

**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

SITE INVESTIGATION & RESTORATION SECTION

**HAZARDOUS SUBSTANCE CLEANUP ACT
POLICY ON BROWNFIELD GRANTS
March 2019**

I. PURPOSE

(1) The purpose of this policy is for the Department of Natural Resources and Environmental Control ("DNREC" or the "Department"), Site Investigation and Restoration Section ("SIRS") to provide Brownfield Grant funding opportunities to assist any eligible party in paying "reasonable remedial costs incurred in responding to a hazardous substance remedy ..." (7 Del. C. Section 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., Section 9113. The Department will seek to give preference to brownfield redevelopment projects with public benefit, such as affordable housing (e.g. for low to middle income buyers), LEED Certified Green Buildings, Green Remediation practices and development consistent with smart growth principles including Delaware Strategies for State Policies and Spending, (<https://stateplanning.delaware.gov/strategies/documents/2015-state-strategies.pdf>).

II. DEFINITIONS

(1) Brownfield Redevelopment Project means the redevelopment of real property where there is a reasonably held belief that the property may be environmentally contaminated which is hindering the redevelopment, reuse or expansion. 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) or HSCA identification numbers, are to be considered a single project, eligible for one (1) funding allocation regardless of the number and type of Brownfield Developers involved in the project.

(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.

(3) Fiscal Year means the State fiscal year, which runs from July 1 of a year through June 30 of the following year.

(4) Green Remediation means the practice of considering all environmental effects of remedy implementation and incorporating options to minimize the environmental footprints of cleanup actions.

(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)

(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.).

(7) Public Entity means a State Agency or body, county or local government, housing authority or redevelopment authority.

III. AMOUNT

(1) In accordance with 7 Del. Code, Chapter 91, Section 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. Of the appropriated amount, five hundred thousand (\$500,000) will be set aside specifically to address groundwater contamination associated with Brownfield redevelopment projects.

(2) (a.) For Brownfields Grant funding for any one public entity or non-profit brownfield redevelopment project, no more than six hundred twenty-five thousand dollars (\$625,000) may be reimbursed or directly paid for costs incurred for assessment, investigation, remedial activities or Department oversight charges. Of this amount, the first five hundred thousand dollars (\$500,000) being a dollar to dollar direct payment, and the remaining one hundred twenty-five thousand dollars (\$125,000) being a fifty cents to the dollar direct payment for the balance. In addition, the redevelopment project would be eligible up to an additional seventy-five thousand (\$75,000) for reimbursement of costs associated with assessment, investigation, remedial activities or Department oversight charges for groundwater contamination. Of this additional amount, the first sixty thousand (\$60,000) being a dollar to dollar reimbursement, and the remaining fifteen thousand (\$15,000) being a fifty cents to the dollar reimbursement for the balance.

(b.) No more than one million dollars (\$1,000,000) may be granted to any one non-profit or public entity in a single fiscal year without prior Department approval.

(3) (a.) For Brownfields Grant funding to any one private entity brownfield redevelopment project, no more than two hundred thousand dollars (\$200,000) may be reimbursed or directly paid to any single private brownfield redevelopment project for costs incurred for assessment, investigation, remedial activities or Department oversight charges. Of this amount, the first one hundred twenty-five thousand dollars (\$125,000) being a dollar to dollar reimbursement, and the remaining seventy-five thousand dollars (\$75,000) being a fifty cents to the dollar reimbursement for the balance. In addition, the redevelopment project would be eligible up to an additional seventy-five thousand (\$75,000) for reimbursement of costs associated with assessment, investigation, remedial activities or Department oversight charges for groundwater contamination. Of this additional amount, the first sixty thousand (\$60,000) being a dollar to dollar reimbursement, and the remaining fifteen thousand (\$15,000) being a fifty cents to the dollar reimbursement for the balance.

(b.) No more than one million dollars (\$1,000,000) may be granted to any one private entity in a single fiscal year without prior Department approval.

(4) Direct payment is permitted once the invoices have been reviewed and signed by the Brownfield Developer and the consultant along with the proper documentation including a certification that the work has been completed and inspected.

(5) The fifty cents to the dollar reimbursement/direct pay may be waived in lieu of full funding if the redevelopment project is deemed affordable by the Delaware State Housing Authority or receives LEED or other nationally recognized energy or sustainable program certification.

(6) The fifty cents to the dollar reimbursement/direct pay may be waived in lieu of full funding, upon written request, for allowable expenses incurred during the months of March through May of the fiscal year provided reimbursement packages are submitted by June 1st of the same fiscal year provided that:

(a) The HSCA line item for the Brownfields grants must have, at a minimum, \$500,000 (five hundred thousand dollars) in the account as of March 1st of the fiscal year;

(b) The Brownfield Developer, private or public/non-profit, must be within the fifty-cent to the dollar stage of their grant funding; and

(c) Only invoices for work completed during the current fiscal year will be eligible for the waiver.

(7) Brownfield redevelopment projects are limited to the amount that the eligible entity may receive pursuant to the limits listed above.

IV. ELIGIBILITY FOR BROWNFIELD GRANTS

(1) Public, non-Profit and private prospective purchasers are eligible to apply for State Brownfield Grant funding under the following conditions:

(a) The property must be certified as a Brownfield pursuant to Section 3.4.3 of *The Regulations Governing Hazardous Substance Cleanup*. Certification may be applied for in conjunction with the application for funding;

(b) Non-profit applicants must be able to demonstrate their legal status;

(c) The applicant must affirmatively demonstrate that they/it did not cause or contribute to the actual release(s) of hazardous substances;

(d) The applicant is in full compliance with all other environmental requirements in Delaware;

(e) The applicant must not be a chronic violator; and

(f) 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.

V. USE OF FUNDS

(1) Monies awarded under the Brownfields Grant program must be used solely for environmental assessments, investigation, remedial activities approved by the Department, or for Department oversight charges. Approved and non-approved activities are detailed in the Brownfields Grant Eligible Expenses Guidance.

(2) Remediation costs, as specified by a Final Plan of Remedial Action, that were incurred prior to the Brownfield Developer taking title to the property, will only be reimbursed after the Brownfield Developer takes title to the property.

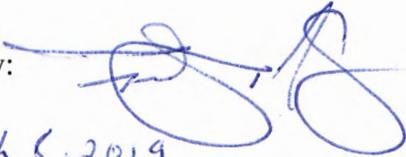
(3) Funding is not available for activities required by the Department to remedy site conditions referenced in a Notice of Violation (NOV) or Secretary's Order without pre-approved permission from the Department in writing.

VI. APPLICATION FOR FUNDING

- (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*.
- (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.
- (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.

VII. MISCELLANEOUS

- (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).
- (2) Any Brownfield grant decision under this policy is in the sole, non-reviewable discretion of the Secretary or his designee.
- (3) All requests for payments from the Department for allowable reimbursement or 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.
- (4) Brownfields Grant funding may be available upon completion of the brownfield redevelopment project or in partial increments during the brownfield redevelopment project, of no less than two thousand dollars (\$2,000) or quarterly, prior to the final payment.
- (5) Eligible grant funds unused by any Brownfield Grant approved entity within a single fiscal year shall not be carried over to the following fiscal year.
- (6) This policy supersedes the prior policy dated November 2006, May 2011, June 2013, July 2014, and March 2015.
- (7) All Brownfield Grant Funding under this Policy is subject to having sufficient funding available in the State HSCA fund.
- (8) All Brownfield Grant recipients shall respond to the best of their ability to Department information requests relevant to grant funding for the purpose of evaluating the effectiveness of the Brownfields Development Program.

Approved by: 
Date March 5, 2019