



FUSS & O'NEILL
Disciplines to Deliver

Connecticut's Brownfield Remediation and Revitalization Program

A New Approach

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Introduction

- Presenting a Summary of the new Brownfield Remediation and Revitalization Program; Section 17, PA-141
- PA 11-141 is the result of the General Assembly's Brownfield Working Group
- Act has 20 sections, 56 pages
- Amends many laws and programs governing assessment and remediation of brownfields and other contaminated property

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Historic Brownfields Problems

- CERCLA – All Liability flows to the current owner
- Connecticut has too many programs – most of little to no value
- Many underfunded or not funded
- DECD Commissioner/Governor approved site selection
- Involved political support, often required lobbyists
- Only the large visible projects received support

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Initial Program Goals

- Incentivize private sector to redevelop brownfields sites in Connecticut
- Provide liability relief to innocent purchasers
- Address brownfields that are not abandoned
- Incentivise companies to sell their mothballed brownfields properties
- Streamlined program
- Minimize agency involvement
- Eliminate “Political” or “Beauty Contest” selection process
- Create a statute that development teams from other states can understand

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Key areas of Debate with DEEP

- Owners responsibility for off-site studies and remediation
- The cost of the State's "new" liability – fees
- Extending liability relief to sites that have not been abandoned or underutilized
- Relief to previous owners
- Limited number of sites – "Pilot Status"

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

- Makes Connecticut more competitive in the brownfields redevelopment market
- Innovative, incentivize private sector to redevelop property
- Incentivize private parties to remediate brownfields quickly
- Offers liability relief
 - *A change in the way Connecticut views environmental liability*
- Provides for expedited reviews by DEEP
- Program incorporates the Connecticut Clean Up processes, i.e. RSRs, verifications, audits, Land Use Restrictions
- Benefits are transferable

PA 11-141: Section 17 Brownfields Remediation and Revitalization Program

Sec. 17 establishes “Brownfields Remediation and Revitalization Program”

- Limited to 32 properties a year
 - On a pilot basis with anticipated removal of the limit
- Participation by an accepted application or nomination from a municipality or economic development agency
- Applicant certifies satisfying the eligibility requirements

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Since the Program is limited to thirty-two sites per year

- Admission of eligible properties is based state-wide portfolio factors.
- Commissioner wants a broad diversity of types of brownfields sites.

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Eligibility – The Applicant

- The applicant must satisfy and certify that they:
 - a “bona fide prospective purchaser,” innocent land owner, or contiguous property owner
 - Did not establish, create or maintain a source of pollution
 - Not responsible for any pollution or source of pollution on the property
 - Not affiliated with any person responsible for pollution on the property

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Eligibility – The Property

- Must be a brownfield
- Must not be subject to federal Superfund & RCRA requirements

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

The Eligible Party Responsibilities

- Shall submit brownfield investigation plan and remediation schedule (BIPRS) that is signed and stamped by an LEP
 - Characterized within two years
 - Remediation initiated within three years of acceptance of program
- Must characterize and remediate the releases within the site boundaries in accordance with the BIPRS
- Shall not be required to investigate or remediate any releases that have migrated off site
- An extension may be provided
 - Reasonable progress is made
 - Circumstances beyond control

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Liability Relief

- A person whose application is accepted will not be liable to the state or any third party while remediating the property
- After the Commissioner issues a no audit letter or a successful audit closure letter the eligible party is not liable to the State or any third part for:
 - Cost incurred in remediation equitable relief or damages
 - Historic off-site impacts
- Only includes substances investigated and remediated
 - New substance could be a re-opener
- Does not include PCBs or UST regulations

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Liability Relief – Transfer

- After successful acceptance of Verification the liability relief of the program can be extended to transferee
- If the eligible party conveys the property before a verification is accepted the liability relief continues to them if they are in compliance with the BIPBS program

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Liability Relief – To Prior Owner

- Upon successful acceptance of a verification or interim verification the immediate prior owner shall have no liability to the State or any third party for any future remediation at the property provided
- Previous owner is still responsible for off-site impacts

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Liability Relief – Transfer Act

- Upon acceptance the person is exempt for filing as an establishment under the Transfer Act
- The Act does not alter existing legal requirements that apply to a certifying party

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Program Fees

- Fee of five percent of the assessed value of the land
- 50% due with 180 days of acceptance into the program
- 50% due not later than 4 years after acceptance into the program
- \$10,000 fee for subsequent transfer

PA 11-141: Section 17 - Brownfields Remediation and Revitalization Program

Program Fees - Incentives

- 10% discount if an LEP states site characterization has been completed within 180 days after acceptance
- The second installment is eliminated if within 4 years of acceptance
 - Remedial action report is submitted
 - A verification or interim verification is submitted
- OR
- The second installment is reduced by twice environmental services costs of characterizing the off-site plume
- Municipalities are exempt from fees
- Municipalities may request reduction on behalf of an applicant