

FOCUS The Environment

State still intent on cleaning up contaminated sites

In September 1995, the Massachusetts Executive Offices of Environmental Affairs and Economic Affairs convened a Brownfields Advisory Committee to develop ideas that would encourage the reuse of environmentally contaminated sites in Massachusetts. The committee included representatives from municipal government, the real estate and development communities, the environmental and legal professional services communities, the lending community, the environmental justice community, and business and industry.

In addition, two subcommittees were created to focus on financing and liability issues specifically.

Financing

To date, the financing subcommittee has developed several legislative proposals in addition to existing programs in Massachusetts. These proposals have largely been adopted by the larger Brownfields Advisory Committee. The general approach of the subcommittee was to evaluate existing resources first, including the Massachusetts Economic Development Incentive Program. This program includes various state investment tax credits, abandoned building tax deductions and municipal tax benefits, such as special tax assessments or tax increment financing. Brochures concerning this program are readily available from the Massachusetts Department of Business Development at (617) 727-3206.

Next, the financing subcommittee focused on what financial incentives were needed to encourage brownfields redevelopment. As a result of that evaluation, draft legislation was prepared to create an Industrial Site Recycling Fund and an Access to Capital program for brownfields projects.

The draft ISRF legislation includes a proposal that a \$15 million fund be created, from which awards of up to \$500,000 for individual projects could be provided. Funds would be provided in the form of loans and grants for private parties, as well as cities and towns, to be used for site investigations and remediation at eligible sites located in economic target areas.

In addition, recipients of the funds would have to match some or all of the loan or grant for a particular project. Lead-paint removal and asbestos removal projects could also be included from this fund.

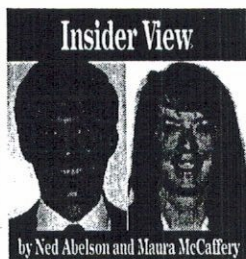
Access to capital

In an effort to encourage reluctant lenders to make loans on collateral they might otherwise consider to be too much of a risk, there is also draft legislation for a Brownfields Access to Capital Program. The objective of this program is to create a self-funding pool, which would be started with \$10 million in state funds.

Under the program, banks could make loans for environmental response actions of up to \$500,000 per project. At the time of making the loan, both the lending institution and the borrower would effectively pay points into the fund, which would act as a secondary loan loss pool.

In the event the bank suffered a loss on the loan due to unanticipated environ-

mental response costs, the bank could then draw on the funds in the pool, including any environmental insurance policies that may have been purchased by the entity managing the pool, to repay the loan in whole or in part.



In addition, the finance subcommittee has explored a number of environmental insurance concepts, with a focus on determining whether it is possible to create a statewide pool in Massachusetts to which these products would apply. The idea is that the premiums could be much lower due to the potential size of the pool.

However, the state does not want to compete with the private sector.

Therefore, the state is attempting to help private insurance companies lead the effort, with state assistance available only when necessary.

Liability

The liability subcommittee has been active in assisting the Department of Environmental Protection draft Brownfields legislation, focusing primarily on liability endpoints and contribution-protection issues. As mandated by Massachusetts legislation enacted last month, the DEP must present to the state Senate and House of Representatives by Oct. 15, recommended legislation addressing changes to Chapter 21E (the Massachusetts Superfund statute) regarding remediation standards and liability requirements for Brownfields sites.

The proposed legislation will focus primarily on liability protection for prospective owners and operators who have no prior affiliation with the property and who are not responsible for the contamination. Similar to the way in which DEP administers the Chapter 21E program, the program proposed in the legislation will require very little DEP oversight, with the legislation creating self-executing liability protections. In essence, this will be accomplished by creating liability exemptions based on a party's status.

In addition to the above-described legislative changes being proposed by the DEP, the agency is also considering amending various provisions of the Massachusetts Contingency Plan and the pilot Covenant Not to Sue program, which is only available to prospective owners or operators of commercial or industrial property. The MCP changes are likely to include narrowing the audit window from five to two years.

Regarding the Covenant Not to Sue program, DEP is considering more narrowly defining those parties who are eligible for specifically negotiated agreements (given that most generic agreements will become obsolete in light of the legislative amendments) and determining which scenarios, if any, warrant affording current owners and operators protection under a Covenant Not to Sue agreement. The MCP and Covenant Not to Sue revisions are targeted for early next year.

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