EBC Site Remediation and Redevelopment Program

Brownfields Financing: Massachusetts State and Federal Programs
Welcome

Jonathan D. Kitchen
Chair, EBC Site Remediation Committee
Senior Project Manager
Civil & Environmental Consultants, Inc.
Welcome to Bowditch & Dewey, LLP

Robert D. Cox, Jr.
Chair, EBC Board of Directors
Managing Partner
Bowditch & Dewey, LLP
Program Introduction & Overview

David Foss

Program Chair & Moderator

Vice President – Principal Hydrogeologist

Wilcox & Barton, Inc.
The Brownfields Act at 20 Years

Robert D. Cox, Jr.

Chair, EBC Board of Directors

Managing Partner

Bowditch & Dewey, LLP
1983 ... 1988 ... 1992 ... 10/1/93 ... 1998

Acting Governor Cellucci signed the Brownfields Act into law on August 5, 1998.
BROWNFIELD'S ACT: CHAPTER 206 OF THE ACTS OF 1998

• An Act Relative to Environmental Cleanup and Promoting the Redevelopment of Contaminated Property
• “To ensure ... environmental cleanup and promote the redevelopment of contaminated property”
• Establishing new incentives to encourage parties to clean up and redevelop contaminated property.
  • Liability relief
  • Financial incentives
LIABILITY RELIEF

1. ELIGIBLE OWNERS AND OPERATORS
2. DOWNGRADIENT PROPERTY OWNERS
3. TENANTS
4. MUNICIPALITIES
5. REDEVELOPMENT AUTHORITIES AND COMMUNITY DEVELOPMENT CORPORATIONS (CDC)
LIABILITY RELIEF (CONTINUED)

6. SECURED LENDERS
7. GOVERNMENTAL BODIES OR CHARITABLE TRUSTS
8. ACTIVITY AND USE LIMITATIONS (AUL)
9. CONTRIBUTION PROTECTION
10. BROWNFIELDS COVENANT NOT TO SUE
SOME OTHER FEATURES

1. PENALTIES
2. MUNICIPAL TAX ABATEMENT PROVISION
3. AULS: TARGETED AUDITS OF ALL SITES WITH AULS.
FINANCIAL INCENTIVES

1. BROWNFIELDS REDEVELOPMENT ACCESS TO CAPITAL
2. BROWNFIELDS REDEVELOPMENT FUND
3. BROWNFIELDS TAX CREDIT
QUESTIONS?
Brownfield Redevelopment Fund

Shyla Matthews

Vice President of Community Development
Central Region
MassDevelopment

Presentation Not Available
What We Know about the 2018 BUILD Act

Jim Byrne

Brownfields Project Officer
U.S. EPA – Region One
Brownfields

Brownfields and the BUILD Act
October 2018
What is a Brownfield?

- Brownfields sites are “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

- The term “brownfields” is often used to describe a wide range of federal, state, and non-regulated sites.
Summary of Brownfields Successes

Leveraged Activities in New England

- $420 million in EPA brownfields grants awarded to New England communities
- 2,807 sites have been assessed with EPA brownfields grant funds
- 378 Sites cleaned up
- 16,399 jobs leveraged
- Over $2.8 billion leveraged from cleanup, construction, and redevelopment of brownfields

Source: US EPA

Source: ACRES – Sep 2015
Even though the Brownfields Law was passed in 2002, there are still many potential property owners who are not clear about what to do prior to purchasing property.

The BUILD Act provides additional clarification and liability relief.
Federal Liability Relief

- Liability Exemption for acquisition through seizure for tax delinquency, bankruptcy, abandonment, or other law enforcement
- Liability Exemption for State or Local government properties acquired prior to 1/1/02: cannot have caused or contributed to contamination (BUILD Act)
- Liability Defense for Bona Fide Prospective Purchase (BFPP)
  - Rule #1: Have an ASTM Phase I Assessment done prior to purchase (shelf life)
Federal Liability Issues

- There are other things you must do as well after acquiring the property (Continuing Obligations):
  - Exercise appropriate care by taking reasonable steps which includes:
    - Stopping any continuing releases
    - Preventing any threatened future releases
    - Preventing or limiting human or environmental exposure to the site.
  - Comply with land use restrictions.
  - Comply with information requests.
Paying attention and doing these things ensures a higher probability of success when you apply for an EPA cleanup grant or try to borrow funding through an EPA revolving loan fund grant.

Speaking about Money....
Annual Brownfields General Appropriation
Fiscal Years 1997 - 2018, in millions of dollars
Eligible Entities for EPA Grants

- States
- General Purpose Unit of Local Government
- Tribes
- Redevelopment Agencies
- Land Clearance Authority
- Councils of Government
- Non-profits (BUILD Act)
  - 501c3
  - LLCs comprised of 501c3’s
  - LLPs comprised of 501c3’s
  - Community development entities per 45D(c)(1)
Assessment Grants
$200,000 - $300,000
Possible site-specific waiver up to $350k

Cleanup Grants
$500,000 (BUILD Act)
possible waiver up to $650k

Revolving Loan Fund
$1,000,000

Multi-Purpose Grants
Up to $1,000,000
(BUILD Act)

Targeted Brownfields Assessments (TBA)
Technical Assistance
Other BUILD Act Changes

- **Petroleum Eligibility Criteria** - “Relatively Low Risk” requirement removed
- **Indirect Costs** – Now allowed up to 5% of grant
- **BFPP Definition** – Expanded to include those who have tenancy or leasehold interests in the facility
- **Small Communities Grants** – Up to $20k awarded to States/Tribes for technical assistance to small communities (<15k)
Coordination with MADEP

- EPA coordinates with MADEP in a number of ways:
  - MADEP approves sites for petroleum eligibility.
  - Properties are assessed and cleaned up according to state regulations through the MCP Voluntary Cleanup Program.
  - MADEP will provide a regional staff person to assist grantees throughout the entire performance period of the grant, if requested. This includes attending meetings and providing technical expertise and oversight.
  - EPA provides the MADEP with funding to establish and enhance Voluntary Cleanup Program.
Former electroplating shop abandoned with extremely hazardous chemicals – lead, asbestos, PAHs

City of Manchester invested $47,000 in EPA Assessment funding for Phase 1 and Phase 2 Assessments

Redeveloped by Anagnost Investments and Bishops Charitable Fund into new $4.8M opioid addiction treatment center which opened in 2013
Upcoming FY19 Competition

- Guidelines anticipated October 2018 with proposals due this winter.
- Guidelines outreach sessions by EPA
- Winners announced spring 2019.
- Grants awarded summer 2019
- Funding available to awardees October 2019
BUILD Act Recap

- Clarifies municipal liability exemptions
- Liability exemption for certain publicly-owned properties acquired before January 11, 2002
- Nonprofits now eligible for all grants
- Multi-purpose grants up to $1M ($800k this year)
- Cleanup grant cap raised to $500k ($650k with waiver)
- Small community grants for states & tribes
- Indirect costs allowed (up to 5%)
Available Resources

- EPA Region 1 Brownfields

- EPA Headquarters
  https://www.epa.gov/brownfields

- MADEP Brownfields
  https://www.mass.gov/brownfields-cleanup
Moderated Discussion

Moderator: David Foss, Wilcox & Barton, Inc.

Panelists:

• Jim Byrne, U.S. EPA – Region One
• Bob Cox, Bowditch & Dewey, LLP
• Shyla Matthews, MassDevelopment