

# The Brownfields Redevelopment Solution

Prepared for and Presented at Triple Play  
Realtor Convention

“Closing the Deal on Contaminated Sites-  
Solutions for Commercial Real Estate  
Professionals”

December 8, 2015

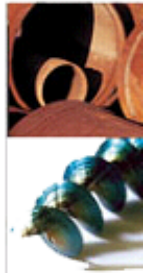
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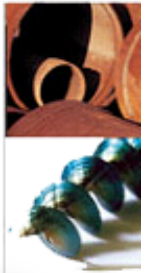
# Topics to be discussed

- **Are Brownfield remediations different from other remediations, or “Is a cleanup a cleanup?”**
- **Knowledge is key for Liability Protection**
- **So is Risk Management**
- **Are Financial Incentives? Vs. Time?**

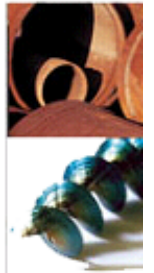


# Brownfields defined

*“Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant*”



# Other Definitions

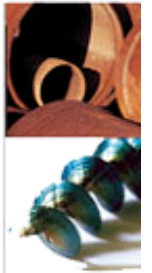


- **NJ's: A former or current commercial or industrial site, currently vacant or underutilized and on which there has been or is suspected to have been a discharge of a contaminant**
- **“A real estate transaction with an environmental personality”**
- **A remedial site with redevelopment value?**



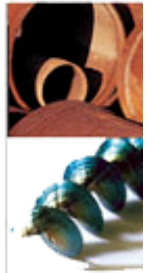
# Where are Brownfields?

- **Everywhere**
- **Sources:**
- **Dry cleaners, industrial parks, oil and gas properties, railroad properties, chemical properties, utility properties, government facilities**



# A Cleanup is a Cleanup

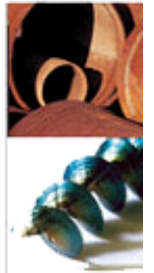
- **Browfield sites follow the same laws, regulations, remediation standards guided by end use, processes, permits, timeframes, O&M and reporting requirements that all other remediations follow**



# Steps in Site Remediation

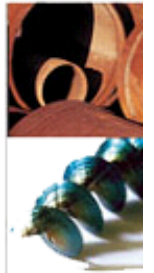
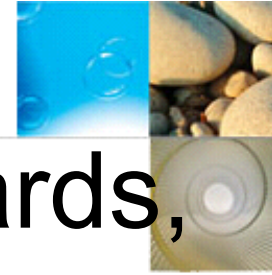


- **Assessment (property, structures, on and off site):**
  - PA, SI for NJ vs. ASTM Phase 1, Phase 2. The difference is **IMPORTANT**
- **Delineation (RI)**
- **Cleanup (RA; deconstruction, removal, waste management): End Use Dependent**
- **QA/QC; O&M**
- **Redevelopment and Reuse**





# NJ Laws, Rules, Standards, Guidance

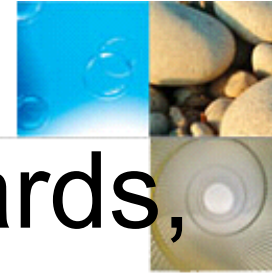


- **Spill Compensation and Control Act, NJSA 58:10-23.11 et seq.; ISRA; UST;**
- **Brownfields and Contaminated Site Remediation Act, NJSA 58:10B-1 et seq.;**
- **Site Remediation Reform Act (SRRRA), NJSA 58:10-C-1 et seq.;**



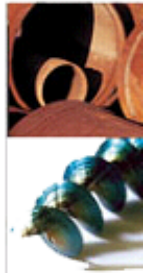
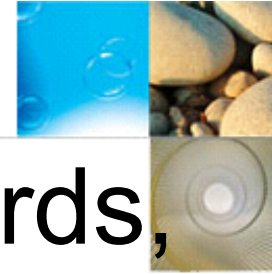
# NJ Laws, Rules, Standards, Guidance (cont.)

- **Technical Regulations for Site Remediation, NJAC 7:26E**
- **Administrative Requirements for Remediation of Contaminated Sites (ARRCS), NJAC 7:26C**



# NJ Laws, Rules, Standards, Guidance (cont.)

- Remediation Standards, NJAC 7:26D (effective 6/2/08 through 6/2/13)
- Guidance: at least 17 documents
- Forms: for everything
- Fees: for everything
- Financial Assurance: sometimes
- Always go to [www.nj.gov/dep/srp](http://www.nj.gov/dep/srp) and get on the ListServe



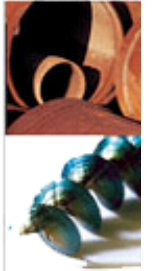
# PA:Laws, Rules, Standards, Guidance



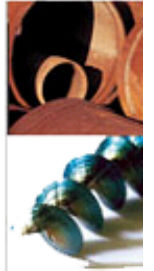
- **3 bill package signed into law by former Governor Tom Ridge on May 19, 1995**
- **ACT 2 - Land Recycling and Environmental Remediation Standards Act: realistic framework for setting cleanup standards**

# PA Act 2

- Remediations may involve one or a combination of standards
- Background Standard
- Statewide Health Standard
- Site Specific Standard

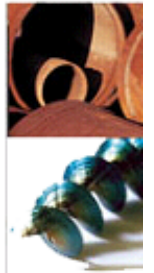


# PA Laws, Rules, Standards, Guidance



- **ACT 3 - The Economic Development Agency and Lender Environmental Liability Protection Act**
- **ACT 4 - The Industrial Sites Environmental Assessment Act**
- **<http://www.dep.pa.gov/Business/Land/Redevelopment/Pages/default.aspx#.VINrm3arQdU>**

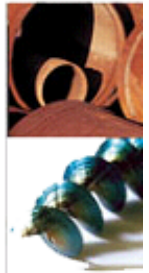
# NY Laws, Rules, Standards Guidance



- **Brownfield Cleanup Program (BCP):**  
The goal of Program is to encourage private-sector cleanups of brownfields and to promote their redevelopment as a means to revitalize economically blighted communities.

# NY Laws, Rules, Standards and Guidance

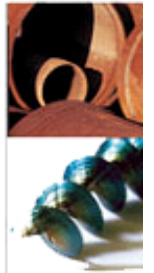
- Provides tax incentives for, the redevelopment of urban brownfields
- 2015 BCP Program Reform: effective July 1, 2015
- Separates BCP eligibility and Redevelopment (Tangible Property) Credit eligibility in New York City



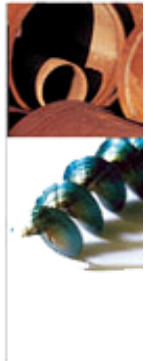


# NY Laws, Rules, Standards and Guidance

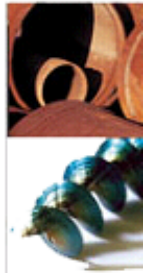
- All sites outside of New York City will be eligible for the Tangible Property Credit without being subject to the new tests
- <http://www.dec.ny.gov/chemical/101350.html>



# Site Remediation: Importance of Due Diligence



- Due Diligence = Reduce the uncertainties
  - Does Contamination affect the Deal and Development (cost, timing)?
- ASTM Phase I: Identify Areas of Environmental Concern
- ASTM Phase II: Subsurface Investigation
- In NJ: Preliminary Assessment (PA) and Site Investigation (SI)
- PA/Phase 1:
  - 1<sup>st</sup> step in identifying Areas of Concern (AOCs)
  - Basis for site characterization
  - Background Data collected
  - Need it to establish Innocent Landowner Defense (AAI, bona fide prospective purchaser, liability protection)



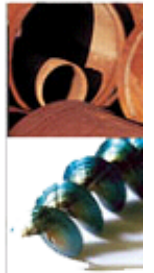
## Due Diligence (cont.)

- **PA/Phase 1 could result in no AOCs identified=finished with remedial process, or**
- **Move to SI/Phase 2 if AOCs are identified**
- **Collect and evaluate data to determine if contaminants are present above standards**



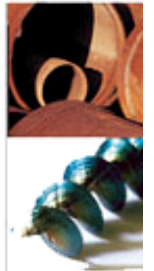
## Due Diligence (cont.)

- **SI involves field sampling, receptor evaluation**
- **Can result in no further work being required or**
- **Move from Due Diligence Phases to Remedial Investigation and Action**



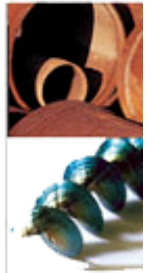
# RI and RA

- **RI investigates the extent of contamination and generates information to evaluate remedial alternatives (which may be presumptive remedies)**
- **RAW includes post-remedial sampling, permits, engineering and institutional controls, O&M**



# Site Remediation at Brownfield Properties

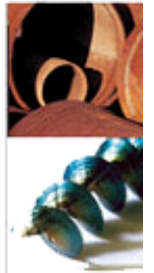
- Process allows you to identify:
- Type of Contamination
  - Oil, hazardous materials, building hazardous materials, PCBs
- Extent of Contamination
- Standards to use based on end use: cleanup? restrictions? combo? permanent? ongoing?





# Of Importance to NJDEP

- **Notification:** where are sites, who is doing the cleanup, how is cleanup proceeding?
- **Receptor Evaluations:** to know of and limit Off-Site Exposure (esp. Soil Vapor Intrusion, drinking water)
- **Immediate Environmental Concerns:** address quickly for public protection
- **Removal of Free Product**
- **Unrestricted Use or presumptive remedies for sensitive receptors**





# Managing the Risks of a Redevelopment

- Know the Site
- Cleanups based on end use
- Clear design documents
  - Health and Safety
  - Soil Management
  - Dewatering
  - Monitoring
  - Measurement and Payment
- Integrate the Contamination and Cleanup into the Design
  - Project layout
  - Soil Reuse and Disposal
  - Encapsulation
  - Vapor barriers

– Q: will NJ move toward risk based cleanups?





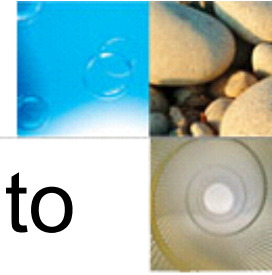
# Brownfield Redevelopment allows for Integration of Cleanup into Project Layout



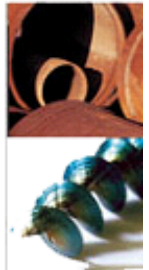
- TCE and metals contamination
- Well characterized.
- Locate building outside of TCE plume
- Vapor barrier
- Structured parking over TCE plume
- Encapsulate metals



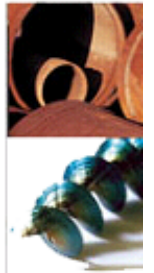
# And Integration of Cleanup into Construction



- Urban fill reused on property
- Off-site disposal of PCB contaminated soil
- PCB characterization and verification during construction
- No deed restriction



# Integration of Cleanup & Construction=Stewardship

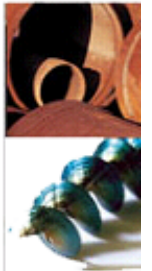


- From the ground up
  - Reuse, repair and retrofit of foundations.
  - Encapsulation of contaminated soils.
  - Site grading to keep unsuitable materials on site.
- Reuse
  - Crushing and reuse on-site (or off-site) of concrete, brick, pavement and demo debris.
  - Recycling of oil contaminated soils into asphalt.
  - Preservation of elements of historic structures, such as facades.
  - Salvage building materials.
  - Assess an existing site—both built and non-built features—and seek a design that incorporate and reuse as much of the existing site materials as practical.
  - Create contract specifications to encouraging reuse of construction/demolition materials
- Full life cycle of materials
  - Consider environmental and health effects from the raw material extraction phase all the way through the end of the product life.



# Brownfield to Parkland

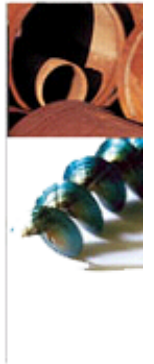
- Former MGP site
- Manages liability without “mothballing” site
  - encapsulates contamination beneath cap.
  - minimizes off-site disposal cost.
- Studies document Increase to adjacent property values





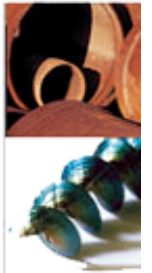
## So, Why the Emphasis of Brownfields as a Remediation Category if a Cleanup is a Cleanup?

- **Incentives available: liability protections, funding to level the playing field, cost reimbursement, tax breaks, attention from select case managers, attention from many government entities.**
- **Municipalities that take over properties for redevelopment have certain exemptions under the SRRA**
- **Innocent Purchaser Status**



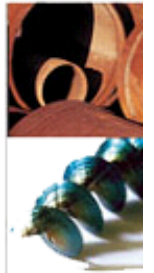
# Incentives

- **Examples of incentive programs**
  - Federal
  - NJ
  - NYS
  - PA
  - CT



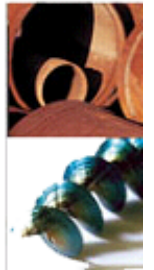


# What Works, What Doesn't



- **Examples of Remedial Plans Turned Bad**
- **Examples of Project Successes**
- **Resources**
- **Toolkit, Organizations, Web Sites**
- **Handout Phase 1 v. NJ PA**

# Contact Information



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