

A True RCRA Brownfield

By Nina G. Marshtein, PG

I have been distressed at the limited description provided by the EPA for a RCRA brownfield. It always seems to involve the cleanup of a property prior to sale or redevelopment. A RCRA brownfield is no different from any other site that has been remediated and sold—it is the sale of a cleaned site and nothing more. To me, a true brownfield is not a site which is remediated, but a contaminated site that is controlled during redevelopment which allows for re-use. A RCRA brownfield should be a site that is actively undergoing cleanup and in pursuit of completion of its post-closure permit, while in use by subsequent owners.

One such site is an electronics manufacturing facility in North Charleston, S.C., which ended manufacturing operations while still remediating a large chlorinated solvent plume. The site is regulated under a RCRA Part B Post-Closure permit, which was effectively preventing the property's sale because the state required prospective buyers to sign the RCRA permit. Thus, the state could seize the land as an asset to fund remediation if the Responsible Party attempted to stop cleanup activities.

When a prospective purchaser expressed interest in purchasing the property, SCS Engineers identified three options for the interested parties—the state, the seller and the buyer—but none were acceptable to all three.

Option 1—leave the worst of the contaminated property under the name of the seller (the seller wanted all of the property sold)

Option 2—have the buyer sign the post closure permit (not acceptable to the buyer who did not want his asset seized)

Option 3—have the state provide the same protection under RCRA as provided for CERCLA brownfields (the state objected).

The state's two greatest concerns were 1) if the state did not have the buyer sign the permit, was there enough money for the completion of the site cleanup?; 2) future owners would not allow the state access which is usually voluntary under the state's brownfield agreements. A review of the site activities and conditions was conducted by the state. The seller prepared a detailed estimate of the remediation costs, approved by the state. A bond was then established by the seller to fund the cleanup.

Another issue was enforceable access to the site. Under the CERCLA-driven brownfield program in South Carolina, these agreements are voluntary with no enforcement activities involved unless there is a violation. It was obvious to all parties that a voluntary contract was not an option. Therefore, the state requested that a consent agreement be negotiated with the buyer, providing the state access and inspection rights in exchange for the waivers of liability usually present in the South Carolina voluntary brownfield contract. In fall 2005, the EPA accepted the contract, making way for the first true RCRA brownfield in the state.

Advancing similar situations requires adequate funding for the completion of permits and the closure of the RCRA site. While RCRA has not always applied the most stringent financial reviews in these situations, the newer regulations (FASB and FIN 47) have tougher accounting standards for accurate estimates of closure costs.

Regulatory access to the property and the remedial systems should be protected through deed restrictions, which are more likely to be identified than a consent agreement or order when a property is transferred. While consent agreements are binding, they don't always accompany the property title, leaving future owners unaware of their presence. Deed restrictions allow the state access to the site, though the property has changed hands.

Nina Marshtein is a project manager for SCS Engineers in Charleston, S.C.

Specializing in Brownfields Redevelopment

- Brownfields
- Environmental Site Assessments
- Remediation
- Risk Management
- Regulatory Compliance
- Civil and Geotechnical Engineering
- Site Development Engineering
- Solid Waste Management
- Water Quality
- Water Resources
- Mining and Quarry Services
- Litigation Support
- Air Quality



KU Resources, Inc.
Investigating the Past, Evaluating the Present, Shaping the Future!



Duquesne, PA | Akron, OH | Green Bay, WI
www.kuresources.com