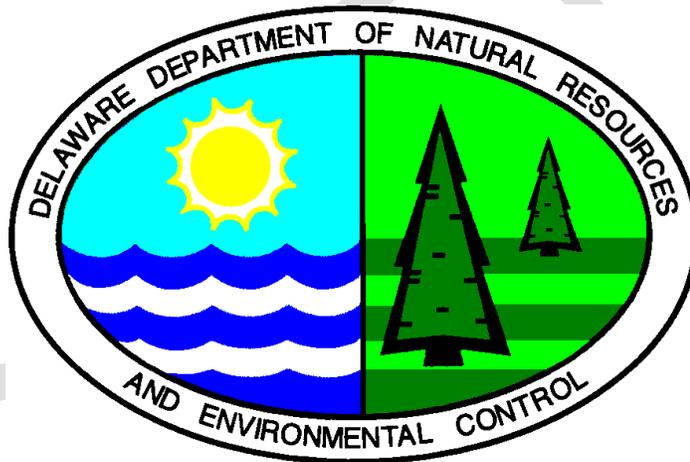


DELAWARE HAZARDOUS SUBSTANCE
CLEANUP ACT

BROWNFIELDS CERTIFICATION AND
GRANT APPLICATION



Department of Natural Resources and Environmental Control
Site Investigation and Restoration Section
Brownfields Coordinator
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New Castle, DE 19720
302-395-2600
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Jim.Poling@state.de.us

JOINT APPLICATION FOR BROWNFIELDS CERTIFICATION AND BROWNFIELDS
GRANTS UNDER THE DELAWARE HAZARDOUS SUBSTANCE CLEANUP ACT

June 11, 2013

Version III

On June 7, 2011, Director Crofts signed the *Hazardous Substance Cleanup Act Policy on Brownfield Grants*

(<http://www.dnrec.delaware.gov/whs/awm/SIRB/Documents/BFGPolicy.pdf>). This Policy authorizes the appropriation of up to \$65,000,000 annually from the Hazardous Substance Cleanup Act Fund (HSCA Fund) for the purpose of reimbursing reasonable remedial costs to eligible parties and sites (7 Del.C. §9113(c)(4)).

The completion of all or parts of this application is a requirement to process a request for funding from the Department of Natural Resources and Environmental Control, Site Investigation and Restoration Section's (DNREC-SIRS) HSCA Fund and for Brownfield certification. Funding under the HSCA Policy on Brownfield grants shall be provided only to those parties who apply to the DNREC-SIRS. This application does not obligate the State of Delaware or any State agency to grant any form of financial assistance. All determinations concerning funding ~~or certification~~ is at the sole discretion of the Secretary, or ~~her~~ his designee.

Brownfield certifications are valid for xxx months only if no remedial work at the property has been commenced.

For Brownfields Grant funding to any one public entity or non-profit brownfield redevelopment project, no more than six hundred twenty-five thousand dollars (\$625,000) may be reimbursed for approved costs incurred for assessment, investigation, remedial activities or Department oversight. Of this amount, the first five hundred thousand dollars (\$500,000) is a dollar to dollar reimbursement, and the remaining one hundred twenty-five thousand dollars (\$125,000) is a fifty cents to the dollar reimbursement. In addition, the redevelopment project will be eligible for an additional reimbursement of up to seventy-five thousand dollars (\$75,000) for costs associated with assessment, investigation, remedial activities or Department oversight for groundwater contamination. Of this additional amount, the first sixty thousand dollars (\$60,000) is a dollar to dollar reimbursement, and the remaining fifteen thousand dollars (\$15,000) is a fifty cents to the dollar reimbursement. No more than one million dollars (\$1,000,000) may be allocated to any one non-profit or public entity in a single fiscal year.

For Brownfields Grant funding to any one private entity brownfield redevelopment project, no more than two hundred thousand dollars (\$200,000) may be reimbursed for approved

costs incurred for assessment, investigation, remedial activities, or Department oversight. Of this amount, the first one hundred twenty-five thousand dollars (\$125,000) is a dollar to dollar reimbursement, and the remaining seventy-five thousand dollars (\$75,000) is a fifty cents to the dollar reimbursement. In addition, the redevelopment project will be eligible for an additional reimbursement of up to seventy-five thousand dollars (\$75,000) for costs associated with assessment, investigation, remedial activities or Department oversight for groundwater contamination. Of this additional amount, the first sixty thousand dollars (\$60,000) is a dollar to dollar reimbursement, and the remaining fifteen thousand (\$15,000) is a fifty cents to the dollar reimbursement. No more than one million dollars (\$1,000,000) may be allocated to any one private entity in a single fiscal year.

For the purposes of this application, reimbursable and non-reimbursable expenses can be found in the State of Delaware Brownfield Grant Eligible Expenses Guidance and Reimbursement Application Instructions, which is available for review at: <http://www.dnrec.delaware.gov/whs/awm/SIRB/Documents/BFGExpenseGuidance.pdf>

Funding for Brownfield grants will only be provided to applicants who are willing to enter into a written agreement pursuant to HSCA. Reimbursement for Brownfield grant funding will be provided after the incremental expenses have been incurred and the Department receives receipts thereof.

Additionally, for the purposes of funding under this policy, Brownfields grant funding, all land acquisition projects entailing multiple parcels, or projects that divide a single parcel into operable units (OUs) or HSCA identification numbers, are to be considered a single project, eligible for one (1) funding allocation.

For the purposes of this application, funding eligibility is distinct and separate from Brownfield certification. Brownfield certification is derived from facts relating to the site, not the applicant. Specifically, certification is based on the threshold criteria outlined in section 3.4 of the *Delaware Regulations Governing Hazardous Substance Cleanup*. Brownfield certification may be obtained regardless of the status of the applicant for funding purposes, or their status as a potentially responsible party (PRP). Brownfield grants, however, are based on the eligibility of the applicant. These criteria are outlined in the above referenced policy. Note: Brownfield grant funding does require that the site be certified as a Brownfield.

Due to the expenditure of public funds associated with the Brownfields Program, it is DNREC's expectation that applicants will be proactive in communicating project details with local elected officials and organized community groups. DNREC will help the applicant develop an outreach program to gauge community support for the project. DNREC may also recommend outreach strategies to help align the project with community needs and expectations.

|

This application has four separate parts. Part One of this application is the Brownfields Property Certification. Part Two is the Brownfields Developer Eligibility section. Part Three is the Brownfields Grant application. Part Four is the Certification of Application. Only the Parts applicable to your specific funding request or certification need to be filled out. Please indicate below the purpose of your application:

Brownfields Property Certification – Please complete Part One, Part Two and Part Four
Brownfields Developer Certification – Please complete Part One and Part Four
Brownfields Grant – Please complete Part One, Part Two, Part Three and Part Four

Please fill in all the blanks for the applicable sections, and answer all questions, using "NONE" or "NOT APPLICABLE" when necessary. If more space is needed to answer a specific question, attach a separate page. Please submit this application either electronically or return the signed original, plus two copies to [James M. Poling](#), Brownfield Coordinator, Department of Natural Resources and Environmental Control, 391 Lukens Drive, New Castle, DE 19720.

DRAFT

PART ONE – BROWNFIELDS PROPERTY CERTIFICATION

This section must be filled out by all applicants seeking Brownfield certification or Brownfield grant funding.

Applicant Information (Please show full official name without abbreviations.)

Applicant: _____

Contact Person: _____

Telephone #: _____

Address: _____

City: _____ State: _____ Zip Code: _____

1. Is the applicant the present owner of the site? Yes No
If no, please indicate applicant's relationship to the property: _____

2. Present owner's name and address, if different from the applicant.

Owner's Name: _____

Telephone #: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____ Telephone #: _____

3. Current use/operation/activity occurring at the site (if applicable): If so provide:

Type of use, activity or operation (provide additional sheets as necessary):

Operator's Name: _____

Telephone #: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Site/Property Information

Site/Property Name: _____

Site Address: _____

City: _____ State: _____ Zip Code: _____

Site Tax Parcel #: _____

SIRS Facility ID # (if applicable): _____

[TMS Facility ID # \(if applicable\):](#) _____

[Other DNREC Facility ID# \(if applicable\):](#) _____

Zoning Classification: _____

Approximate acreage: _____

Census Tract: _____

1. Have there been any environmental investigations at the site? Yes No
If yes, please identify each and every type of investigation, who prepared the report and the date of the report. Please attach executive summaries and/or conclusions from each report as an addendum to the application. _____

2. State the known release(s) of any hazardous substances not addressed in response to Question 1: _____

- [3. Are there any known registered or unregistered tanks on the property:](#)
[If so, please provide all knowledge of their placement, history, use and type:](#)

Brownfield Criteria

1. Is the property vacant, abandoned or under-utilized? Yes No

If no, property is not eligible for Brownfield certification.

If under-utilized, ~~provide justification~~ complete Appendix I as justification. All of Appendix I must be completed to be considered. ~~(Under-utilized can mean that the current use does not support the proposed redevelopment plan, and that the proposed redevelopment will result in increased jobs or benefits to the community.)~~

2. Is the property subject to a current or prospective development or redevelopment plan?

Yes No

If yes, please describe the plan and the current stage of development or redevelopment:

3. Does the applicant intend to seek approval from DNREC to conduct any development activities at the site prior to the issuance of of a Final Plan of Remedial Action (FPRA)? If so, provide in detail:

Type of activity/operation:

Provide details for seeking such approval and describe at what stage of the remedial process it desires to commence such activities:

|

| 34. Is there a justifiable reasonably held belief that the property may be contaminated?
Yes No

If no, the property is not eligible for Brownfield certification.
If yes, please provide your reasoning. (*Executive summaries from environmental reports may be attached as complements only.*) _____

| 45. Is, or has the property ever been one of the following? Yes No
If yes, which one?

- [A Salvage Yard](#)
- [A Permitted or non-permitted landfill](#)
- [A Historically filled](#)
- [A Known hazardous substance release site \(site within the DNREC-SIRS](#)

database)

- [A Gas Station](#)
 - [A Dry Cleaner](#)
 - [A Tannery](#)
-

PART TWO – BROWNFIELDS DEVELOPER CERTIFICATION ELIGIBILITY

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This section must be filled out by all applicants seeking Brownfield grant funding.

Applicant Information (Please show official name without abbreviations.)

Applicant: _____

Contact Person: _____

Telephone #: _____

Address: _____

City: _____ State: _____ Zip Code: _____

1. Is the applicant the present owner of the site? Yes No
If no, please indicate applicant's relationship to the property: _____

2. Present owner's name and address, if different from the applicant. If the applicant is the owner, go to Question 3:

Owner's Name: _____

Telephone #: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____ Telephone #: _____

3. Do you have any contractual relationship with the Seller or current or past operator of the property other than a contract for the sale of the property?

Yes No

If yes, please provide a detailed description of the contractual relationship:

|

| [34.](#) Do you represent a county or local government? Yes No
If yes, which county or local government: _____

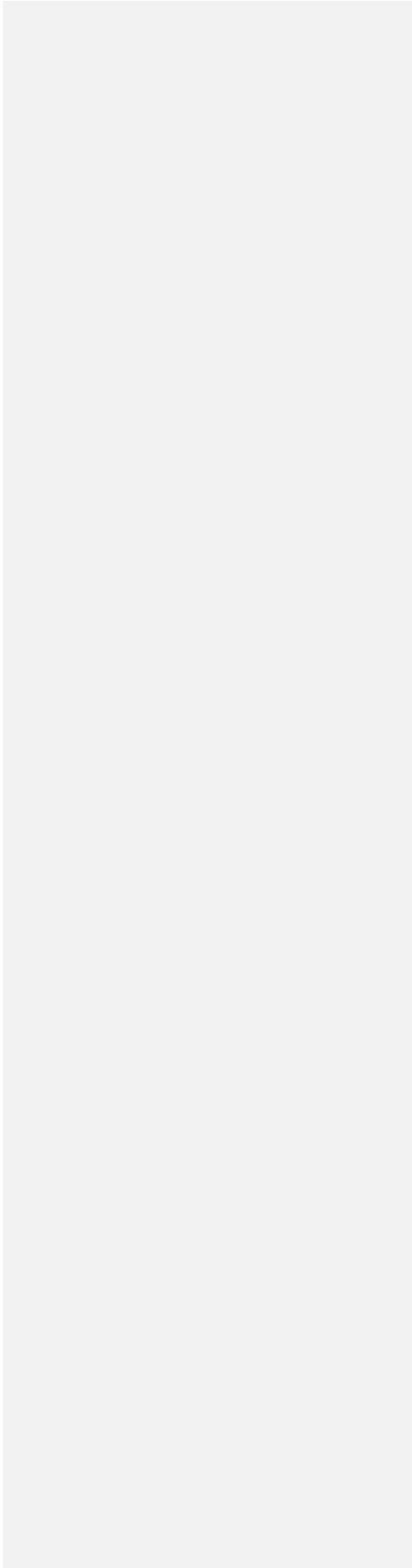
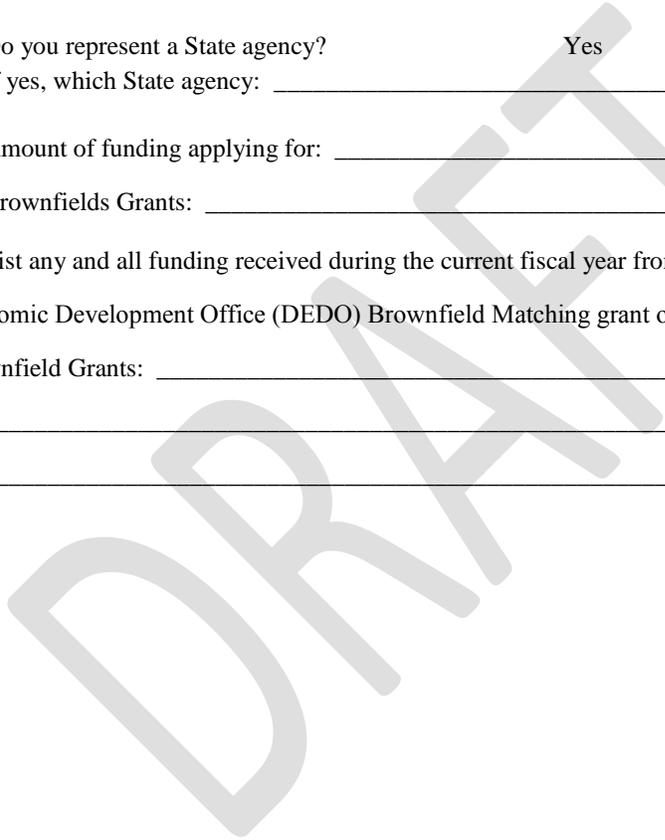
| [45.](#) Do you represent a redevelopment authority? Yes No
If yes, which redevelopment authority: _____

| [56.](#) Do you represent a 503 (c) non-profit organization? Yes No
If yes, which 503 (c) non-profit organization: _____

| [67.](#) Do you represent a State agency? Yes No
If yes, which State agency: _____

| [78.](#) Amount of funding applying for: _____
Brownfields Grants: _____

| [89.](#) List any and all funding received during the current fiscal year from either the Delaware Economic Development Office (DEDO) Brownfield Matching grant or from DNREC's Brownfield Grants: _____



PART THREE – BROWNFIELD GRANT ELIGIBILITY

Information provided here is only required if you are requesting financial assistance. Disclosure of any prior environmental action will not be the sole determinant in a funding decision.

1. Has the applicant ever been the subject of an environmental enforcement action, whether criminal, civil, or administrative, from any State or Federal agency in the past five years?

Yes No

If yes, please describe the situation and how the matter has been resolved:

2. Did the applicant cause or contribute to the release(s) of hazardous substance(s) at the property?

Yes No

If yes, please describe how the applicant caused or contributed:

3. Is the applicant in full compliance with all other environmental requirements/permits in Delaware?

Yes No

If no, please explain details of the non-compliance:

If yes, please provide details of any non-compliance within the last five years:

4. Has the applicant ever been a chronic violator, as determined by 7 Del.C. § 7904?

Yes No

If yes, please describe the situation and how the matter has/if been resolved:

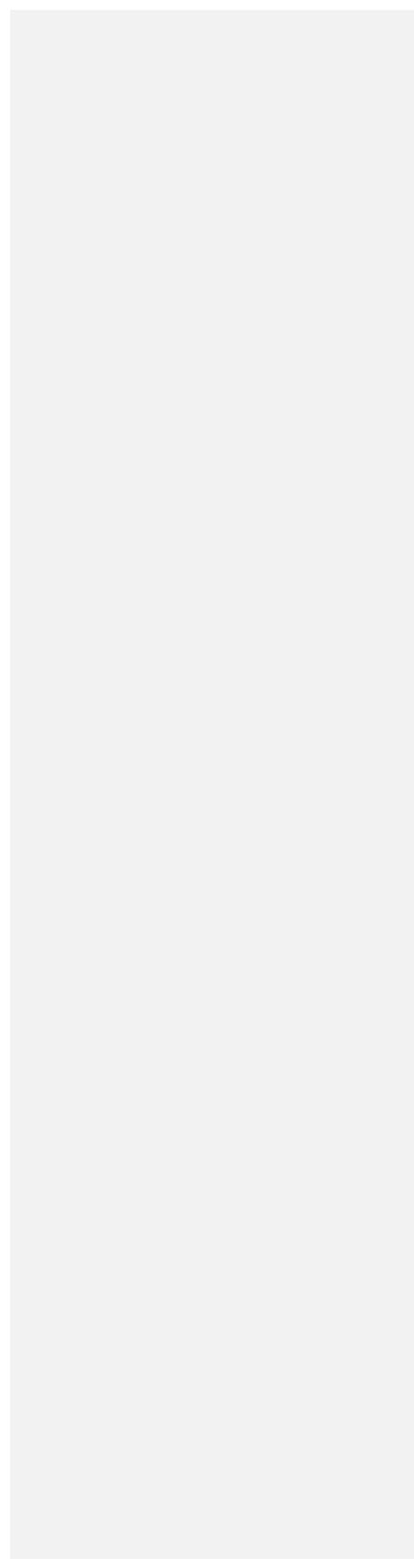
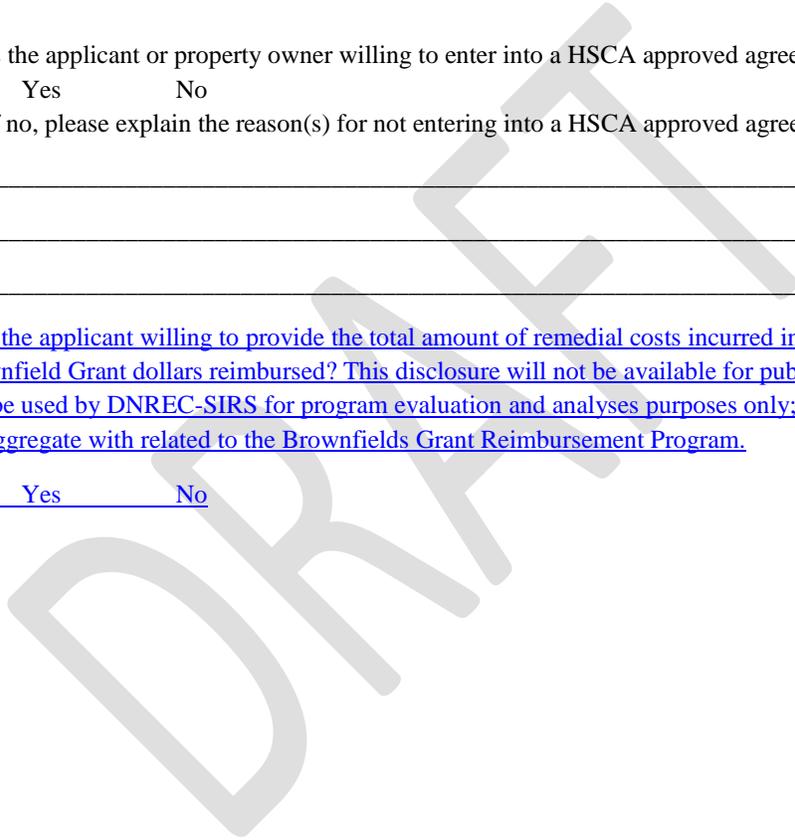
5. Is the applicant or property owner willing to enter into a HSCA approved agreement?

Yes No

If no, please explain the reason(s) for not entering into a HSCA approved agreement:

6. Is the applicant willing to provide the total amount of remedial costs incurred in addition to Brownfield Grant dollars reimbursed? This disclosure will not be available for public review and will be used by DNREC-SIRS for program evaluation and analyses purposes only; and only in the aggregate with related to the Brownfields Grant Reimbursement Program.

 Yes No



CERTIFICATION OF APPLICATION

Comment [KAD1]: This needs to be clarified. Is it a certification of application for the Brownfield property, the developer, for funding, or all of the above?

Eligibility for Brownfield grant funding by DNREC is determined by the information presented in this application. The Secretary, or his designee, shall determine whether an applicant is eligible for any funding pursuant to Section V of the Delaware Hazardous Substance Cleanup Act Policy on Brownfield Grants. Any changes in the status of the proposed project from the facts presented herein could disqualify the project. Please contact the staff of the DNREC before taking any action that would change the status of the project as reported herein. This application is subject to terms pursuant to 7 Del.C. Chapter 91.

I, the undersigned, being duly sworn upon my oath say:

1. The Applicant as listed in Part Two is the party seeking certification and/or funding.
2. The Applicant hereby agrees, if this application is approved, to comply with all federal, state, and local laws affecting any funding to be issued and the operation of the proposed project.
3. The Applicant hereby acknowledges and agrees that the DNREC reserves the right to, and may, disclose any information contained in this application and its supporting documents to the staff and attorneys of the DNREC, to any other State of Delaware agency, at any public hearing held on this application, in any published notice of such hearing, and that this application is subject to the Delaware Freedom of Information Act.
4. The Applicant hereby certifies and affirms that all information contained herein and in the Addendums and Attachments attached hereto is true and complete to the best of its knowledge and belief.
5. I understand that if such information is willfully false, I am subject to criminal prosecution and that the DNREC, at its option, may terminate its financial assistance.

SIGNATURE: _____

NAME (PRINT): _____

TITLE: _____

DATE: _____

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DELAWARE HAZARDOUS SUBSTANCE CLEANUP ACT

BROWNFIELDS CERTIFICATION, DEVELOPER APPROVAL AD GRANT APPLICATION

APPENDIX I

Underutilized Brownfield Certification Factors

DNREC-SIRS has developed these factors in an effort to assist potential Brownfields Developers in determining whether a particular parcel of real estate is currently underused due to a reasonable belief that it is environmentally contaminated. Based upon its experience administering the Delaware Brownfields Development Program (BDP), DNREC-SIRS has determined that many common circumstances exist with respect to those properties that are not being fully utilized due to contamination or the reasonable belief of contamination at the site. While these factors are neither exclusive nor conclusive in determining whether every site is underutilized, they have proven to be relevant in making such a determination in the vast majority of cases. Therefore, in the event this Application is being made based upon the underutilization of the real property in question, the Applicant is required to identify those factors that are relevant and explain how they have contributed to the underutilization of the site. Please provide your response on a separate sheet and attach with the Application.

Again, while these factors alone may not be dispositive, applying them to the totality of the applicable facts and circumstances is of assistance to the Applicant and DNREC and will promote consistency and predictability. The factors are set forth below. In addition, a section is available for Applicant to add any other factors or considerations of which DNREC should be aware.

The principal analysis centers on an analysis of the nexus between the real or perceived environmental contamination and the inability to develop, redevelop or expand the facility. They include:

1. **Current Usage:** Describe in detail the current use of the property, which will be one of the primary factors used to evaluate whether the site is underutilized. Indicate type of activity or operation being conducted at the site. Additionally, provide a reasonable estimate of the proportion of the site the current activity is utilizing. The property should not be deemed vacant or abandoned if under-utilization is being sought.

2. **Prior Usage/Environmental Investigations/Regulatory History:** What a facility was previously or historically used for could be a compelling factor, and from one perspective is similar to the per se "contaminated" previous uses (gas station, dry cleaner, landfill, historically filled) recited in the application. Also, history as used here, ought to include the release/cleanup/investigation history of the site - which needs to be recited to demonstrate documented contamination or

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support the reasonably held belief that contamination is present. **Provide the nexus between the prior usage and thus the supposition that the property is therefore contaminated with the inability to fully utilize the property. This nexus analysis is mandatory.**

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3. Age of the facility: The age of a facility could be relevant to the question of whether or not it ought to be certified as a Brownfield. In general, older facilities could be expected have depreciated in value and would be more attractive redevelopment targets, or they may have deteriorated or become obsolete and no are longer suitable for original or intended purpose.

4. Reuse/Redevelopment Plan: Describe developer's plan (may be conceptual, but some preliminary design is preferred) and how it generates a higher and better use of the property than the existing one. Importantly, this should also include the extent of planned land-disturbing activities and vapor intrusion mitigation issues. The greater the possibility that contamination may be mobilized during redevelopment (with attendant potential exposure) the more compelling the argument for certification. Conversely, the less active the redevelopment, the harder it will be to demonstrate that the contamination is impairing or limiting redevelopment. **Provide the nexus between the prior usage and thus the supposition that the property is therefore contaminated with the inability to fully utilize the property. This nexus analysis is mandatory.**

5. Surrounding Area (proximity to other BFs or potential BFs): Land use in areas surrounding the site may be relevant to how much additional development/redevelopment of a site may be considered a higher and better use of the property. For instance, a higher bar may be set for marginal improvements to an older industrial site that is surrounded by intensive, modern redevelopment projects. It could be relevant to the threshold question of contamination or potential contamination as well.

6. Marketability: The (current) marketability of the property is another way of looking at the degree to which environmental impairment (or potential environmental impairment) complicates, increases the costs of, or hampers redevelopment. The property could have reduced marketability for any number of factors, only some of which would arguably be relevant to the question of certification. Provide the extent and manner in which the property is/was marketed and, if known, the feedback towards non-marketability.

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7. Economic/Community Benefit: Jobs, increased taxes, spillover or attendant revitalization of neighboring properties are examples of factors which ought to weigh in favor of certification. Similarly, resource stewardship /green space enhancement, improvements to quality of life and possibly Environmental Justice issues also need to be considered.

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8. Located in:

- a. Census Tract; Relevant to Environmental Justice, and also regional or community development plans;
- b. Investment Level Status/Targeted Growth Area; or
- c. Enterprise Zone: A legislative or municipal determination that development in geographic location is particularly desirable and ought to be encouraged, should lessen the burden to demonstrate vacancy, abandonment, or underutilization on the applicant seeking certification of a Brownfield.

9. Other relevant factors to be considered for approved by SIRS:

Applicant Signature

Date

[JMP:Brownfields:BFCertUnderutilElements.1](#)

[Rev'd08.31.14](#)

[Rev'd11.26.14](#)

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