

Brownfield properties pose both risks and rewards

By [April Wilkerson](#)

The Journal Record

Posted: 05:24 PM Wednesday, April 28, 2010



Don Grauer with Environmental Data Resources and David Koch and Thomas Knudson with Terracon talk about low funding for brownfields Wednesday during the Oklahoma Brownfield Conference at the Skirvin Hilton Hotel. (Maïke Sabolich)

OKLAHOMA CITY – Owning a brownfield property is a business risk, but it’s one that can be managed just like any other.

Oklahoma has already proved its brownfield hardiness, with developments like the Dell facility on what used to be a landfill at Interstates 44 and 40, and the entire Bricktown area on top of longtime oil-field contamination.

Brownfields – properties that have lost their value because of an environmental problem or the perception of one – continue to hold promise in Oklahoma. At the Oklahoma Brownfield Conference this week, held at another brownfield success story, the Skirvin Hilton Hotel, participants heard about everything from liability issues to funding opportunities.

Rita Kottke, brownfield program manager at the Department of Environmental Quality in Oklahoma City, said potential brownfield owners have to determine their own risk comfort level, but the rewards of developing such a site can be significant. Each state has its own liability structure, but risks could include an inability to get financing, especially with the property as collateral, liability for the cleanup of the site and not being able to sell the property in the future.

But with plenty of technical assistance and grant money available, brownfields can clean up their act and return to a vital place in the community.

“Brownfields are often in great locations, and they have a low market price,” Kottke said. “You can impact the future resale value of the site and provide economic development and community revitalization.”

Brownfields can be former gas stations or dry cleaners, illegal dumps, the site of a chemical spill, an old metal smelter, refineries and more, Kottke said. The type of contaminant on a site plays a role in the ease or difficulty of the cleanup process, she said. For example, metals like mercury are relatively easy to deal with, but organic solvents are not.

Janice Sims of the Environmental Protection Agency’s Office of Brownfields and Land Revitalization in Washington, D.C., said the original Superfund law, although it broadened federal authority to respond to hazardous substances in the environment, also scared away people from developing a brownfield site because of liability concerns. But an amendment, unanimously passed by Congress in 2002, gives liability protections to innocent landowners, prospective purchasers and contiguous property owners who are doing their due diligence in assessing the property, she said.

Across the nation, 10,222 sites have been investigated under the Superfund program, Kottke said. In Oklahoma, 968 sites have been investigated, and 13 of those made it on the Superfund’s National Priorities List.

One Oklahoma Superfund site, the Hardage Landfill, is now providing a link to possible funding for cleanup of other such sites. Attorney LeAnne Burnett, shareholder and director at Crowe & Dunlevy, spoke at the conference about the “archaeological mining of historical insurance policies.”

In Oklahoma, the majority of case law regarding the interpretation of a general liability policy comes out of the Hardage Landfill case, Burnett said. Companies were directed to take their industrial waste to Hardage in the 1970s and 1980s, but when it became a Superfund site, those same companies were asked to pay for its cleanup, she said. To do so, they looked for assistance in their insurance policies.

“Instead of using the policies they had in the 1990s, they would go back and look at the policies they had at the time that their waste was taken to Hardage,” she said. “They were going back in time. You look at the policy and see if it has any kind of exclusion that would exclude the kind of pollution you’re talking about, and make a claim.”

Modern-day insurance is important for people looking to develop a Superfund site, especially for financing and risk assessment, Burnett said. But a retrospective look could become a source of funding.

“Looking backward is one of the tools people can use to try to find the funding for cleaning up the old contamination in order to give you a nice site on which to develop,” she said.