Addressing redevelopment of a Brownfield project in Tennessee

Tennessee's Voluntary Oversight and Assistance Program was established in 1994 with the goal of encouraging prospective purchasers to redevelop Brownfield properties by limiting the liability for new owners and providing oversight in the investigation and clean-up process. Under statute (TCA 68-212-224), the Program provides prospective purchasers of impacted properties the opportunity to work with the State on a properties contaminated by hazardous substances, solid waste, or any other pollutant, including petroleum. The Program also offers relief from liability under all environmental statutes that is transferable to successors in title.

The following is a step by step approach on how to address a Brownfields Project under the VOAP.

1. **Perform Phase I and II Environmental Site Assessment** - When purchasing property, you should solicit the services of a qualified environmental consultant to help you determine if past uses of the property may have resulted in the release of contamination. This is done through a Phase I and/or Phase II Site Assessment. It is customary to perform a Phase I to research the past uses and history of the property. If the Phase I reveals any “Recognized Environmental Conditions” that exist at the property, then a Phase II should be conducted. A Phase II involves taking samples of soil, surface water, groundwater and any other potentially impacted media to establish if there were indeed releases to the property and the extent to which the property has been contaminated. Depending on site circumstances, it may be necessary to perform additional sampling to determine the extent of contamination.

   It should be noted that liability protection under Tennessee's Brownfield Law is supported by site characterization. The more information you have about the history and environmental condition of the property of interest, the stronger the liability protection you receive. The statute (TCA 68-212-224) allows the Department to “limit the liability of the participant in any voluntary agreement or consent order entered into pursuant to this section”. This liability protection may be extended to successors in interest or in title, contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries or insurers. Keep in mind that you may be held potentially liable for any contamination that you fail to discover or disclose.

   If the results of your Phase II indicate that your property may have been impacted by previous site activities, this is a good point to begin discussions with Program staff. You may do this by contacting **Evan Spann** at **615-532-0919** or by email at **Evan.W.Spann@tn.gov**. If you did not release, generate or transport the contamination on the property, you will be eligible to enter into a Brownfield Voluntary Agreement. The Agreement will document what your responsibilities are and what you need to do to obtain closure. If you are a liable party, i.e. the party who did release, generate or transport the contamination, the State can work with you to address these issues through a Consent Order.

   For those properties where an Agreement is not needed by the prospective purchaser, but review of Site conditions is desired, a No Additional Action Letter can be issued. In this case, a prospective purchaser (who did not release, generate or transport contamination at the property) of a property may submit technical documents for the divisions' review and concurrence. However, no liability protection will be provided by the State for the contamination noted at the property.
2. **Prepare, negotiate and finalize your Voluntary Agreement** – After contacting the Program representative and receiving a model Agreement, you will need to decide what areas you wish to address under the Agreement. It is advisable to seek the assistance and advice of an environmental consultant and attorney to determine the content of your Agreement particularly if the property has complex issues. In addition, it is recommended that you schedule a conference with Program staff to familiarize them with your project and receive their recommendation as to what needs to be done to make the property safe for your intended reuse. This can help expedite the process of achieving approval of your project and Agreement. It is also an excellent opportunity to get answers for any questions you might have regarding the Agreement.

Based on feedback from your discussions with Program staff, you should complete certain sections of the Agreement for submittal for Department review and approval. While some items included in the model Agreements are necessary due to statutory or programmatic considerations and cannot be changed, there is some flexibility to modify certain parts of a model based on site-specific circumstances or other considerations.

3. **Conduct public notice and constructive notice** – The VOAP statute requires that certain public notice requirements be conducted. Once the Agreement has been negotiated to the satisfaction of all parties, notice must be sent by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. If the participant desires to receive Third Party Contribution Protection it will be necessary to publish a notice in a newspaper of geographical distribution summarizing the agreement and provide a 30 day comment period for any interested party to respond. Upon completion of the public comment period, the Agreement can be finalized.

4. **Perform agreed actions in Voluntary Agreement** – The finalized Agreement will contain the various activities that you and the Department have agreed to conduct in order to receive liability protection. This can be a variety of activities such as reimbursement of past costs to the remedial action fund, preparation of a Soil Management Plan to guide redevelopment, implementation of a Notice of Land Use Restrictions to restrict future use of the property or conducting further investigative and remedial actions.

5. **Site Closure and No Further Action Letter** – Upon completion of all the agreed actions included in your Agreement, you will receive a No Further Action Letter. This letter is extremely important to demonstrate to potential buyers or lenders that you have addressed the contamination to the satisfaction of the Department.