



Massachusetts
Department
of
ENVIRONMENTAL
PROTECTION

MassDEP FACT SHEET

Brownfields and Waste Site Cleanup Programs

Program titles:

- Privatized Waste Site Cleanup Program (1993)
- Massachusetts Brownfields Act (1998)

Liability Protection

- Under state cleanup laws (Massachusetts General Laws, Chapter 21E) there is strict, joint, and several liability for current and past owners/operators of contaminated property.
- The Massachusetts Brownfields Act amended state cleanup laws to provide liability protection for several types of parties involved in brownfields projects, including:
 - **Eligible Persons:** Owners/operators who did not cause or contribute to contamination at the site and who meet other statutory requirements receive liability protection upon the completion of a cleanup from Commonwealth claims for response action costs and third party claims for property damage.
 - **Downgradient Property Owners:** Exempts certain owners and operators from liability for contamination that has migrated onto their property provided statutory requirements are met. Owners and operators are eligible if they have had no connection with the property that contains the source of the contamination and they did not cause or contribute to the contamination. If the source is unknown, the owner or operator has a defense to liability rather than an exemption.
 - **Tenants:** Exempts certain tenants from operator liability provided certain statutory requirements are met. For example, an eligible tenant's tenancy must have begun after the release was reported to MassDEP, and they must not have caused or contributed to the contamination.
 - **Redevelopment Authorities and Community Development Corporations:** Exempts redevelopment agencies and authorities, CDCs and Economic Development and Industrial Corporations (EDICs) provided statutory requirements are met. Requirements include that they (1) acquire the property after August 5, 1998, (2) did not cause or contribute to the contamination, and (3) notify MassDEP of the release. Other statutory requirements also apply.
 - **Secured Lenders:** Exempts secured lenders who take ownership of contaminated property through foreclosure provided that they meet statutory requirements including acting diligently to divest of the property.
- **Brownfields Covenant Not to Sue (CNTS) Program:** This program is administered by the Office of the Attorney General and provides liability protection for the more complicated projects not covered directly under the statute. For example, the CNTS can be offered to a causally responsible party who wants to partner with a developer interested in cleaning up and redeveloping a brownfields site. Protection is also offered to an eligible person who can reach only a temporary solution, and not the permanent solution required by 21E to get statutory protection. Liability relief is offered to applicants as an incentive towards, and in return for, cleanup and redevelopment at the site.

Financial Programs

- **Brownfields Redevelopment Fund (BRF) Program:** This program is administered by MassDevelopment and provides financing for assessment and cleanup activities at brownfields sites. Low interest site assessment financing of up to \$100,000 is available for economic development projects in state-designated economically distressed areas. The borrower must be an "eligible person," as defined by Chapter 21E. They must own the site, or provide evidence of the right to enter the site for purposes of conducting environmental testing. The BRF Program also offers low-interest financing of up to \$500,000 for cleanup activities at brownfields sites. Terms are flexible and determined on a case by case basis. Applicants can be private developers, non-profits or municipalities.

- **Urban Brownfields Site Assessment (UBSA) Program:** This program is administered by the Executive Office of Environmental Affairs and provides grant funding to municipalities for site assessments. Applicants must be municipalities, and a match is required.
- **MassDEP Funding:** Each year MassDEP dedicates approximately 10% of its federal grant funding from EPA to conducting site assessment and cleanup activities on behalf of municipalities and non-profits agencies undertaking brownfields projects. MassDEP uses its own state contractors to do this work.

Tax Incentives

- **State Brownfields Tax Credit:** This program offers up to a 50% tax credit on cleanup costs once a cleanup is complete. A 25% tax credit is available if an Activity and Use Limitation (AUL) is used. Taxpayers must be eligible persons as defined by Chapter 21E, and projects must be located in state designated economically distressed areas. These tax credits are transferable.
- **Municipal Tax Abatement:** This provision allows municipalities to adopt a by-law that enables them to negotiate back taxes (including penalties and interest) on contaminated sites in exchange for commitment by a new owner to both cleanup and redevelopment.
- **Economic Development Incentive Program (EDIP):** This program is administered by the Massachusetts Office of Business Development and offers incentives for revenue generating projects located in state designated Economic Target Areas (ETAs). Projects in approved areas can receive tax increment financing, an abandoned building tax deduction, and investment tax credits through this program.

Other Incentives

- **Brownfields Redevelopment Access to Capital (BRAC) Program:** MassBusiness offers state subsidized insurance through this program to public and private sector entities for projects statewide. The state subsidizes premiums on policies taken through this program up to 50%.

Massachusetts Waste Site Cleanup Program

- Massachusetts has a risk-based cleanup program that offers a choice of a chemical-specific approach with numerical standards, or a cumulative-risk approach based on site-specific information. This cleanup program is privatized. Instead of MassDEP overseeing all phases of cleanup the state relies on Licensed Site Professionals (LSPs) to oversee this work according to state cleanup regulations.
- As of July 2006, 34,312 release notifications have been made to MassDEP, with about 4,735 active sites requiring additional work to reach a cleanup endpoint. Approximately 1,800 new releases enter the program each year.
- From a universe of 34,312 sites that have been reported to MassDEP, 29,377 cleanups have been completed. Beginning in 2002, the number of cleanups per year has surpassed the new notifications.

Public Participation

- State cleanup laws and regulations require public notice of all classifications of disposal sites and applications for Tier I permits for response actions.
- Under state cleanup laws citizens can become involved in response actions through a Public Involvement Plan (PIP) by filing a petition. Through this process the person conducting response actions must keep citizens informed of cleanup activities.

For more information on Massachusetts Waste Site Cleanup and Brownfields Programs please visit: <http://mass.gov/dep/cleanup/brownfld.htm>