

# Brownfields Basics

## What is a brownfield site?

Brownfields are properties where expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant, including petroleum. Many brownfields were formerly industrial or commercial facilities that are now underutilized, idled, or abandoned. Brownfield sites vary in size, location, age, and past use; they can be anything from an immense closed industrial facility to a small corner gas station. Brownfield properties exist in big cities, small towns, suburbs and even rural areas. Left unaddressed, brownfields pose aesthetic, environmental, legal and/or financial burdens on a community. However, these sites can again become the powerful engines for economic vitality, jobs, and community pride that they once were. Brownfield sites are often in excellent locations for industrial, commercial, residential, public, recreational, and/or mixed uses.

## Are there benefits to developers and/or to the community of redeveloping and reusing brownfield sites?

**Yes.** Brownfield sites may provide important advantages for developers and investors looking for desirable locations for industrial, commercial, residential, and/or other uses. Oftentimes connections to water and sewer infrastructure systems and energy sources are readily available, and sites typically have very good access to transportation networks. Communities benefit because the redevelopment of sites helps bring new businesses, jobs and an improved tax base to areas where brownfield sites have been underutilized and unproductive.

## What is one of the main obstacles to getting brownfields redeveloped and back into use?

Developers and investors, cautious of environmental liability, have often backed away from brownfields. Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, otherwise known as the Superfund law), anyone in the chain of title for a contaminated site may have liability for the site. Developers and investors have been known to avoid sites in urban centers because of possible liabilities and develop instead in "greenfield" areas where land is perceived to be free of potential contamination-related liabilities.

## Has there been progress in addressing some of the key obstacles to brownfields redevelopment?

Beginning in the mid-1990s, the U.S. Environmental Protection Agency (EPA) and state agencies began investigating and adopting new policies and approaches to encourage private reinvestment and community involvement to restore brownfields to productive use. Among the most significant initiatives to stimulate brownfields redevelopment was the establishment of state voluntary cleanup programs. These programs vary among states, but generally include: (1) some form of liability protection, including liability release; (2) variable cleanup standards based on the intended use of the property; and (3) financial and/or technical assistance. Federal support was initially provided primarily through funding for state programs and memoranda of agreements respecting the liability reforms established by state

programs and later with enactment of the Small Business Liability Relief and Brownfields Revitalization Act in 2002. Together, these federal and state initiatives have provided more certainty to developers and investors regarding the levels of site cleanup needed, while clarifying and reducing potential liabilities and offering some financial assistance. Coupled with the increase in brownfield redevelopment success stories, the pace of brownfields redevelopment has greatly accelerated.

Indiana was among the first states to address the liability issues associated with buying, selling or developing property contaminated by hazardous substances. The state's Voluntary Remediation Program (VRP) was established in 1993, and its Brownfields Program, which works cooperatively with VRP, was established in 1997.

## Is financial assistance available for redevelopment projects?

Federal and state grant and loan programs are available to support brownfields site assessment and remediation to facilitate redevelopment. At the federal level, U.S. EPA offers:

- ✓ Site (property) assessment grants
- ✓ Site cleanup grants
- ✓ Grants to establish Revolving Loan Funds
- ✓ Job training grants
- ✓ Funds to states and tribes to establish or enhance environmental cleanup (e.g., brownfields) programs, which, in some cases, may be used to assess and clean up individual brownfield sites

U.S. EPA regional offices also can provide direct technical assistance for assessments through the "Targeted Brownfields Assessment Program." More information about U.S. EPA brownfields financial assistance can be found at: <http://www.epa.gov/brownfields/applicat.htm>.

The Indiana Finance Authority (IFA)—the lead brownfields agency in Indiana—administers the state's Brownfields Program, which offers:

- ✓ Grants for site assessments
- ✓ Grants for remediation of sites contaminated by petroleum products (e.g., gas stations) and hazardous substances
- ✓ Grants to match federal funding
- ✓ Low interest loans for assessment or remediation activities
- ✓ Tax credits for voluntary remediation

More information about IFA brownfields financial assistance can be found at: <http://www.brownfields.in.gov>

## Are the regulatory requirements the same for all sites?

The short answer is **no**. As varied as brownfield sites are, so may be the regulatory requirements. In general, the requirements for sites with relatively low levels of contamination and risk are simpler than they are for sites with higher levels of contamination. Determining exactly what requirements apply to a particular site can be challenging and may require state assistance to navigate through the issues. The first point of contact for brownfield stakeholders should be the Indiana Brownfields Program. See: <http://www.brownfields.in.gov>.

Many sites with varying levels of contamination can be cleaned up and put back into use. Some may have to be addressed under regulatory (cleanup) programs administered by the Indiana Department of Environmental Management (IDEM), while others may be handled through voluntary efforts, utilizing IDEM's VRP and/or the Indiana Brownfields Program housed under IFA. While there are similarities

between the two programs, both of which can facilitate brownfields redevelopment, some of the main differences include the ultimate goal of the respective programs (cleanup vs. redevelopment), the type of participant, and the level of liability protection offered. The VRP frequently works with owners or operators, including those who are responsible for contamination, who voluntarily want to clean up properties (some of which may be brownfields) for an environmental liability release. The Indiana Brownfields Program, on the other hand, typically works with parties who are not responsible for causing the site contamination, but are interested in assistance with reusing or redeveloping a brownfield site. More information about these programs can be found at: <http://www.in.gov/idem/programs/land/vrp/index.html> and <http://www.brownfields.in.gov>.

The type of contamination is an important factor in the type and level of cleanup that are required. Specific programs and cleanup requirements exist for hazardous waste, petroleum, and toxic contaminants, and those requirements may apply to certain brownfield sites.

For example, some brownfield properties contain facilities that have been hazardous waste treatment, storage, or disposal facilities regulated under the federal Resource Conservation and Recovery Act (RCRA). In some cases, part of a property might not be regulated currently under RCRA, but the land may be contaminated with hazardous wastes that may make it subject to RCRA requirements as contaminants are exposed or “generated” during cleanup. RCRA gives U.S. EPA and states the authority to regulate such hazardous waste management facilities. The RCRA Corrective Action Program at the federal and state levels compels responsible parties to address the investigation and cleanup of the hazardous releases themselves. Under certain circumstances, even sites subject to Corrective Action may be eligible for brownfields assistance.

Sites such as abandoned gas stations with contamination resulting from the release of petroleum products from underground storage tanks may be subject to requirements under a different section of RCRA. Leaks from underground storage tanks can pose risks because petroleum releases typically contain contaminants that make water unsafe to drink. Subtitle I of RCRA deals with underground storage tanks, and includes standards intended to prevent leaks, and provisions for remediating sites where there has been a leaking underground storage tank. More about the federal and state regulatory programs that address these types of sites is available at: <http://www.epa.gov/swrust1/cat/index.htm> and <http://in.gov/idem/programs/land/lust/index.html>.

A class of toxic contaminants that are not hazardous or petroleum in nature is regulated under the federal Toxic Substances Control Act. Accordingly, properties tainted with these specific substances (including in particular Polychlorinated Biphenyls or PCBs) are subject to different rules and regulations. See: <http://www.epa.gov/compliance/civil/tsca/tscaenfstatreq.html>.

Sites severely contaminated with hazardous or toxic wastes may also be managed under the federal CERCLA, or Superfund, as previously mentioned. Under the Superfund program, abandoned, accidentally spilled, or illegally dumped hazardous wastes that pose a current or future threat to human health or the environment are assessed and remediated. In carrying out this program, U.S. EPA works closely with states, communities, Potentially Responsible Parties (PRPs), and other stakeholders. Together with these groups, U.S. EPA identifies hazardous waste sites, tests the conditions of the sites, formulates cleanup plans, and cleans up the sites. Many states implement a state type of Superfund program that is similar to the federal program. See: <http://www.epa.gov/superfund/>, and for the Indiana program: <http://www.in.gov/idem/programs/land/statecleanup/scprogram.html>

## Where can I get more information?

Contact the Indiana Brownfields Program at (317) 234-4293 or visit these web sites:

- ✓ Indiana Brownfields Program: <http://www.brownfields.in.gov>
- ✓ Indiana Finance Authority: <http://www.in.gov/ifa/index.html>
- ✓ Indiana Department of Environmental Management's Voluntary Remediation Program: <http://www.in.gov/idem/programs/land/vrp/index.html>
- ✓ Indiana Department of Environmental Management: <http://www.in.gov/idem/>
- ✓ U.S. Environmental Protection Agency's Brownfields Program: <http://www.epa.gov/brownfields>
- ✓ U.S. Environmental Protection Agency: <http://www.epa.gov>

## Statutory and Regulatory References

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. § 9601 *et. seq.*
  - National Contingency Plan- 40 Code of Federal Regulations (C.F.R.) Part 300
- Resource Conservation and Recovery Act (RCRA) 42 U.S.C. § 6901 *et. seq.*
  - Federal RCRA regulations (most which are incorporated by reference into State rule)- 40 C.F.R. Parts 240-299
  - State RCRA regulations – Solid Waste Rules- 329 Indiana Administrative Code (IAC) 10-12; Hazardous Waste Rules- 329 IAC 3.1
- Toxic Substances Control Act (TSCA) 15 U.S.C. § 2605 *et.seq.*
  - Federal TSCA regulations- 40 CFR 761.
  - State TSCA regulations- 329 IAC 4.1
- Indiana Hazardous Substances Response Trust Fund law; Indiana Code (IC) 13-25-4
  - "Risk Integrated System of Closure (RISC)" IDEM Nonrule Policy Document W-0046 (February 15, 2001). (Technical and User's Guide)
  - 2004 Update: January 1, 2004 update to default closure tables
  - 2006 Update: February 1, 2006 proposed update to default closure tables, effective August 1, 2006
- Indiana Petroleum Releases law; IC 13-24-1; RISC
- Indiana Underground Storage Tank Corrective Action law (USTs and Leaking USTs); IC 13-23-13
  - 329 IAC 9 (UST)
  - 328 IAC 1 (Excess Liability Trust Fund)
  - RISC
- Indiana Voluntary Remediation Program (VRP); IC 13-25-5; RISC
- Spill Rule; 327 IAC 2-6
- Responsible Property Transfer Law (RPTL); IC 13-25-3
- Environmental Remediation Revolving Loan Program; IC 13-19-5-1
- Voluntary Remediation Tax Credit ; IC 6-3.1-23
- "Brownfields Program Comfort and Site Status Letters Policy" IDEM Nonrule Policy Document W-0051 (April 18, 2003).
- "Property Containing Contaminated Aquifers" IDEM Nonrule Policy Document W-0047 (January 30, 1997).
- "Property Containing Contaminated Aquifers/Underground Storage Tanks" IDEM Nonrule Policy Document WASTE-0038-NPD (April 20, 2000).