

Massachusetts' Brownfields Program: An Overview

Across Massachusetts, contamination from decades of industrial activity had left many old factories and other sites abandoned or underused, posing risks to public health and adding to blight in our communities. The problem is most prevalent in urban areas where many properties that would otherwise be prime for development lie dormant because they are tainted by oil or hazardous materials. The presence of contamination can create significant barriers to the development or reuse of property.

In Massachusetts, the state's Executive Office of Environmental Affairs, the Department of Environmental Protection (DEP), the Massachusetts Office of Business Development (MOBD), and the Attorney General work together cooperatively to develop tools for cleanup and redevelopment.

Governors' Brownfield Initiatives

The Governor's [Office for Brownfields Revitalization](#) (OBR), established in June 1999, offers assistance to utilize newly created tools and programs to turn any Massachusetts brownfield from a problem to an opportunity and to coordinate all the brownfield activities at the state level. OBR was established to coordinate companies', developers', and municipalities' access programs to help greatly reduce costs, risk, and assure adequate financing.

OBR in coordination with Office of Business Development (MOBD) offers the following free assistance to landowners, buyers, developers, and municipalities:

- Complete information on all brownfields programs and incentives;
- Direct site-specific assistance to:
 - Market the site
 - Access pre-development assistance
 - Obtain financing
 - Secure comprehensive environmental insurance
 - Identify consultant services—legal and environmental
 - Build private-public partnerships
 - Work with local officials
 - Understand municipal tax abatement
- Assistance with other state agencies and quasi-public entities;
- Access to companies searching for new locations;
- Aggressive state support for priority projects; and

Advocacy for specialized covenants not-to-sue from the Attorney General.

Features of Massachusetts Brownfields Program

Governor Cellucci signed the "[Brownfields Act](#)" into law on August 5, 1998, establishing new incentives to encourage parties to clean up and redevelop contaminated property in Massachusetts. The Act provides liability relief and financial incentives to attract new resources for these properties, while ensuring that the Commonwealth's environmental standards are met. Major features of the Act are summarized below.

A. Liability Relief Mechanisms:

- **“Innocent” Owners or Operators** : Ends liability for “innocent” owners and operators once they meet DEP’s cleanup standards for oil or hazardous materials releases.
- **Downgradient Property Owners** : Exempts certain owners and operators from liability for contamination that has migrated onto their property.
- **Tenants**: Exempts certain tenants from operator liability if their tenancy began after the release was reported to DEP and they did not cause or contribute to the contamination.
- **Redevelopment and Community Development Corporations (CDC)**: Exempts redevelopment agencies and authorities, CDCs and Economic Development and Industrial Corporations (EDICs) from liability as long as they acquire the property after August 5, 1998, did not cause or contribute to the contamination, notify DEP of the release, provide access to people who are cleaning up, prevent exposure to contamination, and take immediate response actions where needed.
- **Secured Lenders** : Provides protection for lenders against loss on cleanup loans and contemporaneous related construction loans.
- **Governmental Bodies or Charitable Trusts**: Exempts to governmental bodies or charitable trusts who hold property restrictions created for the public benefit.
- **Activity and Use Limitations (AUL)**: Protects owners and operators from liability for future violations when their permanent solution or remedy operation status includes an AUL and they transfer the property to a new owner.
- **Brownfields Covenant Not to Sue** : Establishes a "Brownfields Covenant Not To Sue" for parties who are redeveloping contaminated properties and do not qualify for the statutory liability relief described above.

B. Financial Incentives

- **Redevelopment Access Capital** - \$15 million for environmental insurance fund. To pay for unanticipated costs associated with an approved cleanup, or to guarantee private loans made for cleanup and redevelopment, up to \$50,000 (requires equal private investment).
- **Brownfields Redevelopment Fund** - \$30 million for low-interest loans to “eligible persons” for site assessment (up to \$50,000) and cleanup (up to \$500,000) in economically distressed areas; cities, redevelopment authorities, and community development corporations can seek similar amounts in the form of grants.
- **Brownfields Tax Credit** – range from 25 percent to 50 percent (depending on level of cleanup) for innocent parties who “diligently” pursue site cleanups in economically distressed areas and for cleanups that begin on or before August 5, 2001.

C. Environmental Insurance

Environmental insurance can assist brownfields projects by reducing the risk of cost overruns and unanticipated environmental costs. This can help a project to stay within its projected budget. In addition, many banks concerned with the potential risks associated with lending on contaminated sites are willing to provide loans if the project is backed by environmental insurance. Insurance costs have decreased dramatically over the past several years while insurance products have

become more comprehensive and coverage periods have increased. In many cases, environmental insurance can be a cost effective tool.

In an unprecedented move, the state of Massachusetts brought together several organizations to participate in a program that will encourage redevelopment. Among them is the state's Brownfields Redevelopment Access to Capital (BRAC), designed to support private financing for the remediation and redevelopment of contaminated property.

Two agencies instrumental in the program's creation—the Massachusetts Office of Economic Development and the Department of Environmental Protection—selected the Massachusetts Business Development Corporation (MBDC) to implement this state-subsidized program. The MBDC is a private corporation with a strong tradition of providing financing and financial services to growing companies throughout Massachusetts. The MBDC's extensive resume, closely related to the job at hand, made them a natural choice to administer the BRAC program.

The BRAC provides environmental insurance, via American International Group (AIG), an industry leader in providing environmental insurance, for the developer, and secured creditor coverage for the lender. The environmental insurance is state-of-the-art, pre-negotiated, state sponsored, and subsidized. It is designed to handle, both cleanups and cost overruns and liability arising from newly discovered, pre-existing environmental contamination. In addition, the lender can be protected from loss due to a default related to environmental issues. The environmental coverage includes:

- Cleanup costs that exceed the planned cost for the approved cleanup plan. Deductible equals 15% of cleanup costs for cost cap coverage (negotiable).
- Cleanup costs for unknown pollution conditions discovered during cleanup, within planned cleanup and property boundaries. Deductible applies.
- Cleanup costs for unknown conditions discovered outside of planned cleanup but within property boundaries.
- Third party coverage for cleanup costs, property damage, and personal injury resulting from pre-existing, yet unknown conditions beyond insured's property boundaries. Deductible applies.
- Legal defense coverage for claims arising from pollution being discovered outside the planned cleanup area. Deductible applies.
- Five-year term.

State Efforts to Identify Public Health Impacts at Brownfield Sites

During the past several years public awareness and concern over the potential health effects resulting from environmental exposures has heightened. There are currently 32 National Priority List or Superfund sites and 800 additional sites designated by the U.S. EPA under investigation in Massachusetts. Further, as of 1990, the Massachusetts Department of Environmental Protection (MDEP) has more than 4,200 confirmed or suspected hazardous waste sites being assessed or cleaned up in the state. Concerns over these and other areas suspected to be environmentally contaminated result in numerous requests (i.e., several hundred per year) to the Massachusetts Department of Health's Bureau of Environmental Health Assessment (BEHA) for toxicological and epidemiological community health assessments. Requests are made by citizen groups, state legislators, local boards of health, and the media, as well as other state agencies.

In addition, a cooperative agreement with the federal Agency for Toxic Substances and Disease Registry (ATSDR) has allowed the BEHA to work with staff from the ATSDR to comply with the federal timelines for Public Health Assessments at National Priority List sites as mandated by the Superfund Amendment and Reauthorization Act (SARA). This work has been carried out largely in the Community Assessment and Environmental Toxicology Units and follows much the same flow as the environmental health assessments typically carried out by these two units.

The Community Assessment Unit (CAU) was established within BEHA in 1987 to provide a coordinated government response for citizens with regard to environmental health issues. The CAU was established in response to the recommendations made in the "Report of the Study Commission on Environmental Health, 1984". The Community Assessment Unit's goals are to educate the public on the relationship of human health effects and the environment, keep an open line of communication between the Massachusetts Department of Public Health and concerned citizens, and to perform efficient and appropriate preliminary analyses of reports of suspected elevations in disease occurrence and the potential relationship to the environment. The Community Assessment Unit serves a trade function for the decision making process in the Bureau. Much of the preliminary work in the BEHA is either performed by or in collaboration with CAU staff.

The Environmental Health Education Unit, partially funded by the Agency for Toxic Substance and Disease Registry (ATSDR), enables the Bureau to provide educational sessions and information materials about environmental exposures and health effects to health professionals and residents of Massachusetts. The objectives of this project is to increase the awareness and understanding of health effects identified at National Priority List or Superfund sites, exposures to various environmental hazards, and the results of BEHA studies and investigations. The Environmental Health Education Unit works with all the units within the Bureau.

Agency Contacts

Massachusetts Brownfields Homepage: <http://www.state.ma.us/dep/bwsc/brownfld.htm>

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