
**Subject: Hazardous Substance Cleanup Act (HSCA)
Brownfields Funding Policy**

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7/3/2023

Timothy T. Ratsep, Director

Date

1.0 PURPOSE

The purpose of this policy is for the Department of Natural Resources and Environmental Control ("DNREC" or the "Department"), Remediation Section ("RS") to provide Brownfields Grant funding opportunities to assist any eligible party in "Reimbursing, or directly paying, any person for reasonable remedial costs incurred with the prior authorization of the Secretary in responding to a hazardous substance remedy ... " (7 Del. C. § 9113(c)(4)). The monies are to be spent from the Hazardous Substance Cleanup Fund (the "Fund") as established under the authority of the Hazardous Substance Cleanup Act (HSCA), 7 Del. C., § 9113. The term "Brownfield" used throughout this policy applies to "Certified Brownfield" defined in 7 Del. C. §§ 9103(3) and 9123(3). The Department may seek to give preference to Brownfield Redevelopment Projects with public benefit as determined by the Department, such as affordable housing (e.g. for low to middle income buyers), Leadership in Energy and Environmental Design (LEED) Certified Green Buildings or equivalent, Green Remediation practices, investment in Environmental Justice Communities, and development consistent with smart growth principles including the *Delaware Strategies for State Policies and Spending*.

2.0 DEFINITIONS

Terms not listed here will have the meaning as defined in the Delaware Regulations Governing Hazardous Substance Cleanup and 7 Del. Code Chapter 91.

- 2.1** *Brownfield Redevelopment Project* means the redevelopment of real property where there is a reasonably held belief that the real property may be environmentally contaminated, which is hindering the expansion, redevelopment, or reuse of the property. At the discretion of the Department, a project may include multiple parcels or multiple operable units (OUs) 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, 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.

- 2.2** *Chronic Violator* means a facility or regulated party that is unable to maintain compliance or has engaged in a pattern of willful neglect or disregard with respect to the State's environmental permits, laws, or regulations as administered by the Department, and identified or designated as such pursuant to 7 *Del. C.*, Chapter 79 and the regulations promulgated thereto.
- 2.3** *Fiscal Year* means the State fiscal year, which runs from July 1 of a year through June 30 of the following year.
- 2.4** *Green and Sustainable Remediation* means the practice of considering all environmental impacts of remedy implementation and incorporating options to minimize the environmental footprints of cleanup actions.
- 2.5** *LEED Certified Green Building* means a project that has conformed and been certified by the Leadership in Energy and Environmental Design (LEED) Green Building Rating Program. (www.usgbc.org)
- 2.6** *Non-Profit* means a 501(c)(3) corporation as defined in Title 26 of the United States Code (may include redevelopment authorities, community development corporations, churches, etc.).
- 2.7** *Public Entity* means a State Agency or body, county or local government, housing authority or redevelopment authority.
- 2.8** *Small Business* means any for-profit enterprise, sheltered workshop, or for-profit business enterprise which is engaged in any phase of manufacturing, agricultural production, or personal service, regardless of the form of its organization, when such enterprise or workshop meet the definition of “small business” as outlined below:
- 2.8.1** A for profit enterprise, sheltered workshop, or business enterprise engaged in manufacturing, agricultural production, or personal service regardless of form of organization, AND
- 2.8.2** Employs fewer than 50 persons, AND
- 2.8.3** Has gross receipts of less than \$10 million dollars, AND
- 2.8.4** Is not owned, operated, or controlled by another business enterprise (note: the owner controller entity is not limited by size or receipts).

3.0 BROWNFIELDS GRANT FUNDING AMOUNTS

- 3.1.** In accordance with 7 *Del. Code* §9113(c)(9) one-third of the amount deposited in any one fiscal year into the Hazardous Substance Cleanup Fund shall be utilized for the purpose of providing Brownfields Grant funding to eligible private and public entities. DNREC’s oversight will not be charged to the site-specific funding.

- 3.2.** No more than six-hundred thousand dollars (\$600,000) being in a dollar-to-dollar match in Brownfields grant funding may be reimbursed or directly paid for costs incurred for assessment, investigation, interim actions, and remedial actions for any one public entity or non-profit brownfield redevelopment project.
- 3.3.** No more than two- hundred thousand dollars (\$200,000) being a dollar-to-dollar match in Brownfields grant funding may be reimbursed or directly paid to any single private brownfield redevelopment project for costs incurred for assessment, investigation, interim actions, and remedial actions for any one private entity brownfield redevelopment project.
- 3.4** No more than two-hundred and fifty thousand dollars (\$250,000) being in a dollar-to-dollar match in Brownfields grant funding may be reimbursed or directly paid for costs incurred for assessment, investigation, interim actions and remedial activities for an entity that qualifies as a Small Business per the definition in this Policy.
- 3.5** Certified Brownfield Sites may be eligible for an additional funding amount up to one-hundred thousand dollars (\$100,000) for reimbursement or direct payment of DNREC approved groundwater, soil, and soil gas remedial actions at the source areas (hotspots) with the goal of reducing Long-Term Stewardship and/or migration of groundwater and soil gas contamination offsite. Additional sampling and other evaluations necessary for the implementation and monitoring of these remedial actions may also be eligible for this funding.
- 3.6** Certified Brownfield Sites may be eligible for an additional funding amount up to twenty- five thousand dollars (\$25,000) for reimbursement/direct payment for limited additional investigation, if there is potential or actual migration of groundwater and/or soil-gas contamination off-site (in any direction).

 - 3.6.1** This is a voluntary action for the Brownfields Developer. If the Brownfields Developer does not choose to perform the off-site investigation, the Department may use this additional funding to determine whether there is off-site impact.
 - 3.6.2** This off-site investigation may be necessary for the Department to evaluate whether an active remediation of the source areas at the Certified Brownfield Site will be necessary.
- 3.7** Certified Brownfield Sites may be eligible for an additional amount up to forty-thousand dollars (\$40,000) for reimbursement/direct payment for the Long-Term Stewardship (LTS) activities before and/or after issuance of the Certificate of Completion of Remedy (COCR). LTS activities include:

 - 3.7.1** Site inspection and maintenance,
 - 3.7.2** Long-Term Monitoring (LTM) for groundwater, surface water and/or soil-gas if required in the Final Plan of Remedial Action, and/or,
 - 3.7.3** Adherence and implementation of the provisions and requirements set forth in the Contaminated Materials Management Plan (CMMP), including sampling and reporting subject to the Guidance for Soil Material Reuse at, and from, Sites/Facilities Regulated by the Hazardous Substance Cleanup Act (HSCA).

- 3.8 Certified Brownfield Sites may be eligible for an additional amount up to twenty-five thousand dollars (\$25,000) for reimbursement/direct payment for Sustainable and Green Remediation as included in the Final Plan of Remedial action.
- 3.9 Certified Brownfield Sites may be eligible for an additional amount of up to fifteen-thousand dollars (\$15,000) for reimbursement/direct payment for Feasibility Studies as required.
- 3.10 Certified Brownfield Sites may be eligible for an additional amount of up to fifteen-thousand dollars (\$15,000) for reimbursement/direct payment for Ecological Risk Assessment.
- 3.11 Certified Brownfield Sites may be eligible for an additional amount of up to fifteen-thousand dollars (\$15,000) for reimbursement/direct payment for Community Involvement activities (including the implementation of the Environmental Justice Screening Investigations and Mapping Tool) as required.
- 3.12 Direct payment is permitted once the invoices have been reviewed and signed by the Brownfields Developer and the consultant along with the proper documentation including a certification that the work has been completed and inspected.
- 3.13 The only Brownfield Funding that will be available for reimbursement after the issuance of the COCR are the LTS activities described in 3.7 of this policy.

4.0 ELIGIBILITY FOR BROWNFIELD GRANT FUNDING

- 4.1 Public, non-Profit, and private prospective purchasers are eligible to apply for State Brownfield Grant funding under the following conditions:
 - 4.1.1 The property must be certified as a Certified Brownfield pursuant to Section 3.4.3 of The Delaware *Regulations Governing Hazardous Substance Cleanup*. Certification may be applied for in conjunction with the application for funding.
 - 4.1.2 Non-profit applicants must be able to document their legal status as a non-profit.
 - 4.1.3 The applicant must affirmatively demonstrate that they/it did not cause or contribute to the release(s) of hazardous substances at the Certified Brownfield site.
 - 4.1.4 The applicant is in full compliance with all other environmental requirements in Delaware.
 - 4.1.5 The applicant must not be a Chronic Violator; and
 - 4.1.6 The applicant must not be subject to any current enforcement action from any State or Federal environmental agency unless such enforcement action is, in the opinion of the Secretary, adequately resolved with the applicable agency.
- 4.2 To qualify for Brownfield grant funding the Brownfield Redevelopment Project shall not cause the loss of “greenfield” resources as per the purpose of the Brownfields Development Program (BDP) 7 *Del. C. § 9122(b)(2)*. and shall be consistent with the Delaware Strategies for State Policies and Spending prepared by the Delaware Office of State Planning Coordination, as updated.

5.0 USE OF BROWNFIELD GRANT FUNDING

- 5.1** Monies awarded under the Brownfields Grant Funding shall be used solely for environmental assessments, investigation, interim actions, or remedial actions approved by the Department. Approved and non-approved activities are detailed in the Brownfields Grant Funding Eligible Expenses Manual.
- 5.2** Remediation costs, including all tasks as specified by a DNREC approved Interim action or Final Plan of Remedial Action, that were incurred prior to the Brownfields Developer taking title to the property, will only be reimbursed after the Brownfields Developer takes title to the property.
- 5.3** Funding is not available for activities required by a Secretary's Order issued by the Department to remedy site conditions unless and until the requirements of the Order are voluntarily resolved by any type of settlement agreement in a form authorized by 7 *Del. C.* §9107(b).
- 5.4** In accordance with §4.2, Brownfield grant funding shall not be available for Brownfield Redevelopment Projects that transform open spaces, including but not limited to golf courses, orchards, and agricultural fields, into a developed area. Funding may be available to investigate and remediate open space areas when the redevelopment plan preserves the area as open space, such as public parks, public recreation areas, or other open spaces that serve a public or community purpose.

6.0 APPLICATION FOR BROWNFIELD GRANT FUNDING

- 6.1** Funding shall be provided only to those parties who apply to the DNREC using the Delaware *Hazardous Substance Cleanup Act Application for Brownfields Certification and Grant Funding*.
- 6.2** Funding shall be provided only to those applicants who have entered into a Brownfield Development Agreement (BDA) prior to taking title to the Certified Brownfield.
- 6.3** Upon request by the Secretary, or his designee, the applicant shall provide any and all documentation regarding all completed and ongoing environmental investigations of the property.

7.0 MISCELLANEOUS

- 7.1** The Secretary, or his designee, shall include the Brownfields Grant appropriations in the annual budget and provide five-year projections of such expenditures from the Fund as directed by 7 *Del. C.*, §§ 9104 (c)(2) and (3).
- 7.2** Any Brownfield grant decision under this policy is in the sole, non-reviewable discretion of the Secretary or their designee.
- 7.3** All requests for payments to the Department for allowable reimbursement/direct pay costs shall be accompanied by a certificate from the qualified consultant stipulating that the costs are true and accurate to the best of their knowledge.



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- 7.4** This policy supersedes the prior policies.
- 7.5** All Brownfield Grant Funding under this Policy is subject to having sufficient funding available in the State HSCA fund.
- 7.6** All Brownfield Grant recipients shall respond to the best of their ability to the Department's information requests relevant to grant funding for the purpose of evaluating the effectiveness of the Brownfields Development Program.

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Funding for Profit \$200,000.00/For Profit Small Business \$250,000.00
Non-Profit Developer \$600,000.00 (reimbursement)

