



Brownfields Handbook: How to Manage Federal Environmental Liability Risks



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Preface

Since the announcement of the Environmental Protection Agency's (EPA) Brownfields Action Agenda in January 1995, the Brownfields program has empowered states, tribes, communities, and other stakeholders to work together to assess, safely clean up and sustainably reuse contaminated property as well as prevent future brownfields. Through the brownfields pilot programs, more than \$3.5 billion has been leveraged in public and private cleanups, over 3,000 properties have been assessed for contamination, and over \$2.5 million in loans have been made for cleanup and reuse. In addition, EPA has entered into more than 150 prospective purchaser agreements and issued more than 1,000 comfort letters to facilitate the cleanup and reuse of property.

The Office of Site Remediation Enforcement (OSRE) plays a key role in the success of the program through the development of tools that clarify and address barriers to timely cleanup and reuse posed by federal environmental liability. In November 1998, EPA issued *The Handbook of Tools for Managing Federal Superfund Liability Risks at Brownfields and Other Sites*. The handbook provided a compilation of tools and a discussion of how to use them in evaluating the benefits of reusing a brownfield property.

EPA's Brownfields program continues to evolve. Until 1998, brownfields were associated primarily with Superfund liability and cleanup issues. As more properties were assessed through the pilot program, stakeholders raised concerns about environmental liabilities under the RCRA (Resource Conservation and Recovery Act), mirroring the Superfund experience.

This updated edition of the handbook summarizes the tools available that clarify and address barriers to cleanup and reuse posed by RCRA. In addition, the handbook also summarizes the new tools and initiatives that the Agency has undertaken since 1995. These include the Superfund Redevelopment

Initiative (SRI), USTfields, RCRA reforms, and improvements to the prospective purchaser agreement process. The new handbook also updates the list of related policies and guidance documents and EPA contacts. All of the other tools described in the 1998 edition remain unchanged.

An electronic copy of the handbook may be found at www.epa.gov/Compliance/about/offices/osre.html. For additional information regarding the handbook, please contact Elisabeth Freed at (202) 564-5117. For property-specific Superfund or RCRA discussions, please refer to the regional contact list provided in Appendix F.

I want to acknowledge key staff - Elisabeth Freed, Lori Boughton, Ilana Saltzbar, Myron Eng, Shannon Kendall and Tessa Hendrickson - who devoted their time and creativity to produce this Handbook. We look forward to continuing our progress and commitment to removing the barriers to timely cleanup and reuse of all types of contaminated property.

A handwritten signature in black ink, appearing to read "Barry N. Breen", followed by a long horizontal line extending to the right.

Barry N. Breen, Director
Office of Site Remediation Enforcement

Purpose and Use of This Handbook

This handbook summarizes the statutory and regulatory provisions of CERCLA and RCRA, and the policy and guidance documents most useful in managing environmental cleanup liability risks associated with brownfields and other sites.

The handbook also summarizes related documents and provides copies of relevant fact sheets and other documents, and lists EPA headquarters and regional contacts for cleanup and reuse issues. Designed for use by parties involved in the assessment, cleanup, and reuse of brownfields, this handbook provides a basic description of the purpose, applicability, and provisions of each tool. To gain a more complete understanding of any tool described in this handbook, please refer to the relevant reference documents listed in Appendix A, search any of EPA's web sites listed in the *Helpful Web Sites* box (*see box on page 10*), or call the office number listed with the referenced document. The websites also provide the latest information and updates.

Before developing a brownfield property, a party should collect and consider information on past uses and potential contamination. The party should next identify which level of government to consult about cleanup and liability protection, if needed. Most parties will find that they can proceed directly to their reuse activities. Others may want to pursue private mechanisms such as indemnification or insurance or work at the state level and make use of existing state tools (*see box on page 14*). If the contamination on the property warrants EPA's attention under CERCLA or RCRA, the party should first determine if EPA or the state is taking or plans to take action at the property. After determining where the property fits in the federal or state cleanup pipeline, parties should find this handbook helpful in deciding which tool or tools are most appropriate to help them manage their federal CERCLA or RCRA liability risks.

Helpful Web Sites

The following web sites contain additional information about issues addressed in this handbook:

- Office of Site Remediation Enforcement:
www.epa.gov/compliance/about/offices/osre.html
- Brownfields:
www.epa.gov/brownfields
- Office of Solid Waste:
www.epa.gov/osw
- Superfund:
www.epa.gov/superfund
- Superfund Redevelopment Initiative:
www.epa.gov/superfund/programs/recycle
- Federal Register:
www.archives.gov/federal_register/index.html
- Code of Federal Regulations:
www.access.gpo.gov/nara/cfr
- U.S. Code:
uscode.house.gov

Both CERCLA and RCRA are designed to protect human health and the environment

from the dangers of hazardous waste. These two programs, however, take fundamentally different approaches to addressing the hazardous waste problem. The RCRA programs focus on how wastes should be managed to avoid potential threats to human health and the environment. CERCLA, on the other hand, is relevant primarily when mismanagement has already occurred.

Many prospective purchasers, developers, and lenders have avoided getting involved with brownfield properties because they fear that they too might be held liable under CERCLA or RCRA someday. The vast majority of brownfield properties will never require EPA's attention under CERCLA, RCRA, or any other federal law. Accordingly, parties' fears of potential liability, rather than their actual incurrance of liability, are the primary obstacles to the redevelopment and reuse of brownfields. EPA hopes that the remaining sections of this handbook will assist in eliminating or reducing these fears.