the program.

Financial Elements

ASSESSMENT AND CLEANUP FUNDING

A variety of grants, loans and technical assistance are available to assist with brownfields reuse projects.

<http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552081&mode=2>

INCENTIVES

- Job Creation Tax Credit Program created a tax credit of \$1,000 per new job for firms that increase employment by 25 jobs or 20% within three years from start date (with program).
- Brownfield Tax Incentive
<http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552085&mode=2>

LIABILITY RELIEF PROVISIONS

- Program offers relief from liability for approved cleanups and potentially responsible parties (PRP) may participate. The program identifies risk-based standards for cleanup, simplifies the approval process, and limits future liability when standards are attained.
- Pennsylvania signed a Memorandum of Agreement (MOA) with EPA in April 2004 that clarifies that sites remediated under the state LRP may also satisfy requirements under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Resource Conservation Recovery Act (RCRA), or Toxic Substances Control Act (TSCA). This was the first One Cleanup Program MOA negotiated with EPA in the nation.

BROWNFIELDS ACTION TEAM

The Brownfields Action Team (BAT) encompasses the other facets involved with a redevelopment project other than the remediation. BAT is responsible for expediting the remediation, reclamation, reuse, and redevelopment of brownfields and abandoned mine lands for locally identified high-priority redevelopment and reuse projects. BAT may be able to shorten the permitting process by involving all DEP programs for a specific redevelopment effort as well as facilitating efforts with other state agencies. This can result in a significant savings of time and money for a project.

<http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552061&mode=2>

Program Elements

METHODS/STANDARDS/CONTROLS

The Cleanup Standards Scientific Advisory Board assists DEP in developing cleanup standards and identifying appropriate statistical and scientific procedures.

http://www.portal.state.pa.us/portal/server.pt/community/guidance___technical_tools/10316

CONTAMINANTS COVERED

Act 2 establishes environmental remediation standards to provide a uniform framework for cleanups. The standards established under Act 2 are used for most voluntary and mandatory cleanups conducted in Pennsylvania. The three types of cleanups are background, statewide health and site-specific.

The remediator selects which cleanup standard is best suited for their remediation project. The statewide health standards are provided at the following link.

http://www.portal.state.pa.us/portal/server.pt/community/land_recycling_program/10307/statewide_health_standards/552039

INSTITUTIONAL CONTROLS (IC)

In late 2007, Act 68, the Uniform Environmental Covenants Act (UECA), was signed into law. Act 68 provides a standardized process for creating, documenting and assuring the enforceability of activity and use limitations on contaminated sites. Under UECA, an environmental covenant will be required whenever an engineering or institutional control is used to demonstrate the attainment of an Act 2 remediation standard for any cleanup conducted under an applicable Pennsylvania environmental law.

http://www.portal.state.pa.us/portal/server.pt/community/land_recycling_program/10307/uniform_environmental_covenants_act/552045

- **IC Tracking:** Environmental covenants created under the law will be recorded in county land records and in a state registry to be created by DEP.
- **IC Oversight and Monitoring:** The environmental covenants will be binding and enforceable on successive owners over time.

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.pasitesearch.com>

Program Highlights

With support from EPA's Section 128(a) Response Program funding, Pennsylvania held its 6th Annual Brownfields Conference in Allentown on September 28 and 29, 2010. The conference attracted local governments, community and economic development professionals, consulting firms, and state and federal environmental officials. The conference agenda reflected current areas of interest such as sustainable redevelopment, renewable energy on contaminated lands, and financial transaction opportunities in challenging economic times. The conference also featured a tour of the former Bethlehem Steel facility, generally known as the largest brownfields redevelopment effort in the country. Approximately 200 people attended the conference.

Other Land Programs

Storage Tank Cleanup Program

http://www.portal.state.pa.us/portal/server.pt/community/cleanup_program/14100

Hazardous Sites Cleanup Program

<http://www.portal.state.pa.us/portal/server.pt?open=514&objID=589565&mode=2>

RCRA Corrective Action Program

http://www.portal.state.pa.us/portal/server.pt/community/rcra_corrective_action_program/14075

Virginia Department of Environmental Quality (DEQ) Division of Land Protection and Revitalization

Brownfields and Land Renewal Program
Voluntary Remediation Program (VRP)
629 East Main Street, P.O. Box 1105
Richmond, VA 23218
<http://www.deq.virginia.gov/waste/homepage.html>

Contact(s): Office of Remediation Programs
Durwood Willis
durwood.willis@deq.virginia.gov
804-698-4192

VRP
Kevin Greene
kevin.greene@deq.virginia.gov
804-698-4236

Brownfields
J. Meade R. Anderson, CPG
j.meade.anderson@deq.virginia.gov
804-698-4179

Program Overview

- Brownfields Program
- Cost to Enter the VRP: \$5,000 or 1% of the cost of remediation
- MOA with EPA Region 3 (January 2002)
- Liability Relief Provisions
- Tax Incentives

Program

Since 1997, Virginia has operated a program for voluntary cleanups of contaminated sites. Regulations provide a framework for selecting cleanup standards under the Voluntary Remediation Program (VRP). Eligibility is limited to sites where remediation is not clearly mandated pursuant to a federal or state regulatory program.
<http://www.deq.virginia.gov/vrp>

On March 12, 2004, Virginia issued an Interim Brownfields Manual. DEQ's goal in implementing the Brownfields program is to make its innovative and business oriented provisions substantive, user friendly, and timely.
<http://www.deq.virginia.gov/brownfieldweb>

- **Funding Source(s) for the Program:** State General Fund and federal grants
- **Cost to enter program or fees for service:** \$5,000 or 1% of the cost of remediation, whichever is less.
- **Sites Enrolled in Voluntary Cleanup Program:** As of January 1, 2011, 353 sites have enrolled in the VRP.
- **Sites Completed under Voluntary Cleanup Program:** As of January 1, 2011, 217 sites have received No Further Action (NFA) Certificates.

Financial Elements

ASSESSMENT AND CLEANUP FUNDING

The Voluntary Resources Authority (VRA) is available to provide low interest loans for funding brownfields remediation projects for localities and governmental authorities across the commonwealth, through the Virginia Pooled Financing Program (VPFP) and the Virginia Water Facilities Revolving Fund (VWFRF).

INCENTIVES

Defines environmental restoration sites holding Certification of Satisfactory Completion of Remediation (Certificate) as a separate class of property and allows local governments to adopt an ordinance partially or fully exempting that class from taxation.
<http://www.deq.virginia.gov/vrp/tax.html>

LIABILITY RELIEF PROVISIONS

Virginia's brownfields law protects bona fide prospective purchasers (BFPP) and innocent landowners from having to conduct containment or cleanup under Virginia's air, water, and waste laws at a brownfield site if they meet the statutory definitions and the additional requirements in the statute.
http://www.deq.virginia.gov/export/sites/default/brownfieldweb/documents/BROWNFIELDS_MANUAL-BC-12-29-2009.pdf

Program Elements

METHODS/STANDARDS/CONTROLS

The Program uses a Risk-Based Corrective Action (RBCA) process that utilizes institutional controls and engineering controls recorded with the deed for the property. Applicants have a choice of remediation standards: Tier I (background), Tier II (look-up values adopted/modified from EPA standards), or Tier III (risk-based, including institutional controls). Tier III may also include a site-specific risk assessment based on methodology derived from the Risk Assessment Guidance for Superfund.

<http://www.deq.virginia.gov/vrprisk>

CONTAMINANTS COVERED

Petroleum and polychlorinated biphenyls (PCBs) can be addressed by VRP, if not regulated under another program.

<http://www.deq.virginia.gov/vrp/guidance.html>

INSTITUTIONAL CONTROLS (IC)

Institutional controls are allowed; however, Virginia does not have a long-term stewardship program for its state cleanup program or for its Voluntary Cleanup Program. UECA laws went into effect in July 2010; regulations 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.deq.virginia.gov/brownfieldweb/brnsites.html>

<http://www.deq.state.va.us/vrp/public.html>

SITE SPECIFIC ASSESSMENT (SSA)

The Brownfields Program recently worked with six localities to complete Phase I and Phase II Environmental Site Assessments or further characterization of existing properties in order to facilitate property sales, purchases and/or redevelopments. The Program is now working with nine additional localities on future subgrants.

ACCELERATED DRY CLEANER PROCESS (ADCRP)

The purpose of the ADCRP is to streamline the site characterization and risk analysis of VRP dry cleaning sites, as well as to accelerate the implementation of appropriate remedial systems that adequately address environmental impacts in commercial buildings resulting from dry cleaning operations. The program is most applicable to sites without offsite contamination, and relies on self-certification of characterization and remediation by the participants.

Program Highlights

The City of Lynchburg is continuing its work at the former Allen Morrison facility. The property has a long history of contamination and was abandoned in 1998. The city enrolled the property in the Virginia Brownfields and Voluntary Remediation Programs, and the Virginia Department of Environmental Quality (DEQ) used Section 128(a) Response Program funding to conduct additional assessment activities. Demolition and deconstruction activities including asbestos abatement are now being conducted at the property. The city plans to transform the property into a recreational facility and will continue to provide opportunities for public input into the development of the master revitalization plan. The city is filming the project work and community meetings for a documentary on the project. The documentary, titled Brownfields to Green Fields: The Allen Morrison Project is available on the city's website at: <http://www.lynchburgva.gov/Index.aspx?page=4590>. The city also continues to document their "Fields of Opportunity" work on their website.

The City of Roanoke continues to redevelop the area known as South Jefferson, which just a few years ago consisted of underutilized, often blighted industrial properties and scrap yards along the Roanoke River. Initial work focused on redeveloping individual properties, and as momentum grew, a synergy was created. Virginia's VRP and Brownfields Programs have been heavily involved in this redevelopment—working with VRP project management; and utilizing SSA sub grants, BFPP liability letters, and EPA Brownfields grants in order to facilitate the revitalization of this area.

<http://www.epa.gov/reg3hwmd/bf-lr/newsletter/2010-Winter/03-scrapstoscrubs.html>

Other Land Programs

VA DEQ Division of Land Protection & Revitalization

<http://www.deq.state.va.us/waste/homepage.html>

Voluntary Remediation Program (VRP)

West Virginia Department of Environmental Protection (DEP)
Division of Land Restoration
601 57th Street, SE
Charleston, WV 25304-2345
<http://www.dep.wv.gov/dlr/Pages/default.aspx>

Contact(s): Ken Ellison
Ken.W.Ellison@wv.gov
304-926-0455

Program Overview

- Cost to Enter the Program: Fee is calculated according to the size of property
- Liability Relief Provisions
- Licensed Remediation Specialists (LRS) Program
- Brownfields Assistance Centers

Program

The Voluntary Remediation and Redevelopment Act (VRRRA) encourages voluntary remediation and redevelopment through an administrative program set out in the West Virginia Code of State Regulations, Title 60, Series 3 entitled the Voluntary Remediation and Redevelopment Rule (the Rule), which became effective on July 1, 1997. The VRRRA limits enforcement actions by DEP, provides financial incentives to entice investment in brownfield sites, and limits liability under environmental laws and rules for those who remediate sites under the standards provided in the Rule.

<http://www.dep.wv.gov/dlr/oer/voluntarymain/Pages/default.aspx>

- **Funding Source(s) for the Program:** State General Fund and federal grants
- **Cost to enter program or fees for service:** Fee is calculated according to the size of property.
- **Sites Enrolled in VCP:** As of November 2010, 193 sites have entered the Voluntary Remediation Program (VRP).
- **Sites Completed under VCP:** As of November 2010, 85 Certificates of Completion (COC) have been issued.

Financial Elements

LIABILITY RELIEF PROVISIONS

- The VRP offers Certificates of Completion (COC) that provide liability relief.
- Any person demonstrating compliance with the applicable standards whether by remediation or where the site assessment shows that the contamination at the site meets applicable standards, shall be relieved of further liability for the remediation of the site. Contamination identified in the remediation agreement submitted to and approved by the DEP shall not be subject to citizen suites or contribution actions.

LICENSED REMEDIATION SPECIALIST (LRS) PROGRAM

Under the VRRRA, Licensed Remediation Specialists (LRS) are required to supervise activities during cleanups pursuant to VRRRA.

<http://www.dep.wv.gov/dlr/oer/voluntarymain/lrs/Pages/LRS.aspx>

BROWNFIELDS REDEVELOPMENT AUTHORITIES (OR SIMILAR)

Brownfields Assistance Centers – Many small communities in rural West Virginia do not have the staff or technical expertise to undertake brownfields redevelopment projects on their own. The West Virginia Brownfields Assistance Centers, located at West Virginia University and Marshall University, were created to empower communities to plan and implement brownfields redevelopment projects. The Brownfields Assistance Centers are available to assist local governments, nonprofits, prospective developers and other stakeholders navigate the brownfields redevelopment process in West Virginia.

<http://www.wvbrownfields.org>

Program Elements

METHODS/STANDARDS/CONTROLS

Risk assessment is used to make two important decisions about what is done at sites in the VRP. First, risk assessment is used to decide whether a site needs to be cleaned up to reduce risk to human health. Second, if cleanup is needed, risk assessment helps determine how much cleanup is needed.

<http://www.dep.wv.gov/dlr/oer/voluntarymain/Documents/Risk%20Assessment%20Guide.pdf>

CONTAMINANTS COVERED

No exclusions.

INSTITUTIONAL CONTROLS (IC)

DEP established by rule the criteria for deed recordation of land-use covenants and contains all necessary deed restrictions. DEP causes all land-use covenants to appear in the chain of title by deed and be recorded properly in the office of the county clerk where the site is located. If institutional and engineering controls are used, in whole or in part, to achieve a remediation standard, DEP directs that a land-use covenant be applied.

- **IC Tracking:** The Office of Environmental Remediation is continuing to work with the Information Technology (IT) and Geographic Information System (GIS) sections of DEP to complement the VRP sites on the agency's interactive mapper with the development of links to the recorded Land Use Controls (LUC) so that they may be reviewed online or downloaded by interested parties.
- **IC Oversight:** Effective January, 2008 DEP implemented a policy requiring an inspection and reporting paragraph be inserted in all future recorded land-use covenants, requiring self-inspection of the restrictions contained in the LUC, and submittal of the inspection report to the agency by the property owner. The frequency of the inspection is dependent upon the restrictions imposed by the LUC, but in no case less frequent than once per year.
- **IC Monitoring:** DEP is a member of the MISS Utility of West Virginia, the one-call system for notification regarding excavation activities as potentially related to recorded LUCs. For the period of calendar year 2008, DEP received 712 notifications of excavation activities for sites within the MISS Utility grid network and for January through July 2009 received 685. Each notification received is forwarded to the respective project manager for review and follow-up as appropriate. Project managers also conduct routine inspections of VRP sites with LUCs.

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://gis.dep.wv.gov/imap/index.html>

DEP established an Institutional Controls Focus Group to provide an independent perspective to DEP about the feasibility of utilizing a public-private land stewardship program for the long-term safeguarding of remediated sites using ICs and engineering controls (ECs) (collectively, IECs) to ensure that the remedy remains protective of human health and the environment. The WV Institutional Controls Focus Group Interim Report can be found at:

<http://www.dep.wv.gov/dlr/oer/voluntarymain/Pages/default.aspx>.

Program Highlights

The West Virginia Brownfield Assistance Centers (BACs) at Marshall University and West Virginia University created the FOCUS WV mini-grant program, funded through a private foundation, in order to provide project assistance. West Virginia Department of Environmental Protection used Section 128(a) Response Program funding to assist the BACs with the conference. There are 32 active FOCUS projects which are showcased at the Annual West Virginia Brownfields Conference. The conference attendance has attracted over 200 participants in recent years. It has keynote speakers ranging from the Governor, Congressional representatives, and top business and community leaders; it is the premiere state event for networking amongst brownfields redevelopment professionals.

Other Land Programs

Leaking Tank Program

<http://www.dep.wv.gov/dlr/oer/lustmain/Pages/default.aspx>

Superfund Program

<http://www.dep.wv.gov/dlr/oer/superfund/Pages/default.aspx>



Congresswoman Shelley Moore Capito and Benedum Foundation Program Officer Mary Hunt-Lieving Present One of Four FOCUS WV Grants at the Conference