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RCRA, Superfund & EPCRA Hotline Training Module

Introduction to:

**Brownfields Economic
Redevelopment Initiative and
Environmental Justice**

Updated February 1998

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THE BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE AND ENVIRONMENTAL JUSTICE

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1. INTRODUCTION

Abandoned and contaminated industrial properties are a major concern in America's urban areas. Although cleaning up contaminated property can revitalize a community and attract new business, developers and investors may be reluctant to reuse these properties for fear of incurring liability for any possible contamination found at the site. Liability under CERCLA and other federal and state statutes can be strict, and the required associated remedies for cleanup can be costly. When abandoned properties are not put to productive use and are perceived as contaminated, the unfortunate results are decreased property values and unaddressed contamination which can lead to problems for human health and the environment. This practice also leads to the development of pristine areas of land as industries look for "low-risk" properties. This creates urban sprawl and a decrease in natural areas for humans and wildlife alike.

In response to this disturbing trend and in an effort to promote the idea that environmental cleanup is not a hindrance to economic development, EPA announced the Brownfields Economic Redevelopment Initiative (the "Brownfields Initiative"). EPA defines brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. The Brownfields Initiative is an organized effort to help communities revitalize brownfields both environmentally and economically. Through this effort, EPA hopes to prove that a clean and healthy environment is an essential component of a growing and robust economy.

Coupled with the Brownfields Initiative is a larger environmental justice initiative to increase fairness and understanding of environmental issues in low-income and minority communities. This module addresses the Brownfields Initiative and Environmental Justice Strategy.

After completing this module, you should be able to:

- Explain what the Brownfields Action Agenda is and its goals
- Explain the purpose of the Brownfields Economic Redevelopment Initiative, the authority for it, and how the grants are used
- Explain what the Brownfields National Partnership Action Agenda is and describe its key components.
- Explain what environmental justice is and why it is important for EPA to address under the Brownfields Initiative, as well as throughout the Agency.

Use this list of objectives to check your knowledge after the training session on brownfields and environmental justice.

2. AUTHORITY FOR THE BROWNFIELDS INITIATIVE

The Brownfields Initiative is one of the Administrative Reforms announced in February 1995, under the Superfund program. The Administrative Reforms, a series of goals to improve Superfund without requiring regulatory amendments, are organized into six general areas: enforcement, economic redevelopment, community involvement and outreach, environmental justice, consistent program implementation, and state empowerment. For more information on the Administrative Reforms please refer to the module entitled Superfund Administrative Improvements/Reforms.

EPA is implementing the Brownfields Initiative under CERCLA statutory authority. Authority for the Brownfields Initiative comes from CERCLA §104, which provides EPA with broad authority to take response actions whenever there is a release or substantial threat of a release of a hazardous substance (and, under certain circumstances, of a pollutant or contaminant) (§104(a)); or whenever there is reason to believe a release has occurred (§104(b)). In addition, CERCLA §104(b) specifically grants EPA broad authority to undertake a variety of studies and investigations, including monitoring surveys, testing, planning, and other information-gathering activities in connection with response actions that may be taken under CERCLA §104(a). EPA may remove or arrange for removal of the hazardous substance, pollutant, or contaminant, provide for remedial action, or take any other response measure consistent with the National Contingency Plan (NCP). CERCLA and the NCP provide broad discretion to take these actions as appropriate to protect public health and welfare and the environment. Whether a site presents enough risk to warrant such action is decided on a case-by-case basis. CERCLA authorizes the award of contracts or cooperative agreements to a state, political subdivision, or Indian tribe to carry out actions authorized under CERCLA §104.

3. THE BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE

EPA believes that the environmental cleanup of brownfields sites is a building block to economic redevelopment. The Administration's Brownfields Economic Redevelopment Initiative is designed to empower states, communities, and other stakeholders to work together to assess, safely clean up, and sustainably reuse brownfields. On January 25, 1995, EPA published the Brownfields Action Agenda, an outline of EPA's activities and future plans to help states and communities implement and realize the benefits of the Brownfields Initiative. The efforts outlined in the Brownfields Action Agenda were grouped into four broad and overlapping categories:

- Providing grants for Brownfields pilot projects
- Clarifying liability and cleanup issues
- Building partnerships and outreach among federal agencies, states, municipalities, and communities
- Fostering local environmental job development and training initiatives.

By mid-1996, EPA met the goals of the Brownfields Action Agenda through several actions including: encouraging state and tribe voluntary cleanup programs, purging CERCLIS of sites which are no longer of federal interest, and identifying uncontaminated portions of NPL sites. However, it became clear that the brownfields problem required more interaction among all levels of government, communities, and the private sector. Following the strong suggestions of a wide range of stakeholders, the Administration established an Interagency Working Group on Brownfields in July 1996. The Interagency Working Group consists of more than 20 federal agencies, including the Departments of Agriculture, Commerce, Defense, Education, Energy, Housing and Urban Development, Interior, Justice, Labor, and Transportation, as well as EPA, the General Services Administration (GSA), and the Small Business Administration (SBA). The interagency Working Group increases the effectiveness of the Brownfields Initiative by coordinating Agency efforts and resources.

3.1 BROWNFIELDS ASSESSMENT DEMONSTRATION PILOTS

One component of the Brownfields Initiative involves funding Brownfields Assessment Demonstration Projects. As of December 1997, EPA awarded 121 site assessment pilot grants to states, cities, towns, counties, and Indian tribes. EPA Headquarters selected and sponsored 64 National pilots, and 57 Regional pilots were selected and sponsored by EPA Regional offices. The pilots, each funded up to \$200,000 over two years, test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated public and private efforts at the federal, state, and local levels. Brownfields demonstration pilot funds are used toward environmental activities

prior to site cleanup at areas that have an actual or threatened release of a hazardous substance, pollutant, or contaminant. Pilot fund recipients may use the funds to assess, identify, characterize, and plan response or cleanup activities identification, characterization, or remedial planning activities at a site.

EPA places several restrictions on the use of Brownfields pilot funds. For example, recipients may not use the funds for:

- Site cleanup and response activities associated with site cleanups (e.g., groundwater extraction and cleanup)
- Activities at any site listed on CERCLA's National Priorities List
- Fund-raising
- Lobbying efforts (e.g., lobbying members of Congress).

National pilots are selected through a competitive application process. EPA evaluates the National pilot applications using several criteria, including a program statement and needs assessment, community-based planning and involvement, the project's implementation plan, and long-term benefits and sustainability. EPA plans to select approximately 100 additional National pilots by May 1998. These pilots will be an essential piece of the nation's overall community revitalization efforts.

Two of the first pilots selected were in Bridgeport, Connecticut, and Richmond, Virginia. Bridgeport is the largest and most economically distressed city in Connecticut. The goal of the Bridgeport pilot is to return contaminated inner city land to productive use and serve as a model for other cities interested in redeveloping brownfields. The project is focusing on involving community-based groups in the decision-making process that will shape their neighborhoods and city.

The city of Richmond is fostering private business investment and reuse of inner-city sites as part of the solution to Richmond's problems with crime, housing, education and health. Activities conducted under Richmond's pilot project include studies undertaken to: identify environmental mitigation alternatives and costs; determine financial shortfalls and mitigate barriers toward achieving brownfields redevelopment; and compare brownfields projects to competing options of developing pristine areas.

3.2 BROWNFIELDS REVOLVING LOAN FUNDS PILOTS

The Brownfields Initiative fiscal year 1997 budget allocated funds for cooperative agreements of up to \$350,000 each to capitalize revolving loan funds for cleanup activities at the first 29 locations which received Brownfields site assessment grants. Winners of the first 29 pilots had to specifically apply for these funds that would be used to capitalize revolving loan fund. EPA awarded 24 Brownfields Cleanup Revolving Loan Fund (BCRLF) pilots in Fiscal Year 1997. Each pilot was funded at

\$355,000. Grants of this type will not be awarded with Fiscal Year 1998 CERCLA dollars unless specifically authorized by subsequent legislation. The states, municipalities, U.S. territories, and Indian tribes who receive the funds will lend this money to developers of the brownfields property. The developers will repay the loans to the state, municipalities, U.S. territories, and Indian tribes, which can in turn loan out the funds.

The use of BCRLF must be consistent with CERCLA and conform to several other guidelines. The BCRLF pilot funds are loaned for activities at sites that are publicly owned by a municipality or quasi-public entity, privately owned, or in the process of being purchased by a new party who meets the definition of prospective purchaser. The revolving loan pilot funds are specifically limited to cleanup activities at brownfields sites that have an actual release or substantial threat of a release of a hazardous substance, pollutant, or contaminant which presents a threat to public health, welfare, or the environment. The BCRLF pilot funds also may be used to address releases into the environment of a "pollutant" or "contaminant" that may present an imminent or substantial danger to public health or welfare. The BCRLF pilot funds may also be used to cover a portion of the lead agency's or fund manager's administrative, cleanup response planning, and legal costs (e.g., loan processing, professional services, audits, and state program fees). The BCRLF pilot fund recipients may not use the revolving loans for:

- Conducting environmental response activities prior to site cleanup (e.g., site assessment, identification, and characterization)
- Non-environmental redevelopment activities (e.g., construction of a new facility)
- Activities at any site listed, or proposed for listing, on CERCLA's National Priority List; undergoing a federal or state agency removal action within six months; or where a federal or state agency is planning or conducting a response or enforcement action
- Operation and maintenance activities upon completion of a site cleanup.

The BCRLF pilots were selected through a competitive application process. The successful applicant needed to demonstrate an ability to manage a revolving loan fund and environmental cleanups, a need for cleanup funds, a commitment toward creative leveraging of EPA funds, and a clear plan for sustaining environmental protection and related economic development activities initiated through the revolving loan program. EPA is currently negotiating cooperative agreements for the revolving loan fund pilots with 24 of the 29 eligible parties.

3.3 BROWNFIELDS NATIONAL PARTNERSHIP ACTION AGENDA

In order to lead the Brownfields Initiative into the future, the Interagency Working Group on Brownfields developed the Brownfields National Partnership Action

Agenda. The Action Agenda more effectively links environmental protection, economic development, and community revitalization within the scope of the brownfields program. The Action Agenda provides a link between cleanup and reuse of brownfields and other national trends including sustainable development, welfare-to-work initiatives, and community empowerment activities. Four categories addressed by the Action Agenda include utilizing more partnerships (e.g., conferences, workshops, and technology transfers), streamlining an organization or agency's internal policies by issuing guidance and revising regulations, researching data and information gathered from brownfields pilots, and implementing community-based projects at the local level. Over 100 commitments from more than 25 organizations and federal agencies are included in the Brownfields National Partnership Action Agenda. The commitments, which total \$300 million in federal government investments and \$165 million in loan guarantees, assist cleanup and redevelopment activities for as many as 5,000 properties. The commitments also support and create new employment opportunities and protect thousands of acres of undeveloped land (i.e., "greenfields").

3.4 BROWNFIELDS SHOWCASE COMMUNITIES

The centerpiece of the Brownfields National Partnership Action Agenda involves the selection of Brownfields Showcase Communities. As part of the Brownfields Initiative, a partnership of federal agencies was formed to offer technical, financial, and other assistance to selected Brownfields Showcase Communities. The goals of the Showcase Communities project is to:

- Promote environmental protection, economic redevelopment, and community revitalization through the assessment, cleanup, and sustainable reuse of brownfields
- Link federal, state, local, and non-governmental action support community efforts to restore and reuse brownfields
- Develop national models demonstrating the positive results of public and private collaboration addressing brownfields challenges.

A selected Brownfields Showcase Community will benefit from greater national exposure for its brownfields efforts as well as technical and financial support provided by participating agency programs. The Federal partners plan to designate at least ten Brownfields Showcase Communities, distributed across the country and varying by size, resources, and community type.

More than 200 communities responded to the first phase of the competition. From that group, 40 communities were requested to submit more detailed applications. The final recommendations have been forwarded to senior officials and an announcement is expected in March/April 1998.

3.5 CLARIFICATION OF LIABILITY ISSUES

CERCLA imposes liability on both past and present owners of contaminated sites even if the owner did not cause or contribute to the contamination. The stigma of potential Superfund liability diminishes the attractiveness of investing in previously used industrial or commercial areas. As a result, the market value of older industrial sites can be depressed, thereby causing these sites to become brownfields. EPA wants to mollify the concerns of lenders, property owners, municipalities, and others by clarifying relevant liability issues. In February 1995, EPA announced its intent to identify options and develop tools to remove liability barriers to the cleanup and redevelopment of contaminated properties, giving prospective purchasers, lenders, and property owners more assurances of a safe investment. As a result, EPA has issued several guidance documents that provide some assurance to prospective purchasers, certain lenders, and certain property owners that they do not need to be concerned with Superfund liability. Several of these guidance documents are listed below.

- **Guidance on Agreements with Prospective Purchasers of Contaminated Property.** In May 1995, EPA issued guidance allowing EPA greater flexibility in entering into agreements which provide a promise by the United States not to sue the prospective purchaser for contamination existing at the time of purchase and provide contribution protection (60 FR 34792; July 3, 1995).
- **Policy Towards Owners of Property Containing Contaminated Aquifers.** In May 1995, EPA issued a policy describing EPA's exercise of enforcement discretion to not take enforcement actions under CERCLA against owners of property above aquifers contaminated by hazardous substances resulting from migration outside the property (60 FR 34790; July 3, 1995).
- **Policy on CERCLA Enforcement Against Lenders and Government Entities that Acquire Property Involuntarily.** In September 1995, EPA and DOJ released a joint statement of intent to apply as guidance the provisions of the invalidated April 29, 1992 final rule on Lender Liability under CERCLA (60 FR 63517; December 11, 1995). [NOTE: Legislation passed as part of the Omnibus Appropriations Bill for Fiscal Year 1997 contains statutory provisions which are based substantially on the 1992 final lender liability rule and address the CERCLA liability of lenders, fiduciaries, and government entities who acquire property involuntarily.]
- **Policy on the Issuance of Comfort/Status Letters.** In November 1996, EPA released a policy designed to assist EPA in responding to requests from parties for some level of comfort that if they purchase, develop, or operate on brownfields property, EPA will not pursue them for the costs to clean up any contamination resulting from the previous use. The policy includes sample letters fro providing parties with information EPA has with respect to a

particular property, what that information means, and the likelihood EPA will take federal Superfund action.

3.6 PARTNERSHIPS AND OUTREACH

To promote public participation and community involvement in brownfields decision-making and to streamline brownfields efforts, EPA is working to build lasting partnerships with states, cities, and community representatives. In addition, EPA will continue to develop its existing partnerships with federal agencies to ensure a coordinated federal approach to the redevelopment of brownfields. EPA is using various mechanisms, such as workshops and conferences in order to facilitate information exchange between those parties involved in the brownfields effort.

During the summer of 1995, the National Environmental Justice Advisory Council (NEJAC) sponsored a series of one-day public dialogues across the country in an effort to involve community groups and environmental justice advocates in the Brownfields Initiative. The Agency also formed a workgroup to explore the potential effects that EPA endorsement of state voluntary cleanup laws might have on brownfields cleanup and redevelopment. In addition, EPA has assigned staff to various cities through inter-governmental personnel assignments (IPAs) to assist cities in the development of their own brownfields programs. IPAs enhance the Brownfields Initiative by promoting dialogue and encouraging understanding among federal, state, and local environmental agencies with common environmental and redevelopment goals.

In February 1996, EPA sponsored a Brownfields Pilots National Workshop. The workshop brought together more than 300 representatives from Brownfields pilot states and cities, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), federal agencies that conduct related programs, NEJAC, and other key stakeholders.

To further broaden the Brownfields Initiative, EPA co-sponsored two major conferences, "Brownfields '96" and "Brownfields '97." In September 1996, the City of Pittsburgh hosted Brownfields '96, a conference jointly sponsored by EPA and key national organizations. The conference, attended by more than 1,000 people, facilitated discussion about a wide range of brownfields topics. At this conference, EPA and the U.S. Department of Housing and Urban Development signed a Memorandum of Understanding in which each agreed to coordinate policies and activities in support of brownfields assessment and cleanup, community revitalization, and economic redevelopment efforts.

In September 1997, EPA co-sponsored Brownfields '97, which drew more than 1,700 people and featured the Brownfields '97 Showcase and Exhibition Center. The Center showcased environmental cleanup and redevelopment products and services from public, private, and community sources.

3.7 JOB DEVELOPMENT AND TRAINING

In keeping with its efforts to aid the economic redevelopment of brownfields communities, EPA has undertaken several job development and training activities. Together, EPA brownfields staff and local contacts have established partnerships with community colleges to provide quality training for local students, including those from socio-economically disadvantaged communities. The Agency's intention is to provide local residents with an opportunity to qualify for jobs developed through brownfields efforts. These jobs might include site assessment or remediation work or a position with the new business venture.

EPA and the Hazardous Materials Training and Research Institute are participating in an effort to expand training and develop curriculum at community colleges in brownfield communities. The Agency has already been successful in establishing job training programs at community colleges in Cleveland, Ohio; Whittier, California; and St. Petersburg, Florida.

EPA, in partnership with the National Institute of Environmental Health Sciences (NIEHS), works to promote job training and development in brownfields communities through the NIEHS Minority Worker Training Program.

3.8 BROWNFIELDS TAX INCENTIVE

As part of the Administration's Brownfields Initiative, President Clinton signed the Taxpayer Relief Act (HR 2014/P.L. 105-34) on August 5, 1997 to spur the cleanup and redevelopment of brownfields in distressed rural and urban areas. Under the \$1.5 billion Brownfields Tax Incentive, site remediation costs for properties in targeted areas are fully deductible in the year in which they are incurred, rather than capitalizing cleanup costs over five or ten years as the tax code previously required. Properties eligible for the tax incentive must be held by the taxpayer incurring the cleanup costs for use in a trade, business, or production of income. Eligible properties must also be contaminated, or potentially contaminated with hazardous substances, and meet one of several geographic requirements. The Brownfields Tax Incentive covers eligible cleanup costs incurred or paid from August 5, 1997 until January 1, 2001. Seventy-five Brownfields Assessment Demonstration Pilots with cooperative agreements signed through February 1997 are eligible for the Brownfields Tax Incentive.

In order to utilize the Brownfields Tax Incentive, the taxpayer must get a written certification from the appropriate state environmental agency, that their property is in the targeted areas and that there is a release, or threat of release, of a hazardous substance.

4. ENVIRONMENTAL JUSTICE

EPA's Brownfield Economic Redevelopment Initiative is an integral part of EPA's efforts to address the issue of environmental justice. Over the last decade, attention to the impact of environmental pollution on particular segments of our society has been steadily growing. Community-based groups and other organizations, such as academic and governmental agencies, have raised the issue that minority populations and/or low-income populations bear disproportionately high and adverse human health and environmental effects from pollution. Studies conducted by organizations such as the National Law Journal and the United Church of Christ maintain that the implementation and enforcement of key environmental laws have not historically provided protection to all citizens. EPA also published a report in 1992 called Environmental Equity: Reducing Risk in all Communities, which found that, although large gaps in data exist, environmental justice is a serious concern.

EPA created the Office of Environmental Equity (later changed to the Office of Environmental Justice) in November 1992. The office serves as the point of contact for environmental justice outreach and educational activities, provides technical support and disseminates environmental justice information. Furthermore, to ensure that the Agency received significant input from affected stakeholders Administrator Browner chartered the National Environmental Justice Advisory Council (NEJAC) under the Federal Advisory Committee Act (FACA) in July 1993. The NEJAC provides independent advice to the EPA on all matters relating to environmental justice. The Council consists of twenty-five members appointed from key environmental justice constituencies.

On February 11, 1994, President Clinton signed Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This executive order directs federal agencies to develop environmental justice strategies that identify and address their programs, policies and activities which result in disproportionately high exposure and adverse human health or environmental effects on minority populations and low-income populations. Executive Order 12898 requires that agencies conduct activities that substantially affect human health or the environment in a nondiscriminatory manner. All agency strategies must consider enforcement of statutes in areas with minority populations and low-income populations, greater public participation, and improvement of research and identification of differential patterns of subsistence use of natural resources.

EPA released the document entitled Environmental Justice Strategy: Executive Order 12898 in May 1995. The strategy describes environmental justice efforts in six types of EPA actions, including: health and environmental research; data collection, analysis and stakeholder access to information; enforcement and compliance assurance; partnerships, outreach and communication with stakeholders; Native

American, indigenous and Indian tribe programs; and integration of environmental justice into all agency activities.

EPA requires that each office and Region develop a strategy or action plan to address environmental justice concerns. The Office of Solid Waste and Emergency Response (OSWER) was the first program office to develop an environmental justice strategy, which was done simultaneously with the Agency-wide effort. On April 25, 1994, OSWER issued the OSWER Environmental Justice Task Force Draft Final Report, launching a major effort to address environmental justice concerns in EPA's waste programs. It consists of a series of action-oriented recommendations encompassing all waste program areas. Based on the recommendations, Headquarters and the Regions developed implementation plans in June 1994.

OSWER has made significant progress in meeting the goals of the Environmental Justice Action Agenda. The Waste Programs Environmental Accomplishments Report describes over 250 accomplishments by Headquarters and Regional offices (OSWER Directive 9200.3-20). One example of activities OSWER has sponsored is an environmental grants writing workshop for 200 Chicago public school faculty members. The purpose of the activity was to help community organizations conducting environmental justice-related activities learn how to compete for grant money.

More information on EPA's environmental justice program can be obtained from the Environmental Justice Hotline. The Environmental Justice Hotline was established to receive calls from concerned citizens about justice issues in their communities. The purpose of the hotline is to make information easily accessible to the public, the media and to assist in the resolution of environmental justice issues. The phone number is 1-800-962-6215. The hotline is answered by staff of the Office of Environmental Justice (OEJ).

5. SUMMARY

The EPA launched the Brownfields Economic Redevelopment Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together to prevent, inventory, assess, safely clean up, and sustainably reuse brownfields. The Brownfields Initiative will be realized through a cleaner environment, new jobs, an enhanced tax base, and a sense of optimism about the future. To implement the Initiative, EPA announced an initial Brownfields Action Agenda in January 1995. The Action Agenda outline four key areas: providing seed money to local governments; removing liability barriers impeding Brownfields redevelopment; developing partnerships and outreach to all Brownfields stakeholders; and promoting local environmental workforce development and job training.

By mid-1996, EPA had completed all of its commitments on the initial Action Agenda. It became clear that the brownfields problem required more interaction among all levels of government, the private sector, and non-governmental organization. A new plan, "The Brownfields National Partnership Action Agenda," was developed. The new Agenda is based on protecting human health and the environment, enhancing public participation in local decisionmaking, building safe and sustainable communities through public/private partnerships; an recognizing that environmental protection can be the engine that drives sustainable economic redevelopment.

The Agency's environmental justice accomplishments have made progress to improve the adverse effects of pollution on minority and low-income communities. Through its Environmental Justice Action Agenda, OSWER has furthered the Agency's efforts to address environmental justice issues.