

SUSPENDING DISBELIEF:

The Partnership and Process that Brought About the Cleanup of 40,000 Brownfield Sites in Massachusetts

By 1990, the cleanup and redevelopment of brownfield sites in Massachusetts had come to a virtual standstill. The Commonwealth's Department of Environmental Protection was too thinly stretched to oversee the closure of more than a handful of sites every year. Environmental activists grew increasingly frustrated that public health and safety was not being adequately protected; banks would not lend; developers could not build; and community advocates could only watch as neighborhood properties deteriorated.

That all changed in 1993 when Massachusetts amended its existing law and adopted new regulations which, among other things, created a set of risk-based cleanup standards and licensed private sector professionals to assess and remediate contaminated sites. These professionals, called Licensed Site Professionals (LSPs), work on behalf of property owners, operators, and other responsible parties to oversee the assessment and cleanup of contamination releases. LSPs are required to conduct their work in a manner consistent with the state regulations, known as the Massachusetts Contingency Plan (MCP). LSPs are governed by the state Board of Registration of Hazardous Waste Site Cleanup Professionals.

Since 1993, the number of brownfield properties returned to active use has skyrocketed; the Commonwealth has eliminated its backlog and closed out approximately 40,000 sites in that 20-plus year window, averaging more than 1,600 sites a year.

The Massachusetts' experience illustrates how a privatized system, within a regulatory framework, succeeds in protecting public health and the environment in Massachusetts. This unique partnership among regulators, environmental advocates, engineers and scientists, business leaders and bankers working together brought about real progress.

THE PROBLEM

"In the late 1980s, there were lots and lots of pieces of property all over the Commonwealth – 7,000 at the time – that couldn't be developed because they needed signoffs by MassDEP staff and there was not enough staff to do so. Everybody was united by the fact that the existing program wasn't working for them."

Dan Greenbaum
Former Commissioner, MassDEP

"People became very concerned about what was happening with these sites. So we went to MassDEP who we expected would be able to address these issues. But, we learned very quickly that they didn't have the resources: the staff, the expertise, the equipment, and most of all, they didn't have the funding to do anything about it."

Gretchen Latowsky
Former Executive Director, For a Cleaner Environment (FACE); Past Member of the LSP Board

"With the regulations as they were in 1988, MassDEP had to approve every phase of a site's progress through the system. And they were not equipped to do so. It was gridlock, and consultants and their clients were extremely frustrated. It was clear that something different needed to be done."

Larry Feldman, GZA GeoEnvironmental, and Deborah Gevalt, Haley & Aldrich
LSPs, and Past Members of the LSP Board

"What environmental agency wants to say, 'We are preventing hazardous waste sites from being cleaned up because of our rules and regulations and lack of staff'? We had to admit that to ourselves. The Department realized we had a real problem here and we had to get on top of this before someone else did."

Jim Colman
Former Assistant Commissioner, MassDEP Bureau of Waste Site Cleanup

THE PARTNERSHIP

"The Study Committee was one of the most congenial, respectful groups of people from disparate interests working together. They all came with good intentions and good will: environmentalists, bankers, consultants, realtors, and Department staff all had different interests and disagreements. All hung their prejudices at the door when they walked in, and really got down to work."

We had to fix this, and we had to do it together. We talked a lot about suspending disbelief, of letting go of your history and conceptions. Everybody was united by the fact that [the current system] wasn't working for them."

Jim Colman

"When we first heard about the proposed new approach, we thought: This is nuts! You're going to give responsibility for investigating and cleaning up sites to the very people who created the sites in the first place? And you're going to license their consultants to do this work for you? We finally began to realize that the other parties were really concerned about what was going on and what needed to be addressed. We started to work hand-in-hand with them."

Gretchen Latowsky

"It was a rare occurrence, for example, to have one of the leading environmental advocacy groups and the bankers association agreeing on something like this. That happened over and over again."

In order to build consensus, everybody had to give up a little bit. The legislation went through as a single package which was not tampered with along the way because it was such a strong effort to get all the parties to buy into it."

Dan Greenbaum

"The fact that we did it was amazing. We were given free rein to just create, brainstorm, and do stuff that had never been done in environmental services. We were able to sit down with a blank page, create it, think it, sell it, go to public meetings, and convince people that it made sense. You had to convince the scientists, the lawyers, and the public."

Dick Chalpin, Former Regional Director
MassDEP Northeast Regional Office

THE PROGRAM

"We created this process whereby the LSP opinion had value in the marketplace to assure that those opinions were based on science and would stand the test of law."

There was instant success on October 2, 1993: people instantly knew where their cleanup endpoints were and that was magical."

Dick Chalpin

"We created a group of professionals with proper certifications who would step in, in the place of the state, and do all the same kinds of things: get the work done properly, get the sites cleaned up, and move them back into commerce."

Dan Greenbaum
Former Commissioner, MassDEP

"We have closed out more than 40,000 releases in 20 years. Each year about 1200 to 1500 new releases come into the system, but another 1300 to 1500 get closed out. The program is sustainable. The vast majority of releases get cleaned up in an organized, quick, and routine manner, without a lot of MassDEP input. It is remarkable that it can be so unremarkable."

Paul Locke
Director, Division of Response and Remediation, MassDEP Bureau of Waste Site Cleanup

"The system has been a tremendous success. The numbers of sites that have moved through the program – overseen by LSPs – have resulted in a tremendous amount of Brownfields redevelopment here in the Commonwealth. The statistics of the program are pretty stunning."

Chris Davis
Former Partner of Goodwin Procter LLP

"The process is the product. The process led us there."

Jim Colman

