

**Three Ws:**  
**What are Brownfields?**  
**What is due diligence?**  
**Why do I care?**

**Brownfields: Resources for Redevelopment in Kansas Communities**

Kansas Environmental Conference

Capitol Plaza Hotel – Topeka, Kansas

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**Terracon**  
A TAB/CHSR & KDHE Contractor

# **BROWNFIELDS**

**Real property,  
the expansion,  
redevelopment, or  
reuse of which may  
be complicated by the  
presence or potential  
presence of a hazardous  
substance, pollutant, or  
contaminant.**

# What are Brownfields ?

- Brownfields are real estate deals with an environmental “twist” that complicates, but does not prevent, redevelopment of the property. Often, the property is not even contaminated
- Brownfields are properties caught between “clean” and “nasty” Superfund
  - “Clean enough” not to be public hazards
  - Perceived as too “dirty” for bankers’/investors’ comfort
- Typically, contaminants and risk improvement would never be addressed on these sites by regulatory agencies if the property were not redeveloped

# Practical Faces of Brownfields

- Yes, you do have them.
  - Every community and county has brownfields
  - Not all are eligible for state or federal financial help
- It isn't visual
  - All 'bad looking' properties are not brownfields
  - 'Good looking' properties can be brownfields
- They may be public property or private real estate
- Not properties where those responsible for contaminant releases can ignore their obligations
  - Liable and viable responsible parties have obligations
  - Imminent health threats must be dealt with
  - Much friendlier arena in which to resolve problems

# Practical Faces of Brownfields

- You'll hear the EPA definition and other information again later today
- But to start off, let's put a few real, 'on the street' faces on a few typical Midwestern Brownfields

# They have many faces ... Agricultural Facilities; active & inactive

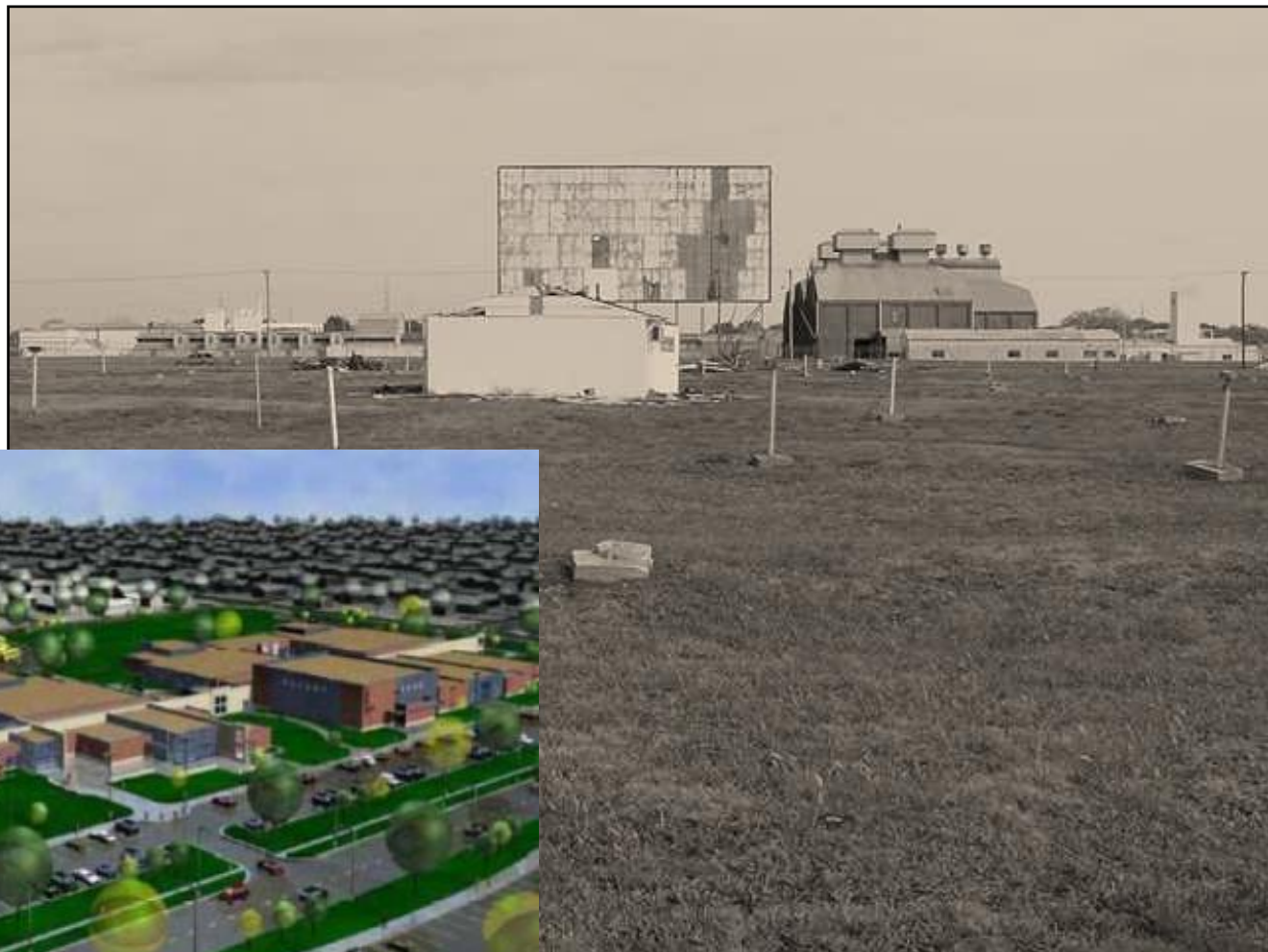


They have many faces ....  
**Former Gas Stations**



They have many faces ...

# Abandoned Commercial Properties





# They have many faces ... Inactive Rail Property



MGP Ingredients Corporate Office & Technical Innovation Center  
Cray Business Plaza, Atchison, Kansas

They have many faces ...

# Active/Under-used Rail Property



They have many faces ...  
**Scrapyards or junkyards**



They have many faces ....  
**Abandoned and Vacant Lands**



# Environmental Due Diligence

- Required for all property purchases, and most major improvements and expansions
- Any time financial assets involved:
  - Loans
  - Federal or State government
  - Shareholders
- Just like other types of due diligence performed when assets sold/purchased

# Brownfields Law & Incentives

- Helps identify environmental issues for property transactions
- Liability protection for any
  - For innocent landowners, prospective purchasers of contaminated property, contiguous landowners, and others
  - Establishes basis for Continuing Obligations to keep and maintain the defense after purchase
- Required by the EPA Brownfields Program as part of All Appropriate Inquiries (AAI) for site funding eligibility
  - Assessment
  - Cleanup

# Environmental Due Diligence

- Why Should I Care?
- Phase I/II Environmental Site Assessments (ESAs)
  - identify environmental risks before purchase
  - evaluate whether environmental risks are worth accepting / correcting in a case where contamination is discovered
  - avoid responsibility for cleanup under CERCLA as an “innocent landowner”
  - Become eligible for loans & brownfields liability protection /incentives

# Phase I ESA

(Environmental Site Assessment)

- Identifies potential or known recognized environmental conditions
- Involves:
  - Records review
  - Site reconnaissance
  - Interviews
  - Report





# Phase II ESA

## (Environmental Site Assessment)

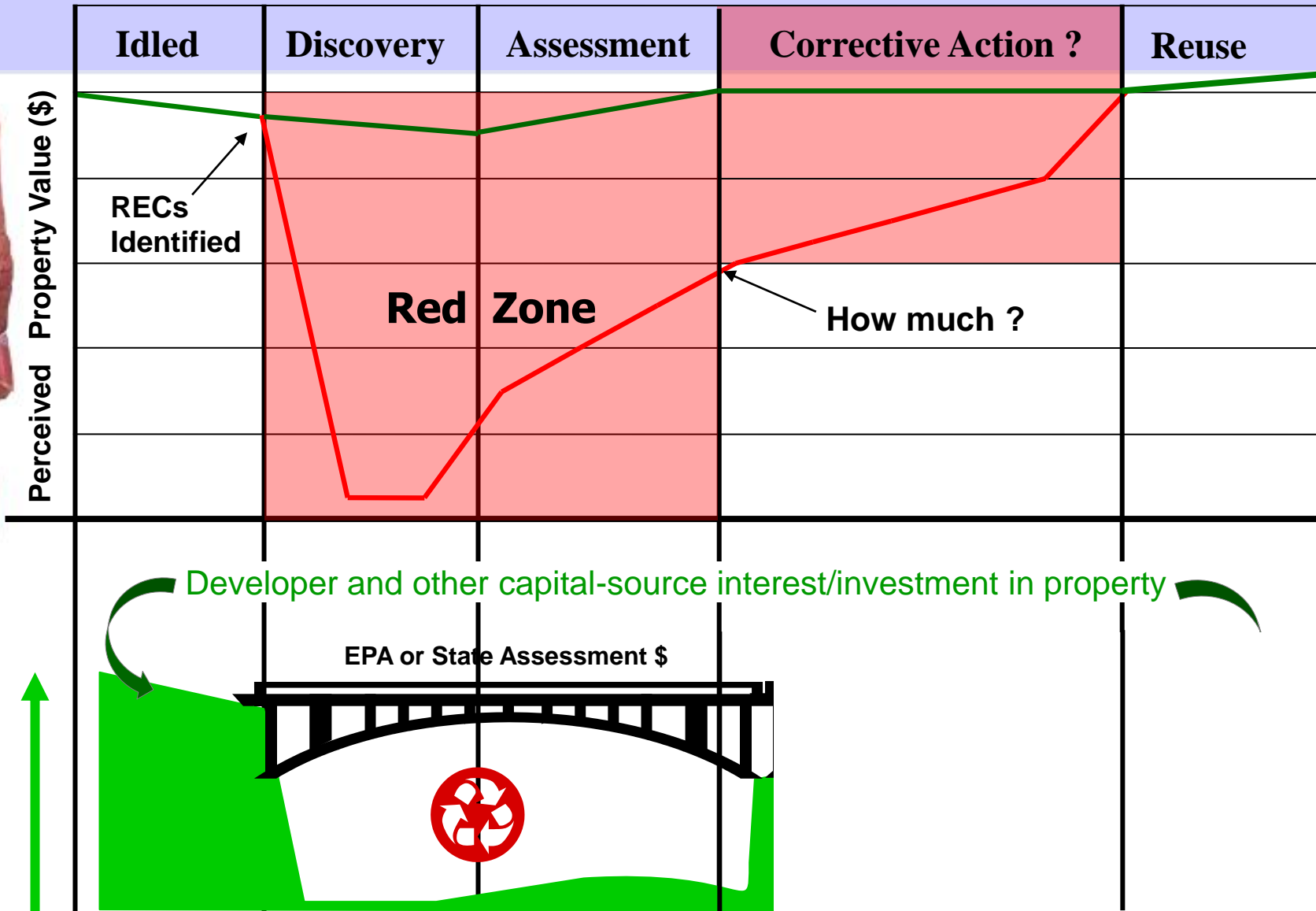
- Evaluates known or potential conditions
- Tailored to site-specific situation
  - Limited sampling and laboratory analysis to confirm or rule out concerns
  - Extensive sampling and analysis to define nature and extent of contamination
  - Recommendations regarding cleanup

# Continuing Obligations: Land Use Control Compliance

- The bona fide prospective purchaser, contiguous property owner, and innocent landowner provisions all require compliance with the following ongoing obligations as a condition for maintaining a landowner liability protection:
  - the person is in compliance with any land use restrictions established or relied on in connection with the response action and
  - the person does not impede the effectiveness or integrity of any institutional control employed in connection with a response action.
- **Key Issue:** “EPA believes the statute requires bona fide prospective purchasers, contiguous property owners, and innocent landowners to comply with land use restrictions and to implement institutional controls even if the restrictions or institutional controls were not in place at the time the person purchased the property.” \*

\*EPA Memorandum on Interim Guidance Regarding Criteria Landowners Must Meet to Qualify for Landowners Limitations on CERCLA Liability, March 2003.

# Why do I care ?



RECs: ASTM E1527-05 Recognized Environmental Conditions produce a stigma that affects property value whether impairment is real or not.



# Brownfields are Opportunity

**“Opportunity is not recognized by most people when they meet, because it is usually dressed in overalls and looks like Work.”**

**Thomas Alva Edison**



# *THANK YOU*



## **Terracon**

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