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Three Strategies to Develop Renewable Energy Projects on Potentially Contaminated Lands

Article By:

Alex Garel-Frantzen

Amy Antoniolli

Developing renewable energy on contaminated lands has proven to be both effective and cost-effective for companies pursuing a new solar or wind energy project. The utility-scale solar farm constructed on the 120-acre Reilly Tar & Chemical Corporation Superfund site is a great example, and there are thousands more that are ripe for redevelopment.

Renewable energy continues to grow in volume and importance in the U.S. as corporations drive demand for sustainable energy, with 166 companies to date committing to go 100 percent renewable as part of a global initiative called RE100. At the same time, states and local governments are driving policy that prioritizes sustainable energy development. Two recent Illinois bills, the Path to 100 Act (HB 2966/SB1781) and Clean Energy Jobs Act (HB3624/SB2132), seek to incentivize the development of new renewable energy and move the state to 100 percent renewable energy by 2050. Other states, including California, New Jersey, New York, and Wisconsin, have called for or passed similar laws.

Using Superfund sites, brownfields, retired power plants, and landfills offers potential benefits to developers and community stakeholders:

- **Preserve Open Space**: Large-scale renewable energy facilities – often called “utility scale” projects – can require a lot of land that may displace or impact agricultural lands, open space, or other “greenspace.” Developing renewable energy on potentially contaminated properties can help to preserve the “greenspace” while returning blighted lands to sustainable and productive use.

- **Lower Costs and Shorter Timeline**: Developers can significantly lower costs and timelines because contaminated sites are usually already served by existing infrastructure, like substations, power lines, and roads, which would otherwise need to be constructed. Streamlined permitting and zoning can also reduce costs and timelines because potentially contaminated property is often already zoned for industrial or commercial use, which likely poses fewer obstacles to constructing renewable energy structures. Decreased land costs, programs for the procurement of renewable energy credits generated from developing

renewable energy projects on brownfields or potentially contaminated properties, and federal and state brownfield tax incentives can drive costs down even further.

- **Greater Community Support**: Communities may be quicker to get behind renewable energy projects that are sited on potentially contaminated lands because, rather than taking agricultural land out of production, the projects can clean up the otherwise abandoned sites, boost surrounding property values, increase tax revenues, and provide low-cost clean power.

Despite these benefits, developers often build renewable energy facilities on greenspaces rather than brownfields because of concerns related to potential liabilities or contamination. Below are three strategies that developers can use to move past those concerns and develop a successful renewable energy project on potentially contaminated lands.

1. Screen Sites for Renewable Energy Potential

Screen potentially contaminated properties to see whether they'd be a good fit for your renewable energy project. For example, confirm that a property has enough usable space and is close enough to transmission or distribution lines to support development. Determine whether a site is free from land-use restrictions that would preclude the use of your chosen renewable energy. Ensure the community doesn't already have a plan in mind to redevelop the property you're assessing. And inspect the property for evidence of potential contamination, like soil surface staining or debris stockpiles. If a site has not yet been assessed, you will need to investigate the site to determine whether redevelopment is appropriate. To help, the EPA has published guidance to assist prospective developers in screening prospective sites for solar and wind projects on potentially contaminated lands.

1. Coordinate the Cleanup and Renewable Energy Development

Developing renewable energy can occur at any stage of a property cleanup, from site inspection and preliminary assessment to post-construction completion. However, identifying and coming to a site at the beginning of or early on in the cleanup process has its advantages. It allows you to engage the community and other stakeholders, including potentially responsible parties, from the start of the redevelopment. It also allows you to coordinate and integrate the cleanup and renewable energy development decisions. For example, you can work with the governmental agency overseeing the site to fold renewable energy design requirements into the remedial design, rather than having to construct renewable energy structures on top of and around the completed remedy. Getting in early will ensure that the renewable energy project is compatible with the remedial design, institutional controls, monitoring activities, and engineering controls.

1. Protect Yourself from Liability Exposure

Many prospective developers, purchasers, and lenders stay away from or tread cautiously around building on contaminated properties for fear of liability under federal or state cleanup laws. However, many state cleanup programs provide liability protections for new owners or lessees, like a developer, who are not responsible for prior contamination at a site. The federal Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA) also generally limits EPA enforcement at certain qualifying brownfield sites, known as “eligible response sites”, where a party is conducting a response action in compliance with a state cleanup response program. Contact a lawyer and work with state government early on in the process to see what liability protections are available to you and how to qualify.

Other contaminated properties may be addressed under the CERCLA cleanup program. CERCLA has several self-implementing liability protections for developers and the like who acquire contaminated property but did not cause the contamination, including a protection for “bona fide prospective purchasers.” Ensure that you take the required steps to qualify for the BFPP protection, which will include, among other things, working with an environmental consultant to conduct “all appropriate inquiries” through a Phase I environmental site assessment. CERCLA can also offer liability protections for people who lease contaminated properties.

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