



CONTAMINATED LAND REDEVELOPMENT CREDIT

EVALUATION SUMMARY | JANUARY 2022 | 2022-TE11

TAX TYPE	Income	REVENUE IMPACT	\$1.3 million
YEAR ENACTED	2014	(TAX YEAR 2018)	
REPEAL/EXPIRATION DATE	December 31, 2022	NUMBER OF TAXPAYERS	27
		(TAX YEAR 2018)	

KEY CONCLUSION: The credit provides a relatively modest additional incentive to clean-up contaminated land and appears to have encouraged some property owners to go forward with remediation projects. It is likely more effective for properties that are located in marginal redevelopment markets and for property owners with less funding available for remediation and redevelopment, whereas well-funded redevelopment projects in strong redevelopment markets may already have strong incentives to complete remediation.

WHAT DOES THE TAX EXPENDITURE DO?

The Contaminated Land Redevelopment Credit (Brownfields Credit) [Section 39-22-526, C.R.S.] allows property owners to claim income tax credits for voluntary cleanup of contaminated land—known as brownfields—located in Colorado. Property owners can claim a credit equivalent to 40 percent of the first \$750,000 spent on remediation and 30 percent of the next \$750,000 spent, for a maximum credit of \$525,000 on remediation costs of \$1.5 million or more. Statute allows CDPHE to certify a total of \$3 million in tax credits each tax year.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

The legislative declaration for the Voluntary Clean-up and Redevelopment Act [Section 25-16-302, C.R.S.], which includes the credit, indicates that its purpose is “to permit and encourage voluntary clean-ups of contaminated property.”

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

If the General Assembly chooses to extend the Brownfields Credit beyond 2022, it may want to consider the following:

- Establishing performance measures for the credit.
- Reviewing its effectiveness and whether it is meeting its purpose to the extent intended.
- Amending statute to allow entities such as school districts, urban renewal authorities, and business improvement districts to qualify.
- Reviewing the annual aggregate cap on credits.



CONTAMINATED LAND REDEVELOPMENT CREDIT

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

The Contaminated Land Redevelopment Credit (Brownfields Credit) [Section 39-22-526, C.R.S.] allows property owners to claim income tax credits for voluntary cleanup of contaminated land—known as brownfields—located in Colorado. The Colorado Department of Public Health and Environment (CDPHE) considers brownfields to be abandoned, idled, or under-utilized properties where redevelopment is complicated by environmental contamination. Property owners can claim a credit equivalent to 40 percent of the first \$750,000 spent on remediation and 30 percent of the next \$750,000 spent, for a maximum credit of \$525,000 on remediation costs of \$1.5 million or more. Statute allows CDPHE to certify a total of \$3 million in tax credits each tax year. If this aggregate limit is reached, CDPHE can “wait list” up to \$1 million in tax credits to be certified as part of the following year’s \$3 million aggregate limit [Section 39-22-526(3), C.R.S.].

In 1994, the General Assembly created the Voluntary Clean-Up Program [Section 25-16-301 et seq., C.R.S.] within CDPHE to provide guidance and financial assistance for remediating contaminated lands. Sites eligible for the Voluntary Clean-Up Program are brownfields that are not under federal or state environmental regulations, often because the contamination occurred prior to such regulations. Statute [Section 25-16-303(3)(b), C.R.S.] excludes the following types of sites from the Voluntary Clean-Up Program—sites designated as “superfund” sites and placed on the National Priorities List by the U.S. Environmental Protection Agency (EPA); sites subject to the federal Resource Conservation and Recovery Act or the State Hazardous Waste Disposal Site program run by CDPHE; and sites subject to CDPHE’s Water

Quality Division enforcement actions or the Underground Storage Tank program administered by the Colorado Department of Labor and Employment.

CDPHE is responsible for determining whether a property is eligible for the Voluntary Clean-Up Program. In order to qualify, the property owner must submit a plan that provides the following, as required by Section 25-16-304, C.R.S.:

- An environmental assessment that describes the contamination of the property and its risk to public health and the environment.
- A plan for remediation of the contaminated land that either has or could release contamination that poses an “unacceptable” risk to public health and the environment. The plan needs to consider the present and future use of the site, and a timetable to implement the plan and monitor the site after completion of the remediation.
- A description of state standards that apply to the soil, surface water, or groundwater, or if no standards exist, a description of the plan’s proposed clean-up levels and existing risks to public health and the environment.

In 2000, the General Assembly passed House Bill 00-1306, the Brownfield Redevelopment Incentives Act that created the initial version of the Brownfields Credit, which was available to Voluntary Clean-Up Program projects in municipalities with populations of at least 10,000 people. This initial credit provided a tax credit of up to \$100,000 for remediation costs of \$300,000, with no aggregate annual limit; it expired on December 31, 2010. In 2014, the General Assembly passed Senate Bill 14-073, which implemented the current Brownfields Credit. The current credit is set to expire on December 31, 2022.

In order to be certified for the credit by CDPHE, property owners must complete the following steps:

- Submit a Voluntary Clean-Up Program plan to CDPHE for approval and pay a fee of \$2,000 to compensate CDPHE for the time it spends reviewing the plan. Voluntary Clean-Up Program plans include the applicant's estimated costs of remediation and the projected tax credit based on those costs.
- Complete the remediation described in the plan.
- Receive a No Action Determination letter from CDPHE, which confirms that the remediation is complete and generally that neither CDPHE nor the federal government will require additional remediation.
- Submit documentation to CDPHE on the actual remediation costs, such as invoices detailing payments for remediation.
- Receive a certification letter for the credit from CDPHE that shows the credit amount based on actual remediation costs.

Statute allows the Brownfields Credit to be used by taxpayers who complete the required remediation, "qualified entities," and taxpayers to whom they transfer the credit. Qualified entities are towns, cities, counties, and private nonprofit entities exempt from income taxes [Section 39-22-526(2)(d), C.R.S.]. In order for qualified entities to receive a benefit from the Brownfields Credit, they must sell the credit, which according to a Colorado-based tax credit broker, is typically at 85 percent of the credit's value (e.g., sell a \$100,000 credit for \$85,000). According to legal guidance received by CDPHE, the statutory definition of qualified entities *does not* include certain tax-exempt entities such as school districts and urban renewal authorities. Taxpayers claim the Brownfields Credit by filing a copy of the CDPHE tax credit certification letter with the Department of Revenue (Department) and completing the following forms:

- **INDIVIDUALS**—Use Line 28 of the Individual Credit Schedule (Form DR 104CR) when filing their income taxes to report the amount of credit available and the amount they are claiming for the tax year.

Individuals must also submit the Remediation of Contaminated Land Credit Use Schedule (Form DR 0349).

- **CORPORATIONS**—Use Line 15 of the Credit Schedule for Corporations (Form DR 0112CR) when filing income taxes to report the amount of credit available and amount used for the tax year.
- **TRANSFERS**—To transfer all or part of a credit, property owners must fill out the Remediation of Contaminated Land Credit Transfer Schedule (Form DR 0348) in addition to the required tax return forms and CDPHE certification letter.
- **PASS-THROUGH ENTITIES**—Use Line 12 of the Pass-Through Entity Credit Schedule (Form DR 0106CR) , which is used by partnerships and S Corporations to file returns on behalf of partners and shareholders, to report the amount of credit available, and the credit amounts allocated to partners/shareholders.
- **FIDUCIARIES**—Use Line 5 of Schedule G in the Fiduciary Income Tax Return (Form DR 0105) to report the credit available and credit used in the tax year.

If the amount of the credit exceeds the taxpayer's tax liability, the taxpayer can carry forward the remainder of the credit for up to 5 years, after which any remaining amounts are extinguished. Although CDPHE can only certify \$3 million in credits each year, there is no restriction on the aggregate amount taxpayers may claim each year, so the total amount of Brownfields Credits claimed in a given year may exceed \$3 million due to taxpayers carrying forward credits.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not explicitly state the intended beneficiaries of the credit. However, based on its operation, discussions with staff at CDPHE and the Department, and stakeholder interviews, we inferred that the direct beneficiaries of the credit are Colorado property owners, including

private individuals and qualified entities – such as cities and counties – that complete the remediation of contaminated land as part of CDPHE’s Voluntary Clean-Up Program. Colorado residents whose health and safety are at risk due to contamination of the properties and the local governments whose local economies and tax bases are positively impacted by the remediation and redevelopment of previously blighted properties may also benefit from the credit to the extent that it encourages remediation to occur. Because qualified entities benefit by transferring the credit to Colorado taxpayers at a discount from the credit value, the taxpayers who purchase these credits also benefit.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

The purpose of the Brownfields Credit is to encourage voluntary environmental remediation of contaminated sites. Specifically, the legislative declaration of the Voluntary Clean-up and Redevelopment Act, which includes the tax credit, says the law is:

“intended to permit and encourage voluntary clean-ups of contaminated property by providing persons interested in redeveloping existing industrial sites with a method of determining what the clean-up responsibilities will be ... [and to] eliminate impediments to the sale or redevelopment of previously contaminated property... [to] encourage and facilitate prompt clean-up activities.” [Section 25-16-302, C.R.S.]

During the committee testimony for Senate Bill 14-073, which re-implemented the tax credit, the bill sponsor and CDPHE staff indicated that the tax credit is intended to serve as an additional financial resource to encourage redevelopment of contaminated sites. Testimony at the committee hearing indicated that voluntary clean-up plans often include financing from both private sources and public sources – such as city funding or Tax Increment Financing. Therefore, the Brownfields Credit appears to have been expected to contribute to, but not necessarily be the deciding factor for, whether a remediation project goes forward or not.

In addition to encouraging remediation generally, CDPHE staff indicated the credit is intended to encourage developers to pursue more complicated, expensive remediation that otherwise would not occur. For example, a property owner might decide that fully remediating contaminated land is too costly and instead, decide to place the site under an environmental covenant or restrictive notices, which places restrictions on how the site can be used [Section 25-15-320(5), C.R.S.]. In these instances, CDPHE staff might use the Brownfields Credit to assist the property owner to fully remediate the contaminated land.

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We determined that the Brownfields Credit is meeting its purpose to some extent, particularly on marginal redevelopment projects that would not be profitable enough to go forward with remediation without the credit. However, the credit is small in comparison to typical redevelopment costs and is likely less influential when the expected profits from developing the land are high. In addition, we found that the definition of “qualified entities” excludes some property owners that may want to conduct remediation and seems to hinder some local governments’ redevelopment efforts.

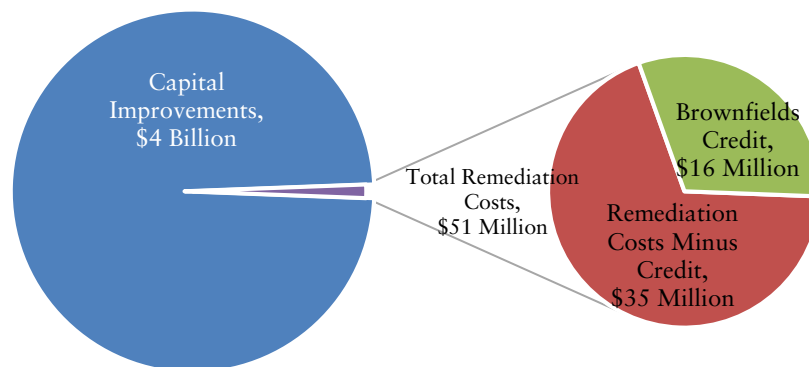
Statute does not provide quantifiable performance measures for this credit. Therefore, we created and applied the following performance measure to determine the extent to which the credit is meeting its purpose.

PERFORMANCE MEASURE #1: To what extent has the Brownfields Credit encouraged property owners to voluntarily remediate contaminated lands in Colorado?

RESULT: We found that the credit likely provides a relatively modest additional incentive to remediate contaminated lands and may encourage some remediation projects, though other factors are often more important to property owners deciding whether to go forward

with projects. Data provided by CDPHE indicate that from Calendar Years 2015 through 2020, there were a total of 62 projects that qualified for the credit. In total, we estimate that credit recipients spent \$51 million on remediation projects and received about \$16 million in credits. Stakeholders indicated that the credit can play an important role in encouraging remediation and redevelopment of properties by making these project more financially viable. However, it appears that some projects would have gone forward regardless of the credit. Specifically, we interviewed six stakeholders involved with Voluntary Clean-Up Program projects—including a 501(c)(3) nonprofit organization, urban renewal authorities, a school district, a private developer, and an environmental attorney—and the four stakeholders that qualified for the tax credit agreed that it helped contribute to the decision to move forward with their remediation project. These stakeholders also stated, however, that the credit was not the primary factor in their decision because the amount of the tax credit is small compared to the overall cost of redevelopment projects. As shown in EXHIBIT 1, our analysis of CDPHE data indicates that the total planned capital improvement costs for the land that was remediated under the credit during Calendar Years 2015 through 2020, was about \$4 billion, meaning that the value of the credit, reported as \$16 million, was less than 0.5 percent of the total capital improvement costs.

EXHIBIT 1. BROWNFIELDS CREDIT IS SMALL PORTION OF CAPITAL IMPROVEMENT COSTS¹
CALENDAR YEARS 2015-2020



SOURCE: Office of the State Auditor analysis of Contaminated Land Redevelopment Tax Credit (Brownfields Credit) data provided by the Colorado Department of Public Health and Environment.

¹ Property owners projected estimates for the capital improvements and remediation costs. The Brownfields Credit amounts reflect the actual credit issued to property owners.

Though the credit's value may be substantially less than the total capital improvements planned for the land being remediated, CDPHE staff indicated that for projects that go through the Voluntary Clean-Up Program, the credit encourages landowners to complete remediation projects and also improve the quality of the remediation conducted. According to CDPHE and stakeholders, lenders generally will not finance capital improvement projects that qualify for the Voluntary Clean-Up Program until the contaminated land is remediated and receives a No Action Determination letter from CDPHE, which means CDPHE will not require further remediation by the landowner. Because the credit reduces remediation project costs, it can help make the remediation necessary to secure financing for the remainder of the capital improvement project more financially feasible for property owners, especially if the property owner has limited funds available. Therefore, it appears that for some projects, the credit, which was equivalent to about 31 percent of remediation costs on projects approved from Calendar Years 2015 through 2020, can be effective at encouraging remediation despite being relatively small in comparison to the overall capital improvement costs associated with redeveloping the property.

Generally, the Brownfields Credit appears to provide the strongest additional incentive to complete remediation when redevelopment projects are expected to be only marginally profitable or not make a profit, which may be the case for qualified entities (e.g., cities, counties, nonprofits) that may also have smaller budgets for remediation and capital improvement projects. Conversely, the credit appears to be less effective in areas where the market demand for redevelopment is especially strong or especially weak. Specifically, according to CDPHE staff and stakeholders, in areas with strong redevelopment markets, such as Downtown Denver, projects are generally well-funded and have higher profit margins, which decreases the importance of the Brownfields Credit for the projects to be financially viable. In contrast, in weaker redevelopment markets, projects may not be profitable even with the credit, so the credit does not by itself result in redevelopment in those areas.

We also found that about 18 projects (16 percent) pursuing remediation through the Voluntary Clean-Up Program between Calendar Years 2015 and 2020—most of which were in the Denver Metropolitan Area—did not appear to seek the Brownfields Credit. This indicates that the Brownfields Credit is not always needed to encourage property owners to complete remediation projects through the Voluntary Clean-Up Program. CDPHE said that it is possible that the aggregate annual cap prevented some of these projects from seeking the credit, but we could not determine if this occurred for any projects.

In addition, we found that Voluntary Clean-Up Program projects completed by urban renewal authorities and school districts are not eligible to receive the Brownfields Credit, which could limit its effectiveness. Specifically, the urban renewal authorities and school district we spoke with explained that they participated in the Voluntary Clean-Up Program and initially sought the credit. However, CDPHE, which had consulted with the Office of the Attorney General, informed the entities that they did not meet the statutory definition of “qualified entity” because they were not a 501(C)(3) nonprofit or considered part of city or county government. Upon learning this, one urban renewal authority, whose city funded the remediation project, worked with CDPHE to find a way to receive the tax credit by deeding the property to the city so that the city could receive and then transfer the tax credit. This method worked because its city funded the project. The other urban renewal authority—which was *not* funded by its city—and the school district that we spoke with completed their remediation projects without receiving the Brownfields Credit.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

The Department reported that the Brownfields Credit had a revenue impact to the State of about \$2 million in Tax Year 2016 and \$1.3 million in Tax Year 2018, with a corresponding tax benefit for taxpayers who claimed the credits. Because credits can be carried forward for up to 5 years, it is possible that there will be an additional

revenue impact to the State in future years for the projects associated with these amounts claimed, though some taxpayers may lack sufficient tax liability to claim the full value of their credits during the 5 years following their approval for the credit. Between Calendar Years 2015 and 2020, CDPHE certified nearly \$16 million in credits, which represents the maximum revenue impact to the State, for 62 projects approved during these years. EXHIBIT 2 provides the number of projects completed and total amount of tax credits certified in each year. As shown, CDPHE approved about 88 percent of the \$3 million annual credit limit during these years.

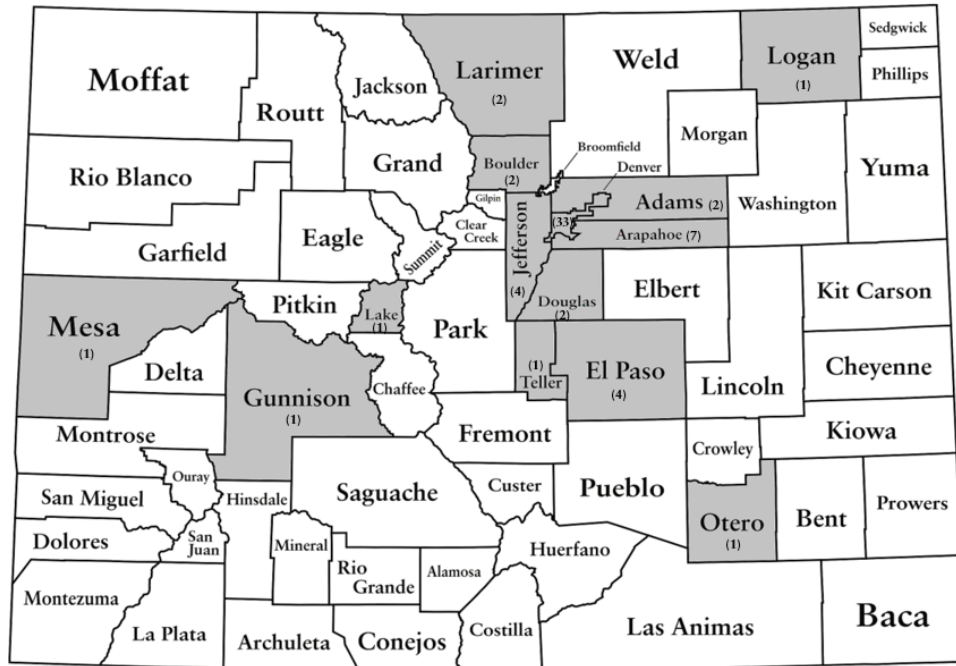
**EXHIBIT 2. COMPLETED BROWNFIELDS REMEDIATION
PROJECTS AND AMOUNT OF BROWNFIELDS
TAX CREDIT CERTIFIED
CALENDAR YEARS 2015 TO 2020**

Calendar Year	# of Completed Projects	Credit Amount Certified	% of Annual Credit Limit
2015	12	\$2,301,200	77%
2016	11	\$2,672,573	89%
2017	10	\$2,476,338	83%
2018	10	\$2,999,990	100%
2019	11	\$2,859,650	95%
2020	8	\$2,443,368	81%
Total	62	\$15,753,119	88%

SOURCE: Office of the State Auditor analysis of Colorado Department of Health and Environment's Brownfields Credit data.

We also found that the Brownfields Credit has most often benefited projects in the Denver Metropolitan Area, where 48 of the 62 approved projects were located, though there have been some remediation projects in rural counties across the state. EXHIBIT 3 shows, by county, the number of remediation projects certified to receive the Brownfields Credit during Calendar Years 2015 through 2020.

**EXHIBIT 3. CERTIFIED REMEDIATION PROJECTS
CALENDAR YEARS 2015-2020**



SOURCE: Office of the State Auditor analysis of Colorado Department of Public Health and Environment data on certified Brownfields Credits.

To the extent that the credit encourages landowners to undertake redevelopment projects that require remediation, the credit may also benefit the economy of the communities where the projects occur. For example, remediation and redevelopment projects may increase property values by reducing the number of contaminated and blighted properties in a community, make properties suitable for commercial or residential use, and help increase employment, both to complete the projects themselves and if redeveloped properties are used to establish new businesses, which helps increase local tax revenue.

CDPHE measures three indirect economic benefits of the Brownfields Credit: 1) new, full-time jobs; 2) new homes; and 3) acres remediated. EXHIBIT 4 shows the indirect benefits of the Brownfields Credit as estimated by CDPHE for Calendar Years 2019 and 2020. However, it is important to note that these estimates show the benefits associated with projects certified for the credit, but because some of the projects may have gone forward regardless of the credit, the economic impact

caused by the credit is likely less. Further, these estimates are based on information provided by program applicants to CDPHE and we did not verify their accuracy.

**EXHIBIT 4. ESTIMATES OF INDIRECT ECONOMIC BENEFITS
OF BROWNFIELDS TAX CREDIT¹
CALENDAR YEARS 2019 AND 2020**

	2019	2020
New Full-Time Jobs ²	656 jobs	593 jobs
New Homes	1,757 homes	1,081 homes
Acres Remediated	86 acres	158 acres

SOURCE: Colorado Department of Public Health and Environment.

¹Estimates provided by Voluntary Clean-Up Program applicants to the Colorado Department of Public Health and Environment.

²CDPHE advises program applicants to exclude temporary construction jobs from calculations of new, full-time jobs.

Additionally, a study conducted by the EPA in 2020 found that remediation of centrally located brownfields that are connected to existing infrastructure result in economic and environmental benefits, as opposed to building structures on undeveloped land, known as greenfields. These benefits are the result of:

- Reducing vehicle miles traveled and greenhouse gas emissions due to residents of the redevelopment living near work, public transportation, and amenities, as well as employees of the redevelopment being able to walk, take public transit, and otherwise have shorter commutes.
- Limiting the expansion of impervious surfaces by using existing infrastructure, which reduces storm water and pollutant run off into bodies of water.
- Encouraging the reorganization of development plans across entire metro areas in ways that increase use of existing infrastructure and reduce the environmental impacts of new development.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

Based on Department data, 15 taxpayers claimed the Brownfields Credit in Tax Year 2017, and 27 taxpayers claimed it in Tax Year 2018, with an average credit amount of \$47,667 per taxpayer, which would no longer be available for new remediation projects if the credit were eliminated or allowed to expire. While corporations and pass-through entities can also claim the credit, only individuals claimed the credit in Tax Year 2018.

To the extent that the credit encouraged remediation projects, if it was eliminated or allowed to expire after 2022, some remediation projects may no longer go forward or may be conducted at a smaller scale. As discussed, property owners that have less funding available for projects—such as cities, counties, and nonprofit organizations—or that are in weaker development markets are more reliant on the credit and may be more likely to not go forward with remediation projects if it was no longer available. On the other hand, eliminating the credit may have less impact on well-funded property owners and those in strong development markets. As previously mentioned, according to CDPHE staff, the Brownfields Credit helps encourage property owners to complete more thorough and timely remediation through the Voluntary Clean-up Program, so eliminating the credit could diminish CDPHE's ability to encourage better quality remediation of contaminated land.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

Eight other states offer tax expenditures that are similar to Colorado's Brownfields Credit, although there is variation in how the tax expenditures operate. For example, some states offer tax credits against estates and trusts tax and insurance premium tax, as opposed to income tax. New York allows its brownfields tax credits to be refundable, meaning that if claimants' tax liability is less than the available credit, the state will issue them a refund for the difference, while all other states, including Colorado, have nonrefundable brownfields tax credits. Further, although some other states limit the aggregate amount of

credits that can be issued each year, Colorado's \$3 million limit is the lowest of all states, with Iowa providing the next lowest limit at \$10 million. EXHIBIT 5 provides information on each state's brownfields tax credits.

EXHIBIT 5. BROWNFIELDS TAX CREDITS ACROSS STATES

State	Maximum Credit Amount Per Project	Aggregate Annual Amount	Tax Type
Colorado	\$525,000	\$3 million	Individual and Corporate Income
Florida	\$1 million	\$27.5 million	Corporate Income
Iowa	\$1 million	\$10 million	Individual, Corporate, Estates & Trusts, and Franchise Income; Insurance Premiums; Property
Kentucky	\$150,000	No limit	Individual, Corporate, and Limited Liability Entity Income
Maryland	No maximum. 50 percent of property taxes due to increased assessed property value; potential for additional 20 percent of remaining property taxes	No limit	Property
Mississippi	\$150,000	No limit	Individual and Corporate Income
New York	Offers seven different credits. One is limited to \$30,000; the other six have no dollar limit and are based on different percentages.	No limit	Individual, Corporate, and Insurance Franchise Income
South Carolina	\$100,000	No limit	Individual and Corporate Income
Tennessee	No maximum. 50 percent of purchase price of brownfields property.	No limit ¹	Franchise Income and Excise

SOURCE: Office of the State Auditor analysis of Bloomberg BNA information on tax provisions in other states' statutes.

¹ As of July 1, 2020, Tennessee removed its \$10 million annual aggregate limit of credits that could be issued in a year.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

There are no tax expenditures with a similar purpose available in Colorado. However, there are other programs administered by CDPHE that are available with a similar purpose of encouraging redevelopment of contaminated land:

COLORADO BROWNFIELDS REVOLVING LOAN FUND—Offers low cost financing at reduced interest rates and flexible loan terms to entities participating in the Voluntary Clean-Up Program. The loan fund is administered by CDPHE, the Colorado Housing and Finance Authority, and the loan fund’s Board of Directors, which approves loans. In Calendar Year 2020, the Board of Directors approved and issued two loans from the fund, totaling about \$2.4 million—\$292,500 for one loan and \$2.1 million for the other.

1306 BROWNFIELDS CLEANUP GRANT PROGRAM—Named after House Bill 00-1306, these grants are available to not-for-profit, governmental entities, and watershed or other community organizations with an eligible project site. In Fiscal Year 2020, CDPHE issued a total of about \$270,500 in grants to four brownfields remediation projects, with the size of the grants ranging from \$17,300 to \$108,000. These funds are not required to be paid back to the State.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

There were no data constraints that impacted our ability to conduct this evaluation.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

IF THE GENERAL ASSEMBLY CHOOSES TO EXTEND THE BROWNFIELDS CREDIT BEYOND 2022, IT MAY WANT TO CONSIDER AMENDING STATUTE TO ESTABLISH PERFORMANCE MEASURES FOR THE CREDIT. As discussed,

statute does not provide performance measures for evaluating the credit's effectiveness. Therefore, for the purposes of our evaluation, we developed a performance measure to assess the extent to which the deduction is meeting its purpose. However, if the General Assembly considers legislation to extend the expiration date of the Brownfields Credit beyond Calendar Year 2022, it may also want to clarify its intent for the deduction by providing performance measure(s) that correspond with the credit's purpose in statute. This would allow our office to more definitively assess the extent to which the deduction is accomplishing its intended goal(s).

WHEN DETERMINING WHETHER TO EXTEND THE BROWNFIELDS CREDIT BEYOND 2022, THE GENERAL ASSEMBLY MAY WANT TO REVIEW ITS EFFECTIVENESS TO DETERMINE WHETHER IT IS MEETING ITS PURPOSE TO THE EXTENT INTENDED. As discussed, statute indicates that the purpose of the credit is to "encourage voluntary clean-ups of contaminated property." We found that the credit is likely meeting this purpose to some extent, though it appears to provide a relatively modest additional incentive. From Tax Years 2015 through 2020, CDPHE certified about \$16 million in credits for 62 projects, equivalent to about 31 percent of the \$51 million in total remediation costs for the projects. However, property owners reported about \$4 billion in total capital costs for these redevelopment projects, which indicates that the credit was often small in comparison with the overall size of the projects.

According to stakeholders, the credit can be an important incentive for encouraging remediation projects and the redevelopment of distressed properties. For example, banks typically require remediation on contaminated properties prior to approving the financing for the larger redevelopment projects and the credit can help make projects more financially viable for property owners with limited funding. In addition to encouraging remediation projects generally, CDPHE staff reported that the credit encourages property owners to participate in its Voluntary Clean-up Program, which likely results in better quality remediation projects than would occur if the projects were completed outside of the program. However, stakeholders also indicated that while

the credit is one factor they consider when deciding to complete a remediation project, other factors, such as the expected profit from redeveloping the property, may be more important. Furthermore, three of the four stakeholders we spoke with who had claimed the credit stated that they pursued remediation of contaminated lands through the Voluntary Clean-Up Program prior to learning that the credit was available, implying that the credit was not always a deciding factor.

We also found that the credit is likely a more important incentive for cities, counties, and charitable organizations, which may have more limited funding to complete remediation projects, and for private owners of land located in weaker redevelopment markets, where there is less incentive to remediate land because the expected profit margin for redevelopment is less. In contrast, the credit may be a less important factor for property owners in areas where the demand for redevelopment is high and when the expected profit from redevelopment projects is greater. We found that the use of the credit is concentrated within the Denver Metropolitan Area, where 48 of the 62 projects certified for the credit between Calendar Years 2015 and 2020 were located. Although this area of the state has seen a strong redevelopment market in recent years, we did not have information on the expected profit from redeveloping these properties.

IF THE GENERAL ASSEMBLY CHOOSES TO EXTEND THE BROWNFIELDS CREDIT BEYOND 2022, IT MAY WANT TO CONSIDER AMENDING STATUTE TO EXPAND THE DEFINITION OF “QUALIFIED ENTITIES” THAT ARE ELIGIBLE FOR THE CREDIT. Statute states that a qualified entity “means a county, home rule county, city, town, home rule city, home rule city and county, or a private non-profit entity that is exempt from the income taxes” [Section 39-22-526(2)(d), C.R.S.]. As discussed, we found that CDPHE, after consulting with the Attorney General’s Office, interprets “qualified entities” to exclude entities that are not explicitly mentioned in the statutory definition, such as school districts and public nonprofit, tax exempt entities that partner with local governments to conduct brownfields remediation (e.g., urban renewal authorities, downtown development authorities, and business improvement districts). While this interpretation of statute appears reasonable based on the explicit

definition of “qualified entities”, it may be limiting local government efforts to remediate and redevelop contaminated land and is not clear whether the General Assembly intended to exclude these entities from accessing the credit.

IF THE GENERAL ASSEMBLY CHOOSES TO EXTEND THE BROWNFIELDS CREDIT BEYOND 2022, IT MAY WANT TO REVIEW THE AGGREGATE ANNUAL CAP. We found that in recent years, particularly 2018 and 2019, CDPHE has certified nearly all of the credit’s \$3 million aggregate cap. CDPHE stated that because of the cap, it has denied Voluntary Clean-Up Program projects from receiving the Brownfields Credit. According to CDPHE staff, when Voluntary Clean-Up Program projects apply to receive the credit, CDPHE reserves the amount of projected tax credits in the year the project is expected to be completed. Once CDPHE assigns \$3 million in tax credits in a specific calendar year, any additional Voluntary Clean-up Program projects with that projected completion year will be denied the tax credit. CDPHE says that if funds become available due to projects being abandoned, staff will contact the denied Voluntary Clean-Up Program projects and offer to reserve the tax credits. According to CDPHE and a stakeholder that has worked with several Voluntary Clean-Up Program projects, as a result of this process, property owners might delay their remediation so that it is completed in the next calendar year so that they can secure the tax credit.

Further, although statute allows that, if the \$3 million aggregate cap is reached in a year, CDPHE can “wait list” up to \$1 million in tax credits for the next year, CDPHE reported that it has not used this waitlist option because it has not served as a viable solution for addressing the demand for the Brownfields Credit, which has consistently been at or above the \$3 million cap in recent years.

Given these limitations, the General Assembly could consider increasing the aggregate annual limit of the Brownfields Credit. CDPHE indicated that an aggregate limit of \$5 million could address the majority of the credit’s demand, and that a \$7 million aggregate cap could likely

address all of the demand. As discussed, of the eight states with brownfields tax credits, Colorado has the lowest aggregate annual cap. Most states have no annual limit, while other states set annual limits of either \$10 million or \$27.5 million. However, increasing the cap would also increase the revenue impact of the credit.