

# Kentucky's Brownfield Redevelopment & Reuse Program

Presented To:

## Brownfields for Bankers

February 24, 2014



*To Protect and Enhance Kentucky's Environment*

**Kentucky**  
UNBRIDLED SPIRIT™

# Outline

- Brief History
- Purpose
- Statute and Regulations
- Process Diagram
- Program Features
- Sites
- Questions



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# History

- Kentucky does not have tax money to contribute to Brownfields redevelopment
- Big Brownfields projects are often well funded by developers
- Small Brownfields need assistance to get started
- HB 465 in the 2012 General Assembly



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# History Continued

- KRS 224.1-415 effective July 12, 2013
- 401 KAR 102:005 et seq. effective February 3, 2013
- First site successfully approved February 5, 2013
- To date approximately 100 properties comprising over 2000 acres



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# Purpose

- Remove uncertainty
- Provide written documentation
- Parallel the CERCLA Bona Fide Prospective Purchaser definition
- Provide something more than an affirmative defense



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# KRS 224.1-415

- Conditions under which a property owner is not liable for characterization or corrective action
- The owner certifies; and
- The Cabinet concurs with an application in writing



# 401 KAR 102

- 401 KAR 102:005 Definitions
- 401 KAR 102:010 Brownfields Redevelopment Program
- 401 KAR 102:020 General Requirements for a Property Management Plan for Brownfields Redevelopment Program



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# Brownfield Redevelopment Program

Is there known, perceived or potential contamination on the property in question?

YES

NO

KRS 224.01-415 is not applicable.

Apply for Brownfields Redevelopment Program by submitting:  
 1. Brownfield Liability Relief Eligibility Form, DEP 60561;  
 2. Copy of the deed to the property;  
 3. Property Management Plan;  
 4. \$2,500.00 application fee; and  
 5. Documentation of all appropriate inquiry.

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

<sup>2</sup>Property 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.

Does the cabinet concur with application?

YES

NO

Letter to applicant stating why the cabinet did not concur and possible next steps.

Do you own the property?

NO

YES

Notice of Eligibility

Notification of Concurrence

Submit deed upon purchase of property

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

## Application Package

1. Signed and notarized application form
2. Current Deed
3. Property Management Plan signed by a P.E. or P.G. licensed in Kentucky
4. \$2500 fee
5. All Appropriate Inquiries documentation



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# All Appropriate Inquiries

- For current property transactions a Phase I ESA which complies with ASTM E1527-13
- For any historic transactions, documentation that the standard of the day was followed; a new Phase I ESA is also required



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# Property Management Plan

- Description of the historical and current use of the property
- Description of the intended future use
- All available information as to known and potential releases of petroleum and HSPC
- A map that identifies all known releases
- A map which identifies any potential or perceived releases



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# PMP, continued

- A description of all know controls, characterization or remedial actions; if any
- A description of the methods used to ensure the property use is protective of human health and the environment
- A certification statement signed by a P.E or P.G. licensed in Kentucky



# Continuing Care

- Provide required notices with respect to petroleum and HSPC at the property
- Comply with the approved PMP and amend as necessary
- Allow access for any ongoing remedial actions
- Comply with all land use restrictions



# Program Features

- All applications will be reviewed within 30 days of receipt
- All applications require a current Phase I ESA
- PMP is expected to be revised as conditions change on the property



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# Program Features

- Specific to releases of HWSPC or petroleum products in Kentucky
- Does not directly address federal CERCLA liability
- Does provide written documentation from Kentucky DEP



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# Program Features

- Does not *release* a property owner from any potential liability
- Confirms that a new property owner with clean hands was never liable for characterization or remediation
- Provides certainty if releases are discovered after acquisition



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# Program Features

- NOE stage may remain confidential
- Once an NOC is issued all documents become public and subject to Kentucky's Open Records Act



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# Benefits to Lenders

- Notice of Eligibility prior to purchase so lender knows if the buyer qualifies
- If Given reliance and if the PMP includes a “mothball” provision, lender can foreclose without a new PMP
- If foreclosing, lender may enter the program as a new owner



# Environmental Benefits

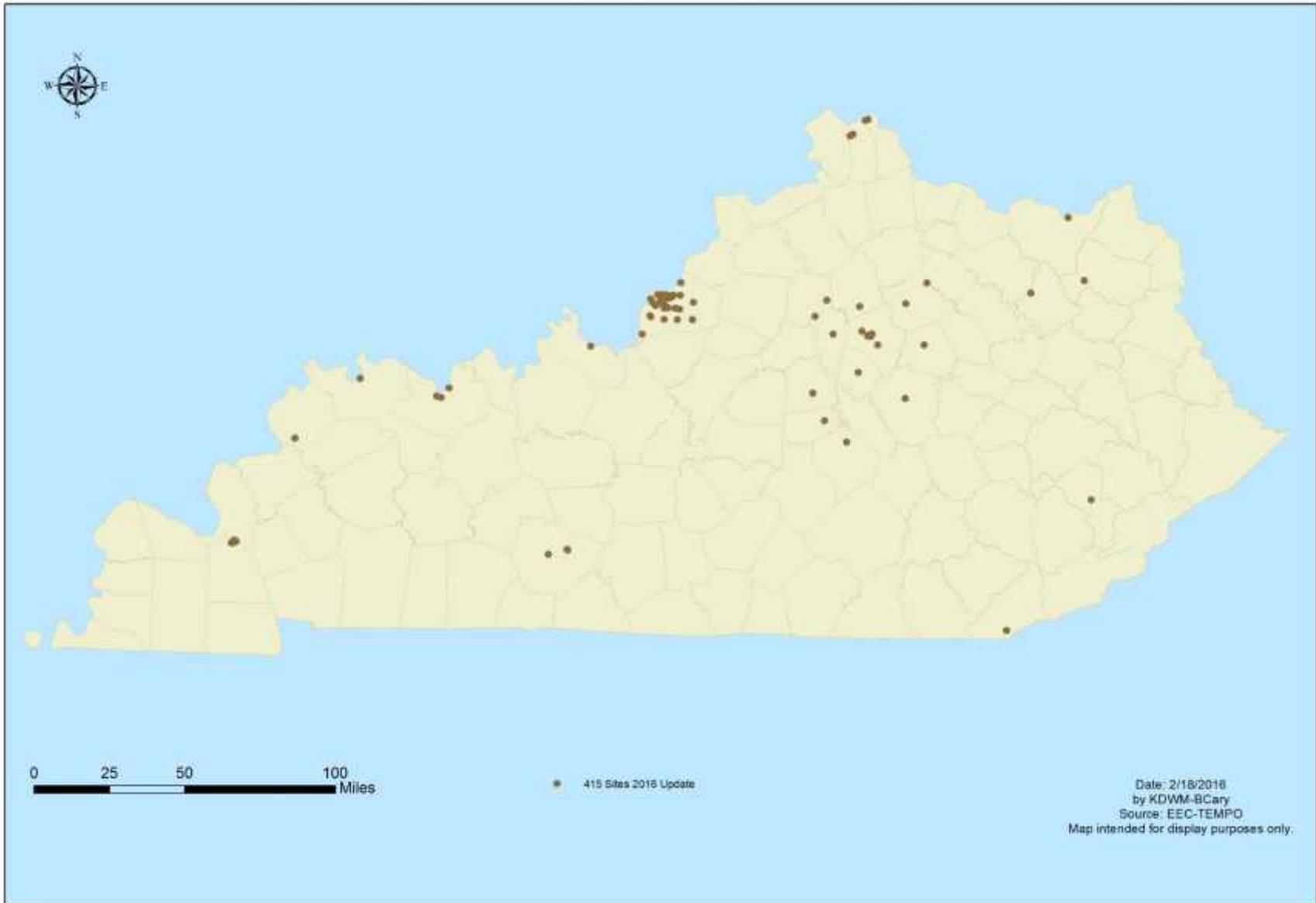
- Improves the opportunity to redevelop idle properties
- Increases the possibility of voluntary cleanups
- Promotes the active management of environmental issues
- Increases awareness of potential environmental issues



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# Kentucky Division of Waste Management 1-415 Redevelopment Sites



# Solae Property Louisville, Jefferson County



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# West Point Bank Property Louisville, Jefferson County



Former Kim's Dry Cleaner Site on  
Dixie Highway



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# Green River Steel Owensboro, Daviess County



Foreground Former Rolling Mill



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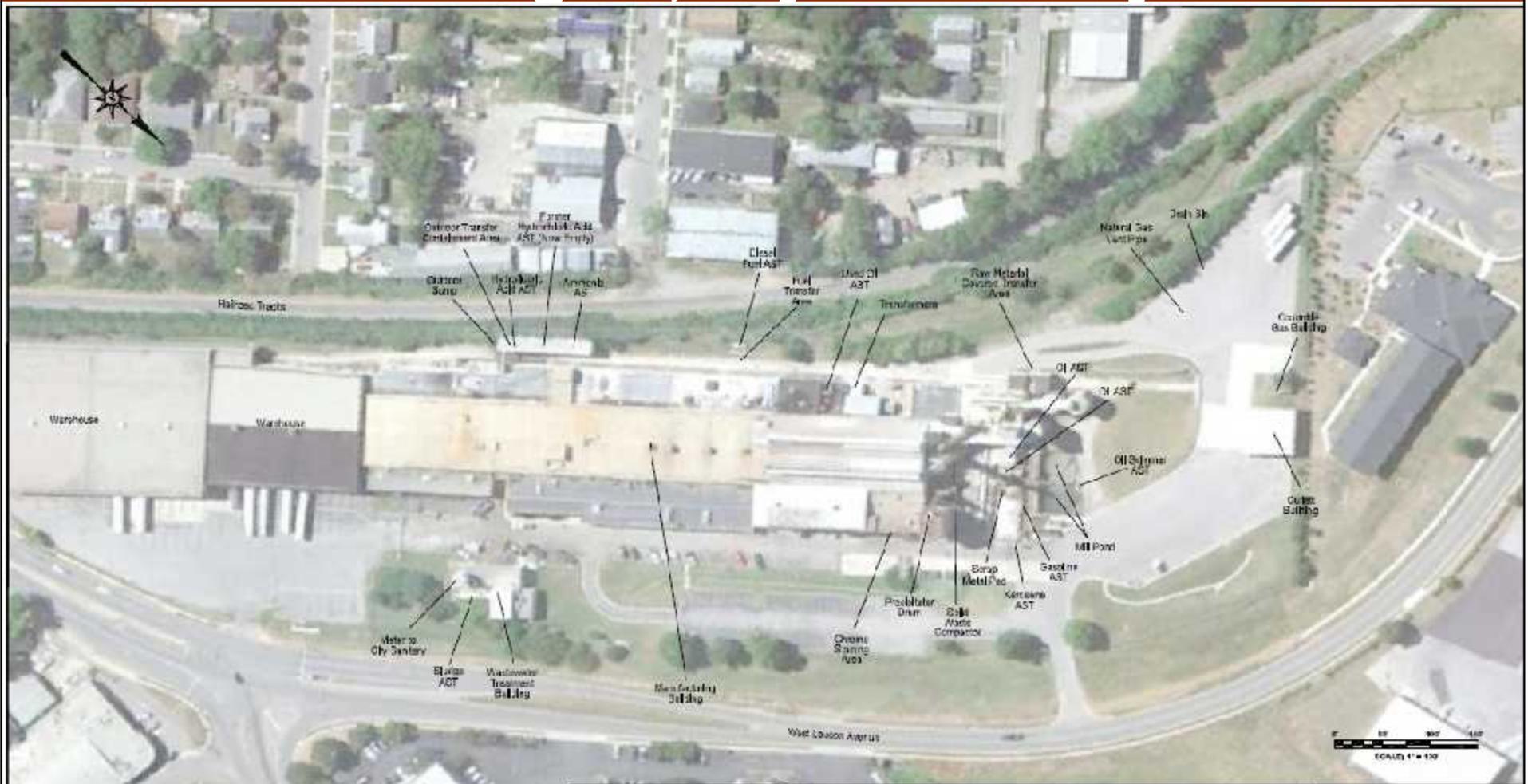
# Old Taylor Distillery Millville, Woodford County



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# Former GE Glass Plant Lexington, Fayette County



AUGUST 2013  
 PROJECT NO: 1134-0030  
 DRAWN BY: GW  
 APPROVED BY: GDF

**FIGURE 3**  
 HISTORICAL FACILITY LAYOUT  
 FORMER GE KENTUCKY GLASS PLANT  
 200 WEST LOUDON AVENUE  
 LEXINGTON, FAYETTE COUNTY, KENTUCKY

**SHIELD**  
 ENVIRONMENTAL CONSULTANTS, P.C.  
 140 Floyd Drive  
 Lexington, KY 40516  
 (606) 597-6154



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# Former GE Glass Plant Lexington, Fayette County



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# Notable Sites

- Outer Loop Wal-Mart Super Center
- Former Henderson Gaslight Property
- Bank of the Bluegrass (Carter County; pre-foreclosure)
- Chrysler, Dodge, Jeep Ram of Paris



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Kentucky's Brownfield Redevelopment &  
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# Questions

