

# Connecticut

## General Information

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## Program Description (VCP, brownfields, or related)

**Brownfields definition:** No information available

**Program titles:** Brownfields-type programs are administered by the geographically organized Remediation Section in the Bureau of Waste Management within the DEP. Urban Sites Remedial Action Program and Voluntary Remediation Program activities are assigned to staff in each of six geographic districts. Other major remediation programs handled by staff in the Remediation Section are the Property Transfer, federal Superfund National Priorities List (NPL) site, and state Superfund programs and state issued enforcement actions (for investigation and/or remediation).

- Urban Sites Remedial Action Program—DEP staff in all of the remediation districts work closely with staff in the Office of Infrastructure and Real Estate Development within the Department of Economic and Community Development (DECD) on two types of Urban Sites projects. Type I projects (Economic Development Initiative projects) are properties identified by DECD as significant to the state's economy. For these, the owner or developer of the property must be willing and able to conduct investigations and remediate the site. DEP can conduct investigations and/or remediation (using Urban Sites Bond Funds) at properties identified by DECD as significant to the state's economic development when an owner cannot be identified, or is unwilling or unable to investigate and/or remediate the site. These Type II projects must be located in Targeted Investment Communities or Distressed Communities as defined by DECD (pursuant to section 32-9p of the Connecticut General Statutes (CGS)).

- Voluntary Remediation Programs—Certain owners of contaminated property may enter into one of the state's two Voluntary Remediation Programs (CGS §§22a-133x or 22a-133y). Property owners may undertake investigation and/or remediation of their contaminated property, using a Licensed Environmental Professional (as established in 1995 pursuant to CGS §22a-133v) or with DEP review and approval of the investigation and remediation.

**Liability relief provisions:** Two types of covenants not to sue are available to prospective purchasers of contaminated property, current owners of contaminated property, or lending institutions, to provide relief from liability for additional remediation once a property has been remediated to current standards. Entities responsible for causing the contamination are not eligible for a Covenant Not to Sue pursuant to either CGS §22a-133aa or CGS §22a-133bb.

State law provides liability protection for "innocent landowners" as defined by CGS §22a-452d. A lender liability exemption is also provided by CGS §22a-452f.

Legal authorities include strict, joint, several and retroactive liability, orders for information and site access, subpoena authority, administrative and consent order authority, injunctive action and cost recovery authority. The preferred enforcement method is consent order, followed by administrative order or court action.

Civil penalties of \$25,000 per day are available under the hazardous waste program. Punitive damages (1½ times costs for negligent acts or two times costs for willful acts) are available in cost recovery actions.

Pursuant to CGS §22a-452a, any amounts paid by the state in cleanup costs shall be a lien against the property, and such liens take precedence over prior liens except in the case of residential property or property transferred pursuant to the state property transfer law. In these situations, the lien filed by the Commissioner does not take precedence over prior liens or previous transfers or encumbrances, respectively. The state is required to attempt cost recovery.

### Financial incentives (grants, loans, tax provisions, etc.):

- Urban Sites Remedial Action Program—Originally capitalized with \$40,500,000 in state bond-funds for assessment/remediation of sites in "Distressed Municipalities" and "Targeted Investment Communities"; DEP can clean up and the state can acquire a site if they choose, recovering costs from future users.
- Special Contaminated Property Remediation and Insurance Fund (SCPRIF) (managed by DECD) provides low-interest loans to municipalities and private entities for Phase II and III investigations and demolition costs.

- Dry Cleaner Establishment Remediation Fund (managed by DECD) for financing soil and ground water remediation and prevention, up to \$50,000 per year, up to \$150,000 over three years.
- Connecticut Brownfields Redevelopment Authority (CBRA) offers redevelopment grants, assessment grants, and financing to stimulate the development of Connecticut's brownfields sites. Brownfields Assessment Grants are available through CBRA for Phase I and Phase II site assessment activities. CBRA provides Grants for Brownfields Redevelopment (cash grants up to \$10,000,000) to investors, developers and business owners who undertake redevelopment projects. CBRA, a quasi-state organization, is a wholly owned subsidiary of the Connecticut Development Authority.

**Legislative or program site eligibility requirements:**

- Urban Sites Remedial Action Program—for Economic Development Initiative (Type I) projects. The owner or developer of the property must be willing and able to conduct investigations and remediate the site. The site can be located anywhere statewide. Only sites located in Distressed Municipalities and Targeted Investment Communities are eligible for DEP assessment and/or remediation using state Urban Sites Bond funds (Type II). State Urban Site Bond funds can be used only when an owner cannot be identified, or is unwilling or unable to investigate and/or remediate the site.
- Dry Cleaner Establishment Remediation Fund— Provides grants to eligible dry cleaning business operators for the cleanup, containment, or mitigation of pollution resulting from releases of tetrachloroethylene, stoddard solvent, or other chemicals used for dry cleaning. The grants may also be used for measures undertaken to prevent such pollution, and for providing potable drinking water when necessary. Contact DECD for additional eligibility requirements and details.
- SCPRIF—Any person, corporation, municipality or business is eligible to apply for SCPRIF funds. Typically the applicant should either be the current owner of the site, the prospective owner or developer of the site, or the municipality in which the site is located. Sites can be located statewide. In general, applicants must demonstrate that they have access to the site, and that the property owner will consent to the placement of a lien on the property in the amount of the SCPRIF loan. Also, applicants must show that they have the financial and technical expertise and resources necessary to successfully undertake the site investigation, remediation, and redevelopment project. Municipalities are not required to have the owners consent if the site is abandoned or tax delinquent. If the applicant is the owner of the site, they must demonstrate that they did not willfully or knowingly create a source of pollution or negligently violate any provision of Chapter 446k of the Connecticut General Statutes. Contact DECD for additional eligibility requirements and loan terms and conditions.

- CBRA Brownfields Assessment Grants—To be eligible for grants for Phase I and Phase II site assessment activities, the grant request(s) must be part of an economic development project, and the Applicant (including individual owners, investors or officers of the company) requesting the grant can have had no role in contributing to the environmental damage. The grant proceeds can only be used to reimburse the costs of site assessments. Sites can be located anywhere statewide. Contact CBRA for additional requirements.
- CBRA Grants for Brownfields Redevelopment—Cash grants up to \$10,000,000 are available to investors, developers, and business owners who undertake redevelopment projects. The developer, municipal officials and CBRA agree to the scope of the project and quantify the future incremental municipal property taxes that will be generated. Municipal officials and CBRA agree to the portion of those tax revenues that will be remitted to CBRA. CBRA provides the developer with the grant, the amount of which is determined by the present value of the tax revenues remitted to CBRA. Sites can be located anywhere statewide. Contact CBRA for additional requirements.

**Financial Elements**

**Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):**

- The principal funding vehicles for state funded projects (and costs other than state personnel costs) are the state Superfund and the Urban Sites Remedial Action Fund. Sources for the two funds are general obligation bond funds. The current balance in the state Superfund as of June 30, 2004 is not available. The fund monies may be used for site investigation, studies and design, removals, remedial actions, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, operations and maintenance, emergency response, victim compensation, grants to local governments, program administration and natural resource restoration. In order to expend funds from the state Superfund, DEP must determine that a threat is unacceptable, and DEP must be unable to determine the RP, or the RP must be in noncompliance with or appealing an order.
- The Urban Sites Remedial Action Fund (USRAF) had a balance of less than \$5,000,000 as of June 30, 2004. The USRAF is used primarily for site investigation, studies and design, operations and maintenance, removals, and remedial actions.

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- Another bond fund, the Potable Water Grant Fund, is used for grants to municipalities to provide long-term solutions for potable water contamination (typically through the extension of public water or the maintenance and monitoring of treatment systems). The balance as of June 30, 2004 was not available.
- The Emergency Spill Response Fund (ESRF) was transferred into an identified account in the state general fund in 1995. The ESRF is administered in, and primarily used by, the Oil and Chemical Spills Response Division of the Waste Management Bureau. The ESRF is funded by appropriations and cost recovery, and can be used for site investigation, studies and design, operations and maintenance, emergency response, removals, remedial actions, and natural resource restoration.
- In 1996, the state enacted legislation creating the SCPRIF. In February 1998, DEP was awarded \$1,000,000 for establishment of the fund. The fund will be used by DEP and DECD for loans to municipalities, individuals, or firms for environmental site assessments and site preparation of contaminated properties. To date, 70 loan requests have been reviewed and 10 loans totaling \$940,000 have been made.

**Tax incentives (abatements, credits, etc.):** Through the DECD, the following incentives are available:

- **Industrial Site Tax Credit Program**—An investor, in an Industrial Site Development Project, may be eligible to receive a dollar-for-dollar corporate tax credit of up to 100% of their investment up to a maximum of \$100,000,000. An eligible Industrial Site Investment Project is defined as an investment made in real property, or in improvements to real property, located within Connecticut that has been subject to environmental contamination. The investment will return the property to a viable business condition that will add significant new economic activity, increase employment and generate additional tax revenue to the state and the municipality in which the property is located.
- **Urban Site Investment Tax Credit Program**—An investor in an Urban Site Development Project may be eligible to receive a dollar-for-dollar corporate tax credit of up to 100% of their investment up to a maximum of \$100,000,000. An eligible Urban Site Investment Project is defined as an investment that will add significant new economic activity, increase employment in a new facility, and generate significant additional tax revenues to the municipality and the state.
- **Enterprise Zone Program**—Incentives provide tax abatement for five years and 80% of local property taxes on real estate improvements; 10 years/50% tax credit; seven-year minimum deferral of increased taxes resulting from property value rise after remediation has been completed.

**Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):**

- **CBRA**—Offers redevelopment grants, assessment grants, financing, and the one-stop center for programs that encourage and stimulate the development of Connecticut's brownfields sites.

## Program Elements

### Technical Elements

**Methods/standards/controls:** Remediation standard regulations (Regulations of Connecticut State Agencies [RCSA] 22a-133k-1 through k3) were adopted in January 1996. These regulations provide criteria for soil and ground water, permit use of background concentrations, site-specific conditions, and future property use to determine appropriate criteria. Risk-Based Corrective Action (RBCA) process was used as a guide in developing the criteria.

**Contaminants covered/excluded:** These regulations require remediation of all substances that are part of a release (including petroleum, asbestos, lead from paint, and polychlorinated biphenyls (PCBs)). If numeric criteria are not provided, criteria must be proposed and submitted to DEP and the Department of Public Health (DPH) for review and approval. Additional remediation can be required by the Commissioner.

**Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners):** Land use restrictions (as prescribed in the remediation standard regulations) can only be implemented with the land owner's consent, require the Commissioner's approval, are recorded on the land records, and are enforceable on future property owners.

### Management & Implementation Elements

**Voluntary Cleanup Program MOA with EPA:** No

**Costs to enter program or fees for service:**

There are fees for:

- Participation in the Voluntary Remediation Program pursuant to CGS §22a-133x
- A Covenant Not To Sue pursuant to CGS §22a-133aa
- Property transfer filings

There are no fees for:

- Participation in the Voluntary Remediation Program pursuant to CGS §22a-133y
- A Covenant Not To Sue pursuant to CGS §22a-133bb

**Funding source for administrative costs and staff:**

Funds for staff and administration are from state funds (approximately 65%) and federal grants (approximately 35%).

- DEP's, Bureau of Waste Management, Remediation Section includes 47 full-time equivalent (FTE) staff associated with remedial activities, most of whom work on non-NPL site cleanups. The Attorney General's office provides legal support with two to three attorneys spending some portion of their time on state Superfund and enforcement of remedial action orders.

## Cleanup Activities

### Sites currently in VCP:

- More than 60 sites are currently in the Urban Sites Remedial Action Program (private and state funded)
- 259 sites are currently in the Voluntary Remediation Programs
  - 216 in CGS §22a-133x
  - 43 in CGS §22a-133y
- 2000 sites (Form III filings) are currently in the Property Transfer Program

### Sites completed under VCP:

- More than 30 sites have been completed under the Urban Sites Remedial Action Program (private and state funded)
- 19 sites have been completed under the Voluntary Remediation Programs
  - 17 completed under CGS §22a-133x
  - 2 completed under CGS §22a-133y
- 96 sites (Form III filings) have been completed under the Property Transfer Program

### Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Not currently tracking economic impacts; DEP does note that parks, open space, schools, day-care facilities, and recreational uses for brownfields are increasing since the legislature increased DECD's authority to address environmental liability concerns.
- Since the program's inception in 1992, more than \$24,000,000 of the \$30,500,000 provided has been allocated to investigate and remediate contaminated urban sites. It is estimated that the 11 state-funded sites will create 2,500 construction jobs and a minimum of 5,000 permanent jobs in manufacturing, service, retail, research, and entertainment. In addition, a minimum of \$6,000,000 in annual municipal tax revenue will be generated. Additional jobs and associated benefits will be gained through responsible party redevelopment of urban sites with the cooperation of DEP.

## Public Participation

**Public participation requirements (notice, comment periods, etc.):** The state's voluntary cleanup law and the remediation standard regulations require public notice of certain activities, and an opportunity for comment, as well as public hearings if there is substantial public interest in the remediation or other activity. The regulations also provide for public notice and an opportunity for a public hearing when the Commissioner is asked to approve a request by a property owner for an engineered control, such as a cap, to address polluted soil. Public notice of proposed environmental land use restrictions (with opportunity to comment) is also required. For state-funded projects, DEP holds public meetings at various stages of the investigation and cleanup. DEP also keeps local officials informed of the status of state-funded projects.

**Public participation activities (hearing, meetings, etc.):** See previous section.

## Statutory Authorities

- Public Act 87-561, codified at CGS §22a-114 and §§22a-133a through 133k (1987, as amended 1989 and 1995), authorizes DEP to cleanup hazardous waste disposal sites and to use funds from the Emergency Spill Response Account or other accounts authorized by law for cleanup purposes. The law provides for enforcement; strict, joint and several liability; and cost recovery.
- Public Acts 95-190 and 95-183 establish a voluntary cleanup program and the Licensed Environmental Professionals program. These provisions are codified at CGS. §§22a-133v through 133y.
- The *Transfer of Hazardous Waste Establishments Program Law*, CGS §§22a-134 through 134e (1985), creates a property transfer program. CGS §22a-134 was amended by Public Act 95-183, Public Act 96-113, and Public Act 97-218.
- The *Water Pollution Control Laws*, CGS §§22a-432, 22a-433 (1967 and subsequent amendments), provide authority for administrative cleanup orders.
- The *Urban Sites Remedial Action Program Law*, CGS §229-133m (1992, amended 1993), provides funding to clean up urban industrial sites and addresses hazardous substance cleanup in connection with property transfers.
- The *Emergency Spill Response Fund Law*, CGS §22a-451(d) (1982, amended 1995), establishes the response fund, provides enforcement authorities, and allows for replacement of water supplies. The 1995 amendment, Public Act 95-208, transferred this fund to the state general fund as of July 1, 1995.

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- CGS §22a-471 (1982, amended 1983-88, 1993-95), authorizes DEP to arrange for the short-term provision of potable drinking water where pollution of ground water creates an unreasonable risk for health or safety; to issue orders requiring the provision of such water supplies; and to advance to municipalities the cost of providing drinking water from the proceeds of any bonds authorized for that purpose.

## General Information

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## Program Description (VCP, brownfields, or related)

**Brownfields definition:** No information available

**Program titles:** Voluntary Response Action Program (VRAP)

### Liability relief provisions:

- Offers Certificate of Completion (COC) for all pollutants identified in site assessment and cleanup to the program's satisfaction.
- Legal authorities include: strict, joint and several, and retroactive liability; orders for information; site access and remediation orders; administrative order authority; cost recovery; liens and superliens; and punitive damages of treble the state's costs. The Commissioner must designate a site for a consent decree. Penalty authority is derived from the hazardous waste statute. DEP also has a property forfeiture provision.

### Financial incentives (grants, loans, tax provisions, etc.):

- Grants to municipalities for site assessment of tax delinquent properties
- Ground Water Fund

### Legislative or program site eligibility requirements:

- Ground Water Fund coverage does not include any costs associated with hazardous substances or hazardous waste.
- Only those costs necessary to clean up a site to the DEP's remedial objectives are eligible for reimbursement. If an applicant cleans a site to a "stringent" soil cleanup objective when only a "baseline-1" cleanup level is required, the Ground Water Fund will only pay for those costs associated with the "baseline-1" cleanup. If the difference between a "stringent" and a "baseline-1" soil cleanup is 2,500 yards of soil, the out-of-pocket cost difference to the applicant could be significant. State cleanup levels are enumerated in

DEP's "Procedural Guidelines for Establishing Action Levels and Remediation Goals for the Remediation

of Oil Contaminated Soil and Ground Water in Maine" and may be found on DEP's Web site.

## Financial Elements

**Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):**

- Maine uses two accounts for cleanup funding—The Uncontrolled Sites Bond Account and the Uncontrolled Sites Fund. Expenditures from the Bond Account totaled \$1,600,000 in 1997. Minimal, if any, funds were added to the Bond Account during FY97. The state spent \$704,600 from the Uncontrolled Sites Fund during 1997, and \$320,900 was added. The majority of monies from both funds were spent at non-National Priorities List (NPL) sites. No information was available concerning total monies obligated or encumbered for these funds. Both funds may be used for site investigation, emergency response, removals, studies and design, remedial actions, natural resource restoration, operations and maintenance, grants to local government, program administration, and Comprehensive Environmental Response Compensation and Liability (CERCLA) match. Cleanup of closed municipal landfills is financed through a separate bond fund and statutory authority.
- The Ground Water Fund provides funding for investigation and cleanup at petroleum contamination sites. Eligible applicants to the Ground Water Fund pay a deductible (based on the number of facilities they own) and receive up to \$1,000,000 in coverage for eligible expenses. The Ground Water Fund is funded by fees on each barrel of oil entering the state.

**Tax incentives (abatements, credits, etc.):** No information available

**Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):** The state's voluntary program is an alternative to the state's regular cleanup program. Some monies are dedicated to fund the state's participation, and participants pay a \$500 application fee and are charged for time spent by the state. Site owners are able to get full or partial liability releases depending on the cleanup work carried out at the site. Incentives for participation include getting sites back into economic use and getting a certificate from state indicating that cleanup was completed to the state's satisfaction. The state is developing a brownfields program. An inter-agency team is identifying potential resources to promote brownfields redevelopment.

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## Program Elements

### Technical Elements

**Methods/standards/controls:** Draft cleanup guidelines consider three separate exposure scenarios for soil contact: residential, commercial/industrial, and trespasser. Alternatively, a site-specific goal may be established using the state's risk-assessment guidance document. If these options fail, applicants may follow a Risk-Based Corrective Action (RBCA)-like process, which always includes institutional controls.

**Contaminants covered/excluded:** Petroleum, polychlorinated biphenyls (PCBs) are OK; no asbestos or lead paint.

**Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners):** Institutional controls are part of most certifications at VRAP sites.

### Management & Implementation Elements

**Voluntary Cleanup Program MOA with EPA:** No

**Costs to enter program or fees for service:** No information available

### Funding source for administrative costs and staff:

The DEP Bureau of Remediation and Waste Management, Division of Remediation has 26 full-time equivalent (FTE) staff. One and one-half positions in the attorney general's office are devoted to Superfund-type enforcement activity. DEP also works with the Bureau of Health in conducting risk assessments and lab work. Funding for administration comes from federal grants (61%), state cleanup funds (34%), and the state general fund (5%).

## Cleanup Activities

**Sites currently in VCP:** 40 sites are underway.

### Sites completed under VCP:

- 260 sites have completed investigation and remedial action as of July 31, 2002.
- Since the VRAP's inception in 1993, 377 sites have applied to the program, with final VRAP certification documents being issued at 291 sites. The program has collected about \$234,000 in fees.

**Benefits (incentives to participate in the VCP, covenants not to sue, etc.):** Economic impacts not formally tracked, but the state has documented specific sites, such as the Bangor Gas Works site, which increased state tax revenues by \$1,300,000 annually. A number of remediated sites are now parks, ballfields, and at least two marinas.

## Public Participation

**Public participation requirements (notice, comment periods, etc.):** Maine has no formal requirements for public involvement. DEP policy is to keep local officials and residents informed.

**Public participation activities (hearing, meetings, etc.):** DEP is working with a stakeholders group to develop a public participation policy. The department anticipates using the policy on a trial basis over the next federal grant period (October 2004–September 2005) with full implementation to follow.

## Statutory Authorities

The *Uncontrolled Hazardous Substance Sites Act*, Maine Rev. Stat., Title 38, §§1361 through 1371 (1983, as amended 1985, 1987, and 1990), establishes the Uncontrolled Sites Fund and authorizes DEP to clean up uncontrolled hazardous substances sites. The law provides for: enforcement; strict, joint and several liability; cost recovery; and natural resources damages assessment and recovery. Maine Rev. Stat., Title 38, §§343–E (1993), creates a program for voluntary cleanup of hazardous waste sites.

## General Information

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## Program Description (VCP, brownfields, or related)

**Brownfields definition:** No official definition has been adopted in Massachusetts.

Program titles:

- Privatized, Voluntary Cleanup Program (1993)
- Massachusetts Brownfields Act (1998)

Liability relief provisions:

- Under state cleanup laws (Massachusetts General Laws, Chapter 21E) there is strict, joint, and several liability for current and past owners/operators of contaminated property.
- The Massachusetts Brownfields Act amended state cleanup laws (MGL Chapter 21E) to provide liability protection for several types of parties involved in brownfields projects:
- Eligible Persons: Owners/operators who did not cause or contribute to contamination at the site who meet other statutory requirements receive liability protection upon the completion of a cleanup from Commonwealth claims for response action costs and third party claims for property damage.
- Downgradient Property Owners: Exempts certain owners and operators from liability for contamination that has migrated onto their property provided statutory requirements are met. Owners and operators are eligible if they have had no connection with the property that contains the source of the contamination and they did not cause or contribute to the contamination. If the source is unknown, the owner or operator has a defense to liability, rather than an exemption.
- Tenants: Exempts certain tenants from operator liability provided certain statutory requirements are met. Those include the requirement that their tenancy must have begun after the release was reported to MassDEP, and they did not cause or contribute to the contamination.

- Redevelopment Authorities and Community Development Corporations (CDCs): Exempts redevelopment agencies and authorities, CDCs and Economic Development and Industrial Corporations (EDICs) provide statutory requirements are met. Those include the requirements that they: acquire the property after August 5, 1998; did not cause or contribute to the contamination; notify MassDEP of the release; provide access to people who are cleaning up; prevent exposure to contamination; and take immediate response action where needed.
- Secured Lenders: Exempts secured lenders who take ownership of contaminated property through foreclosure provided they meet statutory requirements including acting diligently to divest of the property.
- The Brownfields Act created the Brownfields Covenant Not to Sue (CNTS) Program administered by the Massachusetts Office of the Attorney General to provide liability protection for the more complicated projects not covered by liability protection offered directly under the statute. For example, the CNTS can be offered to a causally responsible party, someone who is not covered by the statute. Protection through the CNTS is also available to an eligible person who can reach only a temporary solution. Statutory protection is provided only when a permanent solution is reached. Liability relief is offered to applicants as an incentive towards, and in return for, cleanup and redevelopment at the site.

### Financial incentives (grants, loans, tax provisions, etc.):

- The state offers assessment and cleanup loans for brownfields projects located in economically distressed areas through the Brownfields Redevelopment Fund administered by MassDevelopment. Additional assessment services are available through the Urban Brownfields Site Assessment/Environmental Justice Initiative, implemented through the Executive Office of Environmental Affairs and DEP. Several tax incentive programs are available.
- The state dedicates a portion of its federal Brownfields funding to implement site assessment and cleanup projects to facilitate property turnover and redevelopment.

### Legislative or program site eligibility requirements:

- Permanent cleanup solutions must eliminate significant risk of harm to health, safety, public welfare, and the environment. Where remedial action is taken, cleanup to background conditions is required when feasible. Temporary solutions are required if a permanent solution is infeasible.
- Activity and Use Limitations are required if the remediation levels are based on anything less than the most sensitive (i.e., residential) use. Use restrictions are implemented through a deed notice or deed restriction.
- Eligibility requirements for incentive programs created by the Brownfields Act differ, depending on the program.

# Massachusetts

## **Financial Elements**

**Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):**

- The Waste Site Cleanup Program is funded by the state general fund with support from federal grant programs.
- Bonds fund state response actions – roughly \$6,000,000 was expended from the bond fund during FY06, based on estimates as of July 2006. Of that total, \$4,900,000 was spent for non-National Priorities List (NPL) sites, with \$1,100,000 spent on NPL sites. Since 1983, MassDEP has spent approximately \$183 million. As of July 2006, a balance of approximately \$42,000,000 remained in the bond fund. Bond funds may be used for site investigation, studies and design, removals, emergency response, remedial actions, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, operations and maintenance, and grants to citizen groups and local governments for technical assistance.
- Brownfields and Related Economic Development Programs—The Brownfields Redevelopment Fund (BRF) Program provides interest-free site assessment financing of up to \$50,000. The borrower or project sponsor must be an “eligible person,” as defined by statute, with site control or evidence of the right to enter the site for purposes of conducting environmental testing. The BRF program also offers low-interest financing of up to \$500,000 for cleanup. Remediation loans are secured by a mortgage (or other substantial collateral), and the borrower must be the owner of the site. Terms are flexible and determined on a case-by-case basis.
- Approximately 10% of the state’s federal Brownfields grant funding is dedicated to site-specific assessment and cleanup projects as an incentive to redevelopment. As of July 2006, the state had initiated or completed 15 site assessments and 2 site cleanups using such funding.

**Tax incentives (abatements, credits, etc.):**

- Brownfields Tax Credit for remediation—25% (with reuse restrictions) or 50% (without reuse restrictions), for eligible persons who complete projects in Economically Distressed Areas (EDAs).
- Municipal Tax Abatement—Municipalities can negotiate back taxes on contaminated sites in exchange for commitment by a new owner to clean and restore site to tax rolls.
- Economic Development Incentive Program (EDIP)—Tax increment financing, abandoned building tax deduction, and investment tax credit for revenue generating projects located in Economic Target Areas (ETAs).

**Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):**

Brownfields Redevelopment Access to Capital (BRAC)—State subsidized, volume discounted environmental insurance

provided through a private insurer and administered by MassBusiness. Pollution Legal Liability and Cleanup Cost Cap coverage is available. The state subsidizes premiums on policies up to 25%.

## **Program Elements**

### **Technical Elements**

**Methods/standards/controls:**

- A risk-based regulatory program is in place; it offers a choice of a chemical-specific approach with numerical standards, or a cumulative-risk approach based on site-specific information.
- Regulations (the Massachusetts Contingency Plan) set out three methods for establishing cleanup standards at disposal sites. The first method relies on numeric cleanup standards for 120 chemicals in three ground water categories and three soil categories. The second method allows modification of the Method 1 numeric standards based on site-specific fate and transport information. The third method establishes cleanup goals based on site-specific conditions and a quantitative risk assessment. For sites where a quantitative risk assessment is used to determine cleanup standards, any applicable or suitably analogous Massachusetts health and environmental standards must be met, and cumulative receptor risk limits must be achieved. The cancer risk limit is a cumulative excess lifetime cancer risk of  $10^{-5}$ . The non-carcinogen risk limit is expressed as a Hazard Index of 1.

**Contaminants covered/excluded:**

- Petroleum, asbestos, volatile organic compounds (VOCs), semi-VOCs, PAHs and polychlorinated biphenyls (PCBs) are covered. Lead paint at the point of application, and pesticides that were properly applied, are excluded.

**Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners):**

- Activity and Use Limitations (deed notices/restrictions) are used. An unfavorable audit may re-open cleanup.

### **Management & Implementation Elements**

**Voluntary Cleanup Program MOA with EPA: No**

**Costs to enter program or fees for service:**

No information available

**Funding source for administrative costs and staff:**

Waste Site Cleanup Program: DEP’s Waste Site Cleanup Program has a total of 203 full-time equivalent (FTE) staff. The Bureau of Waste Site Cleanup is the program lead. The Bureaus of Waste Prevention and Resource Protection also have staff dedicated to the program. In addition, 11.5 FTE attorneys from DEP’s Office of General Counsel and several attorneys in the Commonwealth’s Attorney General’s office provide enforcement support. Scientists in DEP’s Office of Research and Standards provide risk assessment support at specific sites and in regulation and policy development.

## **Cleanup Activities**

**Sites currently in VCP:** As of July 2006, 34,312 release notifications have been made to DEP, with about 4,735 still active. Approximately 1,800 new releases enter the program each year.

**Sites completed under VCP:** From a universe of 34,312 sites that have been reported to DEP, 29,377 cleanups have been completed. Beginning in 2002, the number of cleanups per year has surpassed the new notifications.

**Benefits (incentives to participate in the VCP, covenants not to sue, etc.):** No information available

Public Participation

**Public participation requirements (notice, comment periods, etc.):** The statute and regulations require public notice of all classifications of disposal sites and applications for Tier I permits for response actions. When citizens petition for community involvement in response actions, a public involvement plan must be prepared. Local officials are informed of key site activities throughout the cleanup process. The person conducting the response action is required to implement required public involvement activities. The CNTS program requires notice of third parties as part of the covenant negotiation process. The BRF program requires community support letters for all applications.

**Public participation activities (hearings, meetings, etc.):** See above

## **Statutory Authorities**

- The *Massachusetts Oil and Hazardous Material Release Prevention and Response Act*, MGL Chapter 21E (1983, as amended in 1986, 1992 and 1994), authorizes DEP to ensure the cleanup of sites contaminated by oil or hazardous material. Law provides for: enforcement; strict, joint and several liability; cost recovery; public participation; natural resources damages assessment and recovery; and voluntary cleanups.
- The *Massachusetts Brownfields Act* MGL Chapter 206 (1998), authorizes several agencies at the state level to administer financial and liability programs created through this program.

# New Hampshire

## General Information

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## Program Description (VCP, brownfields, or related)

**Brownfield definition:** New Hampshire defines brownfields in statute to be “properties which have been environmentally contaminated, subject to limitations of RSA 147–F:4, II. These limitations include requiring that the property be in compliance with any corrective actions or compliance orders and the property can not be eligible for cost reimbursement from the oil discharge and disposal cleanup fund, the fuel oil discharge fund or the motor oil discharge cleanup fund unless it receives substantially less than full reimbursement from these funds.” In addition, the state uses EPA’s definition as its working definition for broader brownfields redevelopment efforts (including those outside the Voluntary Cleanup Program (VCP)).

**Program titles:** Brownfields Covenant Program (1996)

### Liability relief provisions:

- Program offers No Further Action (NFA) letter, Certificate of Completion (COC), and Covenant Not to Sue (CNTS).
- State law provides for strict, joint and several liability. The state is authorized to issue administrative orders, including orders for information, site access, and site cleanup. The state also has subpoena and consent order authorities. New Hampshire may take injunctive action to induce a generator to clean up a site, may impose criminal penalties, and may bring an action to recover costs. New Hampshire has a first priority lien on: 1) real property (other than residential property) where hazardous waste or hazardous material is located; 2) the business revenues generated from the facility on the real property where the hazardous waste or hazardous material is located; and 3) all personal property located at this facility. A lien without priority, effective as of the date and time of recording and filing, can be established against all other property.

### Financial incentives (grants, loans, tax provisions, etc.):

- Municipally-owned sites are eligible for state clean water revolving fund loans (as of October 1, 1999).

- EPA-capitalized Brownfield Cleanup Revolving Loan Fund (RLF) provides low-interest loans and some direct financial assistance to brownfields cleanup. Five loans have been made. Sites statewide are eligible. Loan amounts are typically between \$50,000 to \$500,000, but any amount can be requested and will be considered. Interest rates and terms are negotiable. Interest rate for loans to date is 3%. Loans for environmental remediation may have terms of up to 10 years, but preference is given to shorter term or bridge loans.
- Site investigation and remedial action planning services available to municipalities through DES Brownfields Program (with EPA grant money used to pay state environmental consulting contractors).

### Legislative or program site eligibility requirements:

- Cleanup levels must meet or exceed any federal standards. Sites must achieve existing federal standards for ground water and surface water. The state has developed a Risk Characterization and Management Policy for soils, which provides for a three-tiered approach to selecting cleanup standards. The first two tiers incorporate established values, while the third tier involves site-specific risk assessment. The state uses risk levels of  $10^{-6}$  (individual) or  $10^{-5}$  (cumulative) for carcinogens and a Hazard Index of 1. Where land use assumptions are a basis for establishing cleanup standards, the state may require that “Activity and Use Restrictions” (AUR) be recorded on the deed. In addition, NHRSA Chapter 485 authorizes the state to designate Ground Water Management Zones as a component of ground water remediation, and the law requires that Ground Water Management Zones be recorded in the registry of deeds.
- New Hampshire enacted legislation creating a Brownfields Covenant Program in July 1996. Any property contaminated with hazardous waste, hazardous materials, or oil is eligible, except sites that are being cleaned up through one of the state’s petroleum reimbursement funds and sites that are under an environmental or corrective order (unless participation in the program will bring about compliance). A CNTS which protects against liability under state law, may be issued to participants other than those who caused or contributed to the contamination. Cleanup is underway or completed at 20 sites participating in the Brownfields Covenant Program.
- New Hampshire law provides general authority for voluntary cleanups. The state considers voluntary cleanups to be an integral part of its program and essentially all non-National Priorities List (NPL) site cleanups to be voluntary cleanups.

**Financial Elements**

**Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):**

- The Waste Management Division of the DES administers the Hazardous Waste Cleanup Fund (HWCF). The Division’s Hazardous Waste Remediation Bureau is primarily responsible for work on federal Superfund and all non-Superfund state sites.
- The balance in the HWCF at the end of FY04 was \$5,500,000. The HWCF is derived primarily from quarterly fees paid by generators of hazardous waste, recovered costs, fines and penalties. An average of \$1,400,000 is collected each fiscal year. The HWCF can be used for site investigation, operations and maintenance, studies and design, removals, emergency response, remedial action, program administration, and grants to local governments. State law requires that the governor certify that circumstances require use of the fund. NHRSA Chapter 147–B provides for issuing bonds, to be paid from the HWCF, to fund remedial investigation and cleanup. A separate capital bond is appropriated for Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match for each fiscal year.

**Tax incentives (abatements, credits, etc.):**

- “Qualified holder” provisions of hazardous waste and petroleum statutes provide protection to lenders and municipalities (for tax deeding).
- Brownfields sites are exempt from state hazardous waste generator fees.
- Municipalities can abate taxes at brownfields sites.

**Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):** No information available

**Program Elements**

**Technical Elements**

**Methods/standards/controls:** Risk characterization and management policy includes a three-tiered risk-based approach. Contaminant-specific generic soil and ground water cleanup standards are provided in table form; alternatives can be developed based upon site-specific information.

**Contaminants covered/excluded:** Petroleum, asbestos, lead paint, polychlorinated biphenyls (PCBs) all OK.

**Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners):**

- AURs are used when the risk characterization depends upon the restriction of site activities and uses to achieve or maintain protection of human health and/or environment. After completion of active remedial

measures, a ground water management permit (an institutional control itself) is typically issued to monitor ground water quality until it meets standards.

- When properly applied, AURs are protective and provide for cost-effective risk management. Use of AURs has helped make site redevelopment feasible at some sites.

**Management & Implementation Elements**

**Voluntary Cleanup Program MOA with EPA:** No

**Costs to enter program or fees for service:** There is a \$500 application fee and a \$3,000 participation fee for the Brownfields Covenant Program. The state has also begun to exercise its statutory authority to recover actual personnel and overhead costs for DES staff who work on contaminated sites investigation and remediation within the voluntary cleanup program.

**Funding source for administrative costs and staff:** The Bureau has 25 full-time equivalent (FTE) staff, 15 of whom work on non-NPL sites. The Department of Justice (Office of the Attorney General) provides legal support through 4.5 FTE attorney positions and receives an annual appropriation from the HWCF. The program’s funding comes from the HWCF (20%) and federal grants (80%).

**Cleanup Activities**

The state generally does not undertake remediation at non-NPL sites. About 83 non-NPL sites are currently being cleaned up. Approximately 136 sites have been cleaned up on a voluntary basis since the start of the program, with about 50 completed in the past fiscal year. In addition to staff and administration, the HWCF has been used for emergency removal activities and for various hydrogeological studies at sites in the preliminary stages of investigation.

**Sites currently in VCP:** Since inception, 33 sites have enrolled in program.

**Sites completed under VCP:** Site remediation has been completed and covenants have been issued at 15 sites in the Brownfields Covenant Program.

**Benefits (incentives to participate in the VCP, covenants not to sue, etc.):**

- About 1,500 jobs have been created or retained. Redevelopment uses have included hotel/conference center, multi-tenant office, small businesses, light manufacturing, town office complex, public park, residential town houses, and a variety of other uses. In excess of \$50,000,000 in new capital investments in sites has been leveraged.
- New Hampshire state and local governments have seen increased business and property tax revenues, but these have not been quantified. A good example—the former Whitney Screw site project in

# New Hampshire

Nashua, New Hampshire, won an Environmental Merit Award in 2002. It used the Brownfields Covenant Program, Brownfields Cleanup RLF program, and state petroleum reimbursement funds to leverage private redevelopment investments in excess of \$3,500,000.

## ***Public Participation***

**Public participation requirements (notice, comment periods, etc.):** The state is working to develop public participation procedures in conjunction with its grant funding under the CERCLA 128(a) State and Tribal Response Program Grant.

**Public participation activities (hearing, meetings, etc.):**  
No information available

## ***Statutory Authorities***

- The *New Hampshire Hazardous Waste Cleanup Fund Act* (HWCF), NHRSA Chapter 147–B (1981, as amended 1983, 1985, 1986, 1987, 1990, 1991 and 1996), establishes the Hazardous Waste Cleanup Fund and authorizes the DES to use the fund for expenses directly associated with cleanup of hazardous waste or hazardous materials. The law provides for: enforcement; strict, joint and several liability; and cost recovery. NHRSA Chapter 147–B and Chapter 147–A (hazardous waste management), provide general authority for voluntary cleanups.
- NHRSA Chapter 485 (1996) and the Groundwater Protection Rules, ENV-Ws 410, authorize the designation of Ground Water Management Zones as a component of the remediation of contaminated ground water and provide for the issuance of permits for the remediation. The law also requires recipients of a permit to record notice of the Ground Water Management Zone designation with the registry of deeds.
- NHRSA Chapter 147–F (1996), establishes the state's brownfields program.

## General Information

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## Program Description (VCP, brownfields, or related)

**Brownfields definition:** Rhode Island does not define a brownfields in statute or regulations, but DEM relies on the Brownfields Law definition.

**Program titles:** Industrial Property Remediation and Reuse Program (1995)

**Liability relief provisions:** Under state law, all parties responsible for contamination at a site (“responsible parties” or “RPs”) are strictly, jointly and severally liable for remediating the site. The remedial liability is retroactive in the sense that liability attaches when a site is determined to be contaminated without regard to when the site became contaminated or whether the activity that caused the contamination was legal at the time it occurred. A person or entity can become a liable RP simply by acquiring ownership of or using a site that was contaminated by past activities. In addition to becoming liable for site cleanup, RPs may also be subject to administrative or judicial legal action, civil and criminal penalties, treble damages, and payment of costs incurred by the state in its handling of the contaminated site. An RP that participates in a cleanup, can receive a Letter of Compliance from DEM indicating that the remediation is complete. The brownfields program allows non-RPs—typically prospective purchasers or users—to protect themselves from liability of a contaminated site. Under the brownfields program, a non-RP that is interested in buying, using, developing, or remediating a contaminated site can become eligible to receive a Covenant Not to Sue (CNTS) that protects against liability from the state following completion of a DEM-approved cleanup, performed pursuant to a Brownfields Settlement Agreement. Although one or more RPs or potential RPs (PRPs) are often the parties that actually perform the cleanup, RPs and PRPs are not eligible to receive a CNTS.

**Financial incentives (grants, loans, tax provisions, etc.):** EPA-capitalized Brownfields Cleanup Revolving Loan Fund (RLF) provides low-interest loans for site cleanup.

RIDEM has funding for site assessment work for municipalities and nonprofit associations, through EPA Brownfields Assessment Grants.

*The Rhode Island Mill Building and Economic Revitalization Act* offers a 10% tax credit on the cost of substantial rehabilitation for certified sites.

Incentives are available to lenders that provide financing to mill developers.

### Legislative or program site eligibility

**requirements:** Cleanup levels are determined on a case-by-case basis, using water quality criteria, Maximum Contamination Level/Maximum Contamination Level Goal (MCLs/MCLGs), ground water standards, background levels, EPA guidelines and generic risk-based soil standards developed by the state. The state also uses site-specific risk assessment. The remedial objective for each carcinogenic substance cannot exceed a  $1 \times 10^{-6}$  excess lifetime cancer risk level and the cumulative excess lifetime cancer risk posed by the contaminated-site cannot exceed  $1 \times 10^{-5}$ . The remedial objective for each non-carcinogenic substance does not exceed a Hazard Index of 1 and the cumulative Hazard Index posed by the contaminated-site does not exceed 1 for any target organ. The state considers assumptions about future land use in establishing cleanup levels. Where remediation standards are based on land use restrictions, the state requires that environmental land usage restrictions (ELURs) be recorded with the title.

Voluntary cleanups are handled under the regular cleanup program. Although anyone is eligible, non-PRPs may obtain a CNTS and protection from contribution actions. The brownfields program targets any underutilized site where contamination or suspected contamination impedes development. Participating sites may receive liability protection.

Highlights of the state brownfields legislation:

- DEM “shall provide for the coordination of the brownfields program, including consolidation of applications and hearing procedures for brownfields properties internally and across state agencies, the creation and maintenance of a consolidated application for brownfields projects which shall include all DEM application information and information required by other state agencies or bodies for purposes of redeveloping or financing the redevelopment of brownfields properties, and any other coordinating functions which will aid in the quick and efficient redevelopment of brownfields properties...”
- “(1)...any registered Professional Engineer who is employed, retained and/or otherwise acting on behalf of a municipality of this state may enter, examine or survey, at any reasonable time, such places and real property which is either owned by a municipality or real property in which the municipality has a legal interest arising from a real property tax lien, on which property owner has made no payments for a period of at least two (2) years, for the purpose of performing an environmental assessment or investigation. An environmental assessment or investigation under this section shall be conducted in accordance with and shall be subject to the same guidelines and limitations

# Rhode Island

provided for an administrative inspection or, where appropriate, a criminal investigation, pursuant to the provisions of R.I.G.L. subsection 42-17.1-2(t)... ”

## **Financial Elements**

**Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):** The Rhode Island Targeted Brownfields Assessment (TBA) Program is funded by EPA and administered through DEM's Office of Waste Management. The purpose of the TBA program is to provide environmental site assessments of brownfields properties in order to determine the actual extent and severity of contamination—if any is present. This program is targeted specifically at government, tribal, and nonprofit organizations that are not considered RPs relative to the contaminated property. The TBA is conducted by one of DEM's technical assistance contractors (TACs) with direct oversight and control by Department personnel. The TBA Report, generated by the performance of the TBA, fully meets the Site Investigation requirements of Section 7.0 of the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (Remediation Regulations). The TBA Report also provides a preliminary cost estimate for any remediation that may be required to bring the site into compliance with the Remediation Regulations. Due to the fact that the DEM generates the TBA Report, it enjoys a higher level of acceptance with the business and environmental communities and eliminates the uncertainty surrounding the required cleanup of the property, thereby facilitating its redevelopment and reuse.

### **Tax incentives (abatements, credits, etc.):**

- There are Mill Building Tax Credits for investors in 11 participating municipalities. The Economic Development Corporation (EDC) oversees the program aimed to assist developers in renovating certified mill buildings.
- There are Historic Mill Building Tax Credits for the rehabilitation of historic commercial structures. The Rhode Island Historic Preservation and Heritage Commission administers both the federal and new state tax credit programs.

### **Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):**

- The state EDC in coordination with DEM administers a Brownfields Cleanup Revolving Loan Fund. EDC acts as the Program Manager and DEM acts as the site manager. Grants are available to nonprofits and municipalities under the RLF.

## **Program Elements**

### **Technical Elements**

**Methods/standards/controls:** The remediation regulations were amended on February 24, 2004. The changes include the following: 1) Revised arsenic standards for residential and Industrial/Commercial Direct Exposure Criteria both raised to 7.0 mg/kg; 2) Special requirements for managing arsenic in soil—Section 12; and 3) Additional revisions and clarifications in Sections 1 through 14, including the appendices.

**Contaminants covered/excluded:** Petroleum and polychlorinated biphenyls (PCBs) are included under the site remediation regulations. Lead-based paint from industrial/commercial properties also are covered under the regulations, but only in cases where they are in the environment and not still on a structure. Lead-based paint contamination at residential properties falls under the jurisdiction of the Department of Health when the source of the contamination is the residence. Some jurisdiction remains under the remediation regulations if the source is from some other structure such as a water tank or a bridge.

**Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners):** State encourages ELURs on industrial/commercial properties. Monitoring wells and annual ELUR compliance monitoring usually are required. Benefits of institutional controls are that more sites are being cleaned and reused. Community concerns are being addressed by mandatory public notice requirements at various points in investigation and remedy selection. In addition, a 14-day public comment period is required prior to any settlement agreement and CNTS.

### **Management & Implementation Elements**

**Voluntary Cleanup Program MOA with EPA:** February 1997

**Costs to enter program or fees for service:** The only fee is the \$1,000 Remedial Action Approval fee which is required of all projects that fall under the remediation regulations.

**Funding source for administrative costs and staff:** Previously the majority of the program was supported by out of state funds, however brownfields funding, from EPA Subtitle C of the federal Brownfields Law, is currently paying for some administrative costs and staff.

DEM Bureau of Environmental Protection, Office of Waste Management, has 44 full-time equivalent (FTE) staff. Federal grants provide 69% of funding for staff and administration, with the remainder coming from state cleanup funds (6%) and the state general fund (25%).

## **Cleanup Activities**

**Sites currently in VCP:** 700 sites are currently underway; 119 sites have entered into settlement agreements and CNTS—totaling 1053 acres.

**Sites completed under VCP:** 47 sites completed the Voluntary Cleanup Program (VCP) program during the last fiscal year. Approximately 800 sites have completed the VCP.

**Benefits (incentives to participate in the VCP, covenants not to sue, etc.):** An estimated 1,116 jobs have been created; 119 businesses have been created or retained on brownfields sites; based on the 119 sites with agreements in place, new value of remediated properties is \$105,701,000; they have generated about \$2,487,000 in sales and property taxes, and \$5,650,678 in income tax revenues.

## **Public Participation**

**Public participation requirements (notice, comment periods, etc.):** State law and regulations require community involvement in investigation and remediation of contaminated sites, including notification to nearby residents of proposed site investigations, availability of records, notice and comment on proposed settlement agreements, and notice and comment on the technical feasibility of proposed remedies. DEM policy is to expand public participation opportunities, and DEM has sought to implement this policy through the public notice and comment process, as well as through agency program planning meetings.

**Public participation activities (hearing, meetings, etc.):** Based on the proposed reuse and nature of the site, DEM has the flexibility in its public notice requirements to require public meetings and hearings. DEM has found the need to require public meetings when brownfields properties are being redeveloped as schools.

## **Statutory Authorities**

- The *Hazardous Waste Management Act*, R.I. Gen. Laws, §§23–19.1–1 through 23–19.1–33 (1978, as amended, 1979, 1984, 1987), establishes the Environmental Response Fund and authorizes DEM to clean up abandoned, uncontrolled, and/or inactive sites. The law provides for: enforcement; joint and several liability; cost recovery; natural resources damages assessment and recovery; and public participation.
- The *Industrial Property Remediation and Reuse Act*, R.I. Gen. Laws §§23–19.14–1 through 23–19.14–19 (1995), provides for voluntary cleanup and brownfields cleanup, and clarifies enforcement authorities and public participation.

## General Information

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## Program Description (VCP, brownfields, or related)

**Brownfields definition:** Vermont defines brownfields as actual or threatened release of a hazardous material at a site which is vacant, abandoned, substantially underutilized or to be acquired by a municipality.

### Program titles:

- Redevelopment of Contaminated Properties Program (1995)—For properties that are abandoned or substantially underutilized and where development is proposed by independent parties are covered by this program. National Priorities List (NPL) sites are excluded, as are sites subject to Resource Conservation and Recovery Act (RCRA) corrective action requirements and sites regulated under the Leaking Underground Storage Tanks (LUST) program.
- Vermont does not have a Voluntary Cleanup Program (VCP), although the state does encourage and support voluntary cleanups.
- Ten-Year Plan—S. 42, enacted in 2004, calls for the DEC and the Agency of Commerce and Community Development to develop a ten-year plan for reclaiming brownfields sites that simultaneously addresses cleanup and economic revitalization. Process will begin with an inventory and prioritization of brownfields based on their cleanup requirements and economic development potential, resulting in a strategy for reusing as many sites as possible with the highest return on public investment. Planning will involve local and regional planning and development entities.

### Liability relief provisions:

- Program offers a Certificate of Completion (COC) covering contamination identified in site plan; 1998 amendment expanded liability protection to current owners.

- DEC is required to give a “discharging party” an opportunity to clean up. DEC sends out letters, to be followed by an administrative order in the event of noncompliance. Ninety-five percent of sites are voluntarily cleaned by responsible parties (RPs). The state has strict, joint and several liability and treble damages provisions. Liability apportionment is available if an RP can prove apportionment. DEC has several order authorities, including authority to request information, subpoena documents, issue administrative orders, issue consent orders, and issue orders for entry. Civil penalties are \$50,000 per violation in addition to \$25,000 per day for continuing violations. Penalties and fines go to the state general fund; recovered costs go into the Environmental Contingency Fund (ECF).
- Program offers limited liability protection under the *Hazardous Waste Management Act* for redevelopers and successors.
- S. 42, amended the Redevelopment of Contaminated Properties program to enable municipalities to acquire brownfields properties through tax sale or similar involuntary mechanisms by entering into an agreement with the Vermont Agency of Natural Resources for resale of the property with liability protection.
- For developers who participate in the program as prospective purchasers, S. 42 limits the increase in costs for modification of the original Corrective Action Plan to 30% of the original estimated cost of completion. This provision gives assurances to redeveloper of a limit to the cost of environmental cleanup once a satisfactory cleanup plan is approved by the state, but the state can pursue the original RPs for additional costs of actions required to protect human health and the environment, or to perform such actions with state funds.

### Financial incentives (grants, loans, tax provisions, etc.):

- Environmental Contingency Fund
- Petroleum Cleanup Fund (PCF)
- New legislation introduced in 2002 establishes a Brownfields Revitalization Fund for purposes associated with grants and loans; however, no appropriations or capitalizations were specified in the legislation, and no funding was granted in 2003 and 2004.
- The Douglas administration supports the DEC’s application for \$2,500,000 in federal funding to assess and clean up contaminated sites around the state. In response to a grant application presented by DEC to EPA to capitalize a revolving loan fund, in December 16, 2002, Governor Jim Douglas, in his January 27, 2003 meeting with members of the business community, “announced a major brownfields environmental reclamation initiative as an example of his view.”

### Legislative or program site eligibility requirements:

- Program caps prospective purchases share of cleanup at 130% of estimate in state-approved plan.

- Under S. 42, projects do not need to be enrolled in the Redevelopment of Contaminated Properties Program to be eligible for grants and loans from Vermont's Brownfields Revitalization Fund. This allows high-priority sites reimbursed through other programs, such as the PCF, to benefit from the Brownfields Revitalization Fund.
- Cleanup standards are determined on a case-by-case basis. The state uses water quality criteria (based on the state ground water statute), Maximum Contamination Level/Maximum Contamination Level Goal (MCLs/MCLGs), and EPA guidelines (e.g., soil cleanup standards) in conjunction with risk assessments. The state uses a risk level of  $10^{-6}$  for excess cancer cases and a Hazard Index of 1 for non-carcinogens. The state considers assumptions about future land use in establishing cleanup standards. Zoning restrictions are used to support land use assumptions, and the state may require deed restrictions in individual cases.

### **Financial Elements**

#### **Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):**

- ECF had a balance of about \$1,200,000 at the end of FY04. Additions amounting to \$400,000 were made to the fund during the fiscal year. A total of \$500,000 was expended at non-NPL sites from the ECF. A hazardous waste generator tax constitutes the major source of revenue for the fund, with minor revenue from cost recoveries and interest. The ECF may be used for site investigation, studies and design, removals, emergency response, remedial actions, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, operations and maintenance, grants to local government, and program administration.
- PCF had a balance of \$3,800,000 at the end of the 1997 calendar year, and the state had obligated another \$800,000 for non-NPL sites. During 1997, Vermont spent \$4,700,000 from the PCF on non-NPL sites. Additions to the fund totaled \$5,000,000 in 1997. The PCF is generated by an annual tank assessment fee required to be paid by Underground Storage Tank (UST) owners and by a one cent per gallon fuel license fee charged to distributors of gas or diesel fuel. It also receives cost recoveries and interest. The PCF may be used for site investigation, emergency response, studies and design, remedial actions, removals, victim compensation, operations and maintenance, and program administration.

#### **Tax incentives (abatements, credits, etc.):**

- Tax incentives for rehabilitation of existing properties in designated "downtown" areas; not specific to brownfields, but contaminated properties are eligible.

- S. 42 eliminates the tax on hazardous wastes shipped under an approved brownfields cleanup under the Vermont Redevelopment of Contaminated Properties Program.

#### **Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.):**

- State conducts some brownfields site assessments using Housing and Urban Development (HUD) grant funds.
- Under S. 42, the Vermont Agency of Commerce and Community Development, in cooperation with the Department of Buildings and General Services, will report in 2006 on the availability of various environmental insurance products and their applicability to brownfields redevelopment projects to further limit the risks imposed on developers.

### **Program Elements**

#### **Technical Elements**

**Methods/standards/controls:** No formal Risk-Based Corrective Action (RBCA) or comparable/informal process in place. State uses EPA Risk-Based Concentrations (RBCs) as screening values, and allows for site-specific or risk-based evaluations of alternative standards. Under S. 42, Agency of Natural Resources (ANR) will develop a procedure for determining site-specific remediation standards that consider the future land use, appropriate use of institutional controls, environmental media, requirements for source removal, treatment or containment and other related issues.

**Contaminants covered/excluded:** Asbestos, lead paint, and polychlorinated biphenyls (PCBs) OK; petroleum OK if not eligible under the PCF.

**Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners):** Specifically provided for in the statute.

#### **Management & Implementation Elements**

**Voluntary Cleanup Program MOA with EPA:** No

**Cost to enter program or fees for service:** No information available

**Funding source for administrative costs and staff:** DEC, Waste Management Division, Hazardous Materials Program has 14 full-time equivalent (FTE) staff members. That section handles all hazardous waste work including CERCLA, RCRA, pre-remedial, and state list work. Four attorneys in the Attorney General's office, two attorneys in DEC's Enforcement Division, and one program attorney work on hazardous waste cases, for a total of about three FTE positions. Staff and administrative costs come from federal grants (75%), the state general fund (23%), and state cleanup funds (2%).

# Vermont

## ***Cleanup Activities***

**Sites currently in VCP:** 6 sites have entered the program with four underway and one abandoned/withdrawn.

**Sites completed under VCP:**

- 3 sites are complete.
- Cleanup activities have been completed at 115 non-NPL sites since the start of the state program.

**Benefits (incentives to participate in the VCP, covenants not to sue, etc.):** Vermont does not currently track economic impacts. However, one former manufacturing plant has been remediated for use as a fire station. A former railyard has been converted to adjunct use for another manufacturing facility, and a former bus/transit maintenance facility has been converted to mixed residential and commercial use.

## ***Public Participation***

**Public participation requirements (notice, comment periods, etc.):** DEC meets with town officials and holds public meetings. The *Waste Management Act* requires that municipalities be notified of sites within their borders; site designation must be entered on the town's land record. The state brownfields law requires public notice of a proposed corrective action plan and a minimum 15-day public comment period.

**Public participation activities (hearing, meetings, etc.):**  
No information available

## ***Statutory Authorities***

- The *Water Pollution Control Law*, Vt. Stat. Ann., Title 10, §§1282–1283, establishes the Environmental Contingency Fund for emergency responses, studies and design, and remedial actions.
- The *Waste Management Act*, Vt. Stat. Ann., Title 10, §§6601–6618 (1977, as amended 1981, 1985, 1987, 1995 and 1996), establishes the state's hazardous waste program and authorizes DEC to take removal and remedial actions to clean up sites contaminated by the release of hazardous materials. The law provides for strict, joint and several liability for responsible parties, and for cost recovery. The law was amended in 1995 to establish a brownfields cleanup program (Vt. Stat. Ann., Title 10, §6615a).
- An *Act Relating to Administrative Enforcement of Specified Environmental Laws (Act 98)*, Vt. Stat. Ann., Title 10, §§8001–8221 (1989), provides additional enforcement authorities.