

## State-by-State Comparison of Publicly Offered Brownfields Cleanup Options

State	State Brownfields Program? <sup>1</sup>	State Voluntary Cleanup Program? <sup>2</sup>	State-Provided Third-Party Protections <sup>3</sup>	Can Remediation Standards Be Adjusted Through Construction or Other Techniques (Engineering Controls, Risk Assessment Tool)? <sup>4</sup>	Institutional Controls Available? <sup>5</sup>	State tax Benefits for Brownfields Projects? <sup>6</sup>	State-Licensed Environmental Professional Program? <sup>7</sup>
AL	Yes	Yes	Yes	Yes	Yes	Yes	No
AK	Yes	Yes	Yes	Yes	Yes	No	No
AZ	Yes	Yes	Yes	Yes	Yes	No	No
AR	Yes	Yes	Yes	No	Yes	No	No
CA	Yes	Yes	Yes	Yes	Yes	No	No
CO	Yes	Yes	Yes	Yes	Yes	Yes	No
CT	Yes	Yes	Partial	Yes	Yes	Yes	Yes
DE	Yes	Yes	Yes	Yes	Yes	Yes	No
DC	Yes	Yes	No	Yes	Yes	No	No
FL	Yes	No	Yes	Yes	Yes	Yes	No
GA	Yes	Yes	Yes	Yes	Yes	Yes	No
HI	Yes	Yes	Yes	Yes	Yes	No	No
ID	Yes	Yes	Yes	Yes	Yes	Yes	No
IL	Yes	Yes	No	Yes	Yes	Yes	No
IN	Yes	Yes	No	Yes	Yes	Yes	No
IA	Yes	Yes	Yes	Yes	Yes	Yes	No
KS	Yes	Yes	Yes	Yes	Yes	No	No
KY	Yes	Yes	Yes	Yes	Yes	Yes	No
LA	Yes	Yes	No	Yes	Yes	Yes	No
MD	Yes	Yes	Partial	Yes	Yes	Yes	No
MA	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MI	Yes	Yes	Yes	Yes	Yes	Yes	No
ME	Yes	Yes	Partial	Yes	Yes	No	No
MS	Yes	Yes	Yes	Yes	Yes	Yes	No
MN	Yes	Yes	Yes	Yes	Yes	No	No
MO	Yes	Yes	Partial	Yes	Yes	No	No
MT	Yes	Yes	Yes	Yes	Yes	No	No
NE	Yes	Yes	Yes	Yes	Yes	No	No
NV	Yes	Yes	Yes	Yes	Yes	No	Yes
NH	Yes	Yes	Partial	Yes	Yes	Partial	No
NJ	Yes	No	Yes	Yes	Yes	Yes	Yes
NM	Yes	Yes	Yes	No	No	Yes	No
NY	Yes	Yes	Yes	Yes	Yes	Yes	Yes
NC	Yes	Yes	Partial	Yes	Yes	Yes	Yes
ND	Yes	Yes	Yes	No	Yes	No	No
OH	Yes	Yes	Yes	Yes	Yes	Yes	Yes
OK	Yes	Yes	Yes	Yes	Yes	Yes	No
OR	Yes	Yes	Yes	Yes	Yes	Yes	No
PA	Yes	Yes	Yes	Yes	Yes	Yes	No
RI	Yes	Yes	Partial	Yes	Yes	Yes	No
SC	Yes	Yes	Yes	Yes	Yes	Yes	No
SD	Yes	Yes	Yes	Partial	Yes	No	No
TN	Yes	Yes	Partial	Yes	Yes	Yes	No
TX	Yes	Yes	Yes	Yes	Yes	Yes	No
UT	Yes	Yes	Yes	Yes	Yes	No	No
VA	Yes	Yes	Yes	Yes	Yes	Yes	No
VT	Yes	Yes	Partial	Yes	Yes	Yes	No
WA	Yes	Yes	Yes	Yes	Yes	No	No
WV	Yes	Yes	Yes	Yes	Yes	No	Yes
WI	Yes	Yes	No	Yes	Yes	Yes	No
WY	Yes	Yes	Yes	Yes	Yes	No	No

## Table Footnotes

1. State Brownfields Program: A formal program established within a state regulatory agency that encourages redevelopment of contaminated sites through provision of technical assistance and may include other elements such as liability protections, tax incentives and financial grants to those who redevelop contaminated sites.
2. Voluntary Cleanup Program: A state VCP allows applicants to voluntarily investigate and clean up properties to a state's satisfaction, in exchange for protection from enforcement actions. These programs are intended to encourage the cleanup and redevelopment of contaminated properties within the state.
3. State-Provided Third-Party Protections: State regulations that provide liability protection or limitations for non-responsible parties (who qualify by redeveloping a brownfield) from state and third-party claims. Liability protection can also be provided to financial institutions and these programs vary from state to state. Covenants not to sue, no further action letters and other instruments can be furnished in many states, depending upon state-specific criteria.
4. Brownfield Engineering Controls: ECs encompass a variety of engineered and constructed physical barriers (e.g., soil capping, subsurface venting systems, mitigation barriers, fences) to contain and/or prevent exposure to contamination on a property. A related tool, allowed in many states, is use of a risk assessment, which is based on rigorous scientific analysis supported by extensive calculations, to examine the dose, duration, toxicity and uptake of specific contaminants against the existing or future use, and often alter the regulatory cleanup levels; generally applicable to commercial/industrial properties.
5. Brownfield Institutional Controls: ICs are generally administrative and legal tools that do not involve construction or physically changing the site. ICs are generally divided into four categories:
  - a. Government Controls - include local laws or permits (e.g., county zoning, building permits and Base Master Plans at military facilities);
  - b. Proprietary Controls - include property use restrictions based on private property law (e.g., easements and covenants) and environmental regulations; examples are deed restrictions, which must be recorded in deeds
  - c. Enforcement Tools - include documents that require individuals or companies to conduct or prohibit specific actions (e.g., environmental cleanup consent decrees, unilateral orders, or permits)
  - d. Informational Devices - include deed notices or public advisories that alert and educate people about a site.
6. Brownfield Tax Incentives: Various federal, state and local tax incentives and credits that can be used by developers to encourage redevelopment of a brownfields site by reducing the costs associated with the transaction. These programs vary widely across jurisdictions.
7. Licensed Environmental Professional: An LEP is a trained individual certified by a state environmental regulatory agency who can investigate and oversee the remediation of contaminated sites as well as verify that a site has been remediated to state standards. Some states may refer to these positions as licensed site professionals or licensed site remediation professionals.

## ICSC Contaminated Site Toolkit Outline/Approach

### 1. Contaminated Sites Landscape – Government Oversight, Regulations and Resources

- Federal (EPA), state and local brownfield regulations and program structures
  - Superfund versus state brownfield programs
    - Federal and state Superfund programs impose liability for contamination on owners.
    - State brownfield programs help mitigate owner liability.
    - Brownfield programs are voluntary.
    - Brownfield programs generally provide liability protection and economic incentives to prospective buyers.
  - Grant Programs (how they work and how to find grantees)
    - Federal programs are separate from state brownfield programs.
    - Grants (for environmental investigation and cleanup) are generally made to municipalities and non-profit organizations to incentivize local jurisdictions to identify and clean up contaminated sites.
    - Most local jurisdictions do not have resources (even with grants) to clean up contaminated properties.
    - However, through public-private partnerships, private developers can jointly venture with local jurisdictions and/or development authorities for redevelopment, with grant funding assisting with cleanup.

### 2. Appropriate Steps When Development Opportunity Is a Contaminated Site

- Conduct Phase 1 (performed to ASTM standards): Initial environmental inquiry into past and current conditions/operations determines whether environmental testing is appropriate and also provides federal cleanup protection
- Perform Phase 2: Initial or additional environmental testing to determine scope of cleanup required, if any; required if indicated by Phase 1
- Evaluate sources of contamination (i.e., the contamination in soil, groundwater, vapor, building materials, etc.)
- Consider any emerging, but as yet, unregulated (or not fully regulated) contaminants (e.g., PFAS)
- Assess whether brownfield programs are available and, if so, what protections are provided
- Assess how construction (foundations serving as cover, parking decks serving as vapor capture, etc.) can serve as remediation techniques
- Determine timetables and uncertainties (if any) associated with regulatory closure
- Ascertain what economic incentives are available and what must be done to capture them

### 3. Other Financial Incentives

- Various economic benefits available for brownfields redevelopment
- Property tax relief
- Tax Increment Financing and tax credits
- Opportunity Zones benefits
- State revolving loan fund programs

*Note: Liability considerations are critical to the extent of possible financing.*

### 4. Liability Considerations

- State brownfield programs often protect purchasers from state-required cleanup.
- Some brownfield programs protect purchasers from third-party claims (adjacent owners, injured parties, etc.).
- Federal cleanup liability protection is obtained by conducting ASTM-compliant Phase I and taking future reasonable steps regarding existing and future environmental conditions.

### 5. EPA/State Search Tools for Brownfields

- Assists in identifying portion of universe of contaminated sites available for potential redevelopment
- Filters identify viable sites:
  - By proximity to infrastructure (interstates/railroads/port facilities)
  - By income demographics
  - By status of cleanup
  - By accessing testing information
  - Numerous other filters are available