

The Changing Landscapes in Kentucky

2014 Governor's Conference on
Energy and the Environment

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Today's Agenda

- KRS 224.1-415 Program Overview
- Property Management Plan Overview
- Brownfield Success Stories
 - HGS Holdings
 - Central Parking Garage
 - Ruggles Sign Company
 - Westlake
- Program Pitfalls
- Questions & Answers



KY's Brownfield Redevelopment Program Overview



Kentucky Brownfields Program

- **Kentucky Redevelopment Timeline:**
 - 2001 Regular Session SB 2 created the Voluntary Environmental Remediation Program (VERP). Purpose was to stimulate economic development, job creation.
 - 2005 Regular Session HB 272 adopted federal bona fide prospective purchaser (BFPP) provisions (“Small Business Liability Relief and Brownfields Revitalization Act”).
 - 2011-2012 - Cabinet engaged in the preparation and vetting HB 465 with stakeholders, and supporting the statute before legislative committees.

Kentucky Brownfields Program

- The purpose of the legislation (House Bill 465) was to encourage the redevelopment of Brownfield properties by:
 - Developing a process whereby qualifying persons would, by law, receive a written determination of non-liability for the cleanup requirements under the state Superfund statutes (KRS 224.1-400 and KRS 224.1-405).
 - Further removing potential uncertainty related to purchase/redevelopment of Brownfield's properties for developers and lenders.

Kentucky Brownfields & USTs

HB 465 contained two amendments to KRS 224.60, which regulates Underground Storage Tanks.

- **KRS 224.60-135 - A property owner who is not also the petroleum storage tank owner or operator shall have no obligation to perform corrective action for a release into the environment from a petroleum storage tank.**
- **KRS 224.60-138 - This notice shall indicate that the property is not subject to any additional actions under KRS 224.01-400 or 224.01-405.**

Kentucky Brownfields Overview

- House Bill 465 became KRS 224.1-415. The statute includes two primary components:
 1. Certification criterion to establish non-liability under the program.
 - Requires the Cabinet to find the certification to be complete.
 - Primarily a self-certification, the weight is on the signature.
 - Criteria are similar to Bona Fide Prospective Purchaser criteria.

Kentucky Brownfields Overview

- House Bill 465 became KRS 224.1-415. The statute includes two primary components:
 2. Reuse of the property that is safe and will not make things worse.
 - Requires the Cabinet to concur that the reuse of the property will not interfere with remediation and will not result in unacceptable harm to the public.
 - Accomplished through a Property Management Plan that can be easily revised as use or information changes.

Kentucky Brownfields - Certification

- The Certification process consists of the submission of a package that includes:
 - Any available Site Data
 - Phase I Environmental Site Assessment (ASTM 1527-13*)
 - Property Management Plan
 - Certification Statement and Form
 - Property Deed
 - \$2500 Application Fee
- *ASTM update

What Are You Certifying?

- All releases of petroleum governed by KRS 224.1-405 or a release of a hazardous substance, pollutant, or contaminant governed by KRS 224.1-400 occurred prior to the applicant's acquisition of the property;
- The applicant made all appropriate inquiries into previous ownership and uses of the property in accordance with generally accepted practices;



Certification (cont'd)

- The applicant has provided all legally required notices under this chapter with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
- The applicant is in compliance with all land use restrictions and will not impede the effectiveness
- or integrity of any institutional control required for the property;



Certification (cont'd)

- The applicant complied with any information requests by the cabinet under KRS Chapter 224.
- The applicant is not and has not been affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.1-400, 224.1-405, or 224.60-135 through:



Certification (cont'd)

- a. Direct or indirect familial relationship;
- b. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
- c. Reorganization of a business entity that was potentially liable; and

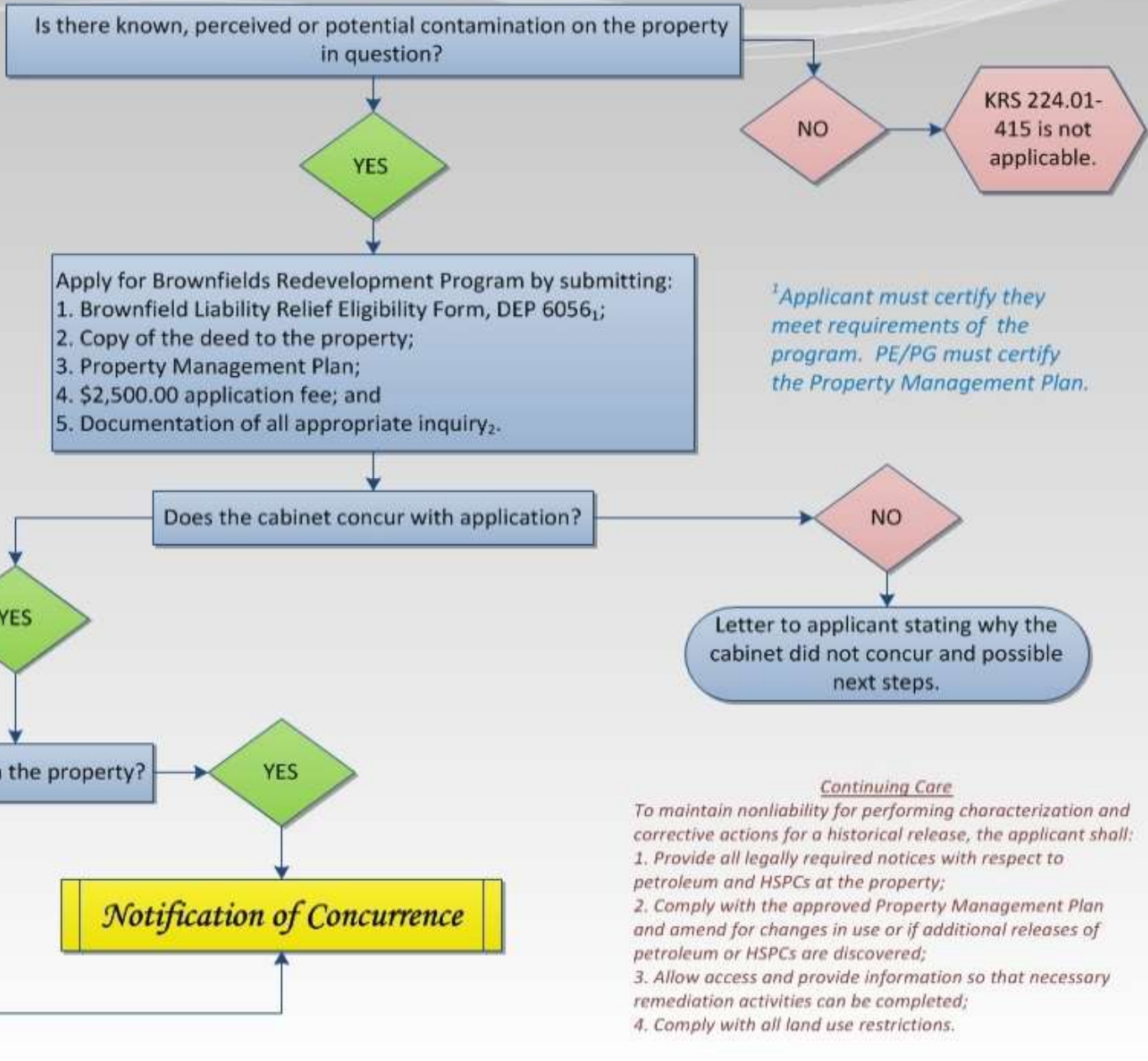


Certification (cont'd)

- The applicant has not caused or contributed to the releases of petroleum governed by KRS 224.1-405 or the releases of a hazardous substance, pollutant, or contaminant governed by KRS 224.1-400.



Brownfield Redevelopment Program



²Property acquired prior to (AR effective date) shall use generally accepted practices at time.
Property acquired after (AR effective date) shall use 40 CFR Part 312.

¹Applicant must certify they meet requirements of the program. PE/PG must certify the Property Management Plan.

Continuing Care
To maintain nonliability for performing characterization and corrective actions for a historical release, the applicant shall:

1. Provide all legally required notices with respect to petroleum and HSPCs at the property;
2. Comply with the approved Property Management Plan and amend for changes in use or if additional releases of petroleum or HSPCs are discovered;
3. Allow access and provide information so that necessary remediation activities can be completed;
4. Comply with all land use restrictions.

Kentucky Brownfields – In Writing

- **Notification of Concurrence** – Indicates the Cabinet concurs that the owner is not liable for performing characterization, correcting the effects of the release on the environment, or performing corrective action of the release.
 - Remains in effect for the property owner and identified property provided the owner remains compliant with KRS 224.1-415 and complies with the PMP.

Kentucky Brownfields – In Writing

- **Notice of Eligibility** – Indicates that the applicant has met all qualifications for a Notification of Concurrence with the exception of ownership and that upon ownership, the applicant will receive a Notification of Concurrence.
 - Developed specifically for lending.
 - Has effect of NOC upon ownership/until NOC.
 - Expires with AAI expiration.

Kentucky Brownfields PMP

- The Property Management Plan (PMP) describes how to accomplish the planned reuse considering the environmental knowledge of a property.
 - Primary purposes are to manage conditions for safe/protective reuse and meet due care.
 - Defines and documents concurrence from agency on due care (uncertain under BFPP).
 - Is certified by PE/G representing property owner.
 - Intended to be flexible.

Property Management Plan Components

- Certification by PE / PG
- Introduction – purpose of plan
- Site Description & Background
- Intended Future Property Use(s)
- Voluntary Assessment or Remediation



Property Management Plan Components (Cont'd)

- Exposure Pathway Evaluation
- Construction Management
- Long Term Management
- Contingency Planning & Notification
- Inspections/Maintenance
- Conditions for Change



Brownfield Success Stories



HGS Holdings

- Tennant displaced due to Newtown Pike Extension
- 227,000 sq ft facility on 18 acre
- Bundy Tubing built in 1950s
- Leggett & Platt operated from 1990's to 2011



695 N Main Street, Winchester, KY

Due Diligence Findings

- Chlorinated solvent release in mid 1980's
 - TCA entered storm sewer and into abutting creek
 - Initial regulatory oversight by KDOW
 - 1986 KDWM directed investigation & remediation efforts
 - NFA Letter received August 1986



Due Diligence Findings

- Hydraulic oil release in 1990's
 - Subsurface trenches carried oil from machines to central pump room
 - Oil/water separator installed and 57,000 gallons of water “flushed” under slab
 - Residual oil remained under floor but KDWM issued NFA Letter in 1996



Due Diligence Findings

- PCB oil release in 1993
 - Exterior transformer released contents
 - Cleanup activities performed
 - Remaining PCB containing equipment removed from site
 - Consultant requested closure with incident report
 - No additional file information available
 - June 2013 KDWM issued NFA Letter as part of Brownfield Redevelopment Program

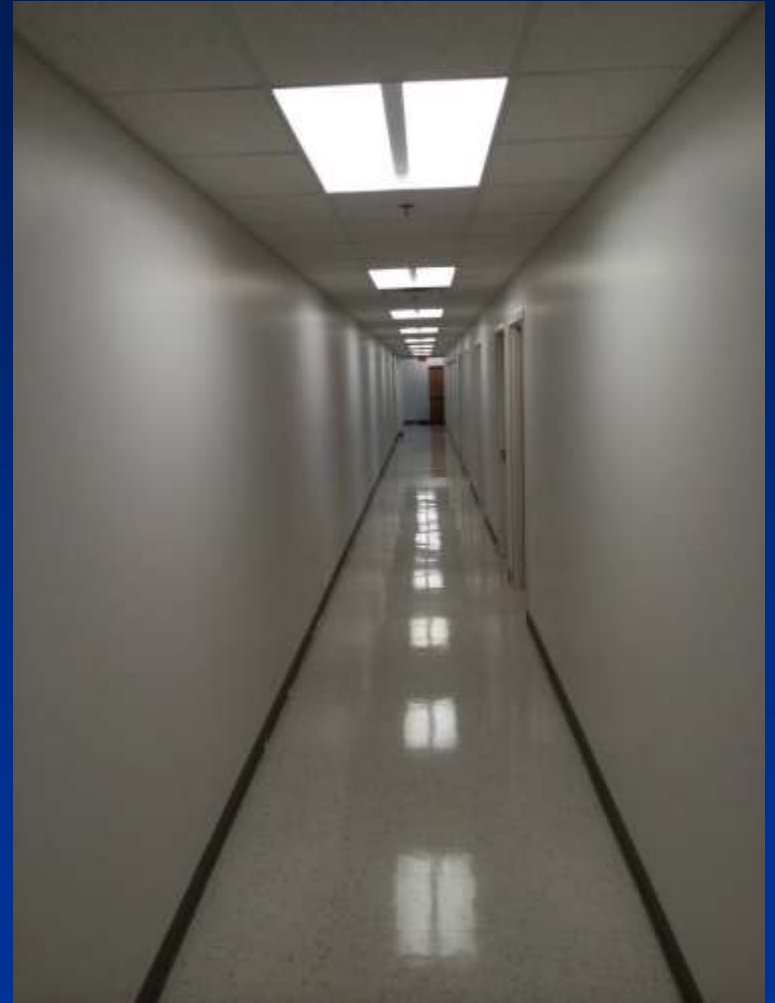


Pre-Purchase Options

- Conduct Additional Site Assessment
 - 2 month minimum delay
 - \$25,000 initial expense
 - Remedial Expense ?
- Brownfield Redevelopment Program
 - 45% of additional assessment expense
 - June 2013 received Notice of Eligibility
 - August 2013 received Notification of Concurrence



Office Area Before & After



Production Area Before



Production Area After



Steel Day 2014 / Open House



City Commissioner Rick Beach, HGS President Ben Norris, Mayor Ed Burtner, County Judge Exec Henry Braham

Social & Economic Impact

- Property is no longer an “attractive public nuisance”
- Property has returned to positive economic status for state and local community
- Approximately 125,000 sq ft available for rent
- Total Economic Impact: \$2,600,000 including:
 - Property acquisition
 - New material handling equipment
 - New electrical service
 - New concrete
 - New steel to reinforce overhead cranes
 - Building construction improvements, and
 - Professional fees

Christ Church Episcopal

- Facility built in early 1900s for automobile sales & service
- 1950s-present utilized as parking structure
- Leased to Central Parking during week
- Leased to CCE on weekends



168-182 N Upper, Lexington, KY

Historical Environmental Concerns

- 2006 prospective purchaser conducted Phase I/II ESAs
 - Elevated levels of Pb and PAHs discovered in former open floor drainage areas
- Transaction fell apart due to liability and remedial cost concerns



2013 Due Diligence Findings

- Same REC's from 2006
- Historical Findings Disclosed
 - Elevated levels of Pb and PAHs
 - Human Health Exposure
- Existing Use Unchanged



Pre-Purchase Options

- Conduct Additional Site Assessment
 - 1 month minimum delay
 - \$15,000 initial expense

- Perform Site Remediation
 - \$40,000 remedial expense
 - Plus potential for Managed Closure & Deed Restriction



Consultant Recommendation

- Brownfield Redevelopment Program
 - Property Management Plan with
 - Cost-effective Voluntary Corrective Action
 - Approximately 30% of remedial option
 - April 2014 received Notification of Concurrence



Voluntary Corrective Action



Voluntary Corrective Action



Voluntary Corrective Action



Social & Economic Impact

- Corrective Action implemented to be protective of human health
- Property remains economically viable as public parking structure
- Total Economic Impact: \$1,650,000 including:
 - Property Acquisition
 - Real Estate Fees and Taxes
 - Professional Fees
 - Brownfield Application & Corrective Action Expenses



Ruggles Sign Company

- Ruggles Sign Company was planning an expansion of their facility in Versailles
- Vacant Manufacturing Facility was for Sale
- Vacant facility operated as a transformer manufacturer
- Possible issues related to PCBs and VOCs





- Founded in 1946, Ruggles has been a fixture in Versailles for over 65 years.
- New facility has allowed Ruggles to expand their business and stay in Versailles.



- Phase I indicated VOCs were present under the building.
- Property Management Plan was developed to allow for remodeling of the facility and provide for future expansion while continuing to be protective of employees and the community.

Westlake Vinyls

- Calvert City is a large complex of chemical plants in Western Kentucky



Westlake Vinyls

- Westlake was able to purchase additional property in this area from another facility





- The 415 program has allowed Westlake to purchase the property without becoming liable for existing groundwater contamination from historical NPL sites.

Pitfalls



Questions ?

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