

# RIVER HILLS ECONOMIC DEVELOPMENT DISTRICT AND REGIONAL PLANNING COMMISSION BROWNFIELDS REDEVELOPMENT PROCESS

## FACT SHEET FOR PROPERTY OWNERS

The purpose of this fact sheet is to give you a general understanding of the EPA Brownfields Coalition program managed by the River Hills Economic Development District and Regional Planning Commission (River Hills). 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.

The EPA's Brownfields Program is designed to support communities throughout the brownfields redevelopment process. Many brownfields sites are in unattractive, economically depressed parts of a neighborhood. Cleanup and redevelopment of the sites can encourage higher property values and create jobs, as well as positively impact the local economy by creating a safer, healthier space to house businesses and residences.

Potential brownfields sites are identified by cities and towns in the coalition region to receive assessment services at no charge to the community or to property owners. The coalition will select an Environmental Consulting Firm to provide brownfields assessment services. The environmental consulting firm team will be made up of Qualified Environmental Professionals, licensed professional geologists, engineers and other scientists and technicians that specialize in brownfields consulting services.

## WHAT ARE THE BENEFITS OF THE BROWNFIELDS ASSESSMENT PROGRAM TO PROPERTY OWNERS?

You may benefit directly by:

- Obtaining environmental assessment services by Qualified Environmental Professionals at no charge;
- Identifying opportunities for insurance recovery to pay for cleanup costs. **Unique to Indiana is the significant funding allowed by the Indiana Supreme Court to remediate sites under basic general liability insurance policies of current/ former owners of the site. The coalition can refer the property owner to local attorneys with insurance recovery expertise to initiate the process if sites appear to have this option.** If the budget allows, insurance archeology fees can be paid for by the brownfields assessment funding;
- Avoiding potential environmental enforcement actions by federal, state and local regulatory agencies that could impose penalties and costly cleanups by voluntarily participating in the program;
- Reducing the likelihood that contamination from the property will migrate off site or into the groundwater under the site, thereby limiting liability for, and long term costs of, cleaning up the property;
- Obtaining a cleanup plan that determines the cost and the most effective methodology acceptable to the Indiana Department of Environmental Management
- Creating good will within the community; and,
- Realizing an enhanced return from the property by making it more marketable.

If you are selling your property, it is standard practice for lenders to request a Phase I Environmental Site Assessment for a *commercial/industrial* transaction. A Phase I Environmental Site Assessment determines if there are “Recognized Environmental Conditions” (RECs) that indicate a release or threat of a release of hazardous substances or petroleum. Typically, a Phase II is required if there are “Recognized Environmental Conditions”. The Phase II investigation can be composed of various steps to define whether any contamination exists at a site, locating the contamination, and characterizing the nature and extent of that contamination. It’s best for the seller to have a good understanding of the issues through the brownfields assessment program rather than relying (and reacting) to studies conducted by prospective purchasers.

## **BROWNFIELDS ASSESSMENT PROCESS**

The Brownfields Assessment process consists of three general activities:

- Phase I Environmental Site Assessment
- Phase II Investigation (which may include a series of investigations)
- Cleanup Planning

### *Phase I Environmental Site Assessment*

The first step in the brownfields assessment process would be to conduct a “Phase I” assessment. The Environmental consulting firm team will conduct these services on behalf of the coalition. These studies can also include the observation of asbestos containing materials, mold, and lead paint. **The Phase I study is not intrusive and does not provide any type of “reportable” data to environmental authorities.**

The Phase I includes a records review to help identify past uses of the property and adjoining properties that could cause environmental contamination. These records may include environmental records (past spills and violations), title history, building permits, insurance records, maps (Sanborn maps), city directories, aerial photographs and other information.

Indications of past spills or practices that could cause environmental contamination may be identified during the site inspection. These might include the presence of storage tanks, drums, wells, sumps, solid waste piles, stained soil, stressed vegetation, septic tanks, transformers, industrial or commercial activities, and disposal areas.

Interviews conducted with you, your tenants, local government officials and other knowledgeable people help to determine historical events that may have contributed to environmental problems on the site.

The environmental consulting firm will prepare a written report that documents the information and findings of the Phase I assessment. The report will identify “Recognized Environmental Conditions” and make recommendations to address those concerns.

Should extreme hazards be encountered by the Professional conducting the inspection, the property owner and the client would be notified immediately. Specific mitigation actions depend on the nature of the hazard and are not indicative of a typical brownfields redevelopment project.

### *Phase II Investigation*

If potential issues are identified during the Phase I, then at the request of the coalition, a “Phase II” assessment may be conducted (with your permission) to determine the type and extent of

environmental contamination. By completing these assessments, you will have a better understanding of the environmental conditions and liability issues.

The Coalition will arrange a meeting with the environmental consulting firm to discuss these steps and determine acceptable levels of investigation for the site. Should you be considering insurance recovery for cleanup, a Phase II will be necessary to collect data to initiate the insurance claim. Prior to proceeding with insurance recovery, the Coalition strongly recommends that you discuss the insurance recovery process with an attorney that specializes in these legal actions.

A thorough Phase II study of the site that identifies the source, nature, and extent of contamination as well as potential pathways for exposure to the contaminants can effectively minimize cleanup costs. Steps to determining if contamination exists at a site can be as simple as cutting a small portion of floor tile for submittal to a lab to determine presence or absence of asbestos to as complex as the collection and laboratory analysis of soil, sediment, surface water and/or groundwater samples. The type and number of contaminants, the contaminant medium (sediment, soil, groundwater, surface water, air, and building materials), the potential location and potential number of locations for contaminants, and the access to the contaminants drive the costs for Phase II investigations which can range from \$500 to greater than \$100,000.

The environmental consulting firm will prepare a Phase II report for you and other stakeholders involved in the project, which will include the results of the sampling. At the coalition's request, Environmental consulting firm can meet with you to explain the results of the report and develop strategies for cleanup.

### *Indiana Brownfields Program Resources*

The Phase II data may indicate that no further work needs to be conducted. In this case, the Indiana Brownfields Program may issue a Comfort Letter to your prospective purchaser or a Site Status Letter to you if you satisfy the eligibility criteria and conditions of the policy.

A Comfort Letter is issued to a party that qualifies for an applicable exemption (such as a prospective purchaser). The Comfort Letter explains the applicable liability exemption or IDEM's exercise of enforcement discretion under an applicable IDEM policy. A Site Status Letter is issued to a party that did not cause or contribute to or knowingly exacerbate the contamination and can demonstrate that current levels of contaminants of concern at the brownfield substantially meet current cleanup criteria as established by IDEM under the Remediation Closure Guidance. The potential liability of the party requesting the letter is not addressed. The Site Status Letter states that based on a technical analysis of information submitted to IDEM pertaining to site conditions, IDEM concludes that current site conditions do not present a threat to human health or the environment and that IDEM does not plan to take or require a response action at the brownfield site. It will also provide suggestions for the cleanup of any confirmed contamination that may cause future problems and liability if it is left in place.

### *Cleanup Planning*

If the insurance recovery for cleanup is a viable option, the cleanup planning will be funded through that process and not the brownfields redevelopment funding.

If the Phase II investigation determines a release that exceeds default closure levels, then, cleanup planning will identify methodology and costs using risk-based closure methods to quantify costs (if necessary) to addressing releases of hazardous substances or petroleum to the environment.

The Indiana Department of Environmental Management recognizes that some substances pose a greater threat than other substances, and that acceptable remaining concentrations of those substances can therefore vary accordingly. Risk-based closure also recognizes that measures such as land use restrictions and engineering controls can often serve to reduce risk to acceptable levels. The intended re-use of a site also impacts cleanup levels. Residential re-use of a site requires a higher level of cleanup compared to commercial/industrial uses which has a higher level of cleanup compared to recreational re-use.

If the Phase II investigation determines that contaminants may be migrating from your site, there may be an obligation to prevent the offsite migration of contaminants. The brownfields redevelopment program is not an enforcement program and unless there is an eminent threat to health or the environment (release is impacting drinking water in the community, or causing vapor intrusion to nearby businesses or homes) reporting obligations are the sole responsibility of the property owner. Cleanup planning is a resource that will comply with IDEM requirements, identify methodology and quantify costs to address releases of hazardous substances or petroleum to the environment.

#### ***Coalition Reporting Requirements***

The Brownfields Coalition program is funded by the EPA. All reports generated with grant funds are provided to the EPA. The Coalition also provides the reports to the Community that requests assessment services.

EPA Brownfields consultant experts in Indiana have worked with owners of contaminated properties in the last 2 decades with no enforcement backlash. Cleanup issues have been managed through the Indiana Brownfields Program. However, if there is a continuing release from the property with no plan to contain the release, it is the prerogative of your community to work with you and ensure your compliance should community health and the environment be at risk of impacts. For more information, please contact Nicholas Creevy, River Hills Economic Development and Regional Planning Commission, at 812-288-4624 or via email at [ncreevy@riverhills.cc](mailto:ncreevy@riverhills.cc).