

# REVITALIZING BROWNFIELDS

## How can Rhode Island do more?

Policy recommendations developed  
by Grow Smart Rhode Island,  
refined and prioritized at a brownfields conference  
convened February 7, 2001



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*Brownfields redevelopment is one of the most important environmental and urban planning issues for the country. Enlist the help of everyone you can...you'll need help from the private sector, government at all levels, non-profits and residents.*

*This conference is an important step in moving Rhode Island's agenda forward, and I applaud all of you for working so hard on this important challenge.*

Mayor J. Christian Bollwage  
Revitalizing Brownfields conference  
February 7, 2001  
Warwick, Rhode Island

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## How the recommendations were developed

The recommendations contained in the following pages are the result of an initiative launched a year ago to strengthen Rhode Island's brownfields program.

Grow Smart Rhode Island is a statewide non-profit organization representing a broad coalition of constituencies dedicated to combating suburban sprawl and urban disinvestment. Our mission is to build public awareness about the negative impacts of sprawl and about policies and programs that will encourage economic and residential growth in existing urban/town centers while preserving open space in outlying areas. Brownfields revitalization is one such policy tool. It is our belief that a coordinated and strengthened brownfields program will facilitate the cleanup of contaminated sites, their return to productive use, and the revitalization of urban and town centers. By directing investment to previously developed sites, it will also help to preserve open space.

Our brownfields initiative began with an analysis of current Rhode Island brownfields policies prepared by Grace Materon, a graduate student at the Kennedy School of Government.

We then hosted focus group discussions with developers, lawyers, environmental consultants, and municipal planners to get their input on Rhode Island's current brownfields policies and programs. We also conducted interviews with other key stakeholders: staff from the Rhode Island Department of Environmental Management, the Rhode Island Economic Development Corporation, the Rhode Island Historical Preservation & Heritage Commission, the United States Environmental Protection Agency Region 1, non-profit organizations, and individuals with experience in brownfield redevelopment. (Our contacts are listed on page 5.) The wide range of people consulted in this process reflects Grow Smart Rhode Island's commitment to coalition building, as well as our belief that issues like the reuse of brownfields are complex problems, best understood and addressed by considering how different facets of the problem – economic, environmental, and historical – interconnect.

Based on research, focus groups and interviews, we developed a series of program and policy recommendations. Grow Smart then joined with Main Street Rhode Island in sponsoring a daylong conference on February 7, 2001. The conference brought together a broad range of people interested in brownfields, some of whom had participated in focus groups and interviews leading up to the development of our draft recommendations. The conference was designed to provide a forum for discussing and prioritizing those recommendations. In addition, it was intended to raise the public profile of brownfields in Rhode Island, bringing it to the attention of the media, the Governor's office, the General Assembly, our Congressional delegation, and to provide information for municipal officials and professionals with limited brownfields experience.

The conference drew 164 attendees, representing a wide range of interests and expertise. Approximately 35% of the attendees were from the private business sector (engineers, environmental consultants, developers, property owners, and lawyers); about 25% were from non-profit organizations (environmental groups, community and neighborhood associations, historic preservation interests, and

economic policy organizations); and 40% represented the public sector (municipal planners, members of the Governor's office, state agencies such as DEM, EDC and others, and federal agencies, including the USEPA.) Most of the conference attendees were from Rhode Island, but we also benefitted from the participation of a number of individuals who were active in the development of Massachusetts's brownfields program, as well as seven representatives from the USEPA Region 1 Office in Boston.

The afternoon of the conference was devoted to discussion and prioritization of the recommendations that Grow Smart had developed. Attendee input was collected through individual questionnaires, through break-out discussion groups, and through opportunities for public comment throughout the day. We then compiled input from all three formats to determine conference attendees' priorities.

As anticipated, conference attendees did not identify a single recommendation as the answer. Rather, they established seven program/policy areas to which attention should be directed. The recommendations in this report focus on those areas, which are presented in the priority order established by the conference attendees. In addition, the recommendations originally presented at the conference have been revised in the interest of clarity and brevity and to reflect attendee input.

Based on the priorities established and on the reality that some recommendations can be implemented more easily than others, the many interests that came together at the conference are now working together to implement the recommendations contained in this report.

*Note: If after reading this report you would like a list of conference attendees and more information about conference discussion of recommendations, please contact Grow Smart Rhode Island at 401 273-5711.*

## Acknowledgments

*During the development of our program presentations and policy recommendations, Grow Smart Rhode Island received input from the people listed below, who have direct knowledge about brownfields issues. We deeply appreciate their assistance. While the following policy recommendations have been strongly influenced by the input of these individuals, they are the work of Grow Smart Rhode Island and do not necessarily reflect the views of every individual consulted.*

Robert Atwood, Resource Control Associates, Inc.  
Katia Balassiano, Town of Burrillville  
Victor Barros, Jr., RI Economic Development Corp.  
Daniel A. Baudouin, The Providence Foundation  
Kendra L. Beaver, Save The Bay  
Christopher Bergstrom, RI Economic Policy Council  
Jeanne Boyle, City of East Providence  
Sean Coffey, Peabody & Arnold  
Claude Cote, Tillinghast, Licht, Perkins, Smith & Cohen  
Michael Creasey, John H. Chafee Blackstone River Valley National Heritage Corridor Commission  
Nicholas Deane, Deane Redevelopment  
Merlin A. DeConti, Jr., P.E., Johnson & Wales University  
George DeTarnowsky, Central RI Development Corporation  
John DeVillars, Brownfields Recovery Corporation  
James H. Dodge, Grow Smart Rhode Island  
Dennis Esposito, Adler, Pollock & Sheehan, P.C.  
J. Todd Fernandez, Massachusetts Office of Brownfields Revitalization  
Catherine Finneran, Massachusetts Dept. of Environmental Protection  
J. Joseph Garrahy, J. Joseph Garrahy and Associates  
Terry Gray, RI Dept. of Environmental Management  
Richard Greenwood, RI Historical Preservation & Heritage Commission

Leo Hellested, RI Department of Environmental Management  
John P. Hartley, GZA Environmental, Inc.  
Elise I. Jakabhazy, City of Providence  
Lynne Jennings, U.S. Environmental Protection Agency  
Barbara Landau, Brownfields Recovery Corporation  
Eli Levine, Brownfields Recovery Corporation  
Kirsten Means, Main Street RI  
Robert E. Mendoza, U.S. Environmental Protection Agency  
R. Christopher Noonan, John H. Chafee Blackstone River Valley National Heritage Corridor Commission  
John O'Brien, Rhode Island Statewide Planning Program  
Tim O'Connor, Vanasse, Hangen, Brustlin, Inc.  
Pamela M. Okolita, AICP, Edwards & Kelcey, RISEP  
Kelly Owens, RI Department of Environmental Management  
Kenneth Payne, RI Senate Policy Office  
William Penn, The Clean Land Fund  
Jan Reitsma, RI Department of Environmental Management  
Chris Reynolds, Vanasse Hangen Brustlin  
Richard A. Sherman, Edwards and Angell  
Linda Silveira, East Bay Community Development Corporation  
Robert I. Stolzman, Adler Pollock & Sheehan  
Bruce Vild, RI Office of Statewide Planning

## **Revitalizing Brownfields**

### **How can Rhode Island do more?**

Rhode Island's long industrial legacy has left its mark on the landscape, often in the form of brownfields – abandoned or underused industrial and commercial facilities where real or perceived environmental contamination deters redevelopment. The exact magnitude of this problem has not been calculated, but conservative estimates put the number of brownfields in Rhode Island well over 300.<sup>1</sup> These range from large sites owned by the Department of Defense on Aquidneck Island and elsewhere to individual mill properties, waterfront industrial sites, and vacant, urban parcels.

Left unaddressed, brownfields drain surrounding areas of their vitality, exacerbating neighborhood blight and economic stagnation. Environmental contamination poses health threats, and abandoned buildings encourage vandalism and illegal dumping. These properties, many of which do not contribute to the tax base and do not represent the highest and best use of the land, are also a fiscal drain for municipalities, reducing their ability to provide public services and contain local property taxes. Furthermore, land is a limited resource in Rhode Island. Developing farmland and open space (rather than redeveloping once-used property) compromises our future economic and environmental well being.

Brownfields represent a valuable alternative resource for future development, for revitalizing our cities and towns and reducing the demand for greenfield development. They are also an untapped resource for new tax revenue. The fifty-six brownfields that have been redeveloped in the state thus far have already brought in more than \$2.25 million in tax revenues and over 1000 new jobs.<sup>2</sup> Buildings and structures within brownfields often have the architectural quality and historical significance to become important community landmarks. Realizing the enormous economic and neighborhood development potential of brownfields, however, will not be possible without successful remediation and redevelopment. Significant barriers – liability concerns, lack of financing, and the complex regulatory environment – have kept many brownfields idle. The trend in Rhode Island and across the country has been to abandon these sites and instead build on undeveloped land where new infrastructure must be installed.

Rhode Island made great strides toward addressing these problems in the mid-nineties, passing the Industrial Property Remediation and Reuse Act in 1995 (and its amendment in 1997) and establishing a voluntary program for brownfields cleanup through DEM. Unfortunately, after a promising start to the program, Rhode Island's effort has lost some of its momentum in recent years. We have fallen behind states such as Massachusetts and Pennsylvania, which have aggressively

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<sup>1</sup> "\$1.25 million to help with toxic cleanups." Providence Journal (May 22, 2000). The US Environmental Protection Agency (USEPA) CERCLIS database lists 200 environmentally contaminated sites (these may or may not be brownfields). Thirteen of these are Superfund sites. The RI Department of Environmental Management (DEM) lists more than 650 sites statewide with environmental contamination of some kind. Both the USEPA and DEM lists, however, contain only those sites of which the respective organizations are aware. There has been no exhaustive statewide survey of polluted or brownfield sites.

<sup>2</sup> DEM, *Brownfields Economic Indicator Tracking*. August 2000

implemented innovative and comprehensive statewide initiatives to promote the remediation and reuse of brownfields. The economic and environmental gains in those states have been substantial, but in Rhode Island, brownfields reuse remains a time-consuming, costly, and complex process.

The challenge of brownfields remediation and reuse requires an holistic approach. While environmental remediation is an essential part of any brownfields program, a cleanup program alone does not result in the productive reuse of idle property. Economic development is the other half of the equation. Sites must be assembled, marketed and matched with developers and tenants, and the whole process needs to be coordinated with state and local goals for economic growth. In order to attract private investment in this process, the public sector needs to ensure timeliness, regulatory certainty, and some measure of liability relief. Active participants in making the revitalization of brownfields a reality must include not only environmental regulatory agencies, but also economic development organizations, municipalities, state planners, non-profit organizations, financial institutions, and the development community.

Seven main policy/program areas present potential opportunities to strengthen Rhode Island's approach to brownfields: more effective leadership and coordination, state agency staffing changes, coordination between state agencies and municipalities, addressing liability concerns, financial incentives, reforming arsenic policy, and new federal legislation.

# Recommendations

## 1. Provide leadership and coordination

An effective brownfields program must combine many elements:

- an efficient remediation program
- pro-active marketing of sites to developers
- financial assistance and incentives for site assessment, remediation, and redevelopment
- clear, accessible information and guidance for property owners and developers about the regulatory process and about available financial assistance
- developer access to capital
- attention to traditional economic development issues of infrastructure, transportation access, and labor availability
- attention to zoning issues and community concerns

Successful brownfields redevelopment therefore requires full state commitment to the objective; coordination amongst state planning, economic development, environmental, housing, and historic preservation agencies; and close cooperation between state agencies and municipalities.

As it is currently implemented, Rhode Island's program is an environmental remediation and regulatory program within the Department of Environmental Management. It is not a coordinated effort among state agencies, nor is it a redevelopment effort fully integrated into statewide planning initiatives. This coordination and integration will only occur if brownfields redevelopment is made a clear priority at the highest level.

**We call on the Governor and the General Assembly to make brownfields remediation and reuse a clear priority for state action, to raise the profile of the issue, and to take steps to ensure the coordination and integration of state efforts to encourage brownfields redevelopment.**



## Recommendation

Establish an Ombudsman's Office for Properties Recycling and Brownfields within the Governor's Office to promote and facilitate coordination among the state agencies working on a project, facilitate communication between state agencies and municipalities, and offer assistance to property owners and developers. This office should be established within the Governor's Office to ensure public accountability and a high profile for brownfields issues. The Office should be distinct from, yet able to coordinate among, other state agencies; it should be staffed primarily by professionals with economic and/or real estate development expertise; and it should serve as a resource for developers and municipalities interested in brownfields redevelopment. In conjunction with DEM and EDC, the Ombudsman should increase the visibility of programs available for brownfields redevelopment and educate stakeholders and the general public on brownfields issues. The Ombudsman's office should also publish a web page with links to other agencies, departments, and programs pertaining to brownfields. An Advisory Committee of brownfields stakeholders should be established to guide the Ombudsman's office.

## Recommendation

The Governor's Council on Growth Issues should recommend specific policies for supporting brownfields reuse, in accordance with Rhode Island's *State Guide Plan*, which emphasizes directing growth to existing urban areas and reusing developed land.

**Example:** The Massachusetts Governor's Office of Brownfields Revitalization was established by an act of the state legislature in 1998 and started with a full-time staff of two in June 1999. The office acts as the ombudsman for specific projects, guiding municipalities, property owners, developers, and others through the remediation and redevelopment process. The office coordinates between state and local agencies, provides information and expertise, and works to raise the profile of brownfields issues in the state. The office also works closely with the Massachusetts Economic Development Corporation and Office of Business Development to implement Massachusetts's environmental insurance and financing programs.

## 2. Strengthen state agency organization and staffing

### Department of Environmental Management

In the past several years, a number of senior level staff from DEM's Office of Waste Management – the office that developed and administers DEM's brownfields program – have left the department for private firms. Due to budgetary and personnel constraints, DEM has been unable to replace them expeditiously with highly experienced staff. Participants in several of our focus groups have observed that those changes within the department have created a break in institutional memory and a shift in the program's philosophy. This has resulted in inefficiency, delays and a conservative decision-making process, which is sometimes exacerbated by inconsistent or incomplete submissions by consultants. Projects that might have moved expeditiously through DEM a few years ago are now more apt to meet with delays, according to lawyers and environmental consultants familiar with the program. Environmental remediation and liability relief lie at the core of any brownfields program, and if Rhode Island's environmental remediation process is laboriously slow, costly, and uncertain, as many describe it currently, we will not succeed in redeveloping our brownfields.

**Example:** Many states have web pages that provide clear information to interested parties. Oregon's Department of Environmental Protection website, for example, provides a step-by-step account of the review process; Pennsylvania's includes an informative Frequently Asked Questions sheet that outlines in plain English who is liable for environmental contamination; and the Massachusetts Office of Brownfields Revitalization website provides valuable contacts for help with site assessments, legal aid, funding, and insurance coverage.

**Example:** Many other states – Pennsylvania, Connecticut, Oregon, and Minnesota, for example – guarantee that each review will be conducted in a certain number of days, 30-90 depending on the state.

### Recommendation

Reorganize DEM's approach to brownfields to serve site cleanup projects more efficiently. Develop a uniform format for report submissions and a standard timetable for the DEM review process; consolidate all site cleanup decisions more fully under one program; assign each brownfields project to one staff member responsible for coordinating that project's passage through the regulatory process; develop clear explanatory brochures and web pages about the assessment and remediation process so that interested parties can easily get accurate information about DEM's program.

## Recommendation

Address the staffing issue at DEM by assigning at least one or two more full time staff to the Office of Waste Management for the brownfields program and by enabling DEM to offer competitive pay levels to attract and retain experienced candidates for senior level staff positions.

## Recommendation

Explore the possibility of developing a Licensed Environmental Professional (LEP) program in the future. Private environmental professionals could be licensed to oversee certain environmental assessment and remediation procedures currently carried out by DEM staff on behalf of owners, developers, and others.

## Economic Development Corporation

The EDC currently does not have a full-time staff person working on brownfields redevelopment. This severely hampers their efforts to redevelop Rhode Island's brownfields, much less manage new brownfields programs. This problem is urgent: the USEPA recently granted \$1 million to EDC and DEM to capitalize a Brownfields Cleanup Revolving Loan Fund, but the EDC has no one to administer the program.

In addition, most Rhode Island brownfield properties are not actively and creatively marketed to potential developers. Information currently available to stakeholders about Rhode Island's brownfields program is confusing and unclear, and information available to policy-makers about the number and condition of brownfields in the state is fragmentary.

## Recommendation

Ensure that there is adequate funding for EDC to have at least one full-time staff person devoted to marketing brownfields sites, administering the brownfields Cleanup Revolving Loan Fund and other federal brownfields programs, and coordinating with cities and towns.

**Example:** Other states with successful brownfields programs have recognized the need to properly fund their state environmental regulatory departments. In New Jersey, for example, then-Governor Christine Todd Whitman recently added seven new staff members to the New Jersey Department of Environmental Protection to work on permitting for brownfields projects. When Massachusetts expanded the number of brownfields audits their Department of Environmental Protection was mandated to conduct, the state allocated \$10 million to increase the number of staff at DEP and to train staff.

**Example:** In Connecticut, a state board of examiners administers an examination and licensing process for environmental professionals. Projects in the state's mandatory and voluntary site remediation programs come under an initial review by the Department of Environmental Protection, which decides whether the department will need to review and approve remediation, or whether a Licensed Professional can oversee cleanup in accordance with state remediation standards. Currently, only 25% of projects are handled directly by the state. For those projects that DEP does not oversee, it audits 70% a year. A spokesperson for the department reports the LEP program has lightened the Department's caseload of the and enabled staff to focus on the most complex and environmentally sensitive cases.

**Example:** Connecticut has five staff members (and 3.5 FTEs) between two economic development offices who work on brownfields redevelopment projects. They market brownfields projects, administer some of the state's brownfields funding programs, run an online brownfields inventory for the state, and, according to a DEP staff member, work very closely with the DEP to redevelop brownfields sites.

## **Recommendation**

The EDC should make the promotion of Rhode Island's brownfields program a high priority. The EDC should work with cities and towns to market brownfields sites that they have identified, and to coordinate this marketing with statewide industrial land use and growth planning goals. As part of its marketing efforts, EDC should update its written materials about the brownfields-related programs and incentives it administers.

## **Recommendation**

Develop a statewide inventory of potential redevelopment sites. While it would be useful to have an inventory of brownfields sites, our research shows that other states have had only limited success soliciting listings for such inventories because of the stigma associated with brownfields.<sup>1</sup> Rhode Island already has several partial industrial/commercial inventories through Statewide Planning, private organizations, and individual municipalities. Legislation exists mandating the creation of such an inventory, and EDC has begun one. What is needed now is to consolidate existing databases, expand the EDC's inventory to include municipally-owned sites, and make the inventory readily available by posting it online.

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<sup>1</sup> Pennsylvania's Brownfields inventory had only 20 listings during its first year. Once the state began offering \$1000 to local governments for each listing they added, the inventory increased to include 250 listings in its second year, though this is still a small number for such a large, industry-rich state. The state is planning to change the name of the inventory to reduce the stigma associated with the word "brownfield." Perhaps because of this stigma, perhaps as the result of technical problems, there have only been 13 listings on Massachusetts' inventory since the list began in early October, 2000.

### **3. Provide State-Funded Financing/Incentives**

Financial assistance of grants, below-market loans, and/or tax incentives for Rhode Island brownfields assessment, remediation and redevelopment is very limited. To date, financial assistance has been in the form of federal grants from USEPA for site assessments carried out by DEM and some Economic Development Act grants to municipalities and state agencies. In September, 2000, DEM and EDC received a grant of \$1,000,000 from the USEPA for a revolving loan fund that could be used by private developers for assessment and remediation, with the understanding that EDC would administer the loan. It is not yet clear, however, how much staff time EDC will commit to the administration and marketing of this program. The only tax incentive currently available in Rhode Island specifically for brownfields is a federal incentive administered by the EPA. (This incentive has somewhat restrictive qualifying requirements and has not been used.)

A number of brownfields properties include mills and other historic buildings, and some of these may qualify for financial assistance provided for building rehabilitation through the Rhode Island Mill Revitalization program, administered by the EDC. The state allows a 10% investment credit for owners who rehabilitate mill buildings certified in the program and lenders who loan money for rehabilitation. Businesses locating in these buildings are also eligible for a tax credit for wages paid to new employees. While this is helpful to owners and businesses in mill buildings, it is not specifically a brownfields funding program because it does not provide funding or tax credits for the assessment and remediation process itself.

Federal tax incentives are available for the preservation of historic buildings listed on the National Register of Historic Places, and some historic industrial buildings located on brownfields properties could meet the qualification for those incentives. A state tax incentive for commercial historic structures now being considered will further augment the federal incentives. However, these tax incentives apply to costs for building preservation only, not for assessment and remediation.

**Examples from other states:**

There are a variety of funding and incentive programs available in other states.

- Pennsylvania's Industrial Sites Reuse Program provides grants and loans for environmental assessments and remediation. Municipalities, Redevelopment Authorities, and Economic Development Agencies are eligible to receive loans for site assessments; these groups as well as private companies can receive loans for remediation. Funding for assessments is available up to 75% of the project's costs, or \$200,000 per fiscal year. For remediation, 75% of project costs, or \$1 million per fiscal year.

- Michigan's Site Reclamation/Site Assessment Grants Program uses \$35 million in bond proceeds to provide grants for assessment and cleanup at sites where a developer has been identified.

- Delaware's Hazardous Substance Site Cleanup Loan Program provides funding for owners, operators, and responsible parties to remediate environmental contamination. Funding comes from the Water Pollution Control State Revolving Fund, so the fund only pays for work directly related to improving or protecting groundwater, surface water, or sediment quality. The maximum loan amount per site is \$250,000.

- Ohio's Urban Redevelopment Program provides loans up to \$5 million to municipalities or non-profit economic development organizations for real estate activities leading to developable parcels in distressed areas. These funds will also cover site remediation.

*For more examples of funding mechanisms from other states, please refer to the Appendix.*

**Recommendation**

The Governor should establish a working group to develop a brownfields financial incentive/assistance proposal for the 2002 legislative session. The working group should specifically consider financial assistance for assessment, remediation, and other up-front costs faced by developers. Financial assistance that encourages municipal and community development corporation involvement in brownfields projects is also needed; such funding might cover assessment and remediation costs and/or staff time on large projects. The working group should make sure that there is financing available for projects with a wide range of end uses.

**Recommendation**

The Mill Revitalization Act should be evaluated and the act amended to better serve brownfields projects. Revisions might include expanding it to provide tax incentives for site remediation work, otherwise improving coordination between mill reuse and contamination issues, and expanding the act to include housing as a reuse supported by tax incentives. The period for identification of eligible properties, which has expired, should be extended.

**Recommendation**

The Ombudsman's Office, in close consultation with the Governor's Washington Office and the Rhode Island Congressional Delegation, should provide assistance to municipalities and developers in identifying Federal funding programs that may be applied to brownfields redevelopment projects and referring them to the appropriate contacts for those programs. There are approximately 80 such programs among 20 federal agencies which have been included in the brownfields National Partnership Action Agenda established in 1997. These include HUD's Community Development Block

Grant Section 108 loans and brownfield Economic Development Initiative Grants, and the Rehabilitation Tax Credit for historically significant income-producing properties.

#### 4. Address liability concerns

Under the Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, past or present owners and operators of a contaminated site are federally liable for cleanup costs regardless of whether they are responsible for the site's contamination. Under Rhode Island law, developers and prospective buyers of a site are protected from liability for contamination if they have remediated the site to an acceptable standard under the state program and entered with DEM into a Settlement Agreement and Covenant Not to Sue. The state has a Memorandum of Agreement with the USEPA to limit federal liability for sites under Settlement Agreements; however the Memorandum of Agreement only extends to a limited list of sites and may not be entirely ironclad.

Liability remains a major stumbling block for developers and prospective purchasers seeking private financing. Banks remain skittish about funding brownfields redevelopment projects because of fears of lost collateral, remediation cost over-runs, and liability if the borrower defaults. Brownfields redevelopment is costly, and any threat to private financing is a threat to the state's brownfields effort.

Liability also presents difficulties for municipalities (as well as for redevelopment authorities and community development corporations). The Industrial Property Remediation and Reuse Act defines the liability of the various parties involved with brownfields activities, but it makes no direct mention of either municipalities or community development organizations, leaving the extent of their liability unclear and open to differing policy interpretations. Whether these groups are exempt from liability or not, the vagueness of the statute effectively deters municipal and community involvement in brownfields projects.

#### Recommendation

Establish an environmental insurance program for brownfields, similar to that in Massachusetts, to reduce the costs of

**Example:** The Massachusetts Brownfields Act of 1998 offers liability relief to municipalities, redevelopment authorities, and community development corporations as long as they did not cause or contribute to contamination and as long as they report releases to the Department of Environmental Protection, respond to imminent hazards, and work to divest themselves of the property. In Pennsylvania, the Economic Development Agency, Fiduciary and Lender, Environmental Liability Protection Act of 1995 offers similar protections.

**Example:** The Massachusetts brownfields Redevelopment Access to Capital (BRAC) Program, administered through MassBusiness Corporation, provides environmental insurance coverage issued by AIG Environmental to lenders as well as developers, buyers, and property owners. The program provides coverage for cost over-runs and third party lawsuits, and for lenders, against loss on loans for development projects on contaminated sites. The policies are pre-negotiated, and the premiums for secured lender policies are heavily subsidized by the state. Funding for the program came from a \$15 million legislative appropriation from the state budget.

environmental insurance and expand its usage within the state. By providing protection against remediation cost over-runs and lost collateral, environmental insurance can enable parties to secure private financing.

### **Recommendation**

Provide statutory liability relief explicitly for municipalities, redevelopment authorities, and community development corporations, similar to the liability relief currently afforded lenders under Rhode Island's brownfields statutes.

## **5. Establish coordinated effort between the state and municipalities**

In order to identify, coordinate, and shepherd the redevelopment of former industrial properties and districts on a local level, municipalities need to take a more active role in the brownfields process and both state agencies and municipalities need to cooperate in the identification and marketing of brownfields. When DEM has solicited projects from municipalities for Federal Assessment Pilots, the Department has encountered varying levels of interest. On the other hand, some municipal planners have complained that their involvement in the redevelopment process is constrained by a lack of communication from DEM about ongoing environmental clean-ups. Some have also complained that because the EDC markets its own sites, it sometimes competes with cities and towns for developers and tenants.

### **Recommendation**

DEM and EDC need to work with municipalities as active partners; the state and municipalities need to share information and better coordinate their activities. One means of encouraging this coordination is to extend the public notice requirement of brownfields projects to the city and town administration where the site is located. (Property owners and others doing cleanup are currently only required to notify their abutters and tenants.)



## **Recommendation**

Municipalities should encourage brownfields redevelopment by forgiving back taxes on brownfields projects that will be redeveloped by an innocent party, as well as by waiving local permitting fees for such projects.

## **6. Find a resolution to the arsenic issue**

New guidelines for a revised arsenic policy were developed by DEM with input from the regulated community, and the Technical Sub-Committee. The arsenic issue was debated between December 1998 and November 21, 2000, when the new policy was finalized and distributed. All of the arsenic submittals under this new policy will be audited until May 2001, when DEM will re-evaluate the policy.

Although DEM reports good results from the amended policy thus far, some of the members of our focus groups have commented that the new regulations have not gone far enough to address the arsenic issue and that it remains a major stumbling block to the reuse of land in Rhode Island, delaying numerous projects with arsenic levels just over the reportable standard threshold. Many sites with no other pollution problems have arsenic concentrations above the threshold that triggers reporting to DEM and entry into the regulatory system. If environmental professionals can document that the arsenic does not result from a release of contaminants, but from general background conditions,<sup>1</sup> they do not have to remediate the site for arsenic. However, this is difficult to prove with any certainty. Rhode Island's low threshold for arsenic produces a backlog of cases at DEM and renders arsenic assessment and remediation a needlessly complex, costly, and time consuming process.

## **Recommendation**

DEM should raise the standard for reporting arsenic concentrations in soil when the department reviews the policy in May 2001. Clearly health is a critical issue, and sites being developed for residential use should continue to be held to high

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<sup>1</sup> DEM defines 'background' as "the ambient concentration of hazardous substances present in the environment that have not been influenced by human activities, or the ambient concentrations of hazardous substances consistently present in the environment in the vicinity of the site which are the result of human activities unrelated to releases at the contaminated site"  
— Rule 3.05 in the DEM *Remediation Regulations*, March 1993.

standards. However, scientific evidence alone has not been able to determine conclusively at what level the arsenic standard should be set. Therefore, DEM and the Department of Health should work together to balance health concerns with the efficacy of the regulatory program, so that DEM can establish a new level above which a developer must prove that arsenic is background.

## **7. Support federal brownfields legislation**

Given the interest of President George W. Bush and EPA Director Christine Todd Whitman in the reuse of brownfields, the prospects for increased support of brownfield redevelopment at a Federal level appear hopeful. Rhode Islanders should support and encourage Senators Chafee and Reed in their demonstrated interest in promoting legislation that would reduce the Federal liability of new owners of remediated brownfields sites and provide significant funds for brownfields reuse.

## APPENDIX

### Funding and Incentive Programs in Other States

#### **Comprehensive Programs: funding programs that include provisions for both private and public parties**

- Massachusetts' Brownfields Redevelopment Fund provides funding for assessment and cleanup, to individuals, private & public entities (not to Responsible Parties). Maximum site assessment financing is \$50,000. Maximum cleanup financing is \$500,000. Project must be in an Economically Distressed Area
- Massachusetts' Predevelopment Assistance Program— \$5,000-25,000 per project with an equal match — for environmental testing, marketing, feasibility studies, etc.
- Wisconsin's Brownfield Grant Program provides \$10 million for public or private use, investigation or cleanup.

#### **Grants, loans and tax incentives to developers for site assessment, cleanup or both**

- New Jersey's Site Redevelopment Act authorizes developer reimbursement for up to 75% of remediation and cleanup costs
- Maryland's Brownfields Revitalization Incentive Program provides loans and grants for developers conducting voluntary cleanups. The total amount available in 1999 was \$1 million.
- Illinois has established a loan program for loans that are matched by banks at 75% of prime rate for terms of 3-15 years (maximum of \$250,000 for commercial, \$350,000 for industrial projects)
- Massachusetts offers a state tax credit for 25%-50% (depending on whether the site has an activity and use limitation) of remediation costs for innocent parties.

#### **Grants and loans to municipalities for coordinating brownfields reuse or funding assessment and remediation**

- New Jersey's Smart Growth Planning Grant Program has allocated \$3 million from the NJ Department of Community Affairs for grants for the identification of brownfields sites and the coordination of brownfields projects.
- Illinois provides \$1.2 million in grants each year for municipalities (limit \$120,000 per city) to coordinate the reuse of contaminated properties. The money is not for remediation activities.
- New Jersey's 2001 budget provides for a \$15 million Brownfields Redevelopment Grant Program (administered by the NJ Redevelopment Authority) to assist municipalities in acquiring and remediating sites.
- New York – a bond act pays for grants to cover up to 75% of assessment and remediation costs for sites which municipalities own or co-own with non-profit organization.
- Minnesota — \$7.8 million in grants for cities for cleanup, up to 75% of project costs per project.
- Wisconsin's Land Recycling Loan Program provides a \$20 million loan pool for loans to municipalities for site assessment and cleanup, with rates at 55% of market rates.
- Michigan provides \$4 million in loans to cities for assessment, demolition, and removal at contaminated sites. The interest rate is 2.25% repayable over 15 years. Cities can repay loans from tax increments collected by a Brownfield Redevelopment Authority.

