

State Brownfields and Voluntary Response Programs: An Update from the States

The “State Brownfields and Voluntary Response Programs” update explores the evolving landscape of state environmental, financial, and technical programs, including the incentives designed to promote brownfields cleanup and reuse. The U.S. Environmental Protection Agency’s (EPA) goal for this analysis was to develop a concise, user-friendly synopsis of the state programs and the tools that are available through state programs. The information contained in this report was derived from state response program web sites, fact sheets, and other pertinent documents.

State programs are at the forefront of brownfields cleanup and redevelopment, as both the public and private markets recognize the responsibilities and opportunities given to states in the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law). Many different—but equally effective—approaches have been put into place to meet the multiple challenges and common objectives of brownfields reuse. Several states have adopted sweeping new legislative changes to encourage cleanups. For example, **Idaho** passed into law the Community Reinvestment Pilot Initiative that provides \$1.5 million in funds for voluntary cleanups. The Community Reinvestment Pilot Initiative amended Idaho’s existing voluntary cleanup program (VCP) statute (the Land Remediation Act) by creating a new financial incentive to draw private parties into the program. After years of legislative effort, **New York** adopted a Brownfield Cleanup Program, which authorizes \$135,000,000 in assessment and cleanup funding assistance and includes an innovative area-wide planning initiative called the Brownfield Opportunity Areas program.

Elements in the Analysis

This update looks at several components of state brownfields/response programs.

An overview **Program Description** lays out the basics of each state’s VCP and any other brownfields-related cleanup programs. It defines each state’s definition of “brownfields,” provides program titles, discusses liability relief provisions, and identifies program requirements.

Financial Elements—both assessment and cleanup funding, as well as tax incentives and other forms of support, such as environmental insurance—are explained. Typically, in practice, the applicability of specific programs comes down to agency interpretation of what brownfields-type property activities are eligible. This update includes information on programs directly available through state VCPs, as well as those identified by state agency staff as having consistent applicability to brownfields reuse efforts. To the extent that information is available, the update includes information on funding sources, funding amounts, eligibility requirements, and a program’s focus on special types of properties, such as dry cleaners or petroleum properties.

Key Program Elements are defined. This section of the update provides information on technical elements, such as cleanup methods and standards, contaminants covered or excluded from state program consideration, availability and requirements for institutional controls, and state approaches to long-term stewardship and reopeners. Administrative elements are also discussed, such as program costs or fees for service and sources of funding for program staff and operations.

A major part of the update is the review of **Cleanup Activities**. To the extent that states have provided the data, the update contains information on the number of properties that have entered and/or subsequently completed the program, as well as data on program benefits, including economic impacts such as jobs created; housing units developed; tax revenues added to the local economy; and businesses and investment value created.

The update also includes information on:

- Public participation
- Programmatic statutory authorities
- Contact information for each state program



General Themes

Adoption of Federal Brownfields Definition

More states have adopted the federal definition of “brownfields,” included in the federal Brownfields Law, as their own—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. Several states emphasized that conforming to this broader definition has given their own programs more flexibility, opening them up to more properties. And while many states do not allow responsible parties (RPs) to take advantage of their VCPs, more are moving towards permitting RP involvement. In fact, a growing number of states, nearly a dozen, allow anyone to participate, including **Wisconsin, North Carolina, Minnesota, Nebraska, and Oklahoma.**

Focus Shifting to Cleanup and Reuse

More states are also channeling resources to properties with some end use or economic development activity in mind—with the thinking shifting from cleanup only to a cleanup-and-reuse strategy. This reflects the approach being taken by the federal EPA.

Enrollment Costs for Voluntary Response Programs Vary

The cost to a property volunteer for participating in a state response program continues to vary widely. Some states require flat fees of as little as \$500; others use hourly rates (ranging from \$50 to \$85 or more per-hour) based on state staff time needed. A few states have defined alternative cost methodologies, such as a percentage of the cost of cleanup; **Nevada**, for example, bases its fees on property size. It has also become clear that there is greater reliance on federal funds to meet state staffing and administration needs, underscoring the importance of the federal funding for state and tribal response programs.

Linking Financing to Specific Needs

In addition, a growing number of states are starting to link financial resources available through programs set up to address specific needs—like discarded tires or abandoned dry cleaners—to broader brownfields property cleanup efforts. For example, **Kansas**, through its Agriculture Remediation Fund, focuses on properties with agriculture-related contaminants. **South Dakota** has a livestock cleanup fund in place which pre-dates its brownfields response program. Others, like **Tennessee**, are encouraging local governments to use traditional public financing tools like tax increment financing to address brownfields.



Creativity

Finally, one theme woven through many state efforts over the past two years—creativity in meeting needs and stimulating reuse. For example, **Wisconsin's** new law provides incentives to promote the cleanup and reuse of contaminated properties by amending its Environmental Remediation Tax Incremental District (ERTID) law to make ERTIDs more consistent with other Wisconsin TIDs; expanding its environmental liability protections for parties who enter DNR's Voluntary Party Liability Exemption (VPLE) process; and creating a new environmental liability exemption for local governments that acquire title to properties with an “unlicensed landfill” on the property. **Kentucky** has established tax incentives for bona fide prospective purchasers of qualified properties who complete its Voluntary Environmental Remediation Program (VERP) process. For qualified parties, the state and local property tax rates on a remediated brownfield property are reduced. **Florida** offers low-interest loans to redevelopment agencies and nonprofit corporations to purchase contractor liens, tax certificates, and similar claims to expedite site reuse. And **Indiana** adopted a “just in time” Phase II site assessment program, offering \$50,000 grants to expedite projects at sites where a company or developer is “imminently interested.”





Specific Findings

The full update contains a wealth of ideas, examples, and strategies that any state may want to explore as it considers enhancing its brownfields programs.

Recently, states devoted significant attention to the types of **public record** and **institutional control databases** they maintain. As a result, diverse databases are used across states, including the following:

- **Virginia** has modified its Voluntary Response Program (VRP) database to record institutional control information for each site, including restrictions on ground water use, residential use, excavation, and additional site specific controls. A report was generated for both completed and active VRP sites and is now available on the Virginia Department of Environmental Quality Web site.
- **Kansas** upgraded its public record to one that is interactive. Its public record can now easily be searched by site name, county, city, river basin, district, or section/township/range. The search generates a list with site name, address, city, and county. More extensive site information, including a site narrative, actions completed, environmental use controls (if any), interactive mapping, aerial photo, color photo(s) of the site for some properties, etc., is available by clicking on the site link.
- **North Carolina** created an interactive map of projects taking place throughout the state. The Web site demonstrates the program's scope, while allowing the public, government officials, and potential developers to access information on sites in their area of interest. Once fully complete it will include background on the site, site activity, contaminants found, cleanup plans, and photographs.

- **California** developed a new Web site for hazardous waste sites. Since 2003, EPA provided \$350,000 through the 128(a) state and tribal program to develop and launch this new system - called EnviroStor. The site makes the "public record" truly public and easy to navigate. It also provides important site documents such as deed restrictions in PDF format.

Virtually all states have cleanup standards that acknowledge the end use of the property. Some are linked to type of use—residential, commercial, or industrial. Others are connected to use limits—unrestricted use, property-specific restricted use, etc. Several, like **Maryland**, provide a "menu" of cleanup options that use a Risk-Based Corrective Action (RBCA)-like process. Most states also allow the use institutional controls, often linked to type of use.

Other examples of state activities reported this year include:

- **Georgia**, through a contract with the University of Georgia, developed the "Georgia Brownfields Academy." The Academy is an initiative to enlarge and enhance the state-wide network of service providers who can serve as first points of contact for a range of brownfields redevelopment questions and potential opportunities.
- **New Jersey** coordinated training on basic real estate principles for 225 staff from the Site Remediation and Land Use Regulation programs. The purpose was to provide information on how the decisions made by the New Jersey Department of Environmental Protection staff can affect the economics of brownfields redevelopment projects.

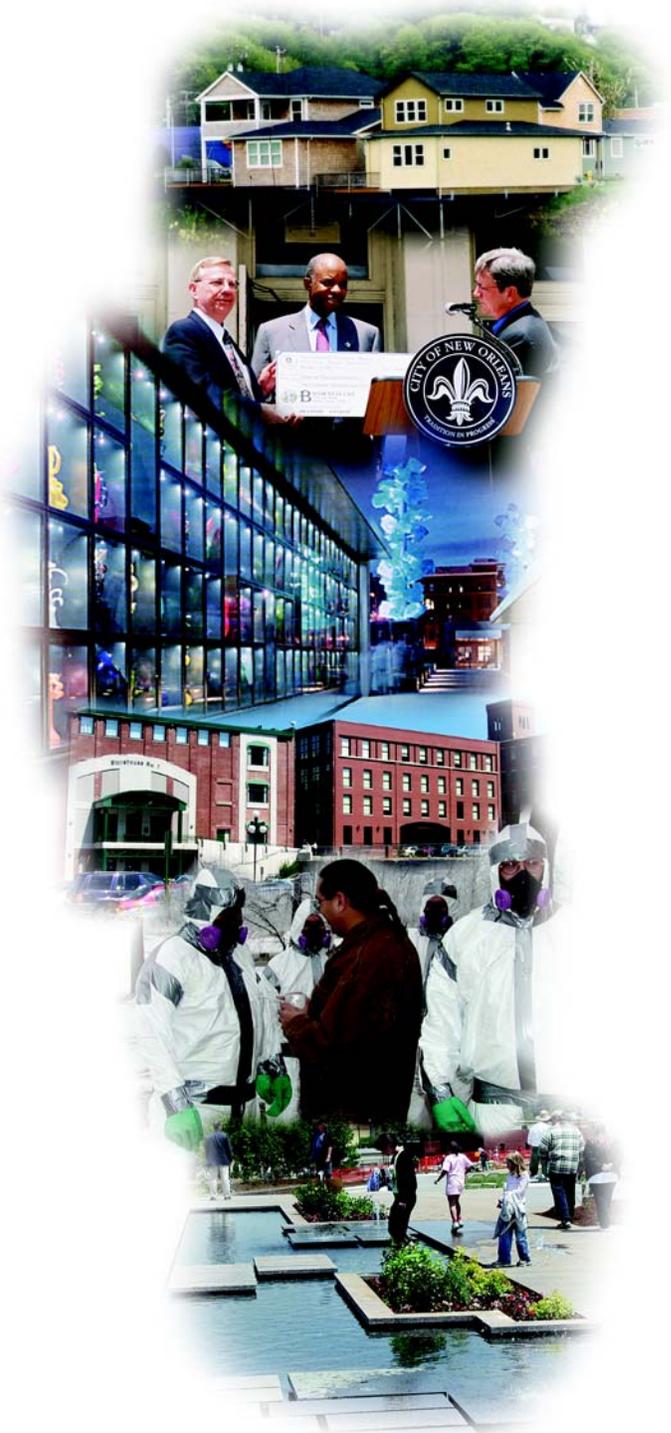
- **Montana** is assisting three to four communities in the development of petroleum site inventories. Each community will then be able to use its individual inventory as a prioritization tool for petroleum sites in advance of seeking assessment and cleanup assistance.

The research indicates that states have embraced the federal Brownfields Law in different ways. Many, like **Oklahoma**, have revised their site eligibility and other response program criteria to mirror federal provisions. **Florida** modified its brownfields definition to match the federal definition, while retaining a separate definition of “brownfields area” which is used for state program eligibility and funding. Others, like **Virginia**, have developed response guidance to take advantage of new federal statutory provisions.

Several states, such as **Nevada**, have emphasized that liability relief for prospective purchasers included in the federal Brownfields Law has been important to state and local officials trying to market brownfields sites. **Indiana** and **New Mexico** have noted that the broader federal definition, which could include facilities like abandoned schools and hospitals as well as petroleum-contaminated sites, will give communities more flexibility in using brownfields initiatives to help meet community development goals.

Finally, more states are reporting significant **benefits** stemming from property participation in their VCP. A sample of what is attributable to these program efforts is as follows:

- **Rhode Island** saw more than \$105,000,000 in new property value generated from 119 businesses that have located on brownfields sites.
- **Wisconsin** attributed more than 5,860 new jobs to 88 brownfields projects.
- **Missouri** conducted a 2006 study of the value of 50 redeveloped sites that were cleaned up under their Brownfields/Voluntary Cleanup Program. The total investment on these 50 sites was \$2.2 billion; 11,053 full-time jobs were created; over 153 thousand tons of contaminated materials were removed; and 686 acres and 13 historic buildings were returned to profitable use.
- **Florida** claims cumulative creation of more than 3,200 direct jobs and 2,100 indirect jobs, as well as \$172,000,000 in new investment in its designated brownfields areas, through the end of 2005.



As the update indicates, elected officials and state program staff across the country are working to make certain that their programs reflect local brownfields project needs, run smoothly, and take advantage of opportunities to tie brownfields cleanup and redevelopment assistance with regulatory incentives.