

## Brownfield Revitalization Amendment Act: Frequently Asked Questions

### 1. What is the purpose of the Brownfields Act and the Voluntary Cleanup Program?

The release of hazardous substances as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA; commonly known as Superfund) results in significant liability for past and current property owners, operators, and other associated parties that could be deemed responsible for the release. This liability had the unfortunate effect of leaving potentially valuable properties abandoned and blighted, as property owners, prospective purchasers, and lenders were hesitant to be deemed as responsible parties that could incur profound legal fees and cleanup costs under CERCLA. These properties are commonly referred to as “brownfields” and they may merely be an eyesore or contaminated by hazardous substances that pose an unacceptable risk to human health and the environment.

The Brownfield Revitalization Amendment Act (Brownfield Act) was passed by the Council of the District of Columbia in 2000 and provides the District government with tools to address hazardous substance releases via regulatory processes and voluntary cleanup of contaminated properties. The Voluntary Cleanup Program (VCP) is intended to facilitate a cooperative dynamic between DOEE, property owners, and developers to promote efficient and effective cleanup of properties impacted by hazardous substances. Both responsible parties and non-responsible parties may enroll in the VCP if the site is not currently enrolled an EPA or subject to any cleanup action enforced by DOEE.

Enrolling a property in the VCP protects human health and the environment by removing, treating, or limiting the potential for exposure to hazardous substances. Upon successful completion of the cleanup process, DOEE issues a Certificate of Completion (COC) that precludes the recipient from future cleanup liability under the Brownfields Act. The liability protections granted by the COC are transferrable, which often increases market value of the remediated property by ensuring prospective purchasers that environmental liabilities have been minimized.

Some examples of completed VCP projects in the District include:

- Audi Field
- Nationals Park
- The Baldwin (an affordable housing development on H Street NE)

### 2. What is a hazardous substance and what is a release?

Hazardous substances are defined under [CERCLA Section 101\(14\)](#) and include substances regulated under other environmental laws including the Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and Toxic Substances Control Act. A complete list of compounds defined as hazardous substances under CERCLA can be found [here](#). Other compounds may be considered as hazardous substances by DOEE under District law. Some common examples of hazardous substances include constituents in gasoline like benzene, toluene, ethylbenzene, and xylenes (BTEX), solvents like perchloroethylene (PCE) and trichloroethylene (TCE) used for dry-cleaning and degreasing, and polychlorinated biphenyls (PCBs) that were commonly used in transformer oils, capacitors, and light ballasts manufactured prior to 1979.

A “release” under CERCLA means the addition, introduction, leaking, pumping, spilling, emitting, discharging, escaping, dumping, injecting, disposing or leaching of any hazardous substance into the environment, including the abandoning or discarding of barrels, containers, and other closed receptacles containing any hazardous substance. This term applies to both past and present occurrences. A release of any hazardous substance in the District is illegal

unless it occurs in quantities permitted by Federal or District law. Discovery of hazardous substances in soil, groundwater, soil vapor, or indoor air must be reported to DOEE.

### **3. Why should I participate in the Voluntary Cleanup Program?**

CERCLA imposes strict liability on responsible parties for hazardous substance releases that include the costs of abatement, remedial activities and cleanups, risk assessment, damages to natural resources, and the cost of any other response action by a regulatory agency.

This strict liability applies to individuals or entities (known as “responsible parties”) including:

- Current and past owners of a property impacted by the release of a hazardous substance
- Those who arranged for the release, disposal, or treatment of the hazardous substance at the property (including transporters and those who arranged for the transport)
- Those who caused or contributed to the release by an act or omission
- Those who transferred a known contaminated property after June 13, 2001, unless they demonstrated they did not participate in the management of the property, or met the conditions of the exemptions at §8-632.01(c)(6)

Conducting an environmental assessment does not make an entity a responsible party and is required to satisfy various defenses from CERCLA liability. Receiving a Certificate of Completion under the VCP releases the participant from further cleanup liability under the Brownfields Act and can be transferred to future owners.

### **4. Is financial assistance available for brownfield properties?**

DOEE will assist 501(c)(3) nonprofit entities that own brownfield properties in applying for grants offered annually by the Environmental Protection Agency. These [Brownfield Grants](#) have offer funding for assessment and cleanup of brownfield properties and have recently received significant increases in program-wide funding and per-grant awards under the [Infrastructure Investment and Jobs Act](#). Under the new funding guidelines, grants may be awarded for up to \$10,000,000 per award for assessments and up to \$5,000,000 per award for cleanups.

Please contact the Land Remediation and Development Branch if you are interested in applying for one of these grants.

### **5. What are “all appropriate inquiries”?**

“All appropriate inquiries” (AAI) is a process of evaluating a property’s environmental conditions and assessing potential liability for any contamination under the commonly referred to as the “Superfund” law. The Brownfields Amendments to CERCLA in 2002 required the U.S. Environmental Protection Agency (EPA) to promulgate standards and practices for conducting AAI, which were ultimately published under the All Appropriate Inquiries Rule on November 1, 2005.

The All Appropriate Inquiries Rule requires that all investigation results be documented in a written report. Though the rule did not require a specific format, length, or structure of the written report, a report compliant with ASTM E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* will satisfy the requirements of the AAI rule. Additional information on the AAI rule and ASTM E1527-14 can be found [here](#).

## **6. How many sites have been cleaned up under DOEE's Voluntary Cleanup Program?**

As of October 2021, [38 sites](#) have received a Certificate of Completion under the VCP.

## **7. How long does it take to cleanup a site and receive a Certificate of Completion?**

There are numerous factors that determine how long it will take to clean up a site. The size of the site, the nature and extent of contamination, the necessary remediation measures, the proposed future use of the site, and other considerations can result in drastically different timelines. However, closure can typically be attained quicker under the VCP than other regulatory programs.

Historically, the average time from DOEE's approval of a VCP application to issuance of a Certificate of Completion or No Further Action (NFA) letter is approximately 3.5 years and ranges from less than a year to 14 years. Approximately 70% of these cleanups were completed in less than 3.5 years and approximately 25% were completed in less than two years. Approval of the Cleanup Action Plan can be issued within six months of receipt by DOEE and the Certificate of Completion can be issued within 30 days after receiving the Site Completion Report, meaning that the primary variable for duration of cleanup is the duration of the development phase.

## **8. What are institutional controls and how do they affect a cleanup project?**

The term "institutional controls" refers to a variety of non-engineering instruments used to ensure that a cleanup project is protective of human health and the environment. These instruments are administrative and legal measures that limit human exposure by modifying or guiding human behavior at a site.

Examples of institutional controls include:

- A notice of residual risk describing hazardous substances and their location on the property
- Prohibiting the use of the property for residential purposes
- Easements that grant DOEE access to the property to monitor hazardous substances
- Orders that run with the land if the institutional controls described above do not provide adequate reduction of environmental risk

All institutional controls must be compliant with the Uniform Environmental Covenants Act. More information regarding this statute can be found [here](#).

## **9. Can I enroll my site in the VCP if I am a responsible party?**

Yes, responsible parties may enroll a site in the VCP just as non-responsible parties. The only exception to this is if the site is currently listed on the Superfund National Priorities List (NPL) or subject to any cleanup action enforced by USEPA or DOEE.

## **10. Does enrolling my site in the VCP make me a responsible party?**

No, identification as a Bona-Fide Prospective Purchaser, Innocent Landowner, or Contiguous Property Owner upon completion of All Appropriate Inquiries precludes the possibility of being determined a responsible party under CERCLA. A non-responsible party may withdraw from the VCP without fear of liability but will forfeit the application fee.

## **11. How does the VCP process work?**

The VCP is administered by DOEE's Land Remediation and Development Branch (LRDB) and follows the general process described below:

- i. Perform a [Comprehensive Site Assessment](#) on the property
  1. Conduct a background search
  2. Fully characterize the soil and groundwater conditions
  3. Delineate the vertical and horizontal extent of contamination
  4. Evaluate potential remedial options
- ii. Submit the program [application](#) and the \$10,000 fee
- iii. Within a maximum 90 days of submission of application and completion of 14-day public comment period, LRDB issues approval or denial of application
- iv. Submit a [Cleanup Action Plan](#) (CAP) within 30 days of LRDB approval
- v. Within a maximum 90 business days of CAP submission, DOEE will approve the CAP or advise the applicant of changes necessary to make their CAP approvable
- vi. Post a performance bond sufficient to stabilize the property in the event that the cleanup project is not completed
- vii. Initiate CAP (DOEE performs oversight)
- viii. Submit a [Cleanup Completion Report](#) (CCR) within 30 days of the completion of the CAP
- ix. Within 30 business days of submission of CCR and completion of 14-day public comment period, DOEE issues Certificate of Completion
- x. File Certificate of Completion with Recorder of Deeds and Office of Tax Revenue within 30 days