



**ENVIRONMENTAL
QUALITY**



ARKANSAS BROWNFIELD PROGRAM

USERS GUIDE

CONTACTS

ARKANSAS BROWNFIELD PROGRAM

t: 501.682.0872

e: Brownfields@adeq.state.ar.us

www.adeq.state.ar.us/hazwaste/bf

LOCATION

ARKANSAS ENERGY & ENVIRONMENT,

Division of Environmental Quality,

Office of Land Resources, Brownfield Program,

5301 Northshore Drive, North Little Rock, AR 72118

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INTRODUCTION

The Arkansas Brownfield Program, administered by the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ), Office of Land Resources, benefits all of Arkansas by encouraging the cleanup and reuse of abandoned or underutilized sites while continuing to protect human health and the environment.

The goals of the Arkansas Brownfield Program are to:

- provide continued protection of human health and the environment
- encourage redevelopment as a sound land-use management policy
- use risk-based cleanup standards
- enable prospective purchasers to determine liability **up front**
- develop a schedule-oriented program that can keep pace with real estate transactions

ELIGIBILITY

PARTICIPANT

To be eligible for participation in the Arkansas Brownfield Program a prospective participant must not be a responsible party or have any affiliation with a responsible party for the site. Prior to property acquisition, a participant must conduct all appropriate inquiry as directed in the Code of Federal Regulations 40 C.F.R. Part 312.

PROPERTY

Under Ark. Code Ann. § 8-7-1101 et seq., a site is eligible for the Arkansas Brownfield Program if it is an abandoned or underutilized industrial, commercial, or agricultural site, or abandoned residential property; it is contaminated or perceived to be contaminated; and it is not in an excluded category listed below:

- proposed or listed on the Superfund National Priorities List
- subject to orders or decrees of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- subject to permit or corrective action by the Resource Conservation and Recovery Act
- federally owned land

PROGRAM STEPS

APPLICATION FORM

A prospective participant will be required to complete and submit an application as a first step in the process. A sample application form can be found online at:

adeq.state.ar.us/hazwaste/bf/pdfs/bf_form_application.pdf

PHASE I SITE ASSESSMENT

In order to retain liability relief from CERCLA, a Phase I Site Assessment must be completed before a participant purchases or takes title to the site. The Phase I Site Assessment must meet American Standard Test Method 1527-13 under the All Appropriate Inquiries (AAI) standards and practices set forth in Code of Federal Regulations 40 C.F.R. Part 312. (The AAI section outlines the process of evaluating a property's environmental conditions and assessing its potential liability for contamination).

This assessment must be conducted or updated within one year prior to the date of acquisition of a property. If AAI is conducted more than 180 days prior to acquisition, certain aspects of the inquiries must be updated.

LETTER OF INTENT

If the participant intends to purchase the site before any liability parameters have been established, a Letter of Intent to purchase the property must be submitted to DEQ before the applicant takes title to the property. A guidance document for preparing this letter can be found online at:

adeq.state.ar.us/hazwaste/bf/pdfs/bf_letter_of_intent_guidance.pdf

TARGETED BROWNFIELDS ASSESSMENT

If a participant is a nonprofit, a municipality or, a government or quasi-governmental entity, the Brownfield Program may be able to offer assessment assistance at no cost to the participant.

COMPREHENSIVE SITE ASSESSMENT

If the Phase I Site Assessment identifies Recognized Environmental Conditions, a Comprehensive Site Assessment (CSA) to identify the location, nature and extent of contamination at the site must be performed. An outline of a typical CSA can be found online at:

adeq.state.ar.us/hazwaste/bf/pdfs/comprehensive_site_assessment_outline.pdf

Prior to conducting a CSA, a CSA Work Plan will be required. The participant is encouraged to meet with the DEQ staff to discuss the Work Plan to ensure an adequate assessment will be conducted.

Environmental assessment work previously completed for the property may be substituted for any or all portions of the CSA upon approval by DEQ.

PRELIMINARY REMEDIATION LEVELS

The potential human health and ecological risks, if any, must be assessed at all Brownfield sites. The most current United States Environmental Protection Agency Regions 3, 6 and 9 Regional Screening Levels (RSLs); Risk Assessment Guidance for Superfund , Parts, A, B, C, D, E, and F; and a Site-Specific Risk Assessment are tools used to evaluate potential risks to human health. The most current version of RSLs can be found online at:

epa.gov/reg3hwmd/risk/human/rb-concentration_table/index.htm

Ecological Risk Assessment Guidance for Superfund and ecological screening levels are tools used to evaluate potential risks to the environment. Information regarding screening levels and risk assessments can be found online at:

adeq.state.ar.us/hazwaste/branch_tech/risk_assessment.htm

IMPLEMENTING AGREEMENT

An Implementing Agreement (IA) is entered into by the participant and DEQ after approval of the CSA. The IA establishes the participant's legal and financial environmental liability parameters for the Brownfield property and is considered to be an enforceable document by DEQ. The participant shall provide notice of the IA in a newspaper of general circulation which serves the area where the Brownfield site is located.

REGION 6 PHOENIX AWARD WINNER BROWNFIELD PROJECT HEIFER INTERNATIONAL WORLD HEADQUARTERS SITE



**BEFORE REMEDIATION
AND CONSTRUCTION**



**AFTER REMEDIATION
AND CONSTRUCTION**

PROPERTY DEVELOPMENT PLAN

A Property Development Plan (PDP) describes any cleanup activities, as well as other plans for development, that provide protection of human health and the environment. The PDP must be submitted to DEQ for review and comment. An outline for a typical PDP can be found online at:

adeq.state.ar.us/hazwaste/bf/pdfs/property_development_plan_outline.pdf

All engineering documents must be prepared and stamped by a registered professional engineer licensed to practice in Arkansas.

All geological documents must be prepared and stamped by a registered professional geologist licensed to practice in Arkansas.

PROPERTY DEVELOPMENT DECISION DOCUMENT

DEQ will issue a Property Development Decision Document (PDDD) which describes the proposed plans for cleanup and development based upon information submitted in the participant's PDP. DEQ will provide notice of the proposed PDDD in a newspaper of general circulation which serves the area where the Brownfield site is located. The proposed PDDD will be available for review and comment by the public for a period of 30 calendar days. Comments received, if any, will be considered when evaluating whether the proposed cleanup is appropriate before the PDDD is finalized. A response to comments, if any, will be prepared by DEQ and will become an attachment to the final PDDD.

PUBLIC PARTICIPATION

DEQ is committed to providing opportunities for meaningful public participation in all cleanup processes. Notices of the IA and the PDDD are required in a newspaper of general circulation which serves the area in which the Brownfield property is located.

DEED NOTICES AND RESTRICTIONS

The participant is required to file a copy of the IA, the PDDD and any other subsequent notices to the property deed with the Clerk of the Circuit Court in the county where the site is located so that they appear in the chain of title. The IA, PDDD, Deed Restrictions or any other notices to the property deed must be filed within 30 calendar days of acquiring legal title to the site.

If necessary, DEQ may require that a restriction be recorded in the site's land records to limit its use to activities and compatible uses that will protect the environment, human health and the integrity of any remediation or other actions implemented on the site.

CERTIFICATE OF COMPLETION

Participants involved in the cleanup of a Brownfields site will be released from liability for past contamination addressed in the IA and the PDDD if the site has been redeveloped according to provisions mutually agreed upon in the IA and the PDDD. The liability release mechanism will be a Certificate of Completion issued by DEQ stating that the response action is complete.

The liability release is transferrable as long as adherence is maintained with all terms of the IA, PDDD and associated restrictions.

TECHNICAL ASSISTANCE AND OVERSIGHT

DEQ can provide the participant with technical assistance. More information about the program is available by contacting DEQ at:

501.682.0867 or **brownfields@adeq.state.ar.us**

FREQUENTLY ASKED QUESTIONS

WHAT IS A BROWNFIELD SITE?

A Brownfield site is an abandoned or underutilized property with real or perceived environmental contamination that complicates redevelopment. The property's former use must fit into one of the following categories: industrial, commercial, agricultural, real property (including residential) contaminated by a controlled substance, petroleum sites (except sites receiving Leaking Underground Storage Tank Trust Fund monies) or mine-scarred lands.

WHAT TYPES OF PROPERTIES DO NOT QUALIFY FOR THE BROWNFIELD PROGRAM?

Properties that have been proposed for inclusion or have been placed on the National Priority List do not qualify for the Brownfield Program. In addition, the following Resource Conservation and Recovery Act regulated properties are not eligible for the Arkansas Brownfield Program:

- sites responsible for corrective action and/or obtaining a permit under an EPA or DEQ order or agreement
- sites not in compliance with a final agency order or a court order secured by a state or federal agency regarding the treatment, storage or disposal of a hazardous substance
- sites that require a permit under state or federal environmental law but have not obtained the required permit
- any site where the applicant has committed significant violations of a federally authorized program at the site

WHO QUALIFIES FOR THE BROWNFIELD PROGRAM?

Individuals, companies or lenders who do not hold title to the site and who are not responsible for contamination at the site could qualify for the Arkansas Brownfield Program.

IS THERE A COST ASSOCIATED WITH THE PROGRAM?

No.

WHAT IS THE BENEFIT OF THIS PROGRAM TO A PROSPECTIVE PURCHASER OF A BROWNFIELD SITE?

If a Brownfield project is executed according to the IA between the participant and DEQ, the participant will not be held liable for past contamination addressed by the CSA and referenced in the IA.

WILL ENVIRONMENTAL CLEANUP ALWAYS BE REQUIRED ON A BROWNFIELD SITE?

No. The program's process examines chemical data from samples collected from the property and combines that information with the intended future land use of the property to make a risk management decision.

IS IT NECESSARY TO HIRE A CONSULTANT OR CONTRACTOR TO PARTICIPATE IN THIS PROGRAM?

No, but many of the environmental issues involved in a Brownfield project do require professional expertise of various kinds.

ARE THERE ANY SPECIAL CERTIFICATIONS OR REGISTRATIONS REQUIRED TO PARTICIPATE IN THE BROWNFIELD PROGRAM?

Geologic interpretations must be prepared and stamped by a registered professional geologist licensed to practice in Arkansas. Engineering documents must be prepared and stamped by a registered professional engineer licensed to practice in Arkansas.

AT WHAT POINT CAN A PROGRAM PARTICIPANT DECIDE TO BACK OUT OF THE PROGRAM?

The Brownfield Program is a voluntary program; therefore, participants may back out of the process at any point. However, if the participant holds title to the property and should fail to complete any conditions in the IA, or if the environmental conditions are somehow worsened by the program participant during the project, DEQ reserves the right to enforce the IA and require the participant to abate any threat to human health and the environment which the participant caused or exacerbated.

PROJECT FLOW CHART

