



Philadelphia Naval Shipyard, PA

BRAC and Brownfields: *Different Means to the Same End*



Vint Hill, VA

	<u>Base Realignment and Closure (BRAC) Program</u>	<u>Brownfields Program</u>
Property Identification	<ul style="list-style-type: none"> BRAC property is identified as excess property that the Department of Defense (DoD) no longer needs and wishes to remove from its inventory. The property is identified through a legislative process directed by law. 	<ul style="list-style-type: none"> An interested party identifies the property for their own interests. In most cases, the buyer, developer or local government of the property identifies the property, not necessarily the seller.
Ownership & Site History	<ul style="list-style-type: none"> In some cases, the federal government has been the sole owner of BRAC property. BRAC property usually has supported multiple missions and uses as the needs of the military have changed. Historical records may not be complete or captured every change in use or mission. 	<ul style="list-style-type: none"> Brownfields property may have had multiple property owners and past uses. Owners may have abandoned property and responsibility for property falls to the local government.
Extent of Environmental Contamination	<ul style="list-style-type: none"> Can be highly variable at BRAC property, ranging from metals, chlorinated solvents, hydrophobic organic chemicals, unexploded ordnance, and radioactive wastes. All or any type of media may be affected (soil, groundwater, surface water, sediments, etc.) Military installations may cover hundreds or thousands of acres. Environmental contamination may be widespread across the area. Generally contamination is more extensive than at a brownfields property. 34 BRAC 1-4 installations are listed on the Superfund National Priorities List (NPL). A number of BRAC installations are considered NPL-caliber, although they are not on the list. 	<ul style="list-style-type: none"> Can be highly variable depending on past uses of the facility, although in general usual contaminants of concern are related to industrial or commercial processes. Brownfields properties are generally small, typically several acres in size, limiting the scope of where environmental contamination may be found. For properties to be considered a brownfield, they cannot be listed on the Superfund National Priorities List or under the jurisdiction, custody or control of the federal government.

This chart reflects EPA's interpretation of the BRAC and Brownfields statutes and programs.



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Addressing Environmental Contamination	<ul style="list-style-type: none"> DoD is the responsible party for contamination that is the result of their activities. DoD has authority under the Defense Environmental Restoration Act (DERA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to conduct cleanup in accordance with CERCLA and the National Contingency Plan (NCP), the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), and other statutes as they apply. General process for cleanups conducted under the NCP: <ol style="list-style-type: none"> Preliminary assessment/site investigation Remedial investigation and feasibility study Record of decision for cleanup (with public comment period) Design of the remedial action Remedial action conducted Operation and maintenance of long-term activities 	<ul style="list-style-type: none"> In most instances a responsible party is not present or may not be viable. Cleanups are often conducted by a party with liability protection. State voluntary cleanup programs or brownfield programs are the most common process to cleanup contamination. General process for voluntary cleanups: <ol style="list-style-type: none"> File application and fee Site investigation conducted by party and reviewed by the state Cleanup plan prepared by party and reviewed by the state Public notice and comment Site cleanup conducted State review and approval
Site Assessment	<ul style="list-style-type: none"> DoD cleanups follow the process as outlined in the NCP. The preliminary assessment/site investigation process outlined in the NCP generally involves conducting a file review, site reconnaissance, collecting information and analytical data, and if needed conducting field sampling to gather additional data. At BRAC facilities, environmental baseline surveys were conducted, and generally followed the procedures laid out in the American Society for Testing and Materials (ASTM) <i>Standard Practice for Conducting Environmental Baseline Surveys</i>. 	<ul style="list-style-type: none"> Phase I environmental assessments are the most common assessment conducted at brownfield properties. If warranted, a Phase II environmental assessment is conducted to further delineate and identify contamination present. Phase III - remediation plan/response action plan is often conducted.



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Cleanup Standards	<ul style="list-style-type: none"> Cleanups by DoD are required by statute to follow the NCP and state laws, as appropriate. The NCP provides that, for all classes of contaminants, health-based applicable or relevant and appropriate requirements (ARARs), where available, should be used to set remediation goals. Where health-based ARARs are not available, remediation goals should be set such that they are protective of human health and the environment. The reasonably anticipated future land use is a key factor in determining remediation goals. 	<ul style="list-style-type: none"> Property owner may use the statewide health standard established for a specific contaminant, or Develop contamination concentrations specific to that site based on information about the contaminants present, the site's geologic characteristics, the potential use of the site, and other factors. Planned or anticipated future use of the site is a key determinant in setting remediation goals.
Institutional Controls	<ul style="list-style-type: none"> Institutional controls are appropriate at BRAC sites when a site cannot support unrestricted use and unlimited exposure or where an engineered remedy requires protection. Although DoD may later transfer procedural responsibilities such as monitoring to another party by contract, property transfer agreement, or through other means, the DoD retains ultimate responsibility for remedy integrity. 	<ul style="list-style-type: none"> A local government may use up to 10 percent of its grant funds for monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfields site. States and tribes that receive Section 128(a) funding must establish and maintain a public record system in order to receive funds. The public record must identify whether or not the site, upon completion of a response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy. In order to preserve CERCLA liability protection as an innocent landowner, contiguous property owner or bona fide prospective purchaser, owners must comply with land use restrictions and not impede the effectiveness of institutional controls.

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Funding Availability and Sources	<ul style="list-style-type: none"> • Congress provides annual budgets to DoD to conduct environmental cleanup in order to meet regulatory cleanup requirements and schedules. • DoD, through the Office of Economic Development (OEA), provides resources for reuse planning to the Local Redevelopment Authority (LRA) where a base is closing. • Other federal agencies provide assistance to BRAC communities, such as the Department of Labor (DOL), Department of Housing and Urban Development (HUD), and the Economic Development Administration (EDA). • DoD may reimburse a third party, in a form negotiated between parties, who is willing to conduct cleanup activities on behalf of DoD. 	<ul style="list-style-type: none"> • EPA provides federal grants to conduct property site assessments and cleanups, to capitalize cleanup revolving loan funds, as well as job training. • Private funding is often leveraged with grants received from the public sector (federal, state, and local). • Other federal and state agencies provide assistance for brownfield properties, such as the Department of Commerce's Economic Development Administration and Department of Housing and Urban Development • Taxpayers Relief Act, allowing eligible taxpayers to deduct qualified cleanup expenses at eligible brownfields in the year they are incurred.

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Future Liability	<ul style="list-style-type: none"> DoD is required by statute to provide covenants to future property owner (transferee) with the deed that: <ol style="list-style-type: none"> DoD has completed all necessary response actions, and The federal government is responsible for all response action required in the future for contamination from DoD activities. Purchasers of BRAC property receive indemnifications that they will not be liable for any claim of injury or property damage resulting from contamination that is a result of DoD activities (<i>Section 330 of the FY 1993 National Defense Authorization Act</i>). EPA's <i>Policy Towards Landowners and Transferees of Federal Facilities</i> provides that generally EPA will not take a CERCLA enforcement action against transferees of BRAC properties, except in instances where the transferee has caused, contributed to, or exacerbated the release or threat of release of any hazardous substances. Under CERCLA 107, liability protections are provided to contiguous property owners, bona fide prospective purchasers, and innocent landowners who meet the statutory requirements set forth. 	<ul style="list-style-type: none"> State Liability Relief Programs - <ul style="list-style-type: none"> ➤ Covenant not to sue from the state agency ➤ No-further-action letter from the state agency ➤ Certificates of completion or cleanup approval letters from the state agency CERCLA liability protections are provided to contiguous property owners, bona fide prospective purchasers, and innocent landowners who meet the statutory requirements set forth.
Environmental Insurance	<ul style="list-style-type: none"> Third parties who agree to conduct cleanup on behalf of DoD usually may obtain environmental insurance to cover cost overruns (cleanup cost cap insurance) or cover the cleanup of unknown pre-existing contamination, tort liabilities, and economic losses associated with the reuse effort (pollution legal liability insurance). 	<ul style="list-style-type: none"> Owners of brownfields property conducting cleanup may obtain environmental insurance to cover cost overruns (cleanup cost cap insurance) or cover the cleanup of unknown pre-existing contamination, tort liabilities, and economic losses associated with the reuse effort (pollution legal liability insurance). Brownfield grantees can use a portion of their funds for insurance.

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Community and Local Involvement	<ul style="list-style-type: none"> • CERCLA Section 117 (Public Participation) applies to BRAC cleanups conducted by DoD. • Restoration Advisory Boards (RABs) are established at the installation and provide a forum for its members (including local community members) to provide input about the cleanup. RABs are established by the Defense Environmental Restoration Program (DERP) statute and implementing regulation. • LRAs, as required by Congress, are created where bases are closed or realigned. LRAs are responsible for developing and implementing a reuse plan for the BRAC property. • Public notice and comment period is required for cleanup decisions made under the NCP framework. • Prior to the transfer of property from the federal government, a public notice and comment period is required. 	<ul style="list-style-type: none"> • Public participation requirements under state voluntary cleanup programs or RCRA. • Community involvement requirements as part of the federal brownfield grant process. • Largely dependent on the level of interest from the community.
Reuse Plans	<ul style="list-style-type: none"> • Under legislation passed by Congress, LRAs are responsible for developing a reuse plan for the BRAC property. • The future use of the property as identified in the reuse plan helps determine the level of cleanup required for use to safely occur. • BRAC property is subject to local government planning, permitting, and zoning processes once transferred from DoD. 	<ul style="list-style-type: none"> • Communities can partner with developers and new users to complete a reuse plan for brownfields properties. • The future use of the property as identified in the reuse plan determines the level of cleanup required for use to safely occur. • Brownfield property is subject to local government planning, permitting, and zoning processes.
Assistance for the Homeless	<p>The LRA and military service must follow the procedures set forth in either Title V of the <i>Stewart B. McKinney Homeless Assistance Act</i> or the <i>Base Closure Community Redevelopment and Homeless Assistance Act of 1994</i> to undertake efforts to provide surplus property for assistance to the homeless in the local community.</p>	<ul style="list-style-type: none"> • The brownfields process does not require assistance for the homeless.

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Property Transaction Process	<ul style="list-style-type: none"> Once an installation is designated for closure, the available property is subject to the federal screening process, as follows: <ol style="list-style-type: none"> Identify other DoD interests in the property; Identify other federal agency interests in the property; Identify other interests in property (i.e., available to the LRA and the public). Once interests in the property have been identified, the property disposal method must be determined between DoD and the LRA. Disposal methods include public benefit conveyances, economic development conveyances, public sale, negotiated sale, homeless assistance conveyances, and conveyances for the cost of environmental remediation. 	<ul style="list-style-type: none"> Open market transactions are not regulated by federal statutes. Generally, public sale is the most common transaction where property changes hands in the brownfields context. However, two parties may agree to a transaction in any form that is mutually agreeable to the parties.
Environmental Considerations in Property Transactions	<ul style="list-style-type: none"> CERCLA 120(h) requires that all remedial action necessary be completed at a property prior to the federal government disposing of the property, unless <ul style="list-style-type: none"> An early transfer is conducted, where property is transferred to a third party prior to the completion of all remedial action. Response action assurances are provided that the cleanup will continue and be completed. Use restrictions may be applicable at a BRAC property. Government property transactions are governed at the federal level through CERCLA 120(h) and the Federal Real Property Act. 	<ul style="list-style-type: none"> Private property transactions are not regulated. Environmental assessments and due diligence are commonly conducted for real estate transactions which take place in the private sector. Use restrictions may be applicable at a brownfields property. Regulated at the state/local level.