

# Brownfields

# BULLETIN



City of Phoenix Brownfields Land Recycling Program

Vol. 12 December 2004

## ENVIRONMENTAL DUE DILIGENCE REQUIREMENTS ARE CHANGING



If you're buying commercial or industrial property that has a potential for environmental contamination; or, if you're buying a property that is adjacent to or nearby a property that is contaminated; or, if you're not sure whether there is contamination, you should be aware that there are new federal laws in place that can protect you from environmental liability.

The evaluation of property for potential environmental contamination and assessment of potential liability for contamination present at the property is an

important step in real property transactions. The Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or Superfund provides for a similar, but legally distinct, process known as "all appropriate inquiries." All appropriate inquiry refers to the requirements for assessing the environmental conditions of a property prior to its acquisition.

In August 2004, the U.S. Environmental Protection Agency (EPA) proposed federal standards and practices for conducting "all appropriate inquiries" as required under the Small Business Liability Relief and Brownfields Redevelopment Act, enacted into law in 2002. These new standards may most directly affect the buyers of commercial property or any property that will be used for commercial purposes and who may, after purchasing the property, seek to claim protection from federal Superfund liability.

The provision clarifies the requirements necessary to establish the innocent landowner defense under CERCLA. Under CERCLA, persons may be held strictly liable for cleaning up hazardous substances at properties that they either currently own or operate or owned or operated in the past. Strict liability refers to liability for environmental contamination that could be assigned based solely on property ownership.

The intent of these new standards is to clarify the steps necessary to establish the innocent landowner defense and to encourage the purchase, cleanup and redevelopment of contaminated properties by providing a standard that buyers can follow without having to specifically obtain protection from the EPA through Prospective Purchaser Agreements or Comfort Letters. These documents have previously been used when purchasing known contaminated property.

*(continued page 3)*

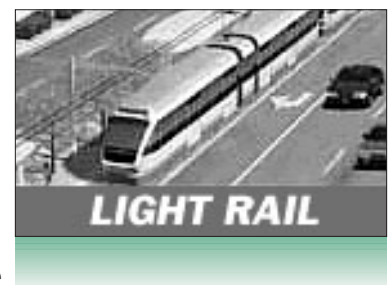
## PHOENIX BEGINS WORK UNDER EPA BROWNFIELDS GRANT

The city of Phoenix received a \$400,000 brownfields assessment grant for the Light Rail Project from the U.S. Environmental Protection Agency. The funds will be used for conducting environmental investigations on properties that the city acquires for construction of light rail. Grant funds will be used on properties along the 13-mile starter segment in Phoenix that will be constructed from 19th Avenue and Bethany Home Road through central Phoenix to 56th and Washington streets.

The grant funds are split into a \$200,000 grant for properties contaminated with hazardous substances and \$200,000 for properties contaminated with

petroleum. The grant period is for Oct. 1, 2004 through Oct. 31, 2006.

City staff are currently working with EPA Region 9 to develop a Master Quality Assurance Project Plan for the entire project that will serve as the guidance document for all Phase II Environmental Site Assessment activities where EPA's brownfields grant funds are spent. For the latest information on Light Rail please visit [www.valleymetro.org](http://www.valleymetro.org).



# ANNOUNCING PHOENIX BROWNFIELDS UNIVERSITY 2005

The city of Phoenix will be hosting the sixth annual Phoenix Brownfields University 2005 session April 20-21 at the Phoenix Civic Plaza. The goal of the conference is to provide an in-depth education on the cleanup and redevelopment of contaminated property. The event benefits real estate professionals, architects, developers, businesses, nonprofits, engineers, consultants and attorneys.

## Attention Speakers

Phoenix is seeking speakers to present information on successful brownfields redevelopment projects, innovative technologies, managing liability, creating new development opportunities and any other topics related to redevelopment of contaminated property.

If you're interested in participating in the conference, please submit an abstract of no more than 300 words by Jan. 10, 2004 to one of the following:

**E-mail:** [rosanne.sanchez@phoenix.gov](mailto:rosanne.sanchez@phoenix.gov)

**Fax:** 602-534-0795

**Mail:** Rosanne Sanchez, Brownfields Project Manager, Office of Environmental Programs, City of Phoenix, 200 W. Washington St., 14th Floor, Phoenix, AZ 85003

## Attention Exhibitors

The conference exhibit hall will be open to attendees throughout the event. It's a great way to showcase your company's products and services or to highlight a successful brownfields redevelopment project.

## Attention Sponsors

For the first time, a variety of sponsorship opportunities will be explored. Your company could be the only one showcased at special conference networking events, luncheons, or the planned bus tour.

Call 602-256-3452 for more information on becoming an exhibitor or sponsor.

A "Brownfields University 2005 Survey" will be posted on the Phoenix brownfields Web site that lets you to tell us what you want to learn. This will help us to create a program that will be most beneficial. Visit [www.phoenix.gov/ENVPGM/brownfld.html](http://www.phoenix.gov/ENVPGM/brownfld.html) and voice your opinion!



*Brownfields University 2004*

# CITY OF TUCSON WINS PHOENIX AWARD



*Rio Nuevo North*

Tucson's Rio Nuevo North Redevelopment Project was the 2004 EPA Region 9 winner of the Phoenix Award. The Phoenix Awards recognize excellence in brownfields redevelopment throughout the country. The Rio Nuevo North Redevelopment Project is located within Tucson's city center, an area of high economic and social stress within Tucson and surrounding Pima

County. The primary reason this site was selected for redevelopment was to regenerate the visible downtown urban core in order to spur growth and economic health for this impoverished, minority population surrounding the Rio Nuevo North Redevelopment Project site.

The Rio Nuevo North Redevelopment Project site was used from the early 1900s through the early 1970s as a source of clay, sand and gravel. Deep excavations throughout the site that resulted from removal of the clay, sand and gravel became recipients of wildcat dumping and numerous construction debris and municipal waste landfills. The greatest challenge associated with the Rio Nuevo North Redevelopment Project was overcoming the uncertainty, stigma and false assumptions associated with the former

landfills. Remediation activities at this site began in 1983. These assessment activities were conducted primarily through the use of soil borings and test pits; collection of soil, refuse and groundwater samples; and sample analysis.

The redevelopment project has returned this historic site back into an economic center providing hundreds of jobs and millions of dollars in salaries. Additionally, and more importantly, the Rio Nuevo North Redevelopment Project has served as an impetus for the city's next and most aggressive redevelopment project to date: the Rio Nuevo, Heart of the City Redevelopment Project.

For more information about the Tucson brownfields program call 520-791-5414 or visit [www.ci.tucson.az.us](http://www.ci.tucson.az.us).

## PHOENIX BROWNFIELDS LAND RECYCLING PROGRAM NEWS

### *Riverview Business Park Project*

The Riverview Business Park project is the newest brownfields project in the Phoenix program. The project is being developed by the Vance Group Partners. The 23-acre site, near 12th Street, north of Riverview Drive, was a former landfill. The property will be redeveloped into an office condominium complex offering office/warehouse space, including outside storage. The project is designed to meet the needs of local businesses. Construction of the first phase of the project is scheduled to begin in 2005.

### *Infill Development*

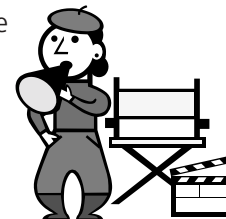
In 2003, a multi-departmental task force was convened by the Phoenix city manager to develop a comprehensive

infill program. Brownfields staff were a part of the task force. After several months of study and research, including surveying developers in the Valley, a program was approved by the City Council in July 2004. Initially, staff will proceed with implementing infill strategies that are of minimal cost or funding and that are feasible to accomplish in one year, as was directed by City Council.

A Special Processing Team within the Development Services Department is being created and should be in place by January 2005. This team would assist infill projects by providing expedited processing, among other services. Brownfields projects located within the infill districts are eligible for the infill incentive program.

## PHOENIX HIGHLIGHTED IN PBS FILM SERIES

The premier of the film series "Brownfields: Reclaiming Our Urban Environment," took place at the national Brownfields 2004 Conference held in St. Louis, MO on Oct. 20-22. The film looks at the history of brownfields redevelopment in the United States, particularly focusing on the creation of EPA's Brownfields Initiative. The film is part of a series that will eventually air on PBS. The Phoenix Brownfields Program is highlighted as well as projects in Tucson, Tempe and Chandler. The film can be obtained at [www.films.com](http://www.films.com) or by contacting [julian.chiabella@films.com](mailto:julian.chiabella@films.com).



### *Due Diligence (continued from pg 1)*

There are ten statutory criteria that are required to be included in the standards for all appropriate inquiry, as follows:

- The results of an inquiry by an environmental professional.
- Interviews with past and present owners, operators and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.
- Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land-use records to determine previous uses and occupancies of the real property since the property was first developed.
- Searches for recorded environmental cleanup liens against the facility that are filed under federal, state or local law.
- Reviews of federal, state and local government records, waste disposal records, underground storage tank records, and hazardous waste handling generation, treatment, disposal and spill records concerning contamination at or near the facility.

- Visual inspection of the facility and adjoining properties.
- Specialized knowledge or experience on the part of the defendant.
- The relationship of the purchase price to the value of the property, if the property was not contaminated.
- Commonly known or reasonably ascertainable information about the property.
- The degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate investigation.

For properties purchased after May 31, 1997, the law requires the use of procedures developed by the American Society for Testing Materials, in particular ASTM's standard E1527-97, "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process" or ASTM Standard E1597-00.

The EPA is inviting comments on these new standards by Nov. 30, 2004. An electronic copy of the documents can be obtained from [www.epa.gov/fedrgstr](http://www.epa.gov/fedrgstr).

## INTRODUCING . . . ARCELIOUS STEPHENS

Mr. Arcelious Stephens, a registered environmental scientist (RES) and an applied chemist, is the new brownfields coordinator for the ADEQ. Mr. Stephens has been with ADEQ since July 1995 and worked primarily with UST issues. He will be working in the Recycling and Brownfields Grants Management Unit of the Waste Programs Division to enhance and expand the various aspects of the Arizona Brownfields Program. Mr. Stephens has a Bachelor of Science degree in chemistry from Ft. Valley State University and a Master of Science degree in environmental sciences from Tuskegee University. He can be reached at 602-771-4401 or at [stephens.arcelious@azdeq.gov](mailto:stephens.arcelious@azdeq.gov).

# BROWNFIELDS NEWS FROM ACROSS THE COUNTRY

**On Sept. 23, 2004, California Gov. Arnold Schwarzenegger approved Assembly Bill 389, California's new Brownfields law.** The legislation enacts the California Land Reuse and Revitalization Act of 2004 (Act), which would provide that an innocent landowner, a bona fide purchaser, or a contiguous property owner qualifies for immunity from liability for response cost or damage claims under state statutory and common laws that impose liability upon an owner or occupant of property. The immunity would be for pollution conditions caused by a release or threatened release of a hazardous material on, under or adjacent to that property, if the innocent purchaser, bona fide purchaser, or contiguous property owner meets specified conditions. The entire bill can be found at <http://www.assembly.ca.gov/acs/acsframeset2text.htm>.

**The Brownfield Cleanup Program in New York State, among other things, provides tax credits** to volunteers who remediate and redevelop brownfield sites. Three tax credits are available: Brownfield Redevelopment Credits, Remediated Brownfields Credits for Real Property Taxes

and Environmental Remediation Insurance Credits. For more information on the program visit [www.dec.state.ny.us/website/der/bfield/](http://www.dec.state.ny.us/website/der/bfield/)

**As part of its Green Buildings on Brownfields Initiative, EPA selected eight communities for Green Buildings on Brownfields Pilot projects.** Through these pilots, EPA has been working with communities to incorporate environmental considerations into the planning, design and implementation of their brownfields redevelopment projects. EPA's initial eight pilot projects are now underway, including: Community Center Building, Springfield, MA; National Aquarium in Baltimore's Center for Aquatic Life & Conservation, Baltimore, MD; ReGenesis Medical Center, Spartanburg, SC; Marina District Redevelopment, Toledo, OH; World Headquarters for Heifer International, Little Rock, AK; Trailnet Inc., Trailhead Building, St. Louis, MO; Community Culture & Commercial Center, Kauai, HI; Volcanic Legacy Discovery Center, Mt. Shasta, CA.

**The California Center for Land Recycling (CCLR or "see clear") has announced the expansion of its "Brownfields 101" workshops to include the states of Arizona and Nevada.** "Creating Vibrant Communities: Redeveloping Our Brownfields" will be offered. CCLR is a western region nonprofit that repairs fractured communities and discourages urban sprawl through creative private, public and nonprofit partnerships. Their work is accomplished through training, technical assistance and small grants for communities. The first Arizona workshops are planned for fall 2005. For more information, visit [www.cclr.org](http://www.cclr.org).

**SAVE THE DATE!**



**APRIL 20-21, 2005  
PHOENIX CIVIC PLAZA**



**City of Phoenix**

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[rosanne.sanchez@phoenix.gov](mailto:rosanne.sanchez@phoenix.gov)*

Phoenix Brownfields Land Recycling program Web site: [phoenix.gov/ENVPGM/brownfld.html](http://phoenix.gov/ENVPGM/brownfld.html)

