2012 Tribal Lands Forum
Coos Bay, OR

Brownfields 101
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Presentation Roadmap

- Brownfields History
- Brownfields Law
- Federal Definition of a Brownfield
- What is a Brownfield and Why Redevelop?
- Brownfield Assistance
- Tips to Ensure Success
- Brownfield Resources
- Contacts
Brownfields History

Prior to the BF law “Polluter Pays”
1970-80s

CERCLA Elements (Comprehensive Environmental Response, Compensation, and Liability Act)

• Strict
• Joint and several
• Retroactive
Brownfields History
Prior to the BF law “Polluter Pays”
1970-80s

CERCLA Elements

**Strict**: Liability may exist without fault.
Prior to the BF law “Polluter Pays” 1970-80s

CERCLA Elements

Joint and several: If two or more parties contributed to the release, and unless a party can show that the injury or harm at the site is divisible, any one or more of the parties can be held liable for the entire cost of the cleanup.
Brownfields History
Prior to the BF law “Polluter Pays”
1970-80s

CERCLA Elements

**Retroactive**: Liability may exist even if the contamination occurred before CERCLA, which was enacted in 1980.
Brownfield History

From the 1800’s - 1970’s Brownfields were being created with improper and unregulated business and industrial waste management practices.
Brownfields History
Changing Times

Mayors raised awareness about brownfield issue

EPA responded with assessment grants
Brownfields History

Changing Times

States create voluntary cleanup programs (VCPs) cooperate rather than litigate

- Applicants could voluntarily enter sites into VCPs, negotiate flexible cleanup based on end use, bring finality to liability
- Many US programs provide statutory liability protection for the purchaser, but do not address tort liability
- Environmental release for prospective purchasers
- Environmental insurance developed to provide additional protection
Small Business Liability Relief and Brownfields Revitalization Act

- “Brownfields Law” signed in January 2002
- Expanded funding for brownfields assessment and cleanup competitive grants
- Clarified liability protections
- Enhanced state response programs including creating a federal superfund bar
- Established state and tribal programs
Brownfields Law

The Brownfields Law (2002) provides CERCLA liability protections for certain property owners to encourage revitalization:

- Innocent Landowners
- Prospective Purchasers
- Contiguous Property Owners

**Note: Tribes do not fall under ‘person’ definition and therefore not viewed as responsible party under CERCLA**
Brownfields Law
Federal Definition of a Brownfield

Defined as “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.”

----------Why Does It Matter?----------
Funding depends on meeting the definition.
Is this a Brownfield?
What is a Brownfield?

- ✔ real property
- ✔ perceived or actual contamination
- ✔ Potential for reuse
- ✔ Underutilized
- ✔ meets the federal definition of a brownfield
- ✔ “mine-scarred lands”;
- ✔ property contaminated by “controlled substances” (e.g., meth labs);
- ✔ Petroleum contamination
What is not a Brownfield?

≠ A site without an enhanced or new use
≠ Sites with potentially responsible parties that don’t meet the federal definition of a Brownfield
≠ Sites listed or proposed for the National Priorities List (NPL);
≠ Sites an administrative order under CERCLA;
≠ Sites under the jurisdiction, custody, or control of the US

**Note: Lands held in trust can meet the federal definition of a Brownfield.**
Why address Brownfields?

- Clean up the environment
- Reduce blight
- Create opportunities for economic development with environmental protection
- Improve quality of life
- Connect green build, clean energy, and transportation, to brownfield sites.
Why address brownfields?

- Studies estimate >400,000 brownfields nationally
- The cleanup & reuse of properties helps with:
  - Environmental concerns – cleans up contaminated or potentially contaminated property
  - Social concerns – removes community eyesores or blight on cultural resources
  - Economic concerns – brings unused or underutilized property back into use, helping with revenue
  - Prevention of future brownfields creation – recycles land, reducing need for use of existing greenspace
Overall Accomplishments

(data as of August 2012)

- Leveraged $18.9 billion in cleanup and redevelopment
- Leveraged more than 78,245 jobs
- Supported assessments at more than 19,734 properties
- 827 properties have been reported as cleaned up and 35,948 acres are made ready for reuse
- Over 10,886 unemployed/under-employed individuals trained, and more than 7,429 of those obtained employment in the environmental field with an average starting hourly wage of $14.16

* Includes ARRA accomplishments

Wowzy!
Brownfields come in all shapes and sizes

Each site is different and requires a unique approach
How do I know I have a Brownfield?
What does expansion, reuse, or redevelopment really mean?

- Building for a public good, e.g. schools, community center, housing
- Greenspace – community gardens, trails, parks, subsistence and cultural spaces
- Transportation
- Business creation

It is not just for industrial parks or tax base creation…
Is this a Brownfield?
Brownfield Programs can help...Build Capacity through Training
...Characterize and Assess Environmental Threats
...Cleanup for Reuse
Types of Brownfield Assistance:

- Targeted Brownfields Assessments – not a grant
- Assessment Grants
- Cleanup Grants
- Revolving Loan Program Grants
- Response Program Grants – Capacity Building
- Workforce Development & Job Training
- Other Technical Assistance Support - EPA Technology Support Center & Innovation Programs, Technical Assistance to Brownfields

Whew!
So many programs ... 
Let’s start with your needs first.
Your Needs and Types of Brownfield Assistance

-Part 1-

Brownfield Resource Areas:

1) Assessment
2) Cleanup
3) Capacity Building
You Need **Assessment Work if...**

- a site investigation is needed to complete the **history of activities**;
- prioritizing **sites** will assist in meeting community needs and targeting limited resources
- previous sampling indicated environmental contaminants and you need to **delineate** the extent;
- an **inventory** of potential brownfields is necessary to identify all the potential threats
- it is time to **develop formal community involvement plans** for site cleanup and future reuse.
You Need Cleanup Work if…

- it is time to develop formal community involvement plans for site cleanup and future reuse.
- the site warrants a cleanup and selection of a method in sync with the future use.
- the site is ready for actual remediation
- monitoring or confirmation sampling is required to determine the effectiveness of the cleanup
You Need Capacity Building if...

- You are a federally recognized tribe(s) with a large number of contaminated sites to address;
- An inventory of potential brownfields is necessary to identify all the potential threats;
- Prioritizing sites & managing data and formalize public participation is required;
- Developing enforcement authorities, drafting ordinances will prevent future contamination.
Your Needs and Types of Brownfield Assistance

Brownfield Resource Areas:

1) **Assessment**
   - Assessment Grant or Targeted Brownfield Assistance (Regional EPA)

2) **Cleanup**
   - Cleanup Grant, RLF, or State Coordination

3) **Capacity Building**
   - Assessment or State and Tribal Response Program
Your Needs and Other Types of Brownfield Assistance

Part 2

1) **Targeted Brownfield Assessments** - TBA’s
2) **Environmental Workforce Development & Job Training**
3) **Area-wide Planning Grants**
4) **Technical Assistance**
Brownfield Assistance

(more details)

EPA has three primary resources for you:

**Competitive Grants**
- Assessment, Cleanup, Revolving Loan Fund
- Environmental Workforce & Job-training Grants

**Capacity Building – (non-competitive)**
- State & Tribal Response Program Grants

**CERCLA 128a**

**Technical Assistance**
- Targeted Brownfields Assessments
The Competitive Grants
Who Is Eligible to Apply?

- All Federally Recognized Tribes Except for Tribes in Alaska
- Metlakatla Indian Community
- Alaska Native Village Corporations
- Alaska Native Regional Corporations
- Local Governments
- Land Clearance/Quasi-Governmental Entities
- State Legislated Government Entities
- Regional Councils of Government
- Redevelopment Agency – under Tribe/State
- States
- Nonprofit Organizations (Cleanup/Job Training Only)
The Competitive Grants - Assessment

- Community-wide, Site-specific, or Coalition (3 or more eligible entities)
- Examples of Eligible Activities
  - Assess deteriorating buildings for re-use
  - Inventory Brownfields (open dumps)
  - Conduct outreach and involve community
  - Plan cleanup activities (prep of QAPP)
- Request up to $200k ($350k site-specific waiver) for both Hazardous & Petroleum -- Coalitions can request up to $600k
The Competitive Grants - Cleanup

- Requires a 20% Match, Unless Hardship Waiver Granted
- Certain Federal Cleanup Requirements Apply to All Cleanup Activities (e.g. Community Notice)
- Grant Recipients Must Own the Property
- Request up to $200k per site
- Can submit a proposal for 3 sites.
The Competitive Grants – Cleanup Revolving Loan Fund

- Grant program to capitalize a revolving loan fund
- Requires a 20% Match, Unless Hardship Waiver Granted
- Recipients must have control or own the Property
- Request up to $1 million per Eligible Entity
- Certain Federal Cleanup Requirements Apply to All Cleanup Activities (e.g. Community Notice)
- Up to 50% of RLF Funds May Be Used for Cleanup Subgrants (for others) to Eligible Entities and Nonprofits
The Competitive Grants - Brownfields Grant Conditions

- Administrative Costs Not Funded (i.e. indirect)
- Grant & Loan Recipients May Not Be a Superfund Potentially Responsible Party or
- Viable Owner Responsible for Petroleum Release
The Competitive Grants …

- Approximately $60 Million will be available – depending on national budget
- 25% of funds to petroleum contaminated sites
- Deadline for submission of grant applications is Oct/Nov depending the grant
- Application Guidelines available online at www.epa.gov/brownfields
Capacity Building
State & Tribal Response Program

What is it for?
- To “establish and enhance” a response program

Who is eligible?
- Any federally recognized Indian tribe
- States

Is it a competition?
- No, it’s a non-competitive application, but sharing it with 50 states, other tribes, and territories
Response Program – What can you do with the funding?

Primary Purpose: to “establish or enhance” a response program

– States and Tribes define it’s “response program”

– Allowable activities are broad and include:
  Hiring staff, developing regulations, ordinances, plans, outreach, community involvement, training, etc.
Response Program - Requirements for funding

- Eligible tribes willing to develop a response program that includes:
  - taking steps to meet the “four elements”
  - establish and maintain a “public record” by end of first year of funding to qualify for additional funding.

- Cooperative Agreement reporting requirements.
- No Cost Share requirement.

Brownfield Assistance:
Response Program –
The Four Key Elements

1. Timely survey and inventory of brownfields sites

2. Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that a response action will protect human health and the environment, be completed in accordance with federal law; and that the tribe can take the necessary response activities, if needed
3. Mechanisms and resources to provide meaningful opportunities for public participation, including access to documents, and a mechanism by which a person can request a site assessment and the tribal official can respond to the request.

4. Mechanisms for approval of cleanup plans & cleanups are complete.

and of course the Public Record
Response Program - The “Public Record”

To continue to receive funding, the tribe must establish and maintain a “public record” which is a record of sites at which...

– response actions have been completed in the previous year and are planned to be addressed by the tribal program in the upcoming year

– And that identifies whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, identifies the institutional controls relied on in the remedy.
Technical Assistance

Targeted BF Assessments (TBA)

- Limited or targeted assessments are done with EPA assistance (not a grant)
- Particularly helpful for small or rural communities that do not have a large environmental problem
- Good starting point to assess contamination and to determine whether other grant funds would be an appropriate next step
Technical Assistance
Targeted BF Assessments (TBA)

- Each region has a different system of prioritizing need
- Up to $50,000 in most cases
- Most accept requests for TBA assistance on a rolling basis, depending upon available funding

Contacts in each Region
http://www.epa.gov/swerosps/bf/grant_info/tba.htm
Grant funds may be used to train residents to:

– handle and remove hazardous substances, which includes training for jobs in sampling, analysis, and site remediation.

– manage facilities at which hazardous substances, pollutants, contaminants or petroleum contamination are located;

– use techniques and methods for cleanup of leaking underground storage tanks, conduct asbestos abatement, or lead abatement
Job-training Grants cont.

- Topics need to be a component of a more comprehensive hazardous waste and substance management training course or environmental technology training course.
- Up to $200K to prepare trainees for employment in the environmental field
- Grant application deadline is Winter 2013
Area-Wide Planning Grants

Funding to develop an area-wide plan for brownfields and identify next steps and resources needed to implement the plan.

Activities may include evaluate existing environmental conditions, market, infrastructure, etc for brownfields sites & area, engage community & identify priorities

Up to $200,000 for research/technical assistance related to reuse planning at/around brownfields. Targeted Brownfields Assessment assistance available for grantees to begin implementation activities

Non-profits can apply too!
Tips to Ensure Success

- Strengthen your project through a community vision for the site.
- Develop the partnerships you need to succeed
- Work with EPA and your Tribal and State Response Programs
- Be creative and flexible
- Projects can take a long time and even longer when you don’t keep pushing.
Tips to Ensure Success

- A brownfield needs a “Champion (s)”
- Identify and involve all stakeholders to obtain a common vision
- Determine highest and best use
  - Redevelopment
  - Adaptive Reuse
Brownfield Resources

- Brownfields National Conference May 15-17, 2013 in Atlanta, Georgia
- National website at [www.epa.gov/brownfields](http://www.epa.gov/brownfields)
- TAB-EZ - Technical Assistance to Brownfields communities and easy brownfields grant application software program [www.tabez.org/](http://www.tabez.org/)
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http://www.brownfieldsconference.org/en/home