AGENDA

Brownfields Overview

Brownfields Liability in Rhode Island

Rhode Island Programs

Funding Sources

- Note: 2016 Hazardous Materials and Petroleum Assessment Funding is ONGOING
  - Though this project has been funded, wholly or in part, by EPA, the contents of this presentation do not necessarily reflect the views and policies of the EPA

Questions & Answers
BROWNFIELDS

WHAT ARE THEY?
- A property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant

WHY DO WE CARE?
- The redevelopment of brownfields is part of a broader strategy to improve the environment, create and retain jobs, and reduce and revitalize urban areas
BROWNFIELD EXAMPLES

- Dry Cleaners
- Former Gas Stations
- Landfills
- Illicit Dump Sites
- Industrial Properties
- Junk Yards
- Vacant Properties
- Sawmills
- Rail Yards and Adjacent Facilities
OLD MILL & MILL-RELATED SITES – EX.) MILL
WORKERS HOUSE, COVENTRY
MANUFACTURING FACILITIES – EX.) ATP MANUFACTURING, NORTH SMITHFIELD
FORMER GAS STATIONS
EX.) FORMER COFFEY’S TEXACO, NEWPORT
VISION FOR THE FORMER GAS STATION
BROWNFIELD LIABILITY IN RI

Warning Signs

Steps to mitigate environmental liability

Case Studies
WARNING SIGNS

- Urban locations
- Current or former industrial use
- Current or former landfill
- Proposed use as a school

- There’s no harm in checking with DEM
ENVIRONMENTAL LIABILITY

Who is a Responsible Party?

- Current owner or operator
- Owner or operator at the time of disposal
- Any person who disposed or arranged for disposal or who arranged for transport for disposal or treatment of hazardous materials at a site
- Any person who accepts or accepted hazardous materials for transport to a disposal or treatment site

R.I.G.L. 23-19.14-6(a)

For what is a Responsible Party liable?

- All removal and remedial actions necessary
- All removal or remediation costs incurred by the state or other parties
- Natural Resource Damages
- All requirements of the Site Remediation Regulations

R.I.G.L. 23-19.14-6(b)
WHO IS NOT A RESPONSIBLE PARTY?

R.I.G.L. 23-19.14-7 PROVIDES FOR SIX EXEMPTIONS TO LIABILITY

- Act of God
- BFPP / BFPT
- Mortgage and lienholders
- Custodial receivers
- Downgradient receptors
- Municipalities*

* Municipalities may not be exempt in certain situations.
Title 23 Health and Safety

Chapter 23-19.14 Industrial Property Remediation and Reuse Act

Section 23-19.14-5.2 Entry of registered professional engineers onto certain property

Any registered professional engineer who is employed, retained and/or otherwise acting on behalf of a municipality of this state may enter, examine or survey, at any reasonable time, such places and real property which is either owned by a municipality or real property in which the municipality has a legal interest arising from a real property tax lien, on which property owner has made no payments for a period of at least two (2) years, for the purpose of performing an environmental site assessment or investigation. An environmental site assessment or investigation under this section shall be conducted in accordance with and shall be subject to the same guidelines and limitations provided for an administrative inspection or, where appropriate, a criminal investigation, pursuant to the provisions of § 42-17.1-2(20)
Title 23 Health and Safety
  - Chapter 23-19.14 Industrial Property Remediation and Reuse Act
  - Section 23-19.14-7.1 Remedial agreements

In addition to exemption from liability provided for in § 23-19.14-7, the state and a person who has received a remedial decision letter may enter into a remedial agreement that includes a covenant not to sue and contribution protection and which describes the agreed remedial actions and shall be assignable as therein provided. Whenever the state has entered into a remedial agreement under this section, the liability to the state under this chapter of each party to the agreement including any future liability to the state, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue. The final covenant not to sue may, at the discretion of the state, be transferred to successors or assigns that are not otherwise found to be a responsible party under §23-19.14-6. The covenant not to sue may provide that future liability to the state of a person who is under the remedial agreement may be limited to the same proportion as that established in the original agreement. A remedial agreement shall be distinct from a letter of compliance, and the absence of a remedial agreement shall not affect or compromise exemption to liability provided for in §23-19.14-7.
CASE STUDIES
WOONSOCKET MIDDLE SCHOOLS
THE STEEL YARD
RI PROGRAMS

Understanding the RI Process

Voluntary Cleanup Program

Funding
## THE RI PROCESS

### VOLUNTARY CLEANUP PROGRAM (VCP) / BROWNFIELDS PROGRAM

**STATE SITE REMEDIATION SITE MANAGEMENT PROCESS**

A Voluntary Performing Party after receipt of a Remedial Decision Letter (RDL), may enter into a Remedial Agreement with DEM. The Remedial Agreement includes a Covenant Not to Sue, contribution protection, a description of the remedial actions, and shall be transferable, at the discretion of the State, to successors or assigns that are NOT Responsible Parties.

### NOTIFICATION:

**Submit Notification of Release Form Within 15 Days of Discovery**

(under Program Process on Site Remediation web page)

### PUBLIC NOTICE:

**Submit Site Investigation (SI) / Public Notice of Technical Feasibility of Proposed Remedial Action Work Plan (RAWP) & $1,000 Remedial Approval Application Fee (Sections 13 & 14 of the Remediation Regulations)**

### COMPLETE SITE INVESTIGATION (SI):

**Submit Site Investigation Report (SIR) (Section 13 of the Remediation Regulations)**

### PUBLIC NOTICE OF COMPLETED SI:

**Public Notice of Technical Feasibility of Proposed Remedial Action Work Plan (RAWP & $1,000 Remedial Approval Application Fee (Sections 13 & 14 of the Remediation Regulations)**

### PERFORM REMEDIAL ACTION:

**Submit Remediator Site Remediation Closure Report & Draft ELUR & SM* (Section 14 of the Remediation Regulations)**

### DEM ISSUES:

- **Property becomes** Jurisdictional under “Remediation Regulations**
- **DEM issues Letter of Responsibility (LOR), Voluntary Procedure Letter (VPL), or Non-Jurisdictional Letter (NJL)**
- **DEM issues Program Letter indicating that SI is complete and that Public Notice is required to be performed**
- **DEM issues a Remedial Decision Letter indicating that SIR & Public Notice are complete and that Remedial Action Work Plan (RAWP) should be submitted**
- **DEM issues a Remedial Approval Letter (RAL) for simple remedies or an Order of Approval (OA) for complex, engineered remedies**
- **DEM issues a Letter of Compliance (LC) or a No Further Action (NFA) letter. If long term monitoring is required, DEM will issue an Interim LOC (LOC)**

* ELUR – Is the acronym for an Environmental Land Usage Restriction. An ELUR is necessary if a Property is not cleaned up to residential direct exposure criteria and/or corresponding groundwater objectives. A draft ELUR and Soil Management Plan (SMP) can be submitted to DEM at any stage in the process as an attachment to an SIR, with the RAWP, or with the Remedial Action Closure Report. The draft ELUR should always be submitted to DEM in an electronic format for review. Once approved by DEM, the Property Owner records the ELUR and an associated SMP on the deed to the Property.
# State Programs to Assist in the Assessment and/or Cleanup of Brownfield Sites

## Targeted Brownfields Assessment (TBA) Program
- **Who can apply?**
  - Municipalities
  - Non-profit organizations
- **Funds the Phase I Environmental Site Assessment (ESA), Phase II ESA, and/or the Remedial Action Work Plan (RAWP)**
- **The TBA program DOES NOT provide cash/grant to the entity applying**
- **2016 Hazardous Substance and Petroleum Assessment Funding is ongoing**

## Brownfields Remediation and Economic Development Fund
- **Encourages the reuse of brownfields**
- **Provides funding assistance for remedial investigation, redevelopment, remedial redesign, construction of remedies, and other associated work**
- **Reimbursement grant**

## Brownfields Cleanup Revolving Loan Fund
- **Funded by the RI Infrastructure Bank**
- **Provide a low interest loan**
- **Grantees will need to pay this loan back**
CONTACT INFORMATION

- **RIDEM**
  - Kelly Owens
    - Kelly.Owens@dem.ri.gov
  - Rachel Simpson
    - Rachel.Simpson@dem.ri.gov
  - Susan Forcier
    - Susan.Forcier@dem.ri.gov

- **EPA**
  - Jessica Dominguez
    - Dominguez.Jessica@epa.gov

- **NJIT**
  - Gary White
    - gwhite@njit.edu