

SABR News

A Publication for the Brownfield Interested Party List

July 2010

Federal Brownfields Reauthorization Bill Introduced; Changes Would Spur More Cleanups

On May 13, 2010, a bill seeking to reauthorize the Federal Brownfields Act of 2002 was introduced in the House by Representative Frank Pallone of New Jersey and Representative Joe Sestak of Pennsylvania. This bill, HR 5310, incorporates many ideas and recommendations for improving and strengthening the federal brownfields program that are being promoted by the National Brownfields Coalition and others involved in brownfield redevelopment.

The Brownfields Coalition is made up of public entities along with private and non-profit organizations with years of experience in fostering successful brownfields redevelopment. Members include the U.S. Council of Mayors, National Association of Local Government, Environmental Professionals, Environmental Bankers Association, National Association of Development Organizations, Smart Growth America and numerous state and local development and environmental officials.

Over the last several years, states, local communities and tribes have benefited greatly from the U.S. EPA brownfield program's funding for site assessment, site cleanup and assistance building and improving state and tribal brownfield programs. According to U.S. EPA, the program's investment of \$1.3 billion has leveraged \$10.3 billion in cleanup and redevelopment monies. This represents a more than eight to one return on public investment.

However, many brownfield redevelopment professionals and the National Brownfields Coalition believe changes to some of the program's requirements, contained in the 2002 Act, can result in U.S. EPA's brownfields program achieving even greater success. Representatives Pallone and Sestak, along with other representatives who are co-sponsoring this bill, agree with many of these recommendations and have proposed the following in HR 5310:

- Increase overall U.S. EPA funding for brownfield assessment, cleanup and revolving loan fund grants, beginning with \$350 million in Federal Fiscal Year (FFY) 2011 and increasing by \$50 million annually to a total of \$600 million in FFY 2016. Funding to states and tribes for brownfield program development would also increase incrementally starting with a \$20 million increase to \$70 million in FFY 2011 up to \$120 million in FFY16. This would greatly help the communities, states and tribes that are relying more and more on the Federal Brownfields Program in this economy to "jump start" their brownfield redevelopment sites and programs.

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- Raise the ceiling on federal brownfield cleanup grants from \$200,000 to \$750,000. Brownfield site cleanup is often costly, and raising the funding limit will greatly help communities with tight budgets that cannot fill the gap in funding when the cleanup runs more than \$200,000.
- Make non-profits and community development entities eligible to receive brownfields assessment and revolving loan fund grants. Many community development corporations and non-profit brownfield and development coalitions have proven track records of facilitating successful redevelopments. Allowing these entities to tap into grant funding can only increase the already impressive return on investment for the program.
- Allow grants to be awarded for site assessments and cleanups for publicly owned sites acquired before the enactment of the 2002 Act without the bona fide prospective purchaser test. Many good brownfield redevelopment candidates that could have benefitted from federal assistance have sat idle because the city owned the property before the original legislation took effect and couldn't meet the prospective purchaser test.
- Allow eligible entities to have the option to apply for multi-purpose grants, up to \$1.5 million, that can be used for the full range of brownfield-funded activities (assessment, cleanup, revolving loan funds and reuse planning) on an area-wide or community-wide basis. The current legislation allows funding only for one activity at a time, thus restricting a community's flexibility to provide different funding tools to sites, depending on what is needed to "jump start" the redevelopment.
- Make sites that have undergone tax foreclosure by a local government eligible for grant funding. Under the current legislation, local governments have been considered liable under CERCLA, and thus ineligible, if they have used tax foreclosure to take ownership to address vacant properties that have created nuisance or safety issues. Many of these properties are ripe for brownfield assessment, cleanup and redevelopment. This change will allow local governments the chance to recharge these sites to bring jobs and growth to the community.
- Allow brownfield grant recipients to use up to 10 percent of their grant funds to cover reasonable indirect and administrative costs, such as rent and utilities. This will especially help cash-strapped small communities who don't have the additional resources necessary to manage a brownfield grant.

HR 5310 has been referred to the Committee on Energy and Commerce along with the Committee on Transportation and Infrastructure to review the language that is in each Committee's jurisdiction. SABR will provide updates on the progress of this legislation in *SABR News* and on our website at <http://epa.ohio.gov/derr/SABR/sabr.aspx>.

No Further Action (NFA) Letter Fees To Increase Fiscal Year 2011

Fees for reviewing NFA letters submitted for a covenant not to sue (CNS) increase annually based on the previous year's increase in the Consumer Price Index, as established in Ohio Administrative Code 3745-300-03(G). The CPI increased by three percent from 2008 to 2009. The resulting increases in the fees can be found in the Fee Schedule on the VAP web page: <http://www.epa.state.oh.us/portals/30/vap/docs/2010%20VAP%20Fee%20Schedule%20rounded.pdf>

Wetland Oasis in Heart of an Ohio Urban Core

Scioto Audubon is the newest addition to Franklin County Metro Parks and is the only urban park in the system. The 71-acre park is located on the bank of the Scioto River on the Whittier peninsula in downtown Columbus and was developed as a partnership effort between Metro Parks, the City of Columbus Recreation and Parks Department and Audubon Ohio. Metro Parks has created seven wetland cells totaling about five acres to enhance the wildlife habitat. Wetland birds such as wood ducks, blue-winged teal and sand pipers have been attracted to the park, along with egrets, northern pintail ducks, pied-billed grebe, American bittern, herons and osprey.

In addition to birding, there are opportunities for fishing, boating, hiking and jogging. The park has one of the largest outdoor climbing walls in the United States available for experienced climbers to enjoy. The three towers and two arches of the main climbing wall reach a height of 35 feet, and extend more than 6,100 square feet. A shade structure with seating is available nearby the climbing wall, as well as sand volleyball courts and Neos, an interactive electronic game. Audubon Ohio operates a downtown nature center inside the park, the Grange Insurance Audubon Center at 505 W. Whittier Street.

The entire Whittier Peninsula project has been funded with local, state and federal dollars. In 1998, Columbus City Council adopted the Olentangy and Scioto Riverfront Vision Plan. In 2003, the city, Audubon Ohio and Metro Parks reached an agreement to redevelop the peninsula as the city's first downtown metro park. The \$10 million park development included a renovated boat launch and \$14.5 million for the Grange Insurance Audubon Center.

In 2005, ODOD awarded Metro Parks a \$742,500 Clean Ohio Assistance Fund grant for the 2008 demolition of the former F&R Lazarus & Co. furniture distribution center warehouse (built in 1946) and cleanup on the surrounding 12.6-acre property, once the site of a steel foundry and sand and gravel mining operation. A certified professional from Burgess and Niple identified contaminated soil and ground water on the Northern Tier and removed nearly 10,650 cubic yards of soil and asbestos before demolishing the former Maier Warehouse. A risk mitigation plan provides protective measures from potential future exposure, and an environmental covenant restricts the property to recreational, commercial and/or industrial land use and prohibits ground water extraction. U.S. EPA issued a \$200,000 Brownfields Assessment grant for Metro Parks to develop a cleanup plan for the Columbus Impound Lot, located on the peninsula's roughly 80-acre Southern Tier.

In June 2008, Ohio EPA celebrated the cleanup of the 26-acre property on which the 18,000-square-foot Grange Insurance Audubon Center was built using sustainable "green" building design and alternative energy, namely a geothermal heating and cooling system. The covenant not to sue (CNS) issued through the VAP for this property recognizes the certified cleanup work voluntarily performed at the Northern Tier and documents that the property complies with Ohio EPA's standards for recreational land use. The CNS approves redevelopment of the Northern Tier for a dog park, wetlands, walking trails, playfields and picnic areas. The CNS releases Metro Parks from liability to perform additional investigations and cleanup activities at the Northern Tier for past releases of hazardous substances or petroleum.

In June 2010, Ohio EPA officially recognized the cleanup of the 12.6-acre former Lazarus Warehouse property, where Metro Parks' climbing wall, water tower/observation decks, playground, sand volleyball court and interactive electronic agility game are located.



Ohio Background Soil Workgroup Developing Database

On November 29, 2006, the Multidisciplinary Board, convened by the VAP to direct revisions of the VAP rules, voted to approve the creation of an Ohio soil background workgroup. The approved recommendation involved the creation of a multi-disciplinary workgroup that would research and report upon area-wide background concentrations of chemicals of concern, primarily in soil, specifically focused in urban areas.

The workgroup was chartered by Ohio EPA; however, it is composed of environmental consultants as well as technical staff from Ohio EPA. The goal of the workgroup is to derive a composite database of background concentrations across large aerial extents of the state, which could be used practically as part of background determinations when conducting assessment and cleanup under the VAP.

On May 24, 2010, the workgroup sent a request to the CP community to gather background data from existing VAP and other cleanup projects. The background data received is currently being compiled in a temporary database.

The temporary database is located outside of Ohio EPA and it will be used until a more permanent, Ohio EPA-housed database can be developed.

The workgroup is also working on a guidance manual. The manual will contain:

- instructions on how to upload/download data from the database;
- guidance on how to make a background determination using data from the background database and site-specific data; and
- frequently asked questions (FAQs) that provide basic answers to the most common questions related to VAP background demonstrations.

Expect to see a draft version of the guidance and database by the CP Annual Training, which is scheduled for October 28, 2010.

New Guidance Document Addresses Vapor Intrusion to Indoor Air

In May 2010, the Division of Emergency and Remedial Response released the final version of *Sample Collection and Evaluation of Vapor Intrusion to Indoor Air for Remedial Response and Voluntary Action Programs*. The guidance document was developed by a workgroup of 15 Ohio EPA technical staff and six environmental consultants. The workgroup started its work in late 2007 by identifying issues typically seen at vapor intrusion sites in Ohio.

Many state and national guidance documents for assessing vapor intrusion are available, and the DERR guidance adopts some concepts and best practices from these. However, due to the unique regulatory framework of the VAP coupled with Ohio EPA-specific sampling techniques for subslab and exterior soil gas, DERR management and technical staff recognized that Ohio should develop its own guidance to assess vapor intrusion to indoor air.

Main topics in the guidance include what factors to consider when developing the conceptual site model, how and when to sample environmental media, and available methods to determine the risk and hazard. A unique feature of Ohio EPA's guidance is the limited use of Johnson & Ettinger modeling for bulk soil data. Also included are standard operating procedures for active soil gas collection using direct push systems, construction and installation of permanent subslab soil gas ports, and procedures for collection of indoor air.

The guidance is available on the Division of Emergency and Remedial Response web page at: <http://epa.ohio.gov/portals/30/rules/VI%20guidance.pdf>

Ohio EPA Offers Free Site Assessments to Communities

Ohio EPA's Targeted Brownfield Assessment (TBA) program assists communities with environmental site assessments at no cost. The TBA program uses money from U.S. EPA and a portion of its state budget to pay for a variety of site assessment needs. The TBA program often fills a unique investigative need for the project and helps to reduce the overall cost to the community.

Because of the limited budget of the TBA program and the desire to assist as many communities as possible, the TBA program limits the type of assessments it funds. Activities that have been funded during the past year include both Phase I and limited Phase II Property Assessments.

Phase I Property Assessments evaluate the past uses of the property and the surrounding area to identify potential areas on property that require further investigation such as soil or ground water sampling. A certified asbestos survey identifies and samples potential asbestos-containing material and catalogs the amount of asbestos in a building that must be abated prior to renovation or demolition of a building. A supplemental Phase II assessment fills in data gaps or specific needs of an ongoing Phase II property assessment that is usually being conducted by a VAP-certified professional.

Over the past year, 23 Ohio sites have received or are scheduled to receive assistance from the TBA Program.

- Eleven sites had Phase I Property Assessments, with four of them also having a certified asbestos survey performed.
- The remaining 12 sites that have received funding have had various Phase 2 activities conducted on the property.
- Four sites have had VAP-compliant water quality surveys performed at adjacent rivers or streams to evaluate the properties' potential impact on the surface water body.
- Two sites have had soil gas or indoor air assessments conducted to evaluate the migration of vapors from volatile organic chemicals (VOCs) and the potential impact to buildings near the site.
- Two sites have had abandoned petroleum underground storage tank (USTs) investigated to identify whether releases of petroleum have occurred from the USTs.
- Four sites have had supplemental Phase II assessments performed.

Ohio EPA's Site Investigation Field Unit (SIFU) uses a Geoprobe™ to collect soil samples or ground water grab samples for laboratory testing. The Geoprobe™ also can be used to install small diameter pre-packed monitoring wells.

For larger diameter monitoring wells, Ohio EPA can mobilize one of its contractors to drill and install more traditional monitoring wells with hollow stem augers.

Ohio's TBA funds have been used to evaluate off-site migration of ground water contamination, investigate potential contamination in a former septic system leach field and complete investigations where the primary funding sources are tight.

For more information about the TBA program, contact Martin Smith, TBA coordinator, or Amy Yersavich, SABR manager, at (614) 644-2924.

Technical Guidance Update

The Voluntary Action Program has updated its technical guidance document related to the eligibility of properties with petroleum underground storage tank (UST) systems removed or closed-in-place prior to December 22, 1988. Technical Guidance VA30002.10.001 replaces VA30002.09.010, which was revised for clarification.

A site where tanks were removed or properly closed-in-place prior to December 22, 1988 must receive a No Further Action (NFA) letter from the State Fire Marshal's Bureau of Underground Storage Tank Regulations (BUSTR) if sample results indicate the site exceeds BUSTR action levels. If the site does not exceed appropriate BUSTR action levels, the site is eligible for VAP.

The detailed technical guidance can be found in the Technical Guidance Compendium:

<http://www.epa.ohio.gov/portals/30/vap/tgc/VA30002-10-001.pdf>

Spring Meeting Provided Program Updates; Presentations Available on the Web

Approximately 40 VAP and brownfield professionals attended the Spring CP Coffee on May 5, 2010, hosted by Ohio EPA's Northeast District Office in Twinsburg. Jim Smith, a CP with Brownfield Restoration Group, provided refreshments for attendees.

The agenda was full of new information and changes at Ohio EPA. Amy Yersavich provided SABR and Clean Ohio Fund updates. She outlined upcoming changes to the Clean Ohio application reviews, Clean Ohio Fund scoring and updated attendees on brownfield grants. She informed Clean Ohio participants that a new requirement for technical assistance on funded Clean Ohio Revitalization projects is being phased in with Round 8.

Tiffani Kavalec provided information on the VAP program workload and workgroups; new templates available on the website; the upcoming streamlined CNS denial process; a revision to the O&M reporting timeframes; and reminders on the details of providing electronic submittals of NFAs and Addendums to Ohio EPA.

Audrey Rush, Vanessa Steigerwald-Dick and Gavin Armstrong gave a presentation on the new vapor intrusion guidance which has been posted on our DERR web site. Natalie Oryshkewych, manager of NEDO's Division of

Hazardous Waste Management, provided an update on the RCRA Corrective Action Program and how CPs can move through the program while conducting assessment and cleanup under the VAP.

Finally, the assistant chief of the Division of Emergency and Remedial Response, Pete Whitehouse, provided an overview of the new direction in the VAP. This direction addresses the evaluation and remediation of properties when a property is expected to be redeveloped in the future.

All slideshow presentations from the May Coffee are available on the VAP web page: <http://www.epa.state.oh.us/portals/30/VAP/docs/Training/2010%20Spring%20CP%20Coffee.pdf>

VAP Legislative Report to be Released Soon

The VAP is preparing to release its annual report to the Ohio legislature for calendar year 2009. Highlights of the activities reported for 2009 include:

- 54 No Further Action (NFA) letters were issued by certified professionals (CPs).
- 24 covenants not to sue (CNS) were issued by Ohio EPA.
- 607 acres were reported being cleaned up for possible redevelopment.
- Eight properties notified VAP of entry into the Memorandum of Agreement (MOA) track.
- One covenant not to sue was voided.
- Staff initiated audits of nine NFA Letters.

The new report, as well as previous reports, will be posted at <http://www.epa.ohio.gov/portals/30/vap/docs/Annual%20Reports.pdf>

Training Update: PDHU-qualified Courses for VAP Certified Professionals

Material covered, information provided and any opinions expressed in courses approved for PDHUs do not supercede Voluntary Action Program statutory language, rule requirements or technical reviews provided by Ohio EPA staff.

Ground Water Pollution and Hydrology Course:

Princeton Groundwater, Inc.

July 12-16, 2010

Orlando, FL

OR

July 26-30, 2010

San Francisco, CA

Fee: \$1,595

Maximum 32 PDHUs (maximum accruable in certification period)

<http://www.princeton-groundwater.com/pollution-and-hydrology-course.htm>

Use of Risk Assessment in Management of Contaminated Sites:

ITRC Training Program

July 20, 2010

Internet seminar

Free

2.25 PDHUs

http://www.clu-in.org/training/#Use_of_Risk_Assessment_in_Management_of_Contaminated_Sites_20100720

SABR News

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