



BROWNFIELD PROGRAM

VOLUNTARY CLEANUP PROGRAM USER GUIDE

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INTRODUCTION

The Arkansas Brownfield Voluntary Cleanup Program (Brownfield VCP) is administered by the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ), Office of Land Resources. The Brownfield VCP benefits Arkansans by encouraging the cleanup and reuse of abandoned or underutilized sites while protecting human health and the environment.

The goals of the Brownfield VCP are to:

- Encourage redevelopment as a sound land-use management policy
- Allow prospective purchasers to determine liabilities up front
- Oversee cleanups that are protective of human health and the environment
- Use risk-based cleanup standard to expedite cleanup and reuse
- Provide redevelopers with certainty during the assessment and cleanup process

ELIGIBILITY

PARTICIPANT

An eligible applicant must be the prospective purchaser of a brownfield property at the time of the application and must certify that they did not, by act or omission, cause or contribute to the known or suspected contamination at the property. Prior to property acquisition, the participant must complete all appropriate inquiries as described in 40 CFR Part 312.

PROPERTY

An eligible property must be an abandoned or underutilized industrial, commercial, or agricultural property, or an abandoned residential property for which no responsible party can reasonably be pursued for a remedial purpose. The property must be contaminated or perceived to be contaminated, and it must not be in an excluded category listed below:

- Properties listed on or proposed to the Superfund National Priorities List
- Properties subject to orders or decrees under the Comprehensive Environmental Response, Compensation, and Liability Act
- Properties subject to corrective actions under the Resource Conservation and Recovery Act
- Properties under control of the federal government

PROGRAM STEPS

APPLICATION

Applicants should complete a Brownfield VCP application form and submit it by email or mail to DEQ. Brownfield staff will review the application and request additional information as needed.

If the applicant and property are eligible, DEQ will issue an acceptance letter; if the applicant or the property are ineligible, DEQ will issue a denial letter explaining the reason that the property cannot be enrolled in the Brownfield VCP by the applicant.

COMPREHENSIVE SITE ASSESSMENT

Participants must complete a comprehensive site assessment (CSA) of the enrolled property to fully characterize existing contamination. The CSA serves as the baseline for existing contamination at the property against which remedial actions will be measured. To meet the statutory requirements of CSA, the following information must be collected and submitted to DEQ:

- Location and extent of contamination;
- Quantity or level of contamination;
- Type of contamination;
- Probable source of contamination; and
- Threats to human health and the environment.

A CSA is typically completed in two or more phases, including a Phase I Environmental Site Assessment (ESA) and one or more Phase II ESAs.

PHASE I ENVIRONMENTAL SITE ASSESSMENT

A Phase I ESA is the first step in assessing the environmental condition of a property and must be completed before the participant takes title to the property. Phase I ESAs should be performed by an environmental professional according to the latest American Society for Testing and Materials (ASTM) standard practice, ASTM E1527-21.

A Phase I ESA allows the prospective purchaser to meet the All Appropriate Inquiries (AAI) standards and practices set forth in the EPA's AAI Final Rule at 40 CFR Part 312. Meeting AAI requirements allows prospective purchasers to qualify for certain landowner liability protections under federal law. Without these protections, landowners can be held strictly liable for cleaning up hazardous substances at a property based solely on property ownership.

A Phase I ESA must be conducted or updated within one year prior to the date of property acquisition. If AAI is conducted more than 180 days prior to acquisition, certain aspects of the inquiries must be updated.

In addition to meeting AAI requirements, a Phase I ESA identifies signs of potential environmental contamination at a property through historical and regulatory research, interviews with key individuals, and site reconnaissance. These findings direct future investigations of the property.

After receiving a Phase I ESA, DEQ staff will review the report and will request additional information, as needed, or issue an approval.

PHASE II ENVIRONMENTAL SITE ASSESSMENT

A Phase II ESA involves sampling media at the property to confirm or deny the presence of environmental contaminants. ASTM E 1903-19 provides basic parameters for completing a Phase II ESA; however, much of the assessment design relies on the professional judgement of the environmental professional performing the work. Prior to conducting a Phase II ESA, the participant should submit a work plan to DEQ for review and approval. The participant may also meet with DEQ to discuss the work plan and to ensure that an adequate assessment will be conducted.

All assessments and plans involving geological interpretations must be signed and stamped by a professional geologist licensed to practice in Arkansas. All assessments and plans involving engineering interpretations or engineering controls must be signed and stamped by a professional engineer licensed to practice in Arkansas.

Once contamination is confirmed at a property, additional sampling may be necessary to gather the data needed for a CSA. Previous Phase II ESAs completed for the property may be substituted for portions of the CSA upon approval by DEQ.

After receiving a Phase II ESA, DEQ staff will review the report and will request additional information, as needed, or issue an approval.

IMPLEMENTING AGREEMENT

Once a CSA has been completed and DEQ has determined that cleanup is required, the participant and DEQ will enter into an implementing agreement (IA) wherein the participant commits to undertaking appropriate remedial actions under DEQ's oversight. The IA describes the existing contamination at the property, establishes the intended reuse and site activities, and outlines the remedial actions required prior to redevelopment. The IA also establishes the participant's legal and financial environmental liability parameters for the property.

The participant is required to provide a public notice of the signed IA in a newspaper of general circulation which serves the community where the property is located. The participant must also file a notice of the IA with the circuit clerk in the county so that it will appear in property deed records. Proof of these notices must be submitted to DEQ.

PROPERTY DEVELOPMENT PLAN

The participant is responsible for submitting a property development plan to DEQ, including specific information on how the property will be reused and an evaluation of the possible remedial actions to make the property suitable for this reuse. For each remedial alternative, the effectiveness, feasibility, and cost should be discussed and a preferred remedial alternative should be proposed. All approved remedial actions must be protective of human health and the environment under the intended reuse of the property. Engineering controls and institutional controls may be evaluated as cost-effective means of controlling exposure to contamination at the property.

After receiving a property development plan, DEQ will review and request additional information, as needed, or will issue an approval.

PROPERTY DEVELOPMENT DECISION DOCUMENT

DEQ will issue a proposed Property Development Decision Document (PDDD) based on the information submitted in the CSA, IA, and property development plan. The PDDD describes the specific remedial actions required by the participant to receive a Certificate of Completion through the Brownfield VCP.

DEQ will provide a public notice of the proposed PDDD in the local newspaper and on the DEQ website. The proposed PDDD will be available for review and comment by the public for a period of 30 calendar days. Any comments received will be considered when evaluating whether the proposed remedial action 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. Once a final PDDD is issued, it is considered to be an amendment to the IA. The participant must file a notice of the PDDD with the circuit clerk for the county and submit proof of this filing to DEQ.

DEQ may also require a Remedial Action Work Plan for review prior to implementing a remedial action.

DEED NOTICES AND RESTRICTIONS

The participant is required to file a notice of the IA, the PDDD, and any other subsequent notices to the property deed with the circuit clerk in the county where the property is located so that the notices will appear in property deed records.

The participant is also required to file deed restrictions to limit the property's future use to activities that will protect human health, the environment, and the integrity of any remedial actions.

COMPLETION REPORT

Once the remedial action has been implemented, the participant will submit a completion report to DEQ summarizing the activities completed. The contents of this report will vary depending on the remedial action required. Proof of required filings must be provided to DEQ as a part of the completion report.

After receiving a completion report, DEQ will review and issue comments or an approval. A final site visit will be conducted by DEQ staff to confirm that appropriate actions have been taken and any required controls are in place.

CERTIFICATE OF COMPLETION

Participants who voluntarily clean up a brownfield property under DEQ's oversight will be released from liability for past contamination addressed in the IA as long as the site has been redeveloped according to provisions mutually agreed upon in the IA. The liability release mechanism will be a Certificate of Completion issued by DEQ stating that the approved remedial action is complete.

It should be noted that the liability release applies to the participant, not the property. The liability release is transferable to subsequent property owners as long as DEQ is notified of the property transfer before it occurs and confirms that the terms of the IA are maintained under the new owner.

IMPLEMENTING AGREEMENT TRANSFERS

Upon written notice to DEQ, the IA, including all rights and cleanup liabilities entered into by DEQ and the participant, is transferable to subsequent owners of the property who did not, by act or omission, cause or contribute to any contamination at the property.

It is the Certificate of Completion holder's responsibility to provide copies of the IA, the PDDD, and any other amendments to the IA to the new prospective purchaser. Notice of these documents will also appear in the property deed records.

The new prospective purchaser must submit a notice in writing to DEQ prior to taking ownership of the property. DEQ may request additional information to ensure that the new prospective purchaser is not potentially responsible for contamination.

If the property will be used for the same purpose described in the IA, DEQ will issue a transfer acknowledgement letter to the new prospective purchaser. After the property has been transferred, DEQ will issue a Certificate of Completion in the new owner's name.

If the property will be used in a manner that differs from the intended reuse or activities described in the IA, DEQ will evaluate the remedial actions implemented to determine if they will be protective of human health and the environment given the new property use.

CERTIFICATE OF COMPLETION REVIEWS

Certificate of Completions are subject to periodic reviews by DEQ staff to ensure that the terms of the IA have been maintained. If DEQ determines that the property owner has not complied with the terms of the IA, DEQ will notify the property owner in writing and provide an opportunity to remedy the violation. If the violation is not corrected, DEQ reserves the right to deem the IA, Certificate of Completion, and all rights and cleanup liabilities null and void.

FREQUENTLY ASKED QUESTIONS

WHAT IS A BROWNFIELD?

A brownfield is real property that is abandoned or underutilized and was previously used for an industrial, commercial, or agricultural purpose, or is an abandoned residential property. Brownfields are contaminated, or suspected to be contaminated, with hazardous or controlled substances, petroleum, or other environmental contaminants for which there is no responsible party who could reasonably be pursued for cleanup.

WHO QUALIFIES FOR THE BROWNFIELD VCP?

Any individual or organization that is a prospective purchaser of a brownfield property and is not responsible for the contamination at the property may qualify for participation in the Brownfield VCP.

WHAT IS THE BENEFIT OF COMPLETING THE BROWNFIELD VCP?

After a participant has completed all steps of the program, they will not be held liable for contamination that was caused by previous owners and was remediated in accordance with the IA between DEQ and the participant. This release from liability may be transferred to subsequent property owners upon coordination with DEQ.

ARE THERE ANY SPECIAL CERTIFICATIONS REQUIRED TO PARTICIPATE IN THE BROWNFIELD VCP?

Yes. All geologic interpretations must be signed and stamped by an Arkansas-licensed professional geologist and all engineering documents must be signed and stamped by an Arkansas-licensed professional engineer.

WILL A REMEDIAL ACTION ALWAYS BE REQUIRED FOR A BROWNFIELD PROPERTY?

No. The Brownfield VCP process reviews the environmental condition of the property and the intended future use to determine if there are any unacceptable risks from existing contamination, allowing the prospective purchaser and DEQ to make a risk management decision regarding the required remedial actions.

IS THERE A COST ASSOCIATED WITH THE PROGRAM?

No. Entry into the program and all technical reviews, technical assistance, and oversight are provided at no cost to the participant. However, participants are responsible for paying for the assessments and cleanup actions required to complete the program, unless they qualify for financial assistance from DEQ.

WHO QUALIFIES FOR FINANCIAL ASSISTANCE FROM DEQ?

Local governments, units of government, quasi-governmental entities, non-profit organizations, and regional economic or community planning organizations may request free Targeted Brownfield Assessments or direct cleanup services from DEQ when funding is available.

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

The Brownfield VCP is intended to be a voluntary program and participants may withdraw their application at any time. However, once a participant holds title to the property and has entered into an IA with DEQ, they have committed to taking all the steps necessary to prevent aggravating or contributing to the contamination of the air, land, or water, including downward migration of contamination from any existing contamination on the abandoned site. If the participant fails to meet the requirements of the IA or if the environmental conditions are somehow worsened by the 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 that the participant caused or exacerbated.