

Question Report DEQ Responses | May 16, 2022 Public Meeting
Chapel Hill Police Property BFs Project | BF Project No. 23022-19-068

No. 9

In the Brownfields Agreement, is Chapel Hill totally shielded from any liability or risk of any future health issues?

DEQ Response: The statute authorizing the North Carolina Brownfields Program is titled *North Carolina General Statutes, Chapter 130A, Public Health, Article 9. Solid Waste Management, Part 5, Brownfields Property Reuse Act (The Act)* and can be found at § 130A-310.30 through § 130A-310.40k in the North Carolina General Statutes, [Brownfields Property Reuse Act](#). The liability protection afforded to a Prospective Developer is conditional on compliance with the brownfields agreement and land-use restrictions recorded thereunder. The liability protection under a completed brownfields agreement is addressed in the statute under § 130A-310.33 where it states, among other things, that: “A prospective developer who enters into a brownfields agreement with the Department and who is complying with the brownfields agreement shall not be held liable for remediation of areas of contaminants identified in the brownfields agreement except as specified in the brownfields agreement.” There are specific reopeners of this liability protection specified in § 130A-310.33(c). These reopeners are mostly related to new risk information or findings of knowingly or recklessly providing false information. The liability protection as described in the statute extends to any future owners so long as they comply with the agreement. The liability protection does not extend to protection from third-parties who claim certain damages. Other aspects of liability protection are referenced in § 130A-310.35 and § 130A-310.37.

No. 10

Has Brownfields mitigated coal ash on proposed housing sites?

DEQ Response: Many sites have been developed with coal ash used as fill, just as the Chapel Hill Police Department site. The vast majority of which are not in any environmental program. When such a site applies into the brownfields program, there has been recognition by the applicant that the site may have environmental impacts that should be addressed. The Brownfields Program addresses the environmental risks posed by the contaminants that are known to be located at a brownfields property in affected media. While the Brownfields Program is still reviewing assessment data collected at this site and some additional assessment is anticipated to occur yet, the primary identified contaminants at the Chapel Hill Police Property are elevated metals from the coal ash. The Brownfields Program has developed many agreements with other Prospective Developers for commercial, high-density residential, or mixed uses where elevated metals had been identified. At least one of these sites was a shopping center developed on property where there was coal ash structural fill.

No. 11

Give examples of other mitigated housing sites with coal ash.

As noted in the response to the question above, the Brownfields Program has developed many agreements with other Prospective Developers for commercial, high-density residential, or mixed uses where elevated metals. There is one structural fill site in Iredell County in which the developer is planning the Phase 2 of the apartment complex over/on portions of the structural fill. There are several businesses located on structural fills. An inventory of known structural fills in North Carolina can be

found at <https://deq.nc.gov/about/divisions/waste-management/solid-waste-section/coal-ash-structural-fills>.

No. 12

If a PD or future owner does abide by the agreement guidelines, but future inhabitants or users of the property are found to have adverse health impacts, what recourse/protections do those community members have?

Please refer to the answer to Question No. 9. There are specific reopeners of liability protection specified in § 130A-310.33(c). These reopeners mostly relate to new risk information or findings of knowingly or recklessly providing false information. If previously unreported contaminants raise the risk of contamination to public health to a level less protective than that required by the brownfields agreement, the brownfields agreement can be reopened to address these newly discovered risks. Furthermore, statutory liability protection provided by the Act does not provide protection from third-parties who claim certain damages (like damages from adverse health impacts). See § 130A-310.37(a)(5) for details. The exception is that the prospective developer, or future owners, cannot be made to remediate the property further unless they violated the agreement, or a reopener under § 130A-310.33(c) applies.

No. 13

If this project is not covered under the 2014 Coal Ash Management Act which says you can't put structural fill within 300 feet of a private dwelling, why would the State permit this project?

The coal ash was placed on this site before any regulations of coal ash structural fills were written/enforced. The state is not "permitting" this project, meaning it has no standing to deny its redevelopment by the owner. The Town of Chapel Hill voluntarily entering the brownfields program has no bearing on the legality or allowability of redevelopment of this site. Sites in the Brownfields Program do require information, including the completion of necessary environmental assessments that address the specific property, showing that the property is suitable for the uses specified in the brownfields agreement while fully protecting public health and the environment. See § 130A-310.32(a)(2).

No. 14

What factors determine eligibility to be considered for a Brownfields agreement? What percentage of applicants have been accepted into the program?

Eligibility criteria under The Act include criteria for both the property and Prospective Developer. Regarding the property, the eligibility criteria are provided in the Brownfields Property Reuse Act § 130A-310.31 and 310.32. To be eligible, the site:

- 1) Must be an abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination.
- 2) Is or may be subject to remediation under any State remedial program or that is or may be subject to remediation under CERCLA.
- 3) Sites listed on the National Priorities List are excluded from eligibility.

Regarding the applicant, definitions in § 130A-310.31 require evidence that a Prospective Developer did not cause or contribute to the contamination at the brownfields property. Further requirements about showings the applicant must make are provided in the Statute § 130A-310.32 (a).

Since its inception in 1997, the Brownfields Program has received 1,295 brownfields property applications. Of those, 23 applications have been deemed ineligible and 289 were voluntarily withdrawn by the applicant (the latter are referred to as “No Further Interest”).

No. 15

Does the fact that DEQ is considering Chapel Hill for a Brownfields Agreement, is it a “done deal”?

The Letter of Eligibility provided to the Town of Chapel Hill in October 2019 means that the Program has found that the Prospective Developer, the Town of Chapel Hill, and the property itself have met the eligibility criteria (see Question #14) for continued evaluation of a brownfields agreement. At this time, this project is in the assessment phase of the brownfields process. Details of the redevelopment and final remedial measures have not yet been determined nor has a site-specific brownfields agreement been drafted. Under The Act, any brownfields agreement that is ultimately developed is still draft and is noticed to the public for a 30-day public comment period for consideration.

No. 18

Will new testing be performed under the DEQ’s Environmental Risk Assessment, or will it be based exclusively off of the testing the Town has already had performed? The Hart-Hickman Risk Assessment from 2021 used the existing test data, the latest of which was from 2020 when the IRMs were implemented, and the majority of which was from 2019 and earlier.

DEQ will conduct an environmental risk assessment that includes data already collected as well as additional data that will be collected to address data gaps identified during the Brownfields’ assessment phase.

No. 19

If site characterization is not deemed complete given the proposed plan, what is DEQ’s budget to conduct additional studies? Or would the developer be required to fulfill the gaps?

The Prospective Developer is required to collect any data that the Program determines is needed during the assessment phase. The Brownfields Project Manager is responsible for reviewing and approving all assessment work plans, assessment reports, and other technical documents that are generated at the Program’s direction. Any deficiencies in these documents are revised as necessary by the Prospective Developer’s team to meet the Program’s statutory obligations. The Brownfields Program does not collect its own data at brownfields sites as part of the application process.

No. 20

How do you stop animals from drinking groundwater.

Groundwater is generally not accessible except by wells that are drilled below the land surface deep enough to reach water underground (groundwater). Groundwater occurs at depths below the earth surface where the soil is saturated with water. The top of this zone in shallow aquifer systems is referred to as the water table. This water table is below the zone in which ground animals would burrow or nest.

No. 21

Why would you not just require that all coal ash be removed from the site before construction?

There are many factors to consider before excavating the coal ash, including finding an acceptable landfill able to accept that volume of material, increased risk of spillage and wind-blown exposure with onsite handling, transport of ash, increased emissions from excavation equipment, increased traffic on public roadways, noise, and greater cost.

No. 26

Very much appreciate what Sharon is sharing — but her comments appear to be contextualized in terms of the economic develop-ability of a site, rather than the safety of use based on what a site intends to develop.

The Brownfields Property Reuse Act requires that a brownfields redevelopment project provide public benefit, is done in a manner to ensure that the site is safe for intended reuse, and that it is done to protect public health and the environment. In § 130A-310.32, the Act states “As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting public health and the environment instead of being remediated to unrestricted use standards.”

No. 28

How does the long-term monitoring work? For how many years?

When a Brownfields Agreement is finalized and recorded under the Brownfields Program, land-use restrictions are recorded on the property deed, and stay with the land for all future owners and must be complied with in perpetuity. Pursuant to § 130A-310.35(e), the Act provides a process by which land-use restrictions can be removed once the hazards are eliminated where it states: “A Notice of Brownfields Property filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have been eliminated and request that the notice be cancelled of record. A future owner may petition DEQ with risk-based evidence that that the land use restrictions are no longer necessary.” The restrictions may be removed only if DEQ agrees. Such land use restrictions would not be removed without additional public notification and public comment.

A brownfields agreement has not yet been drafted for the Chapel Hill Police Property project. If long-term monitoring is required at a site as written into a Brownfields Agreement, it would be included in the land-use restrictions as a site-specific item. The obligation to continue with any such land-use restriction would continue in accordance with the Brownfields Agreement and The Act.

No. 29

Could someone from the town, environmental assessment team, or DEQ speak to what differentiates some of the different nonresidential vs. residential uses in terms of risk? For example, it seems that residential owner-occupied use is a 'no,' a non-residential daycare use (mentioned by Ms. Eckard tonight and by a town council member several weeks ago) is a 'no,' but a residential renter-occupied use is a 'yes.' This is very confusing for us, and I imagine for many other members of the public. Thank you!

Residential and commercial (non-residential) uses have differences in their exposure scenarios. Brownfields agreements consider the long-term stewardship of land-use restrictions and risk at properties based on site-specific data and exposure scenarios. Brownfields agreements are documents that incorporate land-use restrictions based on risk that have to be enforceable. Enforceability of land-use restrictions can be complicated by individual land ownership rights (single-family homes or townhomes). Certain residential uses where there is individual ownership may not be allowed. Rental uses (where renters do not own the land) have fewer complications for long-term stewardship of land-use restrictions and may be allowed. The risk calculations do not distinguish between different types of residential use. The distinction for the Brownfields Program is the enforceability of certain land-use restrictions (for example, disturbance of soil) in different residential uses.

No. 33

Kenneth Reiter has been presenting 828 MLK Blvd as a BFs site, and emphasizing that his firm has developed many BFs sites. He has failed to explain that all of his developments have been for commercial purposes, never housing. None of them have had coal ash contaminants or coal combustion residuals on the site. The distinction between a BFs site and a BFs site where coal ash has been dumped is a great and serious one.

Whether a site has coal combustion residuals or other contaminants, they all present a set of problems that must be dealt with to protect public health and the environment. The Brownfields Program has experience with sites that have soil contaminants, including many with similar or higher levels of contaminants than are present at the Chapel Hill Police Station site. This includes sites with metals, asbestos, chlorinated volatile organic compounds, petroleum compounds, pesticides, PCBs and others.

No. 35

For Sharon - Do you only consider human health risk in the brownfields program? Or do you also consider ecological risk?

The Act, which references public health and the environment, states in § 130A-310.32(a)(2): “As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting public health and the environment instead of being remediated to unrestricted use standards.” So, if either offsite or onsite environmental samples indicate the possibility of significant ecological risk that is attributable to the site, an assessment of that risk would be authorized by The Act and would be conducted.

No. 36

Concerning the containment measures proposed, the only way containment measures can help is if they create a CONTINUOUS, impervious barrier between future users and ALL of the existing coal ash on the property. Even so, the proposed containment measures can't guarantee safety from flooding, heavy storms, or failures to the containment measures.

and

No. 37

Hi, Sharon. Are you confident that, if the ash is allowed to remain on-site, its location will not be at risk of erosion into Booker Creek, with who knows what consequences?

Details of the redevelopment and final remedial measures have not yet been determined nor has a site-specific brownfields agreement been drafted. However, as part of that process, this will be considered,

including the geotechnical stability, stormwater management, and site maintenance requirements. Any final remedial measures will be designed in conjunction with the requirement that the site be made safe for its intended reuse to protect public health and the environment.

No. 38

Has NC DHHS been contacted for assistance?

Not at this time. This project is in the assessment phase of the brownfields process. Details of the redevelopment and final remedial measures have not been determined nor has a site-specific brownfields agreement been drafted. Brownfields does confer with DHHS on occasion depending on a site's specific needs. It is too early in the process to determine whether a consultation with DHHS will be needed.

No. 39

What difference does it make if the coal ash does not come from a public utility? It still is a killer

The Coal Ash Management Act that was enacted on Sept. 20, 2014 pertains strictly to coal ash from public utilities. This site is therefore not covered by the requirements of that law. However, because the Town has applied into the Brownfields Program, it is voluntarily making it subject to the provisions of the Brownfields statute. That statute does require the Town to provide information to DEQ, including the completion of necessary environmental assessment addressing the specific property, showing that the property is suitable for the uses specified in the brownfields agreement while fully protecting public health and the environment, see § 130A-310.32(a)(2). The Town has voluntarily subjected the proposed site redevelopment to risk evaluation to establish the suitable reuse of the property. To meet the stated statutory goal, the exposure or potential for exposure to these contaminants under both current and future conditions will be considered in determining the current and future site risk for decision-making purposes.

No. 40

Also for Sharon - Will you evaluate the risk-based cleanup that has already taken place for recreational use of the trail? In that assessment, a site-specific exposure survey of current recreational users was conducted by the town's consultant. Will that analysis be updated to take into account a possible new community of residents that would be living next to the trail, and thus may have different exposure patterns?

The Brownfields Program will be reviewing the available risk assessment documentation prepared by the Town's consultants and all data collected at the site to evaluate environmental risks associated with the proposed redevelopment.

No. 43

coal ash is coal ash whether it comes from a public utility or somewhere else--in this case from UNC--it's still dangerous! are you saying it doesn't have to be regulated & considered unsafe and could get approved for housing on the site because it's not come from a public utility? there needs to be a law or amendment to change this loophole! Molly McConnell who lives in modestly priced RENTAL housing for 52 years in Chapel Hill, NC

In applying for a brownfields agreement, the Town of Chapel Hill has recognized that the presence of coal ash is something that needs to be addressed. Town officials chose a method they would use to do

so. Sites in the brownfields program require information, including the completion of necessary environmental assessment addressing the specific property, showing that the property is suitable for the uses specified in the brownfields agreement while fully protecting public health and the environment, see § 130A-310.32(a)(2).

No. 46

Has the town of chapel hill or DEQ investigated the cancer rates of the current and historical occupants of 828 MLK (police force and accompanying administrative employees)?

DEQ is not aware of such an investigation. An investigation of the cancer rates at this site would fall under the purview of the N.C. Department of Health and Human Services.

No. 47

Why not just remove all the coal ash and none of this consternation will need to happen? We need to come from our values for human life, safety, and morality—why would Chapel Hill willfully put children and residents at risk? Pay now or pay later.

Decisions about removal should be directed to the Town of Chapel Hill representatives. There are many factors to consider before excavating and removing the coal ash, including increased risk of via exposing of coal ash during excavation, emissions of coal ash from wind and heavy equipment handling, onsite handling, spills and deposition during coal ash transport, increased emissions from excavation equipment, increased traffic on public roadways, noise, and greater cost. As previously addressed in other questions, sites in the brownfields program do require information, including the completion of necessary environmental assessment addressing the specific property, showing that the property is suitable for the uses specified in the brownfields agreement while fully protecting public health and the environment, see § 130A-310.32(a)(2).

No. 49

Have we discussed the Environmental Injustice aspect of this?

The Letter of Eligibility provided to the Town of Chapel Hill in October 2019 means that the Program has found that the Prospective Developer, the Town of Chapel Hill, and the property itself have met the eligibility criteria for continued evaluation of a brownfields agreement. At this time, this project is in the assessment phase of the brownfields process. Details of the redevelopment and final remedial measures have not yet been determined nor has a site-specific brownfields agreement been drafted. Discussions with DEQ's Environmental Justice program will proceed as the redevelopment plans are discussed.

No. 50

It says in the Hart and Hickman risk assessment that owner occupied housing is not allowed on a brownfield site. Is this a mistake made by the consultants? If not, why is owner occupied housing not allowed and why is renter occupied allowed under the current statutes?

As mentioned in response to question #29 above, individual ownership of property comes with ownership rights that complicate the stewardship of land-use restrictions for individual owners. For example, if there were dozens of individual future owners in the form of townhomes, each with land ownership rights, enforcing any future land-use restrictions or institutional controls might be an untenable situation.

No. 56

*Thallium is a toxin that is found in coal ash. It was the primary ingredient in rat poison for many years - until decisions were made that it was too toxic for children and pets that came in contact with the poison. It can be absorbed through the skin. What measures are being considered to prevent children living on-site or in neighboring communities from coming in contact with thallium from the coal ash. ** Please have a more thorough public comment periods.*

Assessment of contaminant levels in soil is a key component of understanding the risk of exposure at the site. Many metals, not just thallium, are going into the risk considerations for this site. The Town has put interim remedial measures in place to limit the potential for exposure to contaminants, including removal of contaminated material along the Bolin Creek Trail, slope stability measures, fencing, and signage along the trail. Final remedial measures will be implemented to prevent direct exposure of contaminants to site users.

No. 57

We need more options than cap-in-place.

Details of the redevelopment and final remedial measures have not been determined nor has a site-specific brownfields agreement been drafted.