




Oklahoma Brownfields
CONFERENCE 2012
MAY 22-23, 2012

*Brownfields 101



*What are
brownfields?

* Properties that have lost value due to environmental problems.



* Examples of brownfields

- * Old gas stations
- * Old dry cleaners
- * Oil/chemical spills from past commercial/ industrial operations
- * Industrial wastes left on property
- * Old landfills
- * Old smelters
- * Metal plating facilities
- * Old oil refineries
- * Old rail yards
- * Old buildings containing asbestos, lead paint, etc.

* Why do brownfields exist?

- * The industrial revolution and “better living through modern chemistry,” increased the threats to human health and the environment from former industrial practices.
- * Environmental laws designed to mitigate the threat to human health and the environment that hold the polluter responsible for the cost of the cleanup.
- * The term “Owner/Operator” under Superfund
- * Banks caught in the Superfund liability web
 - * Now protected

* QUESTIONS

- * How do I know if the property is a brownfield?
- * Why should I care?
- * What am I required to do if it is a brownfield?
- * What financial risks are involved?
- * How can I manage the risks?
- * Are resources available to help?

* How do I know if the property is a brownfield?

- * Phase I Environmental Assessment/Due Diligence
 - * If the property was previously used for industrial purposes or for commercial purposes that used or sold hazardous chemicals/petroleum products
- * The "Deal" is too good...
 - * If the sale price is lower than fair market value
 - * The property has been vacant for a long time and the location is desirable
 - * It is located near a Superfund Site
 - * The site is on CERCLIS
 - * The property is flagged as a brownfield on a state or community brownfield inventory.

* Why should I care?

- * The value of the property
 - * Resale
- * The ability to get financing
- * Liability
 - * Under federal and state law
 - * Under Common Law - Third Party liability
- * Cost of cleanup
- * Once in the chain of title - you are a potentially responsible party (PRP) under Superfund

* **What am I required to do if the property is a brownfield?**

In Oklahoma...nothing. The Brownfield Program is a VOLUNTARY program.

However, certain actions may trigger enforcement under general laws.

Brownfield programs, in general, offer landowners a way to manage their environmental liability.

If there is no specific state law requiring an owner to clean up historical contamination, then the issue is just a question of liability - if/when the government becomes interested in the site

- * Comprehensive Environmental Response, Compensation and Liability Act (Superfund)
 - * Strict joint and several liability
 - * Treble damages
- * Liability to the State
 - * State Superfund Programs
 - * Nuisance laws
- * Third Party Liability

* **What financial risks are involved?**

* How can I manage the risks?

- * Phase I Environmental Site Assessment
 - * Innocent Landowner, Contiguous Property Owner, Bona Fide Prospective Purchaser
- * Lender/Fiduciary protection from Superfund
 - * Involuntary acquisition
- * Acquisition by Eminent Domain
- * Brownfield Certificate
 - * Certificate of Completion
 - * Certificate of No Action Necessary

- * Targeted Brownfield Assessments
 - * Phase I & II...more
- * EPA Brownfield Grants
- * Brownfields Revolving Loan Funds
 - * Loans and Subgrants
- * Clean Water State Revolving Funds
- * State Brownfield Programs
- * HUD
 - * Brownfield Economic Development Initiatives Grants
- * Public/Private partnerships

* Are resources available to help?

* Owing a brownfield property

- * Is a business risk
- * It can be managed like other business risks
- * Each person has to determine their own level of risk tolerance.

- * Liability for a full cleanup of the property under federal and state laws + treble damages.
- * Not being able to get financing...at least not when the property is the collateral.
- * Not being able to sell the property in the future.
- * Third party lawsuits.

* What are the business risks?

- * It depends...
 - * Where is the property located?
 - * Who will be on the property?
 - * How will the property be used?
 - * Is the groundwater impacted?
 - * What chemicals are present?
 - * What is the likelihood that someone would come into contact with those chemicals?
 - * What are the state laws ?
 - * Oklahoma does not have a state Superfund law, but many states do.

* **How real are the risks?**

- * Nationally, over 10,222 sites have been investigated under the Superfund Program
 - * Oklahoma
 - * 982 sites have been investigated under Superfund
 - * 13 have made it onto the National Priorities List
 - * 50 Removal Actions
 - * Petroleum Exclusion
 - * Requires potential impact to the environment
 - * Indoor contaminants such as asbestos and lead paint are normally excluded

* **Superfund**

* Anytime you invest money into something there is a risk, whether large or small, that you might not get your money back. In turn, you expect a return, which compensates you for bearing this risk.

* So ultimately, redeveloping brownfields is an exercise in Cost Benefit Analysis

* General concept

- * Brownfield properties are often in great locations
- * Perception of contamination can keep the price under market value
- * Resolving the liability can impact the future resale value
- * Economic growth and community revitalization

* Rewards





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