

# BANKER & TRADESMAN

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## DIRTY PARCELS

# Why We Rarely Hear About New Superfund Sites

## Brownfields Programs Fund Bulk Of Cleanups

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SPECIAL TO BANKER & TRADESMAN

The U.S. Environmental Protection Agency recently announced that a former industrial property in the town of Franklin was proposed for designation as a Superfund site. That designation, known as a listing on EPA's National Priorities List (NPL), would allow the use of federal Superfund monies for remedial actions.



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We rarely hear of NPL designations these days. Indeed, there are only 37 NPL Superfund sites in Massachusetts, with most added to the NPL decades ago. Given that the law establishing the Superfund, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) is 35 years old, shouldn't there be more sites getting federal monies for cleanup activities through NPL listings?

The short answer is no. NPL sites are the worst of the worst hazardous waste sites. While the EPA believes most NPL sites have the potential for future reuse, many may never be re-purposed and most are in remediation and mothballed for a long, long time. The NPL system is simply not designed to fund the cleanup of the thousands of contaminated sites nationwide.

Instead, cleanup and redevelopment of most contaminated properties is better addressed through state and federal Brownfields programs. What is the difference between a Brownfields site and an NPL Su-

perfund site?

First, some history. CERCLA, adopted in 1980, was designed to address our legacy of pollution. CERCLA set up a fund – the Superfund – to pay for the cleanup of the most severe sites where responsible parties are not to be found. CERCLA also imposes liability on parties responsible for contamination at sites through a broad liability scheme that holds past and current owners and operators strictly liable. That same liability scheme is at the core of the Massachusetts Oil and Hazardous Material Release Prevention Act – Massachusetts General Laws Chapter 21E.

The liability mechanism under both laws applies to any location where there has been a release or threat of release of oil or hazardous material. As a result, Chapter 21E and CERCLA became a major impediment to redevelopment of properties with historic contamination. During the 1990s, many argued that the broad scope of Chapter 21E and CERCLA liability and strict cleanup standards were largely responsible for the abandonment of contaminated properties. Who would want to own or invest in a property for which one is responsible for all cleanup costs, even where one did nothing to cause the contamination or bring pollutants to the property?

### The Rise Of The Brownfields

Fast forward 15 years. Industrial properties that no one wanted to own or develop because of a known or perceived risk of contamination became re-characterized as "Brownfields." To encourage the reuse of Brownfields sites, instead of the development of undeveloped "greenfields," public policy shifted: The use of public resources

and monies for grants, low-interest loans, technical assistance, tax incentives and liability relief for Brownfields sites became public policy and the law.

In 1998, Massachusetts adopted the Brownfields Act to advance the reuse of underutilized or abandoned contaminated properties. In 2002, the Small Business Liability Relief and Brownfields Redevelopment Act amended CERCLA by providing funds to assess and cleanup Brownfields.

As a result, EPA's focus and use of public monies shifted from NPL sites to cleaning up and reinvesting in Brownfields sites. According to EPA, there are over 450,000 Brownfields sites in the U.S., and each dollar invested on Brownfields cleanup averages over \$17 in other investments, along with jobs, better community planning and increased value of surrounding properties once the cleanup is completed.

In Franklin, no viable party exists to pay for the multi-million dollar cleanup needed at the 18-acre BJAT, LLC site. The site has been inactive since 1985 and both the town and MassDEP asked for the NPL listing because the site is a threat to public health and the environment. But this site is an anomaly. Most contaminated properties today can and will be cleaned up and redeveloped under federal and state Brownfields programs. Assuring that we have robust Brownfields programs and making the most of them is critical to getting dirty sites cleaner and underused properties in productive use and back on the tax rolls. ■

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