



# Brownfields

## Brownfields

EPS has extensive experience with procuring Brownfields Limitation of Liability protection for industrial, residential, and commercial properties, applying our strong working knowledge of legislative and regulatory requirements for the benefit of our clients.

### Why EPS for your Brownfields Needs

EPS has worked with a broad assortment of community and economic development agencies as well as commercial and industrial clients to assess, remediate, and redevelop properties contaminated urban sites principally for residential use. EPS's success and expertise in significantly reducing costs associated with property transfer and site remediation can be attributed largely to a successful formula combining two chief ingredients: (1) a long history of extensive negotiation experience supported by a winning record, and (2) a strong desire to provide services that are designed to give focused attention to increasing the client's asset value and minimizing liabilities.

EPS' clients include property owners, sellers, buyers and redevelopers. This panoramic view of the issues gives EPS the experience, insight and strength to provide the best plan of action that is tailored precisely for each individual client. In this regard, EPS is experienced with the entire scope of the Brownfields process and has worked successfully with its clients to achieve the following:

- Execute due diligence obligations
- Facilitate financing and lender environmental review and approval
- Expedite sales and purchases of contaminated or distressed properties
- Complete all required applications

In sum, new modifications of the law allow for innovative solutions that EPS has implemented for the benefit of its clients in facilitating the sale, redevelopment and reuse of environmentally distressed urban properties. EPS aids its clients in streamlining the processes relevant to Brownfields issues while providing winning results at competitive prices.

### What Is the Brownfields Program?

Since its inception in 1995, EPA's Brownfields program has grown into a proven, results-oriented program that has changed the way contaminated property is perceived,

addressed, and managed. EPA's Brownfields program is designed to empower states to work with prospective purchasers to work together in the redevelopment and reuse contaminated properties. A Brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. It is estimated that there are more than 450,000 Brownfields in the U.S. Cleaning up and reinvesting in these properties increases local tax bases, facilitates job growth, utilizes existing infrastructure, takes development pressures off of undeveloped, open land, and both improves and protects the environment.

### The Goals of Brownfields Legislation

The goals of Brownfields legislation is to encourage the voluntary cleanup and reuse/development of contaminated sites, and to leverage private funding for cleanups through redevelopment projects.

### Why Redevelop Contaminated Property?

First and foremost reason for developing contaminated property is location. Secondly, cleanup costs may be much lower than anticipated, and state incentives favorably affect redevelopment prospects.

### What are the Incentives?

The primary incentive is a limitation of liability for prospective purchasers. WITHOUT a Brownfields limitation of liability, environmental liability is joint, strict, and several. Basically, purchasing the property makes YOU liable for the contamination and any associated personal injury, property damage and cleanup. WITH a Brownfields limitation of liability, it now becomes possible to purchase contaminated property without assuming all of the liability. More specifically:

- 1 The new owner is protected from third party claims (lawsuits) resulting from prior contamination.
- 2 The liability for groundwater contamination does not pass to the new owner.
- 3 The limitation of liability is transferable.
- 4 Tax incentives to recoup investigation and cleanup costs.

**EPS is about the Business of the Environment.™**

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## The Brownfields Process Steps to Obtaining a Brownfields Limitation of Liability

The process for a prospective purchaser to obtain a Brownfields Limitation of Liability usually consists of the following:

*Step 1:* The first step is conducting a due diligence study prior to property acquisition, typically in the form of a Phase I and Phase II Environmental Site Assessment, which confirm that the subject property has been environmental impaired.

*Step 2:* The second step involves submittal of a Brownfields application and payment of an application review fee which typically ranges from \$2,000 - \$5,000 depending upon the state.

*Step 3:* Preparation of a Corrective Action Plan (CAP). The CAP outlines the actions to be taken that will clean up soil and source material to obtain compliance with cleanup thresholds. Compliance is then demonstrated with subsurface sampling.

The CAP works like a contract for soil and source cleanup. It is not always necessary or required to obtain the limitation of liability. It is useful when releases can't be fully characterized by the closing date of the transaction, in that the limitation of liability takes effect upon approval of the CAP.

*Step 4:* Delineation and cleanup. At this point, any contamination in the site soils and groundwater must be delineated both vertically and horizontally to the property boundary. Once the delineation is complete, any required remediation of soils or source material must be performed to the appropriate human health and environmental risk standards. These standards are typically established by the state environmental agency, and are referred to as Risk Reduction Standards (RRS). The RRS specify cleanup thresholds for contaminated soils which are based on the intended land-use of the Site.

*Step 5:* Preparation of a Site Characterization Report or Compliance Status Report. This report is the environmental report on the property after the soils and source are remediated. It contains a descriptive narrative of the property, environmental sampling data, and risk assessment calculations. It certifies that soil and source material are in compliance with cleanup standards and that the property is safe for its new use.

Upon approval of the report, the full limitation of liability is granted. This marks the end of the new owner's cleanup obligations, and clears the way to apply for the tax incentive.

## Tax Incentives for Brownfields Redevelopment

In addition to direct financial assistance, federal, state and local tax incentives are available to property owners and developers to help reduce the costs of brownfield projects. The federal tax incentives include the Taxpayers Relief Act, which allows eligible taxpayers to deduct qualified cleanup expenses at eligible brownfields in the

year they are incurred, and rehabilitation income tax credits for 10% of the expenses of rehabilitating structures built before 1936. Many state and local governments also provide tax breaks for brownfield projects.

## **How does the Tax Incentive Work?**

Records of investigation and cleanup costs are submitted to the state agency for certification. The cost certification is then submitted to the local taxing authority. The taxing authority "freezes" the assessed value of the property, resulting in tax savings as the actual value of the property increases. The freeze can last up to ten years unless cleanup costs have been fully recovered sooner.

## **What are the Purchaser's Eligibility Requirements for the Brownfields Program?**

Purchaser eligibility is prospective. If you already own the property, you cannot apply. In addition, the Prospective Purchasers must not:

- Have contributed to the release of hazardous substances or
- Have a business relationship or other affiliation with a party responsible for the release.

## **What makes a Property Eligible?**

An eligible property must have a known preexisting release of a hazardous waste, hazardous constituent, or hazardous substance.

## **What makes a Property Ineligible?**

- Federal superfund sites
- Properties under federal cleanup orders
- Hazardous waste facilities
- Properties with outstanding financial obligations to a state or federal agency

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EPS is a consulting firm that has helped companies for more than a decade with an interdisciplinary team of experts focused on identifying and facilitating business opportunities and sustainability strategies that maximize value and drive profitable growth. EPS helps its clients maintain regulatory compliance, aim for environmental excellence, and achieve high standards of corporate responsibility—all as elements of profitable growth. Our professional experience acquired through service in commercial, industrial, and governmental sectors provides innovative and cost-effective solutions to our clients' environmental and corporate responsibility needs.

*Please contact us for more information.*

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