



Facts About . . .

Environmental Restoration and Redevelopment Program

BROWNFIELDS REDEVELOPMENT REFORM ACT

Maryland
Department
of the
Environment

The Brownfields Redevelopment Reform Act (“the Act”), signed by Governor Ehrlich on April 27, 2004, encourages the cleanup and redevelopment of Brownfields. Brownfields are

abandoned, idled, or under-used industrial or commercial properties where redevelopment is complicated by real or perceived environmental contamination.

The legislation amends the Maryland Voluntary Cleanup and Revitalization Program Act (“the Maryland Act”) that has been in place since 1997. The Maryland Act established the Voluntary Cleanup Program (“VCP”) within the Department of the Environment (“MDE”) to encourage the investigation of eligible Brownfields properties, to protect public health and the environment, to accelerate the cleanup of eligible properties, and to provide predictability and finality to the cleanup process.

The enacted legislation, that becomes effective on October 1, 2004, modifies the VCP requirements to enhance MDE’s efforts to support Brownfield sites redevelopment:

Voluntary Cleanup Program

- Allows oil contaminated sites and sites under active enforcement under specified conditions to be eligible for the VCP
- Increases predictability and efficiencies;
- Increases public notification of cleanups; and
- Clarifies liability provisions.

Department of Business and Economic Development

- Broadens eligibility for grants and loans administered through the Brownfields Redevelopment Initiative Program (BRIP)

Enhanced Eligibility

The amended Maryland Act expands the type of contaminated properties eligible for the VCP.

Currently, MDE addresses oil-contaminated sites through a separate regulatory program. Effective October 1, 2004, properties contaminated with oil and properties under active enforcement are eligible for the VCP.¹ Active enforcement sites must undertake a remedy that is no less protective than the outstanding enforcement order and an Inculpable Person must undertake the remedy. An Inculpable Person is a person who has not taken any prior or current ownership interests in a property and did not contaminate that property.

Public Protections

The Maryland Act increases public notification by requiring MDE to post on its website notice of the VCP application and the opportunity for public comment. It also requires the applicant to hold a public informational meeting for all Proposed Response Action Plans.

Public safety is further protected by requiring persons receiving a No Further Requirements Determination (NFRD) or a Certificate of Completion (COC) from the VCP to send this information to "Miss Utility" for recordation when the NFRD or COC is conditioned by one or more institutional controls. An institutional control may include, among other things, a restriction recorded on the property deed on the use of groundwater or restricting land use to non-residential purposes. A NFRD is issued for an eligible property when the site application is complete and MDE has determined that a response action plan (RAP) is not required. MDE will issue a NFRD stating there are no further requirements related to the investigation of controlled hazardous substances at the property. A COC is issued for an eligible property following the satisfactory completion of an approved response action plan (RAP). The three steps

¹ Oil, as defined under Maryland § 4-401.(g), includes oil of any kind and in any liquid form. It does not include liquefied propane, liquefied natural gas or any edible oils.

preceding the issuance of a COC include: acceptance of the property into the VCP and a determination that a RAP is necessary; development of a proposed RAP for MDE review, and approval and completion of the public participation requirements; and satisfactory implementation and completion of the requirements of the approved RAP.

Efficiency and Predictability

The amendments also provide a more predictable cleanup process for prospective owners of eligible properties, reduce owners' costs associated with redevelopment, and decrease turnaround times. These efficiencies are achieved by establishing specific mechanisms for allowing expedited review of applications via a premium service component, compressing standard review times from 60 to 45 days and the availability of pre-application meetings to ensure that the applicant and MDE collaborate on creating an effective plan to address environmental conditions at the site. The Act also reduces MDE's review of response action plans (RAPs) from 120 to 75 days. Such statutory changes complement the administrative changes already made in MDE's Brownfields program.

The Maryland Act establishes a new and predictable fee structure for the VCP. Table 1 describes the new structure.

The Maryland Act requires MDE to develop regulations allowing for a reduction in the application fee for participants who demonstrate financial hardship. Under the legislation, property owners and developers benefit from the reduction of MDE's review times for applications.

MDE will provide an applicant with technical advice regarding whether and how to conduct an

environmental sampling assessment of the property before the applicant conducts testing.

Liability

The enacted legislation clarifies that a person who is not a "responsible person" because he meets one of the exclusions in the statute will now clearly be entitled to "inculpable person" status and accorded those benefits. In addition, the legislation ensures liability protections granted to an applicant who completes a site cleanup will not be voided if a third party violates the use conditions and maintenance associated with the property.

Financial Assistance

The legislation encourages participation in the VCP by broadening eligibility for grants and loans through the Brownfields Redevelopment Incentive Program in the Department of Business and Economic Development. Specifically, a county or municipal corporation may elect to participate in BRIP by either submitting a list of potential Brownfields sites or updating the list annually or enact legislation granting property tax credits. This money will fund environmental site assessments and cleanups with newly eligible sites such as properties contaminated with oil.

Enforcement

While providing for a fair hearing process, the Maryland Act allows MDE to seek treble damages under the Controlled Hazardous Substances Subtitle of the Environment Article from parties who refuse to comply with a MDE order and fail to properly conduct remediation activities. This new authority will encourage compliance with MDE's environmental protection standards.

Table 1

Activity/Description	Fee Amount
Initial Application Fee: Non-refundable fee for the first VCP application for the property.	\$6,000
Application Fee: Subsequent application regarding the same property or contiguous or adjacent properties that are part of the same Planned Unit Development (PUD) or similar development plan.	\$2,000
Applicant requesting expedited determination as Inculpable Person.	\$2,000
Issuance of NFRD or COC conditioned on certain uses or on the maintenance of certain conditions.	\$2,000
Request by participant to alter the record of determination in the land records for an eligible property with certain conditions.	\$2,000



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