

Welcome

CDFA – BNY Mellon Development Finance Webcast Series: Utilizing the EPA Expensing Incentive Program

The Broadcast will begin at 1:00pm (EDT).

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Utilizing the EPA Expensing Incentive Program

Erin Tehan

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Council of Development Finance Agencies
Columbus, OH**



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Welcome

CDFA – BNY Mellon Development Finance Webcast Series: Utilizing the EPA Expensing Incentive Program

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CDFA is recording this Webcast, and it will be available to view online at www.cdfa.net.

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25th Annual Development Finance Summit

Advancing Development Finance Knowledge, Networks & Innovation



May 9-12, 2011
Boston Park Plaza Hotel & Towers



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MASSDEVELOPMENT
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Utilizing the EPA Expensing Incentive Program

Speakers

Christine Johnson, *Moderator*
BNY Mellon

Charlie Bartsch
U.S. EPA

Darsi Foss
Wisconsin Dept.
of Natural Resources

Sydney Poole
Ohio EPA

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Utilizing the EPA Expensing Incentive Program

Christine Johnson

Product Manager

BNY Mellon

San Francisco, CA



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March 15, 2011

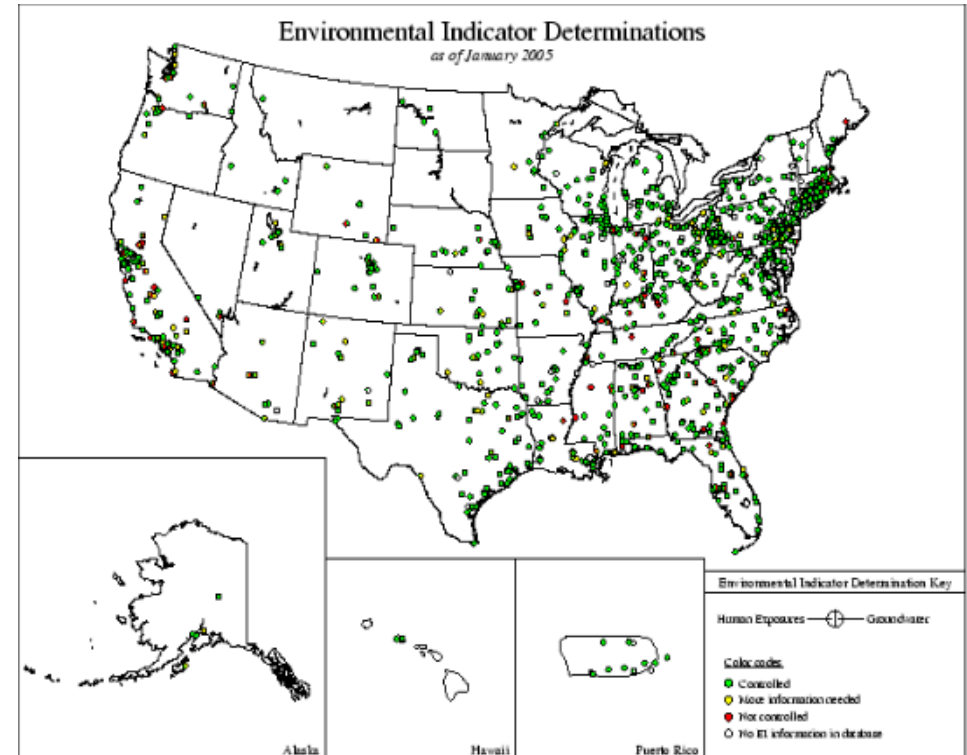
EPA Brownfields Tax Incentive Program

CDFA-BNYM Webcast

Presented by Christine Johnson

What is a Brownfield?

- A brownfield is **real property** that has the presence or potential presence of a hazardous substance.
 - Outside environment only.
 - Hazardous substances defined by CERCLA.
 - Certain exclusions apply (Brownfields Revitalization and Environmental Restoration Act of 2001).



EPA Tax Incentive Program Overview

- Background
 - Originally created in 1997 (Tax Relief Act of 1997) this program has been extended three times (2005, 2007, 2009).
 - The program is designed to allow the taxpayer (beneficial owner of the brownfield site) to fully deduct direct costs of environmental cleanup related to brownfield remediation
 - The taxpayer must hold the property for use in a trade or business, for the production of income, or as inventory.
 - There has been a release, threat of release, or disposal of a hazardous substance at or on the site. (Certified by state environmental agency).
 - Full deduction can be taken in the year costs are incurred

Overview, cont.

- What has changed over time?
 - Elimination of census tract requirements (2000)
 - Expansion of scope to include petroleum product cleanup (2006)
- Where has this program been used
 - SBC Park - San Francisco, CA
 - Alliance Environmental – Westchester, PA
 - Fields Environmental – Bloomington, IN



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Utilizing the EPA Expensing Incentive Program

Charlie Bartsch

**Special Assistant to the Administrator
U.S. Environmental Protection Agency
Washington, DC**



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Brownfield Tax Expensing Incentive: Highlights and Update



Charlie Bartsch
Senior Program Advisor for Economic
Development
US Environmental Protection Agency
CDFA Webcast
March 15, 2011

What this webcast will cover...

- Background and history of the federal brownfield cleanup expensing tax incentive
- What it does
- Key aspects and limitations
- Case study examples

What Are Brownfields?

- The Brownfield Revitalization Act of 2002 defined brownfield sites as *“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.”*
- Practical impact of this definition – **they are all types of properties/sites, in both large cities and small towns everywhere!!**

Brownfield Cleanup Expensing Incentive – the Best Kept Secret in Government ...

- Value of the incentive
 - *Offsets cleanup costs*
 - *Tax advantages of remedies integrated into project design*
 - *Encourages developers to pursue brownfield/infill/smart growth/vacant property strategies*
- Activity only a fraction of level projected at enactment

Legislative history and current status of brownfield expensing tax incentive

- Restrictively targeted original provision signed into law in August, 1997, as part of the **Taxpayer Relief Act** (PL 105-34)
- **Consolidated Appropriations Act** of 2001 repealed geographic restrictions
- Expanded to petroleum sites (beginning 1/1/06) as part of the **Tax Relief and Health Care Act**
- Has lapsed and been reinstated half-a-dozen times since first enacted, as part of broader tax extender bills

Legislative history and current status of brownfield expensing tax incentive

Current status –

- Extended in tax legislation passed by Congress last December
- Now – in effect thru 12/31/11 (retroactive to 1/1/09)
- Some urgency now...current sunset = need to plan, move quickly to use



Expensing Incentive Overview

- ***What it is*** – deduction pegged to cleanup costs, which allows new owners to recover cleanup costs in the year incurred
- ***Uniqueness*** – only federal brownfield incentive targeted to private site owners
- ***Goal*** – effort by Congress to attract new owners to abandoned, contaminated brownfield sites
- ***Value*** – aims to level economic playing field between greenfield and brownfield sites through favorable tax treatment of cleanup costs

Brownfield Expensing Incentive – What it Does

- Allows deduction of “**qualified environmental cleanup costs**” in the year incurred or tax paid
- Can deduct instead of adding the cost to the basis of the property
- Generally available for costs paid or incurred after August 5, 1997, thru December 31, 2011
 - *Petroleum contaminated sites only eligible since 1/1/2006*

“Qualified Environmental Cleanup Costs”

- Costs paid to abate or control a hazardous substance at a **“qualified contaminated site”**
- Can include:
 - *Site assessment, remedial planning, cleanup, monitoring costs*
 - *Costs necessary to install an institutional or engineering control*
 - *i.e., roads, parking lots*
 - *State VCP fees and associated costs*
 - *Removal of demolition debris*

“Qualified Contaminated Site”

- Property must be held by taxpayer
 - *Long-term leases may qualify*
- **Qualified site** must meet 2 requirements:
 - Be held for use in a trade or business, for production of income, or as inventory
 - Has had release, threat of release, or disposal of a hazardous substance at or on the site
 - *Uses broad Superfund definition – ignitable, corrosive, reactive, or toxic*

“Qualified Contaminated Site”

- **Qualified site** considerations:
 - State environmental agency must provide a statement that site meets latter requirement (release/threat of release – the brownfield qualification)
 - *Short note; verification that property in state VCP is sufficient*
 - *All states processed in 1 month or less*
 - *State does not determine whether any work has taken place; only that BF exists*
 - Sites on NPL/proposed for listing, ineligible

Brownfield Expensing Incentive – the paperwork...

- Simple incentive paperwork
 - Small businesses -- *2-page form, Section 198 expensing*
- Companies/partnerships with \$10M+ in assets–
 - *longer Schedule M-3*
- Individuals –
 - *“Other expenses” line on Form 1040, Schedules C, E, or F*
- ***Think about an amended return....***
 - *...for expenses incurred between 1/1/2009 and now...*

Caveats and Limitations -- Level of Recent BF Expensing Activity

From 2004-2007

- ***175 applications*** in 29 states
- Project leaders – Wisconsin (19), Massachusetts (16), Rhode Island (15)
- ***\$295 million*** in cleanup costs expensed
 - Treasury estimate pre-1997 enactment: 10,000 properties annually would expense \$350 million in cleanup costs
- ***Never used*** in 19 states

Caveats and Limitations -- Why has the Incentive Gotten so Little Use?

- Uncertainties/ambiguities/lack of knowledge
- Expired, on again/off again authority causes uncertainty, makes planning difficult
- Lack of information, bad information among development, accounting, and legal communities
- “Gotcha” fears
- Impacts/uncertainties of recapture

Caveats and Limitations: Recapture Penalties

- Deduction may be recaptured as ordinary income when property is sold or otherwise disposed of --
 - *Taxed as ordinary income rather than at capital gains rate, if taxpayer would have received an addition to basis if this deduction had not been elected*
 - *Lack of clarity, rules, on timeframe inhibits use*

Case Studies of the Brownfield Expensing Incentive

Where has the incentive been used?

- T.R. Thickston – *Bloomington, IN*
- Goodwill Business Park – *Chester, PA*

T.R. Thickston Glass Company, Bloomington, IN

- Former recycling center with foundry waste
- Project spearheaded by environmental consulting firm familiar with tax incentive
- Property purchased at country tax sale
- Cleanup included removal of 60 loads of contaminated soil, import of 80 loads of new soil and clay



T.R. Thickston Glass Company, Bloomington, IN

- Indiana certification process requires affidavit, Phase I and II site reports
- Incentive saved about \$80,000 in tax liability, used to support cash flow until redevelopment began
- Site leased to commercial glass operation; created 3 jobs
- Developer has done 2 more projects – former plating facility, former junkyard



Alliance Environmental/Goodwill Fire Department – West Chester, PA

- 8.5 acre former pharmaceutical property, dump site in economically distressed area
- Groundwater contamination
- Property acquired in 1998 by Alliance Environmental
- Cleaned and redeveloped as part of Alliance's corporate expansion plan
- Linked to PA state brownfield incentives



Alliance Environmental/Goodwill Fire Department – West Chester, PA

- Now, location of Good Will Business Park: 100,000 sq. ft. of retail, Alliance Hdqtrs., public service facilities including fire department
- Incentive provided Alliance with nearly \$800,000 in tax relief, received needed cash injection as tax refund
- Alliance has used incentive on a second project, a former concrete plant



For additional information...

From IRS –

- *Publication 954, “Tax Incentives for Empowerment Zones and Other Distressed Communities, at:*
www.irs.gov/pub/irs-pdf/p954f.pdf

From EPA

- *Designated state agency contacts available at:*
www.epa.gov/swerosps/bf/stxcntct.htm

Any questions?

Contact Charlie Bartsch at

Bartsch.charlie@epa.gov

Make sure to visit EPA's brownfields web site:

www.epa.gov/brownfields

Check out...

*A Guide to Federal Tax Incentives for Brownfields
Redevelopment*

AND

*Attend Brownfields 2011
Philadelphia, April 3-5!!*

Utilizing the EPA Expensing Incentive Program

Darsi Foss

Section Chief

Wisconsin Department of Natural Resources

Madison, WI



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Wisconsin's Approach to the Brownfields Tax Incentive

Darsi Foss, Section Chief
Brownfields and Outreach

Wisconsin Department of Natural Resources

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Brownfields Tax Incentive in WI

- Since 1998, 68 property owners have received pre-certification letters from WDNR
- Why it's working?
 - One Cleanup Program
 - Outreach
 - Simplified process for pre-certification

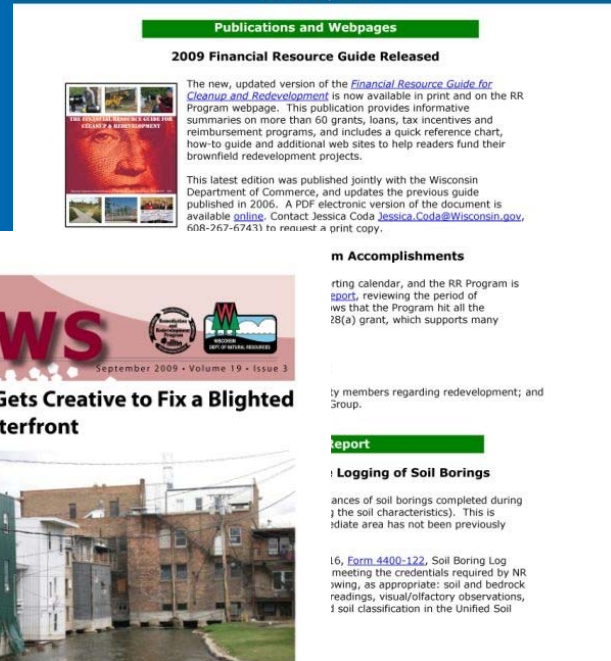
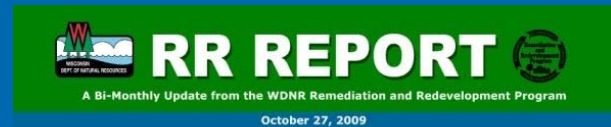
One Cleanup Program

- One set of rules – for *all cleanups*
- One group of staff
- All incentives apply
- Efficiencies and simplification
- Most comprehensive OCP MOA with EPA



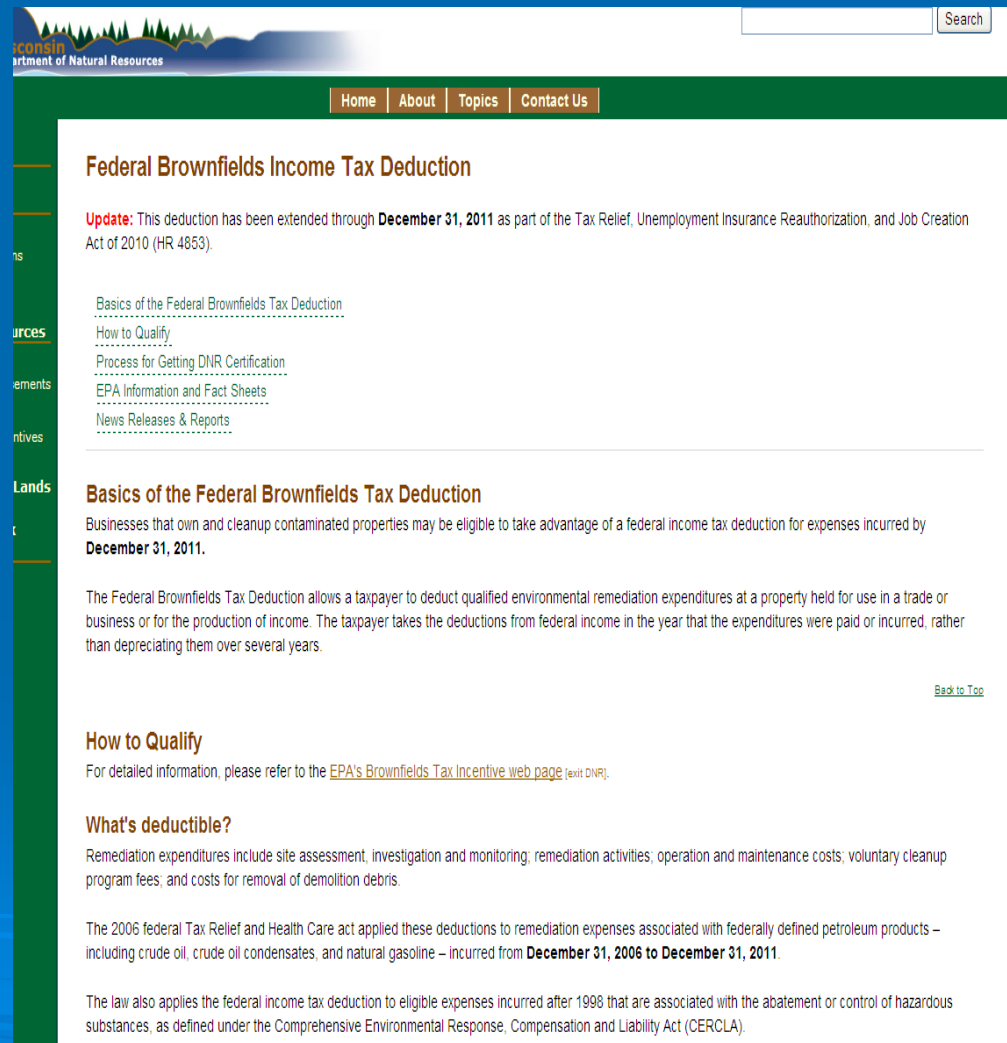
Outreach

- Bi-weekly and quarterly newsletters
- Financial Resources Guide
- Green Team Meetings
- Brownfields advocates



Pre-certification Process

- Webpage
- One-page form online
- WDNR staff confirm that site is a “qualified contaminated site”



The screenshot shows a webpage from the Wisconsin Department of Natural Resources (WDNR). The page title is "Federal Brownfields Income Tax Deduction". It features a navigation menu with "Home", "About", "Topics", and "Contact Us". The main content area includes an "Update" section stating the deduction has been extended through December 31, 2011. Below this is a list of links: "Basics of the Federal Brownfields Tax Deduction", "How to Qualify", "Process for Getting DNR Certification", "EPA Information and Fact Sheets", and "News Releases & Reports". The "Basics of the Federal Brownfields Tax Deduction" section explains that businesses that own and cleanup contaminated properties may be eligible for a federal income tax deduction for expenses incurred by December 31, 2011. It also states that the deduction allows a taxpayer to deduct qualified environmental remediation expenditures at a property held for use in a trade or business or for the production of income. The "How to Qualify" section refers to the EPA's Brownfields Tax Incentive web page. The "What's deductible?" section lists remediation expenditures such as site assessment, investigation and monitoring, remediation activities, operation and maintenance costs, voluntary cleanup program fees, and costs for removal of demolition debris. It also notes that the 2006 federal Tax Relief and Health Care act applied these deductions to remediation expenses associated with federally defined petroleum products – including crude oil, crude oil condensates, and natural gasoline – incurred from December 31, 2006 to December 31, 2011. Finally, it mentions that the law also applies the federal income tax deduction to eligible expenses incurred after 1996 that are associated with the abatement or control of hazardous substances, as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Utilizing the EPA Expensing Incentive Program

Sydney Poole

Brownfields Coordinator

Ohio EPA

Columbus, OH



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**Environmental
Protection Agency**

**Division of Emergency and Remedial
Remedial Response,
Site Assistance and Brownfield Redevelopment
Sydney Poole**



**Environmental
Protection Agency**

Federal Brownfields Tax Incentive Program

- Provided certification letters to 15 projects since 1998.
- Very easy to document.
- Approval generally within one month.
- Why don't more sites take advantage?
- Clean Ohio Fund
- Voluntary Cleanup Program Tax Abatement
 - covers the increase in the assessed value of land and the increase in the assessed value of improvements, buildings, fixtures and structures that exist at the time the tax abatement order is granted, lasts 10 years.

NuTone Cincinnati, Ohio

- Vacant, 29 acre former manufacturing site
- Founded in 1936 as a door chime manufacturer, expanded to a wide range of residential products from range hoods to ceiling fans.
- Closed in 2007.
- Remediation total cost: \$3,000,000
- Developer worked with the City of Cincinnati
- City suggested the Brownfield Tax Incentive, which was **critical** in getting the project financed.
- Also applied for and received a \$3,000,000 Clean Ohio Revitalization Fund grant.



- 132,000 sq. ft. research lab/office
- 50,000 sq. ft. retail
- 430,000 sq. ft. mixed use development
- 1,335 jobs relocated to Cincinnati, including 800 new jobs

Hobart Brothers Lagoon Site Troy, Ohio

- 4.5 acre site with 30+ year history of industrial use.
- Past uses included:
 - gravel quarry
 - Lagoon for disposal of industrial wastes from manufacture of welding equipment and products.
- Remediation included
 - Draining and filling of lagoon
 - Installation of engineered cap over lagoon.
 - Property use restriction to recreational land.



- City of Troy plans to use as green space and a park with bike path
- Owner's tax department learned of Brownfield Tax Incentive

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Audience Questions

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Upcoming Events at CDFA

Advanced Tax Increment Finance WebCourse

April 5-7, 2011

Daily: 1-5pm (EDT)

Annual Development Finance Summit

May 9-12, 2011

Boston, MA

Innovation Finance Course

May 9-10, 2011

Boston, MA

Register online at www.cdfa.net

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Next Webcast

Tuesday, April 19, 2011 @ 1:00pm Eastern

CDFA – BNY Mellon Development Finance Webcast Series: Development Bonds Caught in the Crossfire

The use of municipal bonds commonly issued to finance infrastructure, redevelopment, and other projects is under attack. States across the country are re-evaluating how they use these development bonds and whether state governments will continue to issue debt. During this installment of the CDFA-BNY Mellon Development Finance Webcast Series, we'll discuss the challenges that states are facing with development bonds and potential solutions that we see for resolving this crisis.

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For More Information



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