



## Brownfields Toolbox Gets A Major Upgrade

LEGISLATION PROVIDES FUNDING, REGULATORY RELIEF AND LIABILITY PROTECTION

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Connecticut contains thousands of brownfields — former manufacturing and commercial properties that are abandoned or underutilized because they are possibly contaminated — posing a threat to human health, the environment and the viability of our municipalities. Every community in Connecticut has at least one brownfield that is a major impediment to economic redevelopment and sustainable growth.

There are enormous benefits to remediating brownfields and returning them to productive use. Primarily, the negative impacts on human health and on the environment are reduced. Likewise, brownfield revitalization and development often means that a “greenfield,” or open space, is spared and infrastructure development leading to sprawl is avoided. Finally, when a brownfield is returned to sustained productive use, it often means that properties are added to the grand list, jobs are created, existing infrastructure is utilized, neighborhoods are revitalized and blight is reduced, if not eliminated.

Connecticut, like most states, developed an array of tools for various stakeholders involved in brownfields development. These tools have not proven to be adequate to the task of rehabilitating most of our brownfields, putting us at a competitive disadvantage in light of the additional incentives and regulatory tools our neighboring states have embraced.

The 2011 legislative session, however,

culminated with the passage of legislation that will help spur economic development, remediate brownfields and restore our position as one of the leaders in brownfield redevelopment — at no direct taxpayers' expense. Public Act 11-141, An Act Concerning Brownfield Remediation and Development as an Economic Driver, which was supported and signed by Gov. Dannel Malloy, creates a new program to facilitate the revitalization of brownfields. It also fine tunes and expands the scope of existing programs, resulting in greater clarity and incentives for brownfield developers, municipalities and other stakeholders.

There are three major compartments in the brownfields tool box: Funding and financial incentives; regulatory relief; and liability protection. It requires perseverance and good research skills to sort through and determine which tools are available. The rewards available can be substantial and it is well worth the effort to identify all state, federal and local resources.

Funding and financial incentives consist generally of loans, grants and tax incentive programs. Most are only available after a determination of eligibility by the agency overseeing the program. These agencies include: the Department of Energy and Environmental Protection (DEEP), the Department of Economic and Community Development, the Connecticut Develop-



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ment Authority/Connecticut Brownfields Redevelopment Authority and the U.S. Environmental Protection Agency.

Regulatory relief ranges from exemptions from DEEP filing fees to transfer act exemptions. The creation of the Licensed Environmental Professionals program and development of user-friendly programs by DEEP also fall within this compartment.

Liability protection generally consists of immunity to the state or third parties and is only available to qualified applicants who must establish that they meet various program requirements.

### New Program

The Act creates a new Brownfield Remediation and Revitalization Program (Section 17) which adds new tools to our box. This includes limiting the scope of investigation and remediation to the eligible site; expediting the timetable for investigation and remediation of sites and audits by DEEP; and limiting program participants' liability to the state and third parties.

Up to 32 properties will be accepted each

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year into the program. Admission is based on a detailed list of factors designed to ensure that there is geographic distribution and diversity of projects. Only applicants that did not create or maintain the pollution or that are not otherwise responsible for it are eligible.

Inclusion in the program will not affect eligibility for other brownfield programs. A fee of 5 percent of the assessed land value as of the municipality's most recent grand list is required. Fee waivers are possible. This fee will be substantially reduced if certain investigatory and remedial benchmarks are achieved within specified timelines.

Upon acceptance into the program, the applicant must investigate and remediate under the supervision of a Licensed Environmental Professional (LEP). The duty to investigate and remediate is explicitly limited to the boundaries of the property. DEEP is under a short audit timeline once an LEP has submitted a verification or interim verification.

Participants receive immunity from liability (except for certain PCB and underground storage tank obligations) to the state or any third party for costs relating to releases from the brownfield addressed on-site and historical off-site impacts. These liability protections can be extended to eligible subsequent owners for a \$10,000 fee.

The Act also enhances the existing Abandoned Brownfield Cleanup Program (ABC Program), which should have a significant impact on brownfield revitalization, especially for municipalities and economic development agencies. Section 9 of the Act expands eligibility and offers liability immunity to participants in the ABC Program.

Participants are relieved of liability to the state or other third parties for the release of any pollutants at or from the property prior to the participant taking title to the property. In addition, upon a participant's completion of the requirements of the ABC Program, DEEP will provide that participant a covenant not to sue.

In addition, the Act contains several common sense provisions that should facilitate the remediation of properties under other programs. These include:

- Limiting the responsibility of a certifying party under the Transfer Act to releases which occurred prior to the completion of a Phase II investigation.
- Allowing DEEP to reclassify surface and groundwater.
- Exempting governmental agencies, private entities and nonprofit organizations from paying certain DEEP fees.
- Exempting municipalities and the bankruptcy court from the Transfer Act when

transferring properties to nonprofits.

- Allowing DEEP the ability to waive some of the requirements of environmental land use restrictions and release certain parties from their requirements.
- Requiring a comprehensive review of property remediation programs and the provisions of the general statutes that affect property remediation. DEEP is currently overseeing this task with the assistance of volunteers from the legal, environmental consulting, business and environmental advocacy communities. A comprehensive report is due Dec. 15.

## Conclusion

With our tool box full of new tools and with raw materials now available — the legislature also authorized \$25 million for brownfield remediation in each of the next two fiscal years — the business and development communities should be rolling up their sleeves to make brownfields' revitalization a priority. We all will benefit from the remediation of these properties and their return to productive use. It is a win-win opportunity, increasingly rare in these tough economic times. Connecticut's leaders should be commended for recognizing the enormous benefits brownfield revitalization will have on the economic well-being of the state. ■