

Brownfields Tax Incentive

A Georgia law passed in 2003 provides tax relief for properties where costs were incurred to obtain a brownfields limitation of liability. Cost documentation is submitted to EPD for review, and a certification of eligible costs is issued to the prospective purchaser who then applies to the local taxing authority for the preferential brownfield assessment.

Preferential brownfield assessment provides tax savings by freezing the *ad valorem* value of the property for up to ten years (unless certified costs are recovered sooner). A recent amendment allows extension of preferential assessment (by a maximum of 5 years) for brownfields properties where construction ceased for 180 days or more and later resumed.

Costs to Participate in the Program

The application for a brownfields limitation of liability must be accompanied by an initial application review fee of \$3,000. This non-refundable fee covers the costs incurred by the division during the review of the application. Application reviews are tracked on an hourly basis through issuance of the final limitation of liability certificate, and applicants are invoiced for review costs that exceed the initial fee.

Brownfields Program Results

Since the program began, over 450 applications for limitations of liability have been received. Investigation and cleanup have been completed at over 260 brownfields. These properties represent over 2,500 acres where prospective purchasers have certified that soil is in compliance with risk reduction standards. At two thirds of these properties, compliance with residential standards was achieved.

Applicable Laws and Rules:

Georgia's Brownfields Law:

Hazardous Site Reuse and Redevelopment Act
O.C.G.A. §12-8-200, *et seq.*

Georgia's State Superfund Law and Rules:

Hazardous Site Response Act
O.C.G.A. §12-8-90, *et seq.*

Rules for Hazardous Site Response
Chapter 391-3-19

Environmental Covenants:

Uniform Environmental Covenants Act
O.C.G.A. § 44-16-1

Brownfields Tax Incentive:

Ad Valorem Taxation of Property
O.C.G.A. §48-5-1, *et seq.*

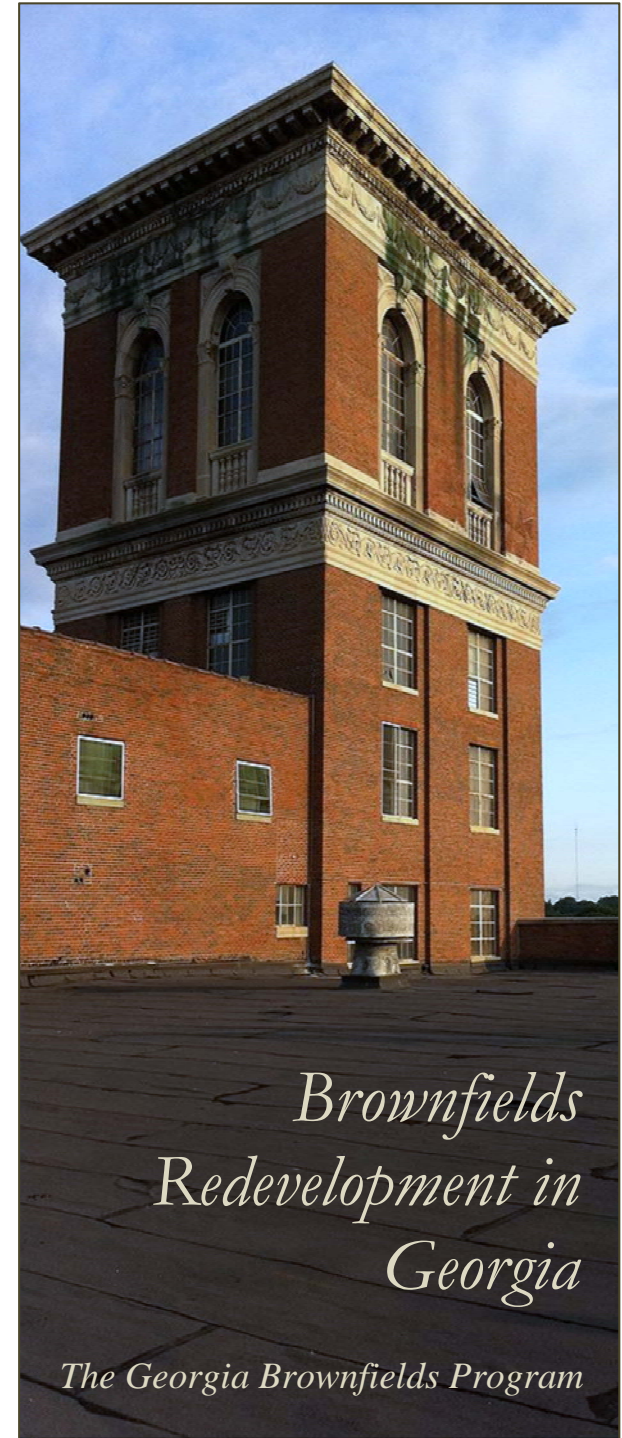
Brownfields Eligibility Form:

www.gaepd.org/Documents/brownfields.html

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State of Georgia
Department of Natural Resources
Environmental Protection Division



The Georgia Brownfields Program

Brownfields come in many forms, from corner gas stations to sprawling industrial facilities. Some have extensive contamination requiring significant resources for cleanup; others may be minimally impacted. Regardless of the extent of contamination, uncertainty regarding financial and legal liabilities can affect the market for brownfields, even those with great locations or other desirable features.

The Georgia Environmental Protection Division (EPD) established the Brownfields Program in 2003 to address economic and environmental challenges posed by contaminated properties. The program facilitates voluntary cleanup and reuse of brownfields by offering liability protection and other incentives designed to improve demand for these properties.

With the goal of fostering revitalization, the program uses a collaborative, streamlined approach to the oversight of site investigation and cleanup. This approach can accommodate the time constraints and complexities of real estate transactions and redevelopment projects.

Under the Brownfields Program, prospective purchasers investigate contaminant releases and conduct soil and source material cleanup if needed. In return, prospective purchasers are relieved of liability for groundwater cleanup and third party claims arising from past releases. This limitation of liability transfers to subsequent purchasers of the property.

A companion property tax law provides preferential *ad valorem* tax assessment for brownfields, creating opportunities for recovery of investigation and cleanup costs.

Property Eligibility

- Properties must have a pre-existing release of hazardous constituents or petroleum.
- Any underground storage tank or state superfund program liens must be satisfied.
- Properties listed on the national priorities list or undergoing response activities under federal order are not eligible.
- Hazardous waste facilities are not eligible.

Prospective Purchaser Eligibility

- Persons “contributing to a release” under the state superfund law are not eligible.
- Purchaser must not be related to a person contributing to a release.
- Purchaser must not be in violation of environmental laws.

The Brownfields Application

Prospective purchasers may apply for a limitation of liability by submitting either a corrective action plan (PPCAP) or a compliance status report (PPCSR) prior to purchasing an eligible property. A non-refundable \$3,000 application review fee must accompany the application. The Brownfield Eligibility Form, which can be found on EPD’s website, should also be completed and included in the application.

Corrective Action Plan

The corrective action plan application is appropriate for most properties. The PPCAP should provide a plan for site characterization, identify a preferred method for soil cleanup should it prove necessary, and provide a schedule through completion of the PPCSR.

Compliance Status Report

Once site investigation and cleanup are complete, a PPCSR documenting compliance of soil and source material with cleanup standards is filed. For some properties, there may be sufficient sampling data at the time the brownfields application is filed to document compliance, and a PPCSR can be submitted as the application in these cases.

Limitation of Liability

The limitation of liability takes effect upon approval of the PPCAP or state concurrence with the certification of compliance, whichever first occurs. Prospective purchasers are not required to perform corrective action for groundwater and are not liable to third parties for claims resulting from pre-existing releases. The limitation of liability automatically transfers to successors in title (excluding only successors “contributing to a release”).

Cleanup Standards

Soil and source material must be brought into compliance with risk reduction standards promulgated under the state superfund law. There are five available cleanup standards:

- Type 1 Residential standard with default assumptions.
- Type 2 Residential standard with site-specific assumptions.
- Type 3 Nonresidential standard with default assumptions.
- Type 4 Nonresidential standard with site-specific assumptions.
- Type 5 Allows use of institutional and/or engineering controls with monitoring, as appropriate, for properties where Types 1-4 are not practicable.