

DELAWARE HAZARDOUS SUBSTANCE CLEANUP ACT

BROWNFIELD CERTIFICATION AND GRANT APPLICATION



DE # _____

Department of Natural Resources and Environmental Control

Division of Waste and Hazardous Substances

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BROWNFIELD CERTIFICATION AND GRANT APPLICATION UNDER THE
DELAWARE HAZARDOUS SUBSTANCE CLEANUP ACT

Please read this entire Application carefully and respond to all requests for information fully and accurately.

I. Introduction

The completion of all relevant parts of this Application is a prerequisite for the Department of Natural Resources and Environmental Control, Division of Waste and Hazardous Substances (“Department” or “DNREC”) to process the Application.

II. Brownfield Certification

Brownfield certification of a property is determined by DNREC based upon the specific information provided in this Application as well as the particular facts relating to the existing environmental condition of the property. For more detailed information concerning this Application and property certification, please review Section 3.4 of the *Delaware Regulations Governing Hazardous Substance Cleanup* (“HSCA Regulations”).

<http://regulations.delaware.gov/AdminCode/title7/1000/1300/1375.pdf>

Brownfield certification may be sought by the current owner of a property, a prospective purchaser of a property, DNREC, or any public agency (the Applicant). A property must be certified as a Brownfield by DNREC in order for it to be eligible for Brownfield grant funding. Note: the current property owner cannot qualify for Brownfield developer eligibility

III. Funding

Any Applicant seeking financial assistance in the form of Brownfield grant funding should carefully review DNREC’s *Hazardous Substance Cleanup Act Policy on Brownfield Grants* (<https://documents.dnrec.delaware.gov/dwhs/remediation/brownfields/Brownfields-Grant-Funding-Policy.pdf>) and the State of Delaware *Brownfields Grant Funding Eligible Expenses Guidance and Reimbursement Application Instructions*, (<https://documents.dnrec.delaware.gov/dwhs/remediation/brownfields/Brownfields-Grant-Funding-Policy.pdf>).

Any decision regarding the provision of financial assistance to an Applicant is made at the sole discretion of the Department and is not subject to review. Further, Brownfield grant funding is contingent upon the availability of funds in DNREC’s Hazardous Substance Cleanup Act Fund. Nothing contained herein creates a right to financial assistance, nor does it obligate DNREC or

the State of Delaware to reimburse any Applicant by means of Brownfield grants or any other public funding mechanism.

The purpose of providing Brownfields grant funding is to reimburse eligible costs incurred at Certified Brownfield Sites pursuant to the provisions of 7 Del. C. § 9113(c)(4). Reimbursement may only be made to a Certified Brownfields developer who has entered into a Brownfield Development Agreement (BDA) with the DNREC *prior* to taking title to the property.

Costs associated with site assessment, investigation, remedial activities and/or oversight costs incurred by DNREC which are consistent with the *State of Delaware Brownfields Grant Funding Eligible Expenses Guidance and Reimbursement Application Instructions*, (<https://documents.dnrec.delaware.gov/dwhs/remediation/brownfields/Brownfields-Grant-Funding-Policy.pdf>), may be eligible for reimbursement.

The only entity eligible for reimbursement is the entity that has entered into a Brownfield Development Agreement with DNREC.

Reimbursement will not occur until allowable expenses have been incurred and receipts for the expenses have been received, reviewed, and approved by DNREC. Further, reimbursement for *remedial* costs will not be provided until the Brownfields developer submits documentation to DNREC establishing that the Brownfields developer has taken title to the property.

To be eligible for non-profit funding, the ownership of the property must meet the definition of non-profit as defined in the DNREC's *Hazardous Substance Cleanup Act Policy on Brownfield Grants*.

At the discretion of the Department, a project may include multiple parcels or multiple operable units and includes all the planned development such as office buildings, residential units, or commercial units shown on the conceptual site plans for the project. In addition, all projects entailing multiple parcels, or projects that divide a single parcel into operable units (OUs), are to be considered a single project, eligible for one (1) funding allocation regardless of the number and type of Brownfields Developers involved in the project.

Periodic evaluations of the State's return on its investment of Brownfields grant funds will be required. Accordingly, from time to time, the Department will provide each Brownfield Developer with a survey soliciting information relating to its redevelopment project(s). Such requests for information may include such matters as the total environmental project costs incurred by the developer, capital investments related to improvements to the property, job creation numbers, and other economic data. Such data will only be used by DNREC for program evaluation and analysis purposes.

IV. Application

This Application is divided into three parts:

- Part One – Certification of a property as a Brownfield.
- Part Two – Eligibility of the Applicant to qualify for Brownfield developer status and eligibility for Brownfield grant funding.
- Part Three - Applicant's certification that the information being provided to DNREC is true and correct to the best of the Applicant's knowledge and belief.

Please indicate below the purpose of your application and complete only those parts that are required:

- Brownfield Property Certification only – complete Parts One and Three
- Brownfields Developer and Funding Eligibility – complete Parts One, Two, and Three

Please respond to each request for information throughout the Application. Answer using "NONE" or "NOT APPLICABLE" if appropriate. If more space is needed to answer a specific question, attach a separate page to this Application. Submit the signed Application electronically to DNREC_WHS_REMEDIATIONINBOX@delaware.gov or by mail, to Brownfields Development Program, Department of Natural Resources and Environmental Control, 391 Lukens Drive, New Castle, DE 19720.

NOTE: this Application may be rejected if all required information is not provided or if the information provided is determined to be incomplete or erroneous.

PART ONE – BROWNFIELDS PROPERTY CERTIFICATION

This Part must be filled out by every Applicant seeking Brownfield property certification and/or Brownfield funding.

A. Applicant Information (Please provide full legal name)

Applicant*: _____

Contact Person and Title: _____

Telephone #s: _____

Email Address: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

*If the Applicant is a legal entity other than an individual, please provide the Applicant’s official status of good standing as applicable.

1. Is the Applicant the present owner of the property? Yes No

If Yes, Complete Part One and Three to certify the property as a Brownfield (property owners may certify the property but may not apply for Brownfield developer eligibility)

If No, please indicate Applicant’s relationship to the property: _____

2. Current Property Owner’s name and address:

Owner’s Name: _____

Telephone #s: _____

Email Address _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person Name and Title: _____

Contact Person Email Address: _____

Contact Person Telephone: _____

3. Is the owner/seller aware that the Applicant is seeking Brownfield certification for the subject property(s)? Yes No

Note: The property owner will be informed by the DNREC of the request to certify the property as a Brownfield.

B. Property Information

DNREC Site Name or Property Name: _____

Property Address: _____

City: _____ State: DE Zip Code: _____

Property Tax Parcel Number(s): _____

Hazardous Site Facility ID #(s) (if applicable): DE- _____

UST or AST Facility ID #(s) (if applicable): _____

Other DNREC Facility ID#(s) (if applicable): _____

Property Zoning Classification: _____

Approximate acreage: _____

Census Tract: _____

Investment Level 1-4, or Out of Play, as indicated on Delaware State Strategies Map _____

<https://strategies.stateplanning.delaware.gov/app/65576d9a42cf416b8801a5545329f336>

1. Are there any industrial, commercial, business operations or any other activities currently occurring at or on the property?

Yes No If Yes, Complete Appendix I.

NOTE: After execution of a Brownfield Development Agreement (BDA), a Brownfield Developer is prohibited from engaging in any industrial, commercial, business operations or any other activities on the Certified Brownfield unless it obtains the **prior, written consent of DNREC** before engaging in such activities. DNREC shall determine if activities may occur based upon its assessment as to whether the activities may pose a potential human health risk or may negatively impact the existing environmental condition of the property. (See *Guidance for Continued Operations on a Certified Brownfield* attached).

Operator's Name: _____

Telephone #: _____

Email Address: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

2. Have there been any environmental investigations at the property? Yes No

If Yes, please identify each type of investigation, the entity that prepared the investigative report and the date of the report. Please attach executive summaries and/or conclusions from each report as an addendum to the application.

3. Identify all known releases of hazardous substances not addressed in response to Question 2
See the list of screening values for hazardous substances at:

<https://documents.dnrec.delaware.gov/dwhs/remediation/Sortable-HSCA-Screening-Level-Table.xlsx> with guidance for the Screening Level Table at:

<https://documents.dnrec.delaware.gov/dwhs/remediation/HSCA-Screening-Level-Table-Guidance.pdf>

4. Are there any known registered or unregistered underground or aboveground storage tanks on the property? Yes No

If Yes, provide all available information related to their placement, history, use and type. Please attach additional documentation as necessary.

5. Has an All Appropriate Inquiry been performed at the property? If Yes, please attach.

<https://www.epa.gov/brownfields/brownfields-all-appropriate-inquiries>

Yes No

C. Brownfield Criteria

1. Is there a reasonably held belief that the real property may be environmentally contaminated by hazardous substances that are hindering its redevelopment, reuse or expansion?

Yes No

If No, the property is ineligible for Brownfield certification.

If Yes, there is a reasonable belief of contamination on the real property, provide a detailed explanation as to how the contamination is hindering the property's redevelopment, reuse or expansion. Executive summaries from environmental reports may be attached in further support of this response.

2. Briefly describe the historical use of the property or attach documentation:

Is the property now, or has it ever been, one of the following? Yes No

Identify all of the following that are applicable:

- A salvage yard

- A permitted or non-permitted landfill

- A historically filled property (this refers to areas filled for the purpose of creating land, as opposed to the disposal of debris on the property)

- A known hazardous substance release site within the DNREC database
- A gas station
- A bulk petroleum storage facility
- A dry cleaner
- A tannery
- A facility that operated under a federal or state permit related to the release of regulated substances
- Other: _____

3. Describe in detail the proposed plan for development, redevelopment, expansion or reuse of the certified brownfield site. Note the current development stage of the plan. If development plans for this site have been, or will be, submitted to any other government agency (county, local municipality, state agency) during the Brownfield investigation or remediation submit all such plans to the DNREC-Remediation Section.

The BF developer must indicate the level of use anticipated and provide a project description:

- Residential Recreational Commercial

4. Does the Applicant intend to seek approval from DNREC to conduct any development activities on the property prior to the issuance of a Final Plan of Remedial Action?

If so, applicant must provide, in detail, the nature of the proposed development activities contemplated and indicate, with specificity, how such activities will impact any remedial actions occurring at or on the property. DNREC must approve of any the proposed development activities BEFORE proceeding. Please append additional relevant information as needed.

PART TWO – BROWNFIELDS DEVELOPER AND GRANT FUNDING ELIGIBILITY

A Brownfields developer must enter into a Brownfield Development Agreement (BDA) PRIOR to taking ownership of (title to) the property.

A. Applicant Information (Please identify the Applicant by its legal name)

The Applicant, exactly as identified below, is the entity that must enter into a BDA with DNREC. It is the only entity that can take ownership of the property under the Brownfield Development Program in order to receive liability protection as provided by 7 Del. C. Ch. 91 and is the only entity entitled to receive Brownfield grant funding for its investigation and remediation activities. Should any other entity wish to take title to the property and receive liability protections and grant funding it must enter into its own BDA with DNREC PRIOR to engaging in any remedial activities and taking title to the property.

Applicant (Brownfield developer)*: _____

Contact Person and Title: _____

Telephone #s: _____

Email Address: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

*If the Applicant is a legal entity other than an individual, please provide the Applicant’s official status of good standing as applicable.

1. Is the Applicant the present owner of the property? Yes No

If Yes, this section does not apply. Note: the current property owner cannot qualify for Brownfield developer eligibility

If No, please describe the Applicant’s relationship to the property:

2. Current Property Owner's name and address

Owner's Name: _____

Telephone #s: _____

Email Address: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person Name and Title: _____

Contact Person Telephone #s: _____

Contact Person Email Address: _____

3. Does the Applicant have any contractual, financial, corporate, or familial* relationship with the owner or any current or past owners or operators of the property other than the contractual and financial relationship arising as a direct result of the purchase and sale of this property? * See 7 Del. C. §9123(1)c. and 7 Del. C. §9105(c)(4)b.5.

Yes No

If Yes, please provide a detailed description of any and all such contractual, financial, corporate, or familial relationships:

4. Does the Applicant represent a state, county or local governmental entity?

Yes No

If Yes, identify the entity by specific name:

5. Does the Applicant represent a redevelopment or housing authority?

Yes No

If Yes, identify the specific redevelopment or housing authority:

6. For Projects that qualify as Affordable Housing as designated by the Delaware State Housing Authority (DSHA) is the Applicant requesting a waiver of the fifty cents to the dollar reimbursement in favor of dollar to dollar reimbursement? Yes * No

*If Yes submit documentation that the Project qualifies as Affordable Housing by the DSHA.

7. Is the Applicant requesting funding as a Small Business as defined in the Brownfield Grant Policy dated July 27, 2020? Yes No

If Yes, check the boxes to certify the Applicant meets all the applicable criteria:

- The Applicant is a not for profit enterprise, sheltered workshop, or business enterprise engaged in manufacturing, agricultural production, or personal service regardless of form of organization, AND
- Employs fewer than 50 persons, AND
- Has gross receipts of less than \$10M*
Submit page 1 of previous year tax returns as verification of gross receipts; if the entity has been formed in the last 12 months and has filed tax returns submit verification of date of company formation), AND
- Is not owned, operated, or controlled by another business enterprise.

8. Is Applicant an IRS recognized tax exempt, non-profit organization? Yes No
Non-profit is defined as a 501(c)(3) corporation as defined in Title 26 of the United States Code.

If Yes, identify the organization's name and its tax-exempt IRS non-profit classification.

Relevant IRS documentation must be attached.

9. For Projects that qualify as LEED or other nationally recognized energy or sustainable program certifications is the Applicant requesting a waiver of the fifty cents to the dollar reimbursement in favor of dollar to dollar reimbursement? Yes * No

*If Yes submit documentation that the Project qualifies as LEED or other nationally recognized energy or sustainable certification.

10. Identify the source and amount of any and all funding the Applicant has received during the current fiscal year from the Delaware Department of State, Division of Small Business Brownfield Assistance Program, other DNREC funding, or funding from any other governmental entity for purposes of providing Brownfields development financial assistance.

Disclosure of any prior environmental enforcement action will not be the sole determinant in an eligibility decision.

11. Has the Applicant been the subject of an environmental enforcement action, whether criminal, civil, or administrative, from any state or federal agency within the past five years?

Yes No

If Yes, please describe the nature of the enforcement action(s) and the final disposition of each such action. Attach all relevant documentation to this application.

12. Has the Applicant or any person with whom the Applicant has a contractual, financial, corporate, or familial relationship caused or contributed to any release of any hazardous substance(s) at the property that is the subject of this Application? Yes No

If Yes, identify the person who caused the release(s) and describe the circumstances relating to the release(s). Attach all relevant documentation to this Application.

13. Has the Applicant been in full compliance with all State of Delaware and federal environmental statutes, regulations, permits and requirements for the past five years?

Yes No

If No, please explain the circumstances relating to every incident of non-compliance and attach all relevant documentation to this Application.

14. Has the Applicant ever been adjudicated a chronic violator pursuant to 7 Del. C. §7904 or any other state's similar statute? Yes No

If Yes, please describe the circumstances and attach all relevant documentation.

15. Entry into a Brownfields Development Agreement with DNREC is a prerequisite for approval of the Applicant as a Brownfields developer.

Is the Applicant willing to enter into a Brownfields Development Agreement with DNREC?

Yes No

16. Are you requesting Brownfield grant funding? Yes No

• **Please Note:**

- A Brownfields developer must enter into a Brownfield Development Agreement PRIOR to taking title to the property.
- Only an entity that has entered into a Brownfield Development Agreement may receive liability protection and grant funding.
- Any industrial, commercial, business, operations, or other use activities on the property must cease as of the time the Brownfields developer enters into a Brownfields developer Agreement or the Brownfields developer must have prior, written consent from DNREC for activities to continue.

- Remediation costs will only be reimbursed after the Brownfields developer who has an executed BDA takes title to the property.

PART THREE - CERTIFICATION BY APPLICANT

Brownfield certification, Brownfields developer eligibility, and Certified Brownfield grant funding are determined based upon the accuracy of the information provided in support of this Application.

After execution of a Brownfield Development Agreement (BDA), a Brownfield Developer is prohibited from engaging in any operations on the Certified Brownfield unless it obtains the prior, written consent of DNREC before engaging in such operations. DNREC shall determine whether the operations may occur based upon its assessment of any potential human health risk as well as whether such operations may negatively impact the existing environmental condition of the property.

This Application and the information provided herein are subject to the relevant terms, requirements, and provisions contained in 7 Del. C. Chapter 91 (HSCA) and the HSCA Regulations. In the event of any discrepancy between the provisions of this Application and the provisions of HSCA or the HSCA Regulations, the provisions of HSCA and/or the HSCA Regulations shall apply.

By executing this Application, the undersigned, certifies that he/she is authorized to bind the Applicant with respect to the accuracy and completeness of the information provided herein and, being duly sworn, deposes and states:

1. The Applicant identified herein is the true party seeking Brownfield certification, Brownfields developer eligibility and/or Certified Brownfield funding.
2. Upon approval by the Department, the Applicant agrees to comply with all federal, state, and local laws and regulations applicable to the investigation, remediation, development and funding of the Certified Brownfield property.
3. The Applicant acknowledges that DNREC reserves the right to disclose any information provided in this Application, including all supporting documentation, to DNREC staff and attorneys, other State of Delaware agencies, and members of the public at any public hearing held on this Application, and, in any statutorily required published notice related to such public hearing. Applicant further acknowledges that this Application is subject to the provisions of the Delaware Freedom of Information Act, 29 Del. C. Chapter 100.
4. The Applicant certifies and affirms that all information contained in this Application and all supporting documentation provided with this Application is true and complete to the best of the Applicant's knowledge and belief.

5. As the signatory on behalf of the Applicant, I, the undersigned, do understand and acknowledge that should it be established that false information was knowingly provided by the Applicant for the purpose of misleading the Department, the Applicant and/or I, as its authorized representative, will be disqualified from further participation in the Brownfield Development Program, will be required to repay all public funds granted to the Applicant by DNREC, and may be subject to the imposition of additional criminal and/or civil sanctions.

SIGNATURE (Applicant): _____

NAME (PRINT): _____

TITLE: _____

DATE: _____

Application submitted by:

NAME: _____

Company Name: _____

Email address: _____

Telephone Number: _____

Application Version IV/Rev'd 030117
Application Version IV/Rev'd 051717
Application Version V/Rev'd 010119
Application Version VI/Rev'd 090519 JWH19043.doc
Application Version VII/Rev'd 040120 JWH20018.doc
Application Version VIII/Rev'd 080320. JWH20048.doc

APPENDIX I – Operations

The Brownfield Certification Application has noted that the property has current operations on site. For a Brownfield developer to seek eligibility for Brownfields grant funding the operations must cease or DNREC must give *prior, written* consent for the operations to continue.

NOTE: After execution of a Brownfield Development Agreement (BDA), a Brownfield developer is prohibited from engaging in any industrial, commercial, business, operations or any other activities on the Certified Brownfield unless it obtains the *prior, written* consent of DNREC before engaging in such. DNREC shall determine whether activities may occur based upon its assessment of any potential human health risk as well as whether such activities may negatively impact the existing environmental condition of the property.

Please complete section I **or** section II.

I. Operations Cessation

Date Operations will cease: _____

Signature: _____

Print Name: _____

Relationship to Operations or Property: _____

Brownfield Developer:

Signature: _____

Print Name: _____

II. Request for Operations Continuance:

1. Provide a detailed description of the current operations and a map of the property noting where the operations take place on the property. Attach to application.
2. Provide the Name and Contact Information for the Person in charge of operations at the property.

Print Name: _____

Telephone number(s): _____

Email: _____

3. Does the current operation require the use, disposal, management or storage of hazardous substances, petroleum products or hazardous waste on site? Yes No

If **Yes**: (attach additional pages as needed)

- a. Provide a description and quantity of all hazardous substances, petroleum products or hazardous waste used, disposed, managed or stored at the site.
 - b. Provide a detailed description of how any hazardous substances, petroleum products or hazardous waste are used at the site.
 - c. Provide a detailed description of how any hazardous substances, petroleum products or hazardous waste are disposed of at the site. Attach disposal manifests.
 - d. Provide a detailed description of how any hazardous substances, petroleum products or hazardous waste are managed at the site.
 - e. Provide a detailed description of how any hazardous substances, petroleum products or hazardous waste are stored at the site.
 - f. Provide copies of any applications submitted to any regulatory agency regarding any hazardous substances, petroleum products or hazardous waste used, managed, stored, discharged or disposed of in relation to the operations at the site.
 - g. Attach copies of any notices of violations of any environmental regulations related to operations at the site.
 - h. Provide copies of any lease or other use agreements relevant to any operations on the property.
 - i. Attach Safety Data Sheets for any hazardous substances, petroleum products or hazardous waste identified above.
4. Provide a date and narrative as to when operations will cease.
5. Provide the name and contact information for a responsible party to be contacted if access to the property and/or any occupied buildings is needed for the purpose of environmental investigation.

Print Name: _____

Telephone Number: _____

Email Address: _____

GUIDANCE for CONTINUED OPERATIONS ON A CERTIFIED BROWNFIELD
May 2022

After execution of a Brownfield Development Agreement (BDA), a Brownfield developer is prohibited from engaging in any industrial, commercial, business operations or any other activities on the Certified Brownfield unless it obtains the prior, written consent of the Department of Natural Resources and Environmental Control – Remediation Section (DNREC-RS) before engaging in such.

A Brownfield developer may request permission for business, industrial, commercial operations, or other activities to continue on the Certified Brownfield by completing the appropriate portions of the Brownfield Certification and Grant Application. The DNREC-RS shall determine whether operations or activities may occur based upon its assessment of any potential human health risk as well as whether such operations or activities may negatively impact the existing environmental condition of the property; or interfere with investigative or remedial activities.

Operations or activities with the potential to cause a release of hazardous substance in a manner that would impact the sampling results must cease prior to the initiation of environmental sampling (Brownfields Investigation). Operations or activities may resume only after all required sampling is complete; and only if, the Brownfield developer agrees to resample areas, as designated by the DNREC-RS, if it is determined that site conditions have been negatively impacted based on a visual indication of a release to the environment. Costs associated with resampling due to continued operation on the Site are not eligible for Brownfield Grant funding.

The results of any DNREC required resampling must be submitted as an Addendum to the Brownfields Investigation Report and be approved of by the DNREC-RS, including an updated human health risk assessment with updated conclusions and recommendations, in advance and prior to drafting and publishing a Proposed Plan of Remedial Action.

If, based upon resampling results, the DNREC-RS determines that additional remedial measures are necessary such actions must be incorporated into an Interim Action, or Proposed Plan of Remedial Action. Any additional interim action costs or remedial costs are not eligible for Brownfield grant funds.