

# WHITE PAPER on USING PUBLIC DOLLARS FOR BROWNFIELD SITE ASSESSMENT

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New Partners for Community Revitalization, Inc. (NPCR) is a 501(c)(3) not-for-profit organization working to revitalize New York communities with a particular focus on brownfield sites in and proximate to low- and moderate-income neighborhoods and communities of color. NPCR's integrated approach to brownfields redevelopment is designed to provide the tools and capacity necessary to promote community-based productive re-use of brownfields. This multi-pronged initiative was developed through on-the-ground work with environmental justice organizations, community based groups, nonprofit and for profit developers, community lenders, and nationwide research on innovative brownfield programs.

In connection with several recent program and project undertakings, NPCR has identified the need for adequate funds for site investigation as an important element in advancing brownfields projects, particularly in low- and moderate-income neighborhoods. While there exist several programs that offer site assessment resources, there also exist a number of obstacles to fully utilizing these funds. The purpose of this White Paper is to identify the sources and clarify the obstacles, the perceptions and the practice, with an eye toward increasing the accessibility and utilization of resources and informing policy and funding decisions. Ultimately, the goal is to use this "White Paper" to support, inform and strengthen efforts to secure funds for site assessment and lay a foundation for decision makers to develop efficient mechanism(s) for getting site assessment funds into projects in a targeted, effective and expeditious manner.

Several of the programs researched are currently in flux and/or evolving due to statutory changes and/or administration changes. And, stakeholders have had a variety of experiences utilizing these programs. Consequently, this White Paper is in being issued in Draft in connection with NPCR's Brownfields Summit III being held in Albany on April 27<sup>th</sup> and 28<sup>th</sup>, 2009. Comments, suggestions and reactions are invited until May 15, 2009. Please check NPCR's website at [www.npcr.net](http://www.npcr.net) for the final version of the paper.

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## **I. Summary**

There is universal agreement on the importance of thorough site investigation to advance brownfield redevelopment projects and there is also wide agreement on the need for additional resources for site investigation, particularly to advance sites in low- and moderate-income neighborhoods. While there are significant resources available through a variety of programs, there exist obstacles that seriously restrict the ability to get these resources into many of the projects that need them the most. Generally, these obstacles fall into three categories:

1. **Eligibility Limitations** – There are eligibility restrictions on both the applicant and site ownership that significantly narrow the availability of most government resources. Generally, the uses of government site assessment resources are limited to the circumstances of municipal applicants for municipally-owned sites, not contaminated by the municipality, that do not need to adhere to timeframes driven by either a private developer or lender. *There are currently no government site assessment resources directly available for private developers of privately owned sites.*
2. **Program Requirements that add to the Time and Cost of the Project** – All of the government site assessment programs discussed in this White Paper are administered through environmental regulatory agencies, and as such, the recipient must satisfy the agency’s regulatory requirements. Project delays are introduced as a result of agency document review and approval requirements, (e.g., regulatory agencies require work plans, quality assurance plans and reports, lengthy review procedures, record-keeping, etc.) And, project costs increase as a result of agency involvement (e.g., additional costs arise as a result of preparing plans and requests for expansion of the scope of work). These time and cost hurdles are difficult to reconcile with typical development project schedules and budgets.
3. **Actual or Perceived Concerns over Loss of Control of the Project due to Notification Requirements** – The notification obligations of a developer (or BOA grantee – defined and discussed below) when contamination is discovered in the course of a site investigation are fairly narrow (except when petroleum storage tanks are present). Nevertheless, all the government-funded site assessment resources discussed in this White Paper are administered via regulatory agencies, and as such, the funding is tied to submittal of final work products, including a report describing the results of the site assessment. Moreover, once government agencies receive the site assessment information, it is subject to disclosure by the government to parties requesting such information pursuant to state and federal freedom of information laws. A concern of some brownfield developers is the perceived potential “loss of control” over a site that might result from the mandated disclosure of the site investigation results to the government. Specifically, the concern is that the government could initiate regulatory enforcement actions based on the disclosures contained in the site assessment. This concern appears to be overstated because any site assessment results that would trigger regulatory enforcement by the government are generally the same as those that would trigger notification requirements. Yet this perceived loss of control continues to be an obstacle.

## **II. Background - The Need for Site Assessments**

The term 'site assessment' is very broad and in the context of this White Paper is used to include:

- Phase II assessments, which are investigative efforts focused on areas of concern identified through historical data base reviews;
- Site investigations which generally require a greater level of investigative effort than Phase IIs and are aimed at delineating the nature and extent of contamination; and
- Remedial Investigations (RIs), which are site investigations carried out within a particular regulatory framework (e.g., the New York State Superfund Program).

A common trigger for a Phase II site assessment is a Phase I site assessment, conducted in connection with a real estate transaction, in which potential areas of concern are identified and further study is recommended. In some cases, a Phase II will be sufficient to delineate the areas of concern and determine whether there is a need for cleanup. The results of the Phase II may also result in an application to a regulatory program.

Site assessments may also be triggered by a reported spill, leakage from an underground storage tank or as a result of a rezoning or other land use change, and such site assessments would generally be conducted under the auspices of a regulatory program. Site assessments conducted under these circumstances are required to generate a comprehensive set of chemical, geological and hydrological data with which to assess the risks posed by the site. The data and the risks then form the basis for an evaluation of remedial alternatives, the development of a remedial plan and the estimate of cleanup costs.

Federal and state governments may also initiate site assessments at the request of state and municipal governments if there is a concern that a piece of property is contaminated but there are no responsible parties to conduct the work.

Site assessments are highly site-specific, in that the scope and costs for a site assessment will vary significantly from site to site depending on past operations, the nature of the contaminants, the regulatory framework as well as the quality and quantity of the existing site data.

The site assessment is an important part of brownfields redevelopment because it generates the data needed to evaluate the risk: the cleanup-costs, third party liability, impacts on construction schedule and cost, and long term stewardship requirements. In November 2008, NPCR released the report, "Addressing the Risk: Making Environmental Insurance Available for Brownfield Sites in New York City." Research in connection with that report revealed that developers, lenders, and insurers were in universal agreement about the importance of adequate site investigation. In the absence of sufficient site data, consultants are forced to make conservative assumptions about the extent of contamination, which in turn lead to inflated remedial cost estimates that may make a deal unworkable. In contrast, the better the site characterization, the more accurate the cleanup cost estimate and the greater the chance of closing the deal.

Funding for site assessments is a good use of government brownfield resources, particularly now as the market softens. Brownfield redevelopment projects take several years to materialize even when times are good. Providing the resources to conduct high quality site assessments now will help ensure that sites are ready for the next phase of development or expansion when the market strengthens.

### III. Summary of Notification Requirements when Conducting Site Assessments<sup>1</sup>

In the performance of an environmental site assessment, the question frequently arises as to whether or not the results of the assessment must be reported to the government. In the typical circumstance of a brownfield developer using his/her own funds to conduct a site assessment, when contamination is discovered, there exists a fairly narrow circumstance that would require notification to the government. (This narrow reporting responsibility is discussed below and a much more detailed discussion about notification obligations is found in Appendix A).

#### Summary Description of Reporting Obligations

Federal and NY State laws require notification when there is a release of a hazardous substance or petroleum. In general, the obligation to report such a release is limited to the person who is an owner, operator or a “person in charge” of a property. Generally, the term “person in charge” is an owner or operator (or their employees or agents) of the property. <sup>2</sup> Under the federal Superfund Law<sup>3</sup>, if hazardous substances<sup>4</sup> are found during a site assessment the obligation to report would only arise when a person becomes aware that a release of a minimum volume of the hazardous substance – referred to as a reportable quantity<sup>5</sup> – has occurred over a 24-hour period. Generally, the typical site assessment would not reveal information regarding whether the event that caused the contamination occurred within a 24-hour period and, therefore, would not result in an obligation to report under the federal Superfund Law. Some environmental professionals take the view that while analytical data may show that a release took place the data generally would not reveal how much was released (i.e., whether the release exceeded the reportable quantity or “RQ”) or the duration of the release. Under this view, the reporting requirement would not be triggered nor would there be an obligation to notify the government.

In the case of petroleum, under the New York State Navigation Law, if petroleum is detected during the site assessment, the obligation to report is limited solely to the party responsible for the discharge. <sup>6</sup> This notification must take place immediately, but no later than 2 hours after the discovery of the contamination. Therefore, under the Navigation Law, unless the developer him/herself caused the petroleum discharge, there would be no obligation to report. However it is important to note that there is a broader notification obligation where the subject property is considered to be a petroleum bulk storage facility under New York State’s Petroleum Bulk Storage (PBS) regulations. The regulations require that any person with knowledge of the discharge of petroleum from a “bulk storage facility” must report such discharge to the New York State Department of Environmental Conservation (NYSDEC) within 2 hours. The term “bulk storage facility” applies to property that has petroleum storage tanks with a combined storage capacity of 1,100 gallons and/or to partially or fully buried tanks with a 110 gallon capacity excluding those used for on-site fuel consumption.<sup>7</sup> This regulation applies to the circumstance of a property with abandoned tanks that **had** a combined storage capacity in excess of regulatory capacity threshold *even where the tanks do not contain such volume of petroleum*. Moreover, the NYSDEC has indicated that once a

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<sup>1</sup>It should be noted that nothing herein is or should be construed in any manner as legal advice. Case specific questions regarding reporting obligations should be discussed with and evaluated by qualified environmental legal counsel.

<sup>2</sup> A New York court has interpreted this to apply to any person who is in a position to detect, prevent or abate a release, even if he/she is not the owner or operator (U.S. v. Carr, 880 F.2d 1550, C.A.2 (NY) 1989).

<sup>3</sup> Formally known as the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), this act has been amended several times including in 1986 by the Superfund Amendments and Reauthorization Act (SARA) and in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act.

<sup>4</sup> Hazardous substances as defined in CERCLA

<sup>5</sup> Every CERCLA hazardous substance has a reportable quantity that triggers notification.

<sup>6</sup> As to whether the owner/operator is “responsible for the discharge” is something he/she needs to discuss with an attorney on a case by case basis.

<sup>7</sup> The PBS statute, Environmental Conservation Law § 17-1003, was recently amended to expand the definition of facility to include certain 110 gallon tanks.

property is considered a bulk storage facility, this reporting rule applies even where the tanks are no longer situated on the site.<sup>8</sup>

The reporting obligation under the PBS regulations applies to anyone with such knowledge, even if he or she does not own or operate the PBS facility. Furthermore, knowledge of the existence of petroleum contamination in the soil or groundwater (as, for example, revealed by sampling data) at a PBS facility will be sufficient to impute knowledge of a past petroleum release, thus triggering a reporting obligation. As a general rule, environmental consultants will notify the NYSDEC whenever the consultant believes that evidence of a discharge of petroleum triggers reporting under the PBS regulations. This is particularly so when evidence of an on-going release (e.g., a leaking underground storage tank) is discovered during the course of an investigation. Sometimes consultants will first notify their clients and ask them to report to the government. The NYSDEC has, however, been very clear that where a consultant has a duty to report, the consultant cannot “hide behind” telling the client to report as a means of avoiding the imposition of a penalty.

Substantial penalties can be (and often are) imposed when a party fails to report a reportable release. Therefore, in those situations where the obligation to report a release is open to question, the prudent approach always is to report to the government.

It should be noted that the consequence of a party reporting a release or discharge to the government can be significant, particularly in the context of the purchase or sale of contaminated property. Often the purchase and sale contract allows the buyer to conduct due diligence investigations (including a Phase II-type intrusive site assessment) and then withdraw from the contract if the environmental conditions are not to the buyer’s liking. When the buyer conducts the investigation and discovers a reportable release, he/she acquires an obligation to report such release to the government. However, since the buyer does not actually own the property, the duty to further investigate and remediate the site would generally fall upon the seller. Thus, if the buyer reports a release and then withdraws from the deal, the seller is left ‘holding the bag,’ having to cleanup the release and no longer having a purchaser to take the property off their hands.

It is important to note that these reporting requirements apply regardless of the source of funds used to conduct the site assessment. Nevertheless, all the government-funded site assessment resources discussed in this White Paper are administered via regulatory agencies, and as such, the funding is tied to submittal of final work products, including a report describing the results of the site assessment. Moreover, once government agencies receive the site assessment information, it is subject to disclosure by the government to parties requesting information pursuant to state and federal freedom of information laws.

A concern of some brownfield developers is the potential “loss of control” over a site that might result from the mandated disclosure of the site investigation results arising from a government site assessment grant. Disclosure of the site assessment results, would not, in itself, trigger regulatory enforcement, unless there are circumstances that would already obligate governmental notification of a release. However, there always exists a possibility that the data could show a condition that presents a significant threat, e.g., impacts to groundwater, which would then trigger regulatory involvement via Superfund enforcement authority, and this frequently looms as a concern to both owners and developers. Since a condition that could be deemed a “significant threat” would likely trigger the reporting notification requirements, this perceived “loss of control” appears to be overstated.

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<sup>8</sup> Many practitioners believe that the application of the PBS regulations to a property on which the tanks have been removed will not be upheld in court.

## **IV. Government Programs that Offer Site Assessment Resources**

Below is a list of the government programs discussed in this White Paper that provide site assessment resources as well as a brief summary of the eligibility requirements.

### **1. EPA Brownfield Assessment Grants**

- Applicant must be a general purpose unit of local government, land clearance authority, government entity created by State Legislature; a Regional Council, or a State; <sup>9</sup>
- Applicant may not be responsible for any of the contamination on the sites proposed; and
- Sites must meet the EPA definition of a brownfield site. <sup>10</sup>

### **2. EPA State and Tribal Response Programs**

- Only states or tribes who can demonstrate that they have or are developing a response program or are a party to a Voluntary Response Memorandum of Understanding with EPA are eligible;
- Applicants may not be responsible for any of the contamination on the sites selected;
- Eligible sites are those that meet the federal definition of a brownfield site; and
- In NYS, eligible sites are those for which a report was made to the State Spill Hotline and for which there is no responsible party.

### **3. EPA Targeted Brownfield Assessment Program**

- Sites must generally meet the federal definition of a brownfield site although there is some flexibility; and
- In NYS, the program is administered by the NYSDEC on the basis of nominations from municipalities.

### **4. EPA Clean Water State Revolving Loan Funds**

- Only states are eligible to receive funds from EPA;
- Funds can be used for point source, non-point source and land acquisition projects; and
- In NYS, the fund is administered by the New York State Environmental Facilities Corporation and non municipal entities are eligible for loans for non-point source water quality improvement projects including brownfield assessment and remediation.

### **5. NYSDEC Environmental Restoration Program (ERP)**

- Municipalities and municipalities acting in partnership with community based organizations (CBOs) are eligible;
- A municipality must own the property but cannot be responsible for the contamination at the site; and
- The site may not be listed on the NYS Registry of Inactive Hazardous Waste Sites as a Class 1 or 2 site.

### **6. DOS Brownfield Opportunity Area (BOA) Program**

- Eligible applicants include municipalities (cities, villages, town, local public authorities, etc.), CBOs and NYC Community Boards;
- Eligible properties are those owned by a municipality or a volunteer; and
- Sites owned by responsible parties are not eligible for site assessment funds.

### **7. NYC Office of Environmental Remediation (OER) Funding Program**

- Eligibility not yet determined.

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<sup>9</sup> Additional details on applicant eligibility under CERCLA can be found in CERCLA Section 104(k) (1) (A)-(H).

<sup>10</sup> The definition of a brownfield site is contained in CERCLA Section 100.39

# 1. Using EPA Brownfield Assessment Grants for Site Assessment

The 2002 Small Business Liability Relief and Brownfield Revitalization Act provided for Brownfield Assessment Grants (as part of a larger package of Section 104(k) funds for brownfields assessment and cleanup). These funds can be used to inventory, characterize, and prioritize sites; to conduct site assessments and cleanup planning activities (but not cleanup); and to conduct community involvement activities. It is a significant program. EPA estimated that between 2002 and 2008, it awarded 818 Brownfield assessment grants for a total of \$175.5 million.<sup>11</sup> In the FY09 Guidelines for Brownfields Assessment Grants, EPA indicated that for 2009 it would provide 183 assessment grants for approximately \$37.5 million dollars. In addition, as part of the American Recovery and Reinvestment Act of 2009, Congress recently approved \$100 million for Brownfields projects authorized under Section 104(k) of CERCLA.<sup>12</sup>

EPA Brownfield assessment grants may be used on sites contaminated by either petroleum or hazardous substances. These grants are awarded annually and are good for a period of three years. EPA has awarded two types of site assessment grants in the past: community assessment grants and site-specific assessment grants and for 2009, has added a new category, coalition assessment grants.

- Community assessment grants are designed for individual municipalities who have not identified a specific brownfield site or who may want to spend the grant on more than one site in their community. Applicants do not need to identify the sites and may request up to \$200,000 for hazardous substance site investigation and up to \$200,000 for petroleum site investigation. Municipalities may also submit a proposal for one community for both hazardous substance and petroleum assessment funds or may submit two different proposals for funds to be used in different locations. In either case, the maximum amount that EPA will award for a community assessment grant is \$400,000.
- Site-specific assessment grants are, as their name suggests, for a specific site. Applicants may only apply for one site-specific grant. Grants are typically awarded in the amount of \$200,000 but an applicant may request a waiver and up to \$350,000 in funds if site conditions (such as level of contamination, size of site or ownership of site) are anticipated to require a greater level of effort.
- Coalition assessment grants are awarded to coalitions of three or more eligible local government entities (the entities must be legally separate). The coalition must develop a memorandum of agreement that outlines the coalition's site selection process and one entity must act as the grant recipient and administrator. EPA will consider coalition grant applications of up to \$1,000,000 (for a minimum of 5 sites at \$200,000 each) in site investigation funds.

**Eligibility** - Applicants must be a general purpose unit of local government, a land clearance authority acting under the supervision and control of or as an agent of a general purpose unit of local government, a government entity created by State Legislature, a regional council or group of general purpose units of local government, a redevelopment agency that is chartered or otherwise sanctioned by a State, a State or an Indian Tribe other than those in Alaska or an Alaska Native Regional Corporation and an Alaskan Native Village Corporation; and cannot

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<sup>11</sup>Testimony of Susan Parker Bodine, Assistant Administrator OSWER, available at: [www.epa.gov/ocir/hearings/testimony/110\\_2007\\_2008/2008\\_0214\\_spb.pdf](http://www.epa.gov/ocir/hearings/testimony/110_2007_2008/2008_0214_spb.pdf)

<sup>12</sup>H.R. 1 American Recovery and Reinvestment Act of 2009 available at: [http://www.whitehouse.gov/the\\_press\\_office/ARRA\\_public\\_review/](http://www.whitehouse.gov/the_press_office/ARRA_public_review/)

be responsible for any of the contamination on the sites selected for use of site assessment funds.<sup>13</sup> Nonprofit organizations are not eligible for these grants.

In order for a site to be deemed eligible, it must meet the EPA definition of a brownfield site.<sup>14</sup> There are additional eligibility requirements depending on the type of contamination. For site-specific grants at sites contaminated by hazardous substances, grant applicants must demonstrate that they are not a liable party, which is most often demonstrated by showing that they meet the standard for a bonafide prospective purchaser.<sup>15</sup> Petroleum sites, at which CERCLA liability protections do not apply, must meet four eligibility criteria to receive funding:

- Site must be low risk;
- There can be no viable responsible party;
- The applicant must not be liable for clean up; and
- Site cannot be the subject of a RCRA corrective action.

Either the state or EPA will determine petroleum site eligibility.

Proposals are submitted to EPA Headquarters who then redistributes them to the regional offices to conduct a threshold pass/fail evaluation that is primarily based on eligibility considerations. Proposals that pass threshold are evaluated and scored by national evaluation panels and those evaluations are referred to a selection official who makes the final selection of grant recipients. Once an award is made, EPA and the applicant must negotiate a Cooperative Agreement that outlines EPA's "substantial involvement" in the project, the amount of grant funds, a scope of work and a budget. "Substantial involvement" is a statutory requirement that permits EPA to be directly involved in performance of the work, review contracts and resumes of key personnel, review and provide comments on reports, ensure that eligibility requirements are maintained and closely monitor the grant recipient's performance. Applicants are also required to provide quarterly project reports to EPA and to meet specific program technical requirements in the conduct of their work including preparation of a Quality Assurance Project Plan that meets EPA approval.

Municipalities may use EPA brownfield assessment grants to provide subgrants or subawards of financial assistance. Subgrants are not used with great frequency in EPA Region 2. One reason may be that the subgrantee must comply with all applicable requirements of the grant, including the use of competitive bids to select contractors. Instead of awarding subgrants, the City of Rochester has used their site assessment grant to establish a brownfield assessment fee-for-service program. Under this Brownfield Assistance Program, Rochester, through its consultants, provides environmental assessment services to third parties that need investigations completed to evaluate liability, secure financing, and to assess cleanup and redevelopment costs. Program applicants generally are property owners, businesses and developers. The City of Rochester establishes several agreements with different consultants and approved applicants can select any one of the consultants under agreement to the City. Services generally include Phase I assessments, limited Phase II investigations, and remedial cost estimating. Both Rochester and the parties in the program receive consultant assessment reports. Parties in the program agree to repay Rochester for 1/3 of the assessment costs but only if they proceed with the proposed property acquisition or redevelopment project.

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<sup>13</sup> CERCLA Section 104(k) (1) (A)-(H), available at <http://www.epa.gov/lawsregs/laws/cercla.html>

<sup>14</sup> CERCLA Section 100.39, available at <http://www.epa.gov/lawsregs/laws/cercla.html>

<sup>15</sup> Bonafide Prospective Purchaser requirements include the following: all disposal occurred prior to ownership; the owner is not liable for nor associated with the party liable for contamination; the owner has conducted all appropriate inquiry (see <http://www.epa.gov/bfields/regneg.htm>); the applicant must take appropriate care of hazardous substances at site, provide all legally required notices and comply with any land use restrictions

The City of New York retains its own consultants and uses the EPA assessment grants for Phase I and II assessments on eligible City-owned sites. Between 2004 and 2007, NYC received three community assessment grants and one site-specific grant (for a Staten Island site) that ranged in value from \$270,000 and \$400,000. However, the City has had some difficulty finding sites that meet the grant eligibility requirements because the grants cannot be used on contaminated sites at which the recipient is a responsible party. While the City can use assessment funds on properties it acquires through property tax foreclosures, it is restricted from using the funds on city-owned facilities or housing that may have leaking underground storage tanks or other environmental impacts that occurred during the period of City-ownership.

## **Obstacles to Using EPA Brownfield Assessment Grants for Site Investigation**

### **Eligibility Issues:**

- Applications for EPA Brownfields Assessment Funds will only be accepted from eligible state and local governmental entities (see footnote 13). This means that nonprofits that desire funding must request that a municipality apply for and administer the grant funds on their behalf.
- Brownfields Assessment grants cannot be used to investigate sites at which the grant recipient is a responsible party. This criterion prevents local governments from using funds on municipally owned buildings (such as housing and maintenance facilities) that may have environmental issues.

### **Program Requirements that Create Cost/Time Concerns:**

- Applicants are required to submit detailed information to verify that the site is an eligible hazardous substance site and that the entity undertaking the work is not potentially liable for contamination at the site. The information required includes: the site operational history and current uses, known environmental concerns and how the site became contaminated. The applicant must also affirm that the site meets the federal definition of a brownfields site. Collecting the documentation is time-consuming even for municipalities with significant capacity.
- Petroleum contaminated sites require a separate and distinct list of information to verify that the site and site owner are eligible for funds including: list of current and past owners, how property was or will be acquired, that the last two owners were not responsible parties at the site and that the site is a “relatively low risk relative to other petroleum sites” (there is no guidance on how to make this determination). The applicant is directed to include a state determination letter with the application. Assembling the information to verify compliance and obtaining a state determination letter is a time-consuming task. And, in NYS, it is EPA’s responsibility to make a petroleum site eligibility determination.
- For successful applicants, it will take a year from the time the application is submitted to EPA in the fall until they receive a Cooperative Agreement. Evaluation of the Brownfield Assessment grant applications involves a competitive, multi-step review process by EPA that takes several months to complete. Applicants are notified in the spring of awards and then spend the next several months completing paperwork and developing work plans, schedules and budgets. These are incorporated into the Cooperative Agreement that is executed in the fall, a year from submission of the original application.
- Brownfield Assessment grants have extensive site-specific requirements including sampling and monitoring plans, health and safety plans and site assessment reports. Not only do these documents take time to prepare but EPA then must review and approve every document, typically an iterative process that can be quite time-

consuming. Because of the extensive effort and delays associated with using the Brownfields Assessment grants, some grant recipients have chosen not to conduct environmental investigations on brownfield properties but have instead used the grant to fund technical assistance to private property owners and developers.

- EPA grants have extensive administrative requirements including competitive bidding for contractors, reporting on MBE/WBE goals, as well as fiscal record keeping and rules for allowable expenses.
- Once an application is approved, applicants are required to sign Cooperative Agreements with EPA, which contain provisions for ensuring EPA “substantial involvement” in the project. This involvement extends beyond report review to include performance monitoring, collaboration during work, and contract and key personnel qualifications review. In practice, this involvement varies from project to project. In some cases, EPA has accepted State regulatory agency oversight and sign-off to satisfy the requirements for substantial involvement.

## 2. Using EPA State & Tribal Response Programs for Site Assessment

The 2002 Brownfields Law authorizes a non-competitive \$50 million grant program to establish and enhance state and tribal response programs. Funds under this program can also be used for site assessment activities. One application is accepted from each state and in FY2009, each state could apply for up to \$1.5 million in funds.<sup>16</sup> Funds are administered by EPA Regional Offices through Section 128(a) Cooperative Agreements (which are similar to the Cooperative Agreements described above for brownfield assessment grants). The funds are primarily designated for developing legislation, regulations and guidance to establish or enhance the capacity of an existing State response program. However, funds may also be spent on property-specific site assessments at either hazardous substance or petroleum sites and the maximum amount allowed for a site assessment, without prior EPA approval, is \$200,000. While site assessments are a secondary focus of response programs, as long as it can be shown that they are being conducted to enhance the program, the activities are eligible for funding.

**Eligibility** - Only states or tribes are eligible for funding and they must be able to demonstrate that they have or are developing a response program or are a party to a Voluntary Response Memorandum of Understanding with EPA. Further, the state or tribe must publish and maintain a record of sites at which response actions have been undertaken. Eligible sites are those that meet the federal definition of a brownfield site. However, with a few exceptions, according to EPA guidance, these funds cannot be used to assess sites owned by the grant recipient or at which the state itself is a potentially responsible party.<sup>17</sup> Further, potentially responsible parties are not eligible to receive any subgrants under this program.

**Use of 128(a) funds in New York State** - New York State receives limited EPA Response Program Funds and uses these funds to supplement the staff costs for the NYS Chemical and Petroleum Spill Response Program, although most of the funds for this program are generated via state taxes on petroleum and chemicals. Eligible sites are those reported to the NYS Spill Hotline. The NYSDEC inspects all reported spill sites, and will try to identify responsible parties to conduct any necessary investigative or remedial work. If there is no responsible

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<sup>16</sup> Grant Funding Guidance for State and Tribal Response Programs, Fiscal Year 2009 available at: [http://www.epa.gov/brownfields/state\\_tribal.htm#grant](http://www.epa.gov/brownfields/state_tribal.htm#grant)

<sup>17</sup> See Grant Funding Guidance for State and Tribal Response Programs, Fiscal Year 2009, page 8 available at [http://www.epa.gov/brownfields/state\\_tribal.htm#grant](http://www.epa.gov/brownfields/state_tribal.htm#grant) for further details.

party or the responsible party will not undertake the work, NYSDEC assigns one of its response contractors to conduct an assessment at the site. The assessment data are used to rank the site and sites are cleaned up in ranked order. On petroleum spill sites, NYSDEC contractors conduct their work in accordance with NYSDEC's Spill Response Guidance Manual. Hazardous substance spill site investigation and remediation is typically conducted in accordance with the Superfund Program Requirements and NYSDEC Technical Guidance for Site Investigation and Remediation (DER-10). To the extent that a brownfield site has a spill number and there is no responsible party, these response funds should be available for site assessments by state contractors.

### **Obstacles to Using EPA 128(a) Funds for Site Investigation**

#### **Eligibility Issues:**

- State Response Program grants are only available to state and tribal governments. Nonprofits trying to redevelop brownfield sites in their neighborhoods cannot directly utilize these funds.
- Assessment funds cannot be used to investigate contaminated sites at which the state is a liable party. While there is no explicit prohibition under 128(a), to date, the EPA has not been willing to approve the use of such funds at a site for which a municipality was liable.

#### **Program Requirements that Create Cost/Time Concerns:**

- States are required to sign Cooperative Agreements with the EPA for Response program grants, which require that EPA have "substantial involvement" in the project.
- To the extent that NYS chooses to use Response Program funds for assessment of a brownfield site, the developer will have no control over the scope or the schedule for investigation.

### **3. Using EPA Targeted Brownfield Assessment Program for Site Assessment**

The Targeted Brownfield Assessment (TBA) Program is designed to help states, especially those without Brownfield Assessment grants, manage their brownfield sites. In some states it is administered as a technical assistance program in which, EPA, through a pre-arranged contract, directs a contractor to conduct the appropriate site assessment activities (which may include a Phase I, a Phase II and/or development of remedial strategies and remedial cost estimates). The TBA assistance is available through EPA Regional offices and is funded using Section 128(a) EPA funds.

TBA funding is generally used on sites that are deemed eligible for brownfields grants, but the site selection process is flexible. EPA regional offices either select sites for site assessment grants, or approve those recommended by states or tribal governments and prefer to target properties that are abandoned or publicly owned, have low to moderate contamination, include environmental justice issues, suffer from the stigma of liability or have a prospective purchaser willing to buy and pay for any necessary cleanup. These funds cannot be used for cleanup.

**Use of Targeted Brownfield Assessments in New York State** - In New York State, EPA Targeted Brownfields Assessment funds are administered by NYSDEC and EPA has only minimal involvement. Municipalities generally nominate sites to NYSDEC Regional Offices, and if TBA funds are available, the site information is sent to

NYSDEC Headquarters who then must obtain site approval from EPA. Once the site approval is granted, NYSDEC contracts with one of its standby contractors to conduct the site assessment. The municipality who originally nominated the site may have some involvement in developing the scope of the assessment with the NYSDEC contractor and after the contractor completes the field work, either the contractor or NYSDEC may prepare the site assessment report. The final report is sent to EPA and to the municipality that requested the assessment. NYSDEC conducts the site assessments in accordance with Superfund Program Guidance and the NYSDEC's Division of Environmental Remediation Draft DER-10, Technical Guidance for Site Investigation and Remediation.

## **Obstacles to Using EPA Targeted Brownfield Assessment Funds for Site Investigation**

### **Eligibility Issues:**

- A request to EPA for TBA funds can only be made by state governments. Nonprofits trying to redevelop brownfield sites in their neighborhoods cannot utilize this program directly.

### **Requirements that Create Control Concerns:**

- EPA and/or NYS directs its contractors to perform TBAs on eligible sites, and while municipalities may have some input into the scope of work, potential developers have little to no control over the level of effort or scope of work implemented at a site.
- The TBA may not provide sufficient information with which to completely assess the risks posed by the site, reducing the program's usefulness to advance sites to redevelopment.
- Potential developers are unlikely to have input into the TBA report or the manner in which the report is released to the public. While the contractor is obligated to report all of the data, interpretation and explanation of the data, its interrelationship with the future use of the property and its eligibility for state cleanup programs are not typically a focus of the report.

## **4. Using EPA Clean Water State Revolving Funds for Site Assessment**

Under the federal Clean Water Act, EPA capitalizes and oversees clean water state revolving funds (CWSRF) in all 50 states and Puerto Rico. The CWSRF may be used for projects that preserve, protect or improve water quality. States that receive funding administer the program within their boundaries and may set their own project priorities and eligibility requirements within EPA guidelines. The CWSRF can be used to fund "point source projects" such as wastewater treatment plant construction and may also be used for land acquisition to protect watersheds. EPA also encourages use of these funds for non-point source projects, including brownfields assessment and remediation.<sup>18</sup> A few states, including New York, have taken advantage of the non-point source funding and used these funds to address brownfields at which surface water runoff or groundwater contamination may have impacted or could in the future impact an adjacent water body. Unlike some of the other EPA programs, which are grants, this is a loan program in which states provide interest-free short-term loans of three to five years and low interest long-term loans of up to 30 years to eligible entities. Loan recipients must have a projected revenue stream to provide for repayment. Given that there is no limit to the size of the loan, it is a potentially significant program for brownfields revitalization. Furthermore, Congress, in the American Recovery and

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<sup>18</sup> Funding Brownfield Remediation with the Clean Water State Revolving Fund available at <http://www.epa.gov/brownfields/html-doc/cwsrf.htm>.

Reinvestment Act of 2009, authorized an additional \$4 billion in funding for the CWSRF. Congress stipulated that priority be given to projects ready to proceed within 12 months of the date of the Act and that funds for projects not under construction or contract within those 12 months will be reclaimed and reallocated.

**Use of CWSRF in New York State** - New York's CWSRF has been in existence since 1990 and is jointly administered by NYSDEC and the New York State Environmental Facilities Corporation (NYSEFC). In NYS, municipalities are eligible for loans that address point sources as well as loans for some land acquisition projects; non-municipal entities are eligible for loans to address non-point sources and nonprofit organizations are eligible for loans for some land acquisition projects.<sup>19</sup> Eligible non-point source projects include the water quality components of remediation activities and the NYSEFC offers some examples of such projects:

- Brownfields, Petroleum Spills, Inactive Hazardous Waste Sites: the assessment/remediation of sites or those portions of the site necessary to correct or prevent water quality impacts may be eligible for financing;
- Leaking Petroleum/Chemical Underground Storage Tanks: characterization of groundwater and wastes, tank removal and remediation of soil and groundwater; and
- Municipal Vehicle Maintenance Facilities: site characterization, closure plan preparation, soil remediation, on-site treatment.

According to NYSEFC, several brownfield projects have been funded in the past but the only project currently being funded with a CWSRF loan is in Syracuse.

The application process for any project, including non-point source projects such as a brownfield, involves two steps. First, the project must be categorized, ranked and listed on New York State's Intended Use Plan (IUP). Applicants must submit a Project Listing Form to NYSEFC; forms are accepted on a continuous basis for multi year projects but deadlines are imposed for listing on the Annual Project List where most brownfield projects would fall. On the basis of the Listing Form, NYSEFC determines the project category, which is generally based on population served, so that similar projects are compared. Most non-point source projects are classified as Category E projects, which means that remediation projects generally do not compete with infrastructure projects for funding. NYSEFC then ranks each project within each category on the basis of its water quality improvement potential. Each year, NYSEFC allocates funds to each category based on need and funds as many projects as possible within each category starting with the highest ranked project. NYSEFC lists all projects for which they receive a Project Listing Form on the IUP, the key is to receive a high enough ranking that the project becomes eligible for funds. In addition to the Project Listing Form, non-municipal entities applying for assessment/remediation loans must submit an engineering report that describes the site conditions and the proposed development project.

Once it is determined that there is funding for a project, an application for financing must be submitted to NYSEFC. The NYS CWSRF offers a variety of short (three to five year) and long term (up to 30 year) financing options for both priority and non-priority IUP projects which are described in more detail at: <http://www.nysefc.org/home/index.asp?page=457#CWSRF>. These loans are subject to Davis Bacon; a federal law that requires payment of prevailing wages for construction. There is no cap on the amount that may be requested for a brownfields loan. However, planning activities (which include site assessments) are only eligible for reimbursement after a project has been approved for a remediation loan. In other words, a non-municipal entity must have sufficient funding to conduct a site assessment and develop a plan for remediation before applying to the CWSRF. Then, once the site is listed on the IUP and the remediation loan is approved, they will be reimbursed

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<sup>19</sup> Further discussion of eligibility requirements can be found on the NYSEFC website at: <http://www.nysefc.org/home/index.asp?page=75>.

for site assessment activities. Funds for remediation can be provided in an upfront loan repayable out of construction financing. These loans are not forgivable; if the project is not completed, the loan must be repaid.

Any brownfield assessments conducted under this program in NYS are under the jurisdiction of NYSDEC and therefore, depending on the type and level of contamination at the site, must comply with the appropriate regulatory program requirements (BCP, Spills, Superfund). NYSDEC ensures that a loan recipient complies with the necessary technical requirements while NYSEFC monitors the financial requirements of the loan.

### **Obstacles to Using CWSRF for Site Investigation**

#### **Eligibility Issues:**

- The eligibility criteria for this program are broader than those for other EPA-funded programs in that not non-municipal entities working on non-point source projects may apply for a CWSRF loan. However, since this is a loan program, applicants must have a source of repayment.
- In order to be eligible for funding, projects must be listed on the NYS IUP. A review of accepted 2008 IUP projects suggests that it is predominantly infrastructure projects that get listed. NYSEFC recently amended the ranking criteria to eliminate some bias toward large infrastructure projects. The absence of remediation projects on the IUP may also be a function of the very few applications NYSEFC receives for remediation loans.

#### **Program Requirements that Create Cost/Time Concerns:**

- The CWSRF cannot be used to provide loans for site assessment although it can be used to reimburse loan recipients for prior site assessment activities. Therefore a non-municipal entity must be able to fund the site assessment activities before they can apply for a loan.

## **5. Using Environmental Restoration Program Funds for Site Assessment**

The Clean Water/Clean Air Bond Act, passed in 1996, included \$200 million for site investigation and cleanup under the Environmental Restoration Program (ERP). These funds are almost all expended, and at this point, NYSDEC does not recommend that municipalities submit new applications. The ERP has in recent years become a very popular program and municipalities from across the State are strongly supportive of efforts to continue this program. Fortunately, there is a movement growing to pass a new Bond Act that would, presumably, include new funds for the ERP if and when it passes.

Municipalities and municipalities acting in partnership with CBOs are eligible for site assessment ERP funds. The municipality must own the property and demonstrate proof of ownership prior to the award of the grant. ERP funds can be used for sites contaminated with either petroleum or hazardous substances but the municipality cannot be responsible for the contamination that is the subject of the site assessment funding. Nor can the site be listed on the NYS Registry of Inactive Hazardous Waste Sites as a Class 1 or 2 site.

NYSDEC generally accepts applications for individual sites. If a municipality has multiple sites, multiple applications are encouraged unless the sites are contiguous. The municipality is required to provide 10% in matching funds and NYSDEC will reimburse municipalities 90% of the costs expended for on-site assessments and 100% of the costs for off-site assessments. Eligible on-site assessment activities include soil vapor, soil and

groundwater assessments as well as building interior characterization. ERP funds are provided on a reimbursement basis only, and the municipality must have access to sufficient funds to initiate the site assessment within 12 months of NYSDEC's written approval of its application.

Once an application for investigation funds is approved, the municipality must negotiate a State Assistance Contract (SAC), which includes a scope of work and a cost estimate, with NYSDEC. Once NYSDEC approves the contract, it must be approved by the NYS Department of Law and executed by the Comptroller. In the event of a change order for either schedule or budget reasons, the change order must go through the same approval process.

Program rules require that consultants and contractors retained by municipalities be selected on the basis of a documented competitive process that conforms to General Municipal Law; municipalities must also implement an affirmative action program and pay prevailing wages. Grant recipients must follow the same Remedial Investigation/Feasibility Study process that governs site assessment and remedy selection in the NY State Superfund program, and must comply with requirements for a citizen participation process. Site assessment funds can be used to cover all costs incurred to determine the nature and extent of contamination as well as the appropriate remedy for the site.

After the municipality finishes the investigation and remediation of the site, it will receive very strong liability protection from NYS for any past contamination at the site, in the form of an indemnification:

*The state shall indemnify and save harmless any municipality, successor in title, lessee, or lender identified in paragraph (a) of subdivision one of this section in the amount of any judgment or settlement, obtained against such municipality, successor in title, lessee, or lender in any court for any common law cause of action arising out of the presence of any contamination in or on property at anytime before the effective date of a contract entered into pursuant to this title. Such municipality, successor in title, lessee, or lender shall be entitled to representation by the attorney general, unless the attorney general determines, or a court of competent jurisdiction determines, that such representation would constitute a conflict of interest, in which case the attorney general shall certify to the comptroller that such party is entitled to private counsel of its choice, and reasonable attorneys' fees and expenses shall be reimbursed by the state. Any settlement of such an action shall be subject to the approval of the attorney general as to form and amount, and this subdivision shall not apply to any settlement of any such action which has not received such approval. (ECL 56-0509 (3)).*

If after conducting the investigation, the municipality decides not to undertake remediation, the property cannot be used for any new purpose until the remediation is complete. In Rochester, NYSDEC has been willing to consider interim uses that are similar to current or previous uses on ERP sites provided that they do not have the potential to exacerbate existing environmental problems or result in additional new environmental contamination.

This program has been used extensively by municipalities across the State to investigate and cleanup former manufacturing facilities and other contaminated properties for which there are no potentially responsible parties. According to a 2007 report, Bond Act funding had been committed for 241 investigation and cleanup projects, which included more than \$76.4 million for 199 investigation projects and \$79.4 million for 42 remediation projects.<sup>20</sup>

In NYC, this program works well for large municipal sites with a significant level of contamination that are being redeveloped for parks or municipal buildings. Recent examples of ERP projects in NYC include: the Maspeth

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<sup>20</sup> DEC Announces Brownfield Grant for Jefferson County at: <http://www.dec.ny.gov/press/37245.html>

Railroad Place site in Maspeth, Queens; Bush Terminal Landfill Piers 1-4 in Sunset Park, Brooklyn; and Barretto Point Park in Hunts Point, the Bronx. These are all long-term projects that do not involve private developers or the need to meet a strict redevelopment schedule. The City of Rochester has found that the program works well for large cleanups at sites where the intended future use is residential because the indemnification provides a unique liability safety net that is especially helpful when selling single family homes on former brownfields projects.

## **Obstacles to Using ERP Funds for Site Investigation**

While ERP offers significant funding and is a critical tool for municipal brownfield redevelopment efforts, it is a highly structured program with detailed contractual, record-keeping and regulatory requirements.

### **Eligibility Issues:**

- ERP funds can only be used by municipalities and on municipally owned properties.

### **Program Requirements that Create Cost/Time Concerns:**

- Execution of a SAC involves multiple agencies (NYSDEC, NYS Department of Law and the Office of the State Comptroller) and can sometimes take over a year. On several NYC projects it has taken 12 to 18 months to obtain the final contract. Experience in other parts of the State suggests that the timeframe can be shorter. This range may be a function of site size, level of contamination, and/or the level of effort involved in investigation and remediation. NYC has withdrawn sites from the ERP when there was a need to coordinate with a private developer's timeline.
- Change orders that result from budget or schedule adjustments must go through the same lengthy approval process. However since project work continues as change orders are being processed, the change orders do not generally cause delays, only an additional level of paperwork.
- NYSDEC first approves the application and then NYSDEC and the applicant must enter into a SAC. However, if field work on the project is not started within 12 months of NYSDEC's written approval of the ERP application, the NYSDEC may remove the project from its approved list and reallocate monies to other applicants. Therefore a municipality must have the funding and the ability to mobilize a field crew within the requisite 12 months even if the SAC is not signed.
- Once a site is accepted into the program, the municipality must comply with all technical reporting, quality assurance, quality control, and public reporting requirements for site assessments required by the NYS Superfund Program. This program is a detail driven, iterative, time-consuming process designed for very contaminated sites.
- Costs incurred before NYSDEC approves the application for site investigation are not eligible for reimbursement. Therefore any initial testing done to determine the status of the site or the need for additional site investigation and funding is not eligible for reimbursement.
- Although the 2003 amendments to this program provided that Community Based Organizations (CBOs) could apply as part of a partnership with a municipality, the reimbursements can only go to municipalities, and no CBOs have successfully utilized this program.

## 6. Using Brownfield Opportunity Area funds for Site Investigation

The Brownfield Opportunity Areas (BOA) Program is designed to promote area-wide community revitalization and value-creation through planning and brownfield redevelopment activities in neighborhoods plagued by multitudes of brownfield sites; areas where a site-by-site approach has been insufficient to catalyze cleanup and redevelopment. The program was created in 2003 with the passage of the New York State Brownfield Law, and administration of the program was significantly altered with the July 2008 statutory amendments. The program has been jointly administered by the NYS Department of State (DOS) and the NYSDEC; however in April 2009, administration of the program will be the sole responsibility of the DOS. It is worth noting that because the BOA program is “young,” much of it is evolving. In particular, although Site Assessment guidelines have been established they have not yet been applied. It is also worth noting that the statute is quite broad and therefore leaves fairly wide latitude to the DOS for the successful implementation of the program.

A total of \$75.5 million has been appropriated from fiscal year 2003-2005 through fiscal year 2008-2009 for BOA grants and other brownfield costs. Award of funds from fiscal year 2003 through 2006 requires the execution of a legislative Memorandum of Understanding (MOU). The first MOU addressed \$30 million from two appropriations of \$15 million each, one in State Fiscal Year (SFY) 2003/04 and a second in SFY 2004/05. This MOU was executed March 23, 2005 (First MOU) and it allocated \$20,250,000 for BOA grants and \$9,750,000 for other specified uses (including \$4 million for TAG/BOA administration). Of the \$20,250,000 allocated, the First MOU awarded \$7,630,538 for 54 BOA grants and \$1.5 million for NYSDEC. The First MOU was then amended in March 2008 to award an additional \$7,250,409 for 50 BOA grants. In total, NYS has awarded 104 BOA grants for \$14,880,947:

2005/06 awards (round 2 & 3)	50	\$ 7,250,409
2004 awards (round 1)	54	\$ 7,630,538
<b>TOTAL</b>	<b>104</b>	<b>\$14,880,947</b>

There remains a maximum of \$33,869,053 from fiscal year budget appropriations 2003-2004 through 2006-2007 available for BOA grants, all of which is subject to a legislative MOU. In addition, there is a maximum of \$15,500,000 from fiscal year budget appropriations 2007-2008 and 2008-2009 that is available for BOA grants; these dollars are not subject to an MOU.

In terms of future site assessment funds, NYS has estimated a cost of \$150,000 for an average site assessment; and agency representatives have indicated they anticipate providing flexibility in the site assessment scopes to allow for an appropriate level of assessment. They have also indicated some flexibility in the number of site assessments that will be approved per BOA.

Eligible applicants include municipalities (cities, villages, town, local public authorities, etc.), community based organizations (CBOs) and NYC Community Boards. Program guidelines allow BOA applicants to apply for Step 1, Step 2 or Step 3 funding. Step 1 requires a community visioning process, as part of the the Pre-Nomination Study, and is designed for communities with little or no information on the brownfields within their study area boundary. Step 2 involves the preparation of a Nomination Study which is a much more detailed evaluation of the existing conditions, issues and opportunities, and includes an economic and market trends analysis, as well as the identification of strategic brownfield sites that could be catalysts for redevelopment. Once DOS has approved a Step 2 report, an applicant may submit an application for Step 3 that includes development of an Implementation Strategy and may include site assessments on strategic brownfield sites.

Applicants may enter the BOA program at either Step 1 or Step 2 but must have a DOS-approved Step 2 Report to apply for Step 3 funding. The application is posted on the DOS website at [http://nyswaterfronts.com/BOA\\_package.asp](http://nyswaterfronts.com/BOA_package.asp) and the required information varies depending on whether the applicant is a CBO, a municipality, or a CBO and municipality working in partnership. Those entering at Step 2 must include a DOS-approved Pre-Nomination Study (or an equivalent study that follows the DOS guidance) with their application and those entering at Step 3 must include a DOS-approved Step 2 report as well as Site Assessment Forms for any site proposed for site assessment activities.

Under the 2008 amended program, which authorized DOS as the single agency administering the BOA program, once DOS approves a Step 1 or Step 2 application, a State Assistance Contract (SAC) that includes a budget and a detailed scope of work for the BOA activities must be executed by the BOA grantee and sent to DOS for processing. In the past, the SAC required approval by the Attorney General's Office and execution by the Office of the State Comptroller as the last step toward finalization. However, as a result of the State's current budget concerns, a new review process has been implemented. DOB Budget Bulletin B-1184, issued on 11/04/2008, requires that all state commitments of \$500 or higher receive Department of Budget and Governor's Office of State Operations approval. After obtaining B-1184 approval and agency-specific approval, the SAC then requires approval by the Attorney General's Office and execution by the Office of the State Comptroller.

Requests for site assessment funding have been incorporated into the Step 3 application process such that funding for site assessments is contingent upon the applicant receiving a Step 3 grant. Potential properties for site assessments should be discussed with the State during Step 2, prior to submitting the Step 3 Application and any Step 3 Application Site Assessment Supplements. The Supplements will be reviewed by NYSDEC and graded as pass/fail. That grading will be factored into the ranking of the Step 3 application to determine ranking for the purposes of the award.

Following notification that an award has been made for a Step 3 that includes a site assessment, the grantee will enter into a site assessment SAC with NYSDEC that defines the scope of work, schedule, deliverables, and reporting, and includes a requirement to make work products publicly available. NYSDEC will then need to secure the same series of approvals described above that DOS follows for Step 1, 2 and 3 SACs. It is important to note that if a Step 3 application includes a request for funds for both an Implementation Strategy and site assessments, two SACs will be necessary, one with DOS for the Implementation Strategy and one with NYSDEC for the site assessment. This is intended to allow work conducted under the Implementation Strategy and on the site assessment to move forward on parallel tracks.

Under the SAC, BOA applicants will be reimbursed for up to 90% of the eligible costs and a 10% match is required from the grantee. In October 2008, the DOS began accepting applications on a rolling admissions basis. The amended statute also requires that should responsible party payments become available to the applicant, the amount of such payments attributable to expenses paid by the award shall be paid to the NYSDEC by the applicant; provided that the applicant may first apply such payments toward any actual eligible project costs incurred.

### **Obstacles to Using BOA Funds for Site Investigation**

BOA funds are expressly permitted by statute for site assessments, but no one has yet applied to use BOA dollars for this purpose. The BOA program is relatively new (created in 2003) and continues to evolve as the program moves forward. To date, these factors have likely contributed to the lack of use of BOA funds for site assessment.

Nevertheless, there are a number of other potential obstacles that may also inhibit the efficient utilization of BOA funds for site assessment:

### **Eligibility Requirements:**

- Statute and guidance on eligibility requirements for owners and sites narrow the properties for which BOA site assessment funds can be used; and particularly makes it more difficult to use BOA site assessment funds on private properties:
  - The statute requires that site assessments using BOA funds be conducted on property owned by a municipality or a volunteer.<sup>21</sup> Therefore, in order to qualify, a private property owner must have the desire and wherewithal to prove he/she is a volunteer, with all the attendant risks of doing the research for such proof.
  - Sites owned by responsible parties are not eligible for site assessment funds.
  - Only eligible BOA grantees (municipalities and CBOs) may apply for these funds; and to utilize these funds on private property requires that the BOA grantee submit proof of ownership for the site or a certification that the site owner will allow access onto the property. Private property owners and BOA grantees may be unwilling or unable to enter into such a site access agreement.

### **Program Requirements that Create Cost/Time Concerns:**

- There is a concern that delays may be caused by the recently added multi-level contract review and approval process stemming from State budget concerns (see above reference to DOB Budget Bulletin B-1184, etc.) These procedures are on top of several “standard” contract reviews that involve the Attorney General and the Comptroller.
- Site assessment grants will not be awarded until the Step 3 grant has been awarded, which follows the Step 2 report. For some BOA study areas that have readily identifiable “strategic sites,” this administrative requirement may delay the development of cleanup and reuse plans and priorities.

### **Program Requirements that Create Uncertainty**

- The July 2008 statutory amendments move the BOA program to the DOS as of April 1, 2009. NYSDEC will have a more limited role than in the past and will remain involved with site assessments and as a technical resource. NYSDEC will review and grade site assessment supplements as part of the Step 3 application process, oversee site assessments performed by the grantee’s contractor and prepare and manage the related state assistance contract (SAC). What remains unclear is how existing and new funds will be split between the two agencies. There is also some uncertainty associated with how already appropriated funds will be allocated.
- Since no site assessment funds have been awarded for any site, there is no track record and the proposed procedures for qualifying for such awards have not yet been tested.
- The statute authorizes the use of BOA site assessment funds for a broad range of site assessment activities

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<sup>21</sup> A volunteer is defined in 27-1405(1)(b) as an applicant other than a participant whose liability arises solely out of a person’s ownership or involvement with the site after the disposal or discharge of contaminants.

including selection of a remedial strategy.<sup>22</sup> NYSDEC program guidance currently limits the use of site assessment funds to Phase IIs which are generally limited in scope to previously identified areas of concern and do not include remedy selection. NYSDEC Program guidance states, “Phase II ESAs are typically not sufficient for selecting a remedy” (page E-1). Program guidance does not yet reflect the flexibility intended by the law, however, it is anticipated that NYSDEC will be flexible during implementation of site assessments and permit remedial strategy development on a case-by-case basis.

- If the program limits site assessment funds to Phase IIs, this program may be less attractive as it could leave sites “in limbo.” Contaminated sites that are not completely characterized will need additional funds to complete site investigation activities, remedy selection and remedial cost estimates. Such information will be required for redevelopment; and its absence will likely delay the redevelopment and reuse of the property.
- The BOA program guidance calls for NYSDEC review of the Phase II for land use planning purposes. However, NYSDEC personnel are typically not planners and are generally more familiar with reviewing reports in the context of cleanup standards and remediation strategies.
- Interpreting the data from a site assessment under the BOA program requires the evaluation of source areas and nature and extent of contamination in terms of future land uses. The current guidance does not establish a “bright line” between the application of DOS’s land use planning expertise and the technical role of NYSDEC when it comes to reviewing site assessment reports.

#### **Program Requirements that Could Create Stigma Concerns**

- According to the October 2008 BOA program guidance NYSDEC must be notified of environmental situations that arise during site investigation. If the site is determined to pose a significant threat, parties will be given the opportunity to address it under the Brownfield Cleanup, Environmental Restoration or Spills Programs before NYSDEC considers listing it on the NYS Inactive Hazardous Site Registry or requiring cleanup under the Navigation Law. The potential threat of having a site listed on the State’s Registry is a possible concern for property owners and developers (For a more detailed discussion about notification requirements and concerns, see Appendix A).

## **7. Using NYC Office of Environmental Remediation Funds for Site Assessment**

In June 2008, the Office of Environmental Remediation (OER) was officially established by Mayor Bloomberg, and Daniel Walsh was hired as its Director. According to PlaNYC, the Office will increase the resources dedicated to brownfield planning, testing and cleanups and promote brownfield planning and redevelopment. City Council legislation that formally establishes the Office of Environmental Remediation and a local brownfield cleanup program was proposed in mid April 2009.

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<sup>22</sup> Part F, Section (6)(c) of the 2003 NYS Brownfields Law specifies that “*Brownfield Site Assessment Activities eligible for funding include, but are not limited to, testing of properties to determine the nature and extent of contamination (including soil and groundwater), environmental assessments, the development of a proposed remediation strategy to address any identified contamination, and any other activities deemed appropriate by the Commissioner in consultation with the Secretary of State. Any environmental assessment shall be subject to the review and approval of such commissioner.*”

OER is looking to develop a small grant program that will assist brownfield projects from the earliest stages of pre-development project evaluation through site cleanup. Four grant types are envisioned, including: predevelopment grants (for predevelopment services such as acquisition of title report, zoning analyses and Phase I evaluations); environmental investigation (for eligible components of Phase II-type studies); cleanup grants (for projects enrolled in OER's brownfield cleanup program, for eligible services in an OER-approved cleanup plan), and environmental pollution liability insurance grants. Flexibility in grant funding for eligible services covered by different grants up to grant cap amounts, and higher grant cap amounts for BOA and low income housing projects, is also envisioned.

## V. Alternative Tools/Resources for Site Assessments

Recognizing the gap in funding and the importance of site assessment in spurring redevelopment, several nonprofit organizations have developed programs to provide grants and/or loans for site assessments. A preliminary scan of regional brownfield nonprofit intermediaries across the country with relevant programs include:

- Center for Creative Land Recycling (California)
- Colorado Brownfield Foundation (Colorado)
- Delta Redevelopment Institute (Illinois)
- New Partners for Community Revitalization, Inc. (New York)

**Center for Creative Land Recycling (CCLR) – CALReUSE program** - CCLR was founded in 1998 as a project of the Trust for Public Land and became an independent 501(c)(3) in 1999. CCLR promotes the reuse and recycling of previously developed land and buildings, with a focus on brownfields in distressed neighborhoods in both urban and rural areas. CCLR administers a variety of programs and provides fee for service and technical assistance to nonprofit developers, municipalities and community based organizations. CCLR is also a statewide strategic partner in the California Recycle Underutilized Sites (CALReUSE) Assessment Program established by the California Pollution Control Financing Authority (CPCFA). The program is funded by discretionary funds from the California Office of the State Treasurer and provides forgivable loans for site assessment. CPCFA intentionally sought a partnership with a non-profit intermediary to help develop and administer the CALReUSE program. CPCFA thought an NGO was in the best position to provide user-friendly assistance to community developers, that an NGO was a good vehicle for providing and overseeing flexible funding and that the program would benefit from an NGO with experience in brownfield redevelopment project work. Interestingly, CPCFA specifically did not want the program implemented by a regulatory agency. They believed that the funding needed to be managed separately to enable the strategic partners to provide independent advice.

The program is specifically designed to assist community brownfields developers by providing low-interest loans for the assessment of distressed properties. Eligible activities include Phase I and II site assessments, technical assistance and remedial action planning. The maximum loan amount is \$300,000 per project or \$500,000 per infill residential or mixed use project. The loan requires a 15% cash match and becomes payable upon sale or transfer of the property, filing for a construction or grading permit or three years from the date of the loan closing. Loans may be forgiven if the borrower has made a good faith effort but is unable to complete the project or proceed with development.

The program was designed to be as inclusive and flexible as possible. Any party is eligible to apply and eligible sites are those that meet the definition of a brownfield; the only ineligible sites are those listed for a state response action, sites that have been or are now owned by a federal agency and hazardous waste facility sites. Applications are accepted on a rolling basis and applicants may submit an application to CCLR, or one of the other local government strategic partners, who will qualitatively review the application for the following information:

- Experience of developer
- Redevelopment plans
- Evidence of site access
- Location of site (there is a programmatic preference for distressed neighborhoods in urban areas)
- Quality of site assessment plans, consultant and plans for regulatory oversight
- Evidence of community support

Once a complete application is received, it takes CCLR about two weeks to review and approve the application. CCLR, as agent of the State is authorized to approve the loans without any further sign-off from the State. Once approved, the borrower is required to sign a non-negotiable agreement (the terms of which are set by State regulations) with CCLR as agent of the State. The borrower must also submit an application to a California state regulatory program (developers have several options depending to some extent on the magnitude and type of the contamination- the California EPA's Department of Toxic Substances Control, the applicable regional water quality control board or a Certified Unified Program Agency). During the project, CCLR provides oversight of the loan, including invoice review, project schedule review, assistance with regulatory issues and review of regulatory agency approvals. At the completion of the project CCLR requires a copy of the final report. In addition to overseeing the loans, CCLR also acts as a document repository and makes the project documents available for the public record.

CCLR also manages the financing for approved projects with an annual appropriation from the State. The State provides the appropriation to an independent trustee at a bank who holds the funds for CCLR and the other strategic partners. Once CCLR approves a borrower, the trustee uses a portion of the appropriation to fund a bank account for that borrower. As CCLR approves the borrower's invoices, the trustee sends a check from the borrowers account either to the Borrower or directly to the contractor. The borrower provides quarterly reports to CCLR who in turn provides quarterly and annual reports to the CPCFA. As the loans are paid back, the trustee returns the money to CPCFA. CCLR has provided more than \$2 million in loans, the average size of which was about \$100,000 since the program started in 2003.

**Colorado Brownfields Foundation (CBF)** - CBF is a 501(c)(3) nonprofit organization that is under contract to the State of Colorado to provide technical assistance with financing, redeveloping and reusing brownfield sites. The State of Colorado, like the CPCFA, thought that parties with potential brownfields sites would be more likely to approach an NGO than a state regulatory agency with questions or requests for information. CBF provides their services through workshops and conferences as well as on a site-specific basis. CBF provides assistance to all interested parties and estimates that about two-thirds of its assistance is provided to local governments and one-third to private property developers. In terms of site assessment services, CBF provides project coordination and technical assistance, information on risk management and funding opportunities; assistance with grant applications; and periodically awards environmental due diligence grants.

**Delta Redevelopment Institute (Delta REDI)** - Delta REDI is a 501(c)(3) that was formed in 1998 (under the name ChicagoLand Redi) to help Chicago-area communities redevelop brownfield sites. They recently expanded their services and now co-manage the Delta Redevelopment Funds, LLC. Their first product, Delta Redevelopment Fund I, combined an allocation of New Market Tax Credits with conventional sources of private capital to make loans to redevelopment projects and businesses in low-income communities in Illinois, Wisconsin and Indiana. This fund provided flexible rates and terms, interest only payments for seven years and could be used for soft costs, environmental remediation, site preparation, development and "project seasoning." The fund had up to \$100,000 in forgivable loans available for each state. Site assessment loans were administered such that 50% was used to pay for third party costs such as engineering, legal, and environmental assessments and 50% was used for project structuring and other technical assistance provided by the managers of the Delta Redevelopment Funds. However, Delta REDI found that most of the loans in the first fund were used for project financing. For the most part, any environmental issues associated with the projects had either already been addressed or were sufficiently minor that they did not require financing. The funding for the Delta Redevelopment Fund I has been expended and Delta REDI has applied for a second round of New Market Tax Credits to initiate the Delta Redevelopment Fund II. The new fund will include two new states - Michigan and Ohio - and will continue to focus on project financing.

**New Partners for Community Revitalization, Inc. (NPCR)** - Through the Brownfields START-UP Program, NPCR offers flexible, targeted technical and financial assistance to non-profit developers and non-profit groups working with for-profit developers to advance community-supported brownfield redevelopment projects in NYC. NPCR offers two types of assistance:

- Direct technical assistance which may include: report and data review to determine environmental conditions and the need for additional site characterization, assistance with pre-development and development strategies, project management to oversee contractor selection and work quality, and advice on regulatory programs; and
- Financial assistance to retain external service providers: START-UP Program funds are available to reimburse nonprofit developers for external service providers in the pre-development phase; and there is a per project cap of \$50,000, usually paid out in increments of \$10,000.

START-UP Program assistance can be paid for through fee-for-service arrangements (which may involve deferred payment schedules or forgivable payments) and/or philanthropic grant funds secured by NPCR for this program. The availability and terms of the assistance are based on project need and program resources. Privately owned sites and nonprofit organizations and private developers working with nonprofits are eligible, provided they can demonstrate a commitment to community engagement as well as a community-supported end-use. Projects are eligible at any stage of predevelopment or development.

## Appendix A

### Summary of Notification Obligations under Federal and State Law for Contamination Revealed during a Site Investigation at a Brownfield Site.<sup>23</sup>

During the conduct of an environmental assessment on a brownfield a person may become aware of a circumstance that requires government notification. These circumstances include the presence of contamination on a property or an active release of petroleum from a tank. This section provides a summary of the basic rules and industry practices for notification to environmental agencies should an environmental assessment reveal contamination, with a focus on the reporting obligations of property owners, developers and BOA grantees that perform site assessments.

Generally, only the owner or operator of a property is obligated under State or federal environmental laws and regulations to report a release of hazardous substances, hazardous wastes or petroleum.<sup>24</sup> Any owner/operator of a brownfield site or other person responsible for a discharge of petroleum at the site must report such discharge (no later than 2 hours after becoming aware of the discharge) to soil, surface or groundwater or from any bulk storage facility on the property. Deciding whether the owner/operator would be “responsible for the discharge” is something best discussed with legal counsel on a case-by-case basis. Additionally, there is an immediate reporting responsibility for anyone who owns, operates or controls a site when there is a release of hazardous substances that is in excess of a specified “reportable quantity” (as specified in applicable state and federal regulations). Upon knowledge of a suspected or actual release of any kind, environmental counsel should be retained to secure a legal opinion about a party’s reporting responsibilities under the specific circumstances.

#### CERCLA Notification

Under the federal Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), also known as the federal “Superfund Law”, any unpermitted release of a hazardous substance from a vessel or an on- or off-shore facility at or in excess of the reportable quantity (RQ<sup>25</sup>) for that substance must be immediately reported. Under CERCLA Section 103, this reporting requirement is imposed upon any “person in charge” of a vessel or an off or on-shore facility. EPA has indicated that the period during which the person in charge must measure whether an RQ has been exceeded is a 24-hour period. This reporting requirement is triggered even when there are multiple releases where each is less than the RQ but where the aggregate amount equals or exceeds the RQ. In specific cases, EPA has also indicated that even where an amount of the substance in excess of the RQ is stored in a sealed container, the reporting requirement is triggered where the container is discarded or abandoned.

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<sup>23</sup> It should be noted that nothing herein is or should be construed in any manner as legal advice. Case specific questions regarding reporting obligations should be discussed with and evaluated by qualified environmental legal counsel.

<sup>24</sup> These include New York’s Navigation and Environmental Conservation Laws and the federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), Emergency Planning and Community Right to Know Act (EPCRA) Clean Water Act (“CWA”) and the Oil Pollution Act of 1990 (“OPA 90”). Though there are some variations, State and Federal statutes and regulations generally define “release” or “discharge” very broadly to include both intentional and non-intentional acts including any spilling, leaking, pumping, pouring, emitting, emptying, discharging, leaching, escaping, dumping or disposing of hazardous substances or contaminants. Most provisions require reporting when there is either an actual or threatened release to the environment. The Navigation Law, New York’s primary statute controlling petroleum, uses the term “discharge” rather than “release” which is also very broadly defined. Throughout this document memorandum, the terms “discharge”, “spill” or “release” will be used interchangeably.

<sup>25</sup> A RQ is provided for each CERCLA hazardous substance. A release of the volume of RQ listed for each hazardous substance triggers the obligation to notify the government.

The term “person in charge” is not defined, but EPA has indicated that determining the person in charge depends on a number of variables, including the specific operation involved, the management structure, and other case-specific considerations. Generally, the term “person in charge” is aimed at an owner or operator (or their employees or agents) of a vessel or a facility. A New York court has interpreted this to apply to any person who is in a position to “detect, prevent or abate a release of hazardous substances”, even if he/she is not the owner or operator.<sup>26</sup> Thus, an environmental consultant acting as an agent for a non-owner/operator could conceivably have an obligation to report any release of a hazardous substance exceeding the RQ.

Often, however, evidence of a release of a hazardous substance is discovered during a site assessment conducted long after the use or storage of hazardous materials has ceased and long after the release took place. Generally, the only evidence that a release took place in the past is analytical data indicating that listed hazardous substances are present in the soil and/or groundwater at this site. Such data indicates the existence of an historical release but does not reveal the quantity of the substance that was released in the past. Some environmental professionals take the view that while the analytical data may show that a release took place, the data would not reveal how much was released (i.e., whether the release exceeded the RQ) or the duration of the release. Under this view, the reporting requirement would not be triggered nor would there be an obligation to notify the government.

Substantial penalties can be (and often are) imposed when a party fails to report a reportable release. Therefore, even in those situations where the obligation to report a release is open to question, the prudent approach always is to report to the government. The obligations (e.g., more investigation or cleanup), which may arise after reporting a release are almost always less onerous than the imposition of civil or criminal penalties (in addition to such obligations).

Historic fill sites are those that have been contaminated by the historic practice of in-filling to raise their elevation. Often, the fill was comprised of a mixture of materials some of which contained heavy metals. The discovery, during a site investigation, of heavy metals in concentrations above state standards would not trigger notification. Even if the placement of historic fill on the property was considered a release, such release would not constitute a RQ because of the absence of evidence that it occurred within a 24-hour period.

#### New York State’s Petroleum Bulk Storage Regulations

There are certain specific circumstances that require any person who gains knowledge of a release of petroleum to notify the government. Pursuant to the State’s Petroleum Bulk Storage (PBS) regulations, any person with knowledge of the discharge of petroleum from a “bulk storage facility” must report such discharge to the NYSDEC within 2 hours.<sup>27</sup> Petroleum includes oil, petroleum, fuel oil, gasoline, kerosene oil sludge or oil mixed with other materials.

Recently, the Environmental Conservation Law § 17-1003(1) was amended to modify the definition of a petroleum bulk storage (PBS) facility. Previously, a PBS facility was one that contained stationary tanks with a combined storage capacity of 1,100 gallons of petroleum. (Note that under the new law, tanks which are located on a single property or on contiguous or adjacent properties and which are used for the same purpose and owned and operated by the same person, must be included in the calculation to determine the combined storage capacity).

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<sup>26</sup> U.S. v. Carr, 880 F.2d 1550, C.A.2 (NY) 1989

<sup>27</sup> See, PBS Regulations Part 613.8

Under the new law, the definition of a PBS facility has been expanded to include tanks with a capacity of 110 gallons or greater where more than 10% of the volume is stored under ground. There are some specific exemptions to this expanded definition of a PBS facility:

- Tanks used for storing heating oil for on-site consumption with a capacity of less than 1,100 gallons are generally not included in this definition;
- Tanks which are 1,100 gallons or less used to store motor fuels for non-commercial purposes at a farm or residence are generally not included in this definition;
- Tanks used to store asphalt are not included in this definition (though tanks storing asphaltic emulsions are included); and
- Tanks permanently closed pursuant to the PBS regulations are likewise not included.

This reporting obligation applies to anyone with such knowledge, even if he or she does not own or operate the facility. Furthermore, knowledge of the existence of petroleum contamination in the soil or groundwater (as, for example, revealed by sampling data) at PBS facilities will be sufficient to impute knowledge of a past petroleum release, thus triggering a reporting obligation.

There is a narrow exception to this reporting rule for a de minimus petroleum spill at a PBS facility that does not impact the environment and is promptly cleaned up. Specifically, a petroleum spill of less than five gallons, which is under the control of the spiller, does not and will not contaminate land or water and is cleaned up within 2 hours does not have to be reported. A typical example of a non-reportable spill is a small leak (less than 5 gallons) onto an impervious surface which is immediately cleaned up by the spiller.

Most significant for brownfield properties is that this two hour reporting rule will likely also apply to properties containing abandoned tanks which *had* a combined storage capacity in excess of the regulatory capacity threshold, *even where the tanks do not contain such volume of petroleum*.<sup>28</sup> Many practitioners believe that the application of the PBS regulations to a property on which the tanks have been removed will not be upheld in court.

Thus, where any person has knowledge of the release to the environment of petroleum at a bulk storage facility (even those which no longer contain petroleum or the storage tanks), he/she must promptly (within 2 hours) report the release to the NYSDEC. Any person who is not sure whether he or she has a direct legal duty to report a release should immediately consult with environmental counsel. Upon instruction from legal counsel, appropriate notification to the government must be undertaken.

Notification obligations of a developer/consultant/any 3<sup>rd</sup> party who doesn't own the site but has access to the site -  
Generally a 3<sup>rd</sup> party who is conducting an investigation at a site which he or she does not own does not have reporting obligations except under limited circumstances. The reporting obligations under the CWA, OPA 90 and CERCLA only apply to the "person in charge" of a vessel or facility at or from which there was a release. Under the NY Navigation Law only a party deemed a "discharger" responsible for the petroleum discharge must notify the government. Thus, under these statutes, a 3<sup>rd</sup> party (who is not a discharger) does not have an obligation to report. Only where there is evidence of a discharge of petroleum at a NY petroleum bulk storage facility does any "person with knowledge" have a duty to report. A 3<sup>rd</sup> party, such as a developer, prospective purchaser or their consultant would have to report under these circumstances.

As a general rule, environmental consultants will notify the NYSDEC whenever the consultant believes that evidence of a discharge or release triggers a reporting requirement. This is particularly so when evidence of an

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<sup>28</sup> Moreover, the DEC has indicated that once a property is considered a bulk storage facility, this reporting rule applies even where the tanks are no longer situated on the site.

on-going release (e.g., a leaking underground storage tank) is discovered during the course of an investigation. Sometimes consultants will first notify their clients and ask them to report to the government. The NYSDEC has, however, been very clear that where a consultant has a duty to report, the consultant cannot "hide behind" telling the client to report as a means of avoiding the imposition of a penalty.

#### New Soil Vapor Notification Law

New York recently enacted a new notification law requiring property owners to notify tenants of certain test results (indoor air, sub-slab air, sub-slab soil or sub-slab groundwater results), which exceed DOH indoor air guidelines or OSHA indoor air guidelines. The law also requires notification to tenants of the existence of any engineering controls (e.g., fans, vents, blowers) installed to address vapor intrusion. The law also requires an owner to notify its tenants if the property is subject to on-going indoor air monitoring, as part of an on-going cleanup.

This new law's notification requirement is triggered only when the property owner (or the owner's agent) has been provided with such indoor air results by an "issuer," which is defined as the NYSDEC, a person subject to certain governmental orders, a municipality participating in certain projects under the Environmental Restoration Program and a "participant" in the BCP program. Therefore, if a property owner (or the owner's agent) has been provided a site assessment that includes soil vapor/indoor air sampling data which exceed DOH indoor air guidelines or OSHA indoor air guidelines, the property owner would be subject to notification obligations.

## About NPCR

New Partners for Community Revitalization, Inc. (NPCR) is a 501c3 nonprofit organization formed to advance the revitalization of New York's communities with a particular focus on brownfield sites in and proximate to low and moderate income neighborhoods and communities of color.

The creation of NPCR as an independent nonprofit organization emerged out of the multi-year policy debate that culminated in the 2003 passage of the NYS brownfields legislation and the recognition that low and moderate income (LMI) areas could be left behind without an organization whose mission is to develop programs and policies to address the needs specific to LMI communities. Jody Kass and Mathy Stanislaus, who co-founded NPCR, co-direct the organization with the help of an active and diverse board of directors whose varied perspectives help inform NPCR programs and policies. The decision to create NPCR, with an independent board of directors and a mission that was focused on brownfields and community revitalization in LMI communities, was a collaborative process. In early 2002, a diverse Technical Advisory Committee was convened to consider what was needed to address New York's thousands of brownfield sites that lay abandoned or under-utilized, primarily in low and moderate income neighborhoods. While NYC had led the country in re-building urban America in the 1980s and 1990s with some of the most successful housing programs in the nation, there was a growing realization that the landscape had changed. The portfolio of developable land was dwindling, and what was left was often contaminated from previous uses or illegal dumping. At the same time, the overheated real estate market was leading to rising property values, speculation and displacement. It was determined that there was a need to create new tools and approaches that would respond to this changed landscape. And, there was the recognition of the need to affirmatively address environmental justice concerns by rejecting the notion that only low uses (such as waste transfer stations) can be built on brownfield sites in low- and moderate-income communities.

## NPCR Program Overview

NPCR is implementing an integrated approach to brownfields redevelopment that is designed to provide the tools and capacity necessary to promote community-based productive re-use of brownfields. This multi-pronged initiative was developed through on-the-ground work with environmental justice organizations, community-based groups, nonprofit and for-profit developers, community lenders, and nationwide research on innovative programs and approaches. For more information about NPCR financing, technical assistance, training and policy work, please see our web site at [www.npcr.net](http://www.npcr.net)

Past and present philanthropic support for NPCR projects, program and policy work has been received from:

Alpern Family Fund  
Booth Ferris Foundation  
Citigroup Foundation  
Deutsche Bank Foundation  
Ford Foundation  
Garfield Foundation  
HSBC Bank USA NA

Independence Community Foundation  
Mertz Gilmore Foundation  
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