

**Brownfields State Redevelopment Fund Guidance**

Waste Management & Remediation Division

Brownfields and Federal Facilities Section

**DRAFT**

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# **1.0 Introduction**

The goal of the State Brownfields program is to work with, support and strengthen communities across Montana. Ensuring that blighted and underused properties are given an opportunity to overcome the perception, or presence, of environmental contamination and be returned to the communities as an economic resource.

Federal Brownfields grants are awarded to eligible entities throughout Montana allowing communities to take the lead in choosing the Brownfield sites most important to them. For those communities not being served by Federal Brownfields funds, the state can provide Brownfields financial support and Brownfields training to assist communities in understanding Brownfields, developing their own site inventories, and applying for local, state, and federal Brownfields assistance/funding.

The Montana Brownfields Revitalization Act (MCA 75.11.4) establishes the Brownfields Site Redevelopment Fund which provides Montana’s Department of Environmental Quality (DEQ) Brownfields Program with $200,000 per year for two years (Fiscal year 2026 and 2027) to assist communities in covering costs for both Environmental Site Assessment and Cleanup of Brownfields sites across Montana. This guidance outlines the eligibility requirements and processes the DEQ Brownfields Program will follow in expending these funds.

# **2.0 Montana Brownfields Site Redevelopment Fund – Site Assessment Assistance**

*Eligible Entities*

* Tribal governments
* Non-profit organizations
* Economic development organizations
* State Agency
* Local governments

(Private property owners or Prospective Purchasers – cannot apply for funds directly but one of the eligible entities listed above can apply on behalf of the private owner or prospective purchaser. This ensures that the requested assessment assistance benefits the community and has community support.)

Eligible entities, private property owners, or prospective purchasers must not be a responsible party as defined in HB808 Section 3:

* A person responsible for conducting the assessment, investigation, and cleanup at a brownfield site as determined through:
  + A judgement rendered in a court of law or an administrative order;
  + An enforcement action by federal authorities or the department;
  + A citizen suit, contribution action, or other 3rd party claim brought against the current owner of a brownfield site; or
* A current owner or prospective purchaser of the site must not have:
  + Dispensed or disposed of petroleum, petroleum product, or hazardous substance
  + Exacerbated existing contamination at the site;
  + Owned the site when any dispensing or disposal of petroleum or hazardous substances took place
  + Failed to take reasonable steps with regard to contamination at the site

*Eligible Activities*

The Montana Brownfields site redevelopment fund can assist with various activities to help move sites through the redevelopment and reuse process. A few examples of this assistance include the following assessment activities:

* + The investigation, analysis, and monitoring of a Brownfields site to determine the existence and extent of actual or potential hazardous substances, pollutants, or contaminants.
  + Redevelopment planning.
  + The removal of underground storage tanks located on eligible sites.

*Eligible Sites*

Brownfield sites are abandoned, idle, blighted, or underutilized property, for which the expansion, redevelopment, or reuse of may be complicated by the presence or potential presence of hazardous substances, pollutants, or contaminants.

A Site must not be:

* A property with facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to which a permit has been issued by the United States or an authorized state under the Resource Conservation & recovery Act (RCRA), Federal Water Pollution Control Act (FWPCA), Toxic Substances Control Act (TSCA), or Safe Drinking Water Act (SDWA)
* A property with facilities subject to RCRA corrective action (§ 3004(u) or § 3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;
* A property that are land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.
* A property where there has been a release of Polychlorinated Biphenyls (PCBs) and all or part of the property is subject to TSCA remediation; and
* A property that includes facilities receiving monies for cleanup from the Leaky Underground Storage Tank (LUST) Trust Fund.

Sites where petroleum contamination is the predominant contaminant must also meet the following criteria:

* Have no viable responsible party – DEQ will determine first, whether a responsible party (RP)exists, if one does exist, DEQ determines whether the RP is financially viable to conduct the necessary environmental work.
* Generally, DEQ will consider ongoing businesses or companies (corporations, LLCs, partnerships, etc.) and government entities to be viable. DEQ will generally deem a defunct or insolvent company and an individual responsible party to be not viable. DEQ will apply these assumptions unless there is information suggesting that the assumption is not appropriate in a particular case (e.g., if there is information that an individual has adequate financial resources to address contamination at a site, or if there is information indicating an ongoing business is not, in fact, viable). An applicant/recipient should indicate if one of the above assumptions applies and provide support for the assertion. In circumstances not covered by one of the above assumptions, the applicant/recipient should explain why the responsible party is not viable.

If the owner disagrees with DEQ’s general determination of viability, they can provide or may be asked to provide the following:

* **Responsible Party**: the responsible party could be asked to provide financial information (tax returns, bank statements, financial statements, insurance policies designed to address environmental liabilities, etc.), especially if the responsible party is still associated with the site or is the applicant/recipient, and, therefore, will receive the benefit of the funding. An applicant/recipient that is a responsible party and claiming it is not viable should provide conclusive information, such as an INDIPAY or MUNIPAY analysis, on its inability to pay for the assessment or cleanup.
* **Federal, State, and Local Records**: Federal, state, and local (i.e., county and city) records often provide information on the status of a business. These records can be searched for information on the viability of a responsible party. Examples of such resources include regulatory records (e.g., state hazardous waste records), Secretary of State databases, and property/land records.
* **Public and Commercial Financial Databases**: Applicants/recipients also may obtain and provide financial data from publicly available and commercial sources. Listed below are examples of sources for financial data. Please note that some commercial sources may charge fees. DEQ does not endorse the use of any specific sources, and DEQ will accept reliable data from other sources as part of an application for funding.

Examples of sources: Lexis/Nexus, Dun & Bradstreet reports, Hoover’s Business Information, Edgar Database of Corporate Information, Thomas Register of American Manufacturers, The Public Register, Corporate Annual Reports, Internet search engines (e.g. Google, Ask).

# **3.0 Montana Brownfields Site Redevelopment Fund – Cleanup Assistance**

*Eligible Entities*

* Tribal governments
* State Agency
* Non-profit organizations
* Economic development organizations
* Local governments

(Neither private property owners nor prospective purchasers are eligible for Montana Brownfields site redevelopment fund cleanup assistance. These entities are potentially eligible to receive cleanup loans through locally administered Brownfields Revolving Loan Fund Grants (where available). Please reach out to the DEQ Brownfields Program for additional information.)

Eligible entities must not be a responsible party as defined in (HB808 Section 3):

* A person responsible for conducting the assessment, investigation, and cleanup at a brownfield site as determined through:
  + A judgement rendered in a court of law or an administrative order;
  + An enforcement action by federal authorities or the department;
  + A citizen suit, contribution action, or other 3rd party claim brought against the current owner of a brownfield site; or
* A current owner or prospective purchaser of the site must not have:
  + Dispensed or disposed of petroleum, petroleum product, or hazardous substance
  + Exacerbated existing contamination at the site;
  + Owned the site when any dispensing or disposal of petroleum or hazardous substances took place
  + Failed to take reasonable steps with regard to contamination at the site

*Eligible Activities*

The Montana Brownfields site redevelopment fund can assist with various activities to help move sites through the redevelopment and reuse process. A few examples of this assistance include the following assessment activities:

* + Any initial or follow-up investigation, analysis, monitoring, or confirmation sampling of a Brownfields site to determine the existence and extent of actual or potential hazardous substances, pollutants, or contaminants.
  + The abatement, removal, or containment of hazardous substances, pollutants, or contaminants at a Brownfields site.
  + Demolition of structures, buildings, or other features located on eligible sites that have already received Brownfields assessment and/or cleanup assistance and which demolition is necessary to the redevelopment planning.

*Eligible Sites*

Brownfield sites are abandoned, idle, blighted, or underutilized property, for which the expansion, redevelopment, or reuse of may be complicated by the presence of hazardous substances, pollutants, or contaminants.

A Property must not be:

* A property with facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to which a permit has been issued by the United States or an authorized state under RCRA, FWPCA, TSCA, or SDWA
* A property with facilities subject to RCRA corrective action (§ 3004(u) or § 3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;
* A property that are land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.
* A property where there has been a release of PCBs and all or part of the property is subject to TSCA remediation; and
* A property that includes facilities receiving monies for cleanup from the LUST Trust Fund.

Sites where petroleum contamination is the predominant contaminant must also meet the following criteria:

* Have no viable responsible party – DEQ will determine first, whether a responsible party (RP)exists, if one does exist, DEQ determines whether the RP is financially viable to conduct the necessary environmental work.
* Generally, DEQ will consider ongoing businesses or companies (corporations, LLCs, partnerships, etc.) and government entities to be viable. DEQ will generally deem a defunct or insolvent company and an individual responsible party to be not viable. DEQ will apply these assumptions unless there is information suggesting that the assumption is not appropriate in a particular case (e.g., if there is information that an individual has adequate financial resources to address contamination at a site, or if there is information indicating an ongoing business is not, in fact, viable). An applicant/recipient should indicate if one of the above assumptions applies and provide support for the assertion. In circumstances not covered by one of the above assumptions, the applicant/recipient should explain why the responsible party is not viable.

If the owner disagrees with DEQ’s general determination of viability, they can provide or may be asked to provide the following:

* **Responsible Party**: the responsible party could be asked to provide financial information (tax returns, bank statements, financial statements, insurance policies designed to address environmental liabilities, etc.), especially if the responsible party is still associated with the site or is the applicant/recipient, and, therefore, will receive the benefit of the funding. An applicant/recipient that is a responsible party and claiming it is not viable should provide conclusive information, such as an INDIPAY or MUNIPAY analysis, on its inability to pay for the assessment or cleanup.
* **Federal, State, and Local Records**: Federal, state, and local (i.e., county and city) records often provide information on the status of a business. These records can be searched for information on the viability of a responsible party. Examples of such resources include regulatory records (e.g., state hazardous waste records), Secretary of State databases, and property/land records.
* **Public and Commercial Financial Databases**: Applicants/recipients also may obtain and provide financial data from publicly available and commercial sources. Listed below are examples of sources for financial data. Please note that some commercial sources may charge fees. DEQ does not endorse the use of any specific sources, and DEQ will accept reliable data from other sources as part of an application for funding.

Examples of sources: Lexis/Nexus, Dun & Bradstreet reports, Hoover’s Business Information, Edgar Database of Corporate Information, Thomas Register of American Manufacturers, The Public Register, Corporate Annual Reports, Internet search engines (e.g. Google, Ask).

# **4.0 Application Process:**

One of the 5 eligible entities will fill out a Montana Targeted Brownfields Assessment application and submit to the DEQ Brownfields program via email [DEQ.Brownfields@mt.gov](mailto:DEQ.Brownfields@mt.gov).

Applications will include questions regarding the redevelopment plan including:

* Timeline
* Future use
* Anticipated number jobs
* Dollars leveraged
* Other community benefits (where appropriate)

The DEQ Brownfields team will review the applications on a rolling monthly basis until all funding has been allocated for that fiscal year.

# **5.0 Prioritization for State Assistance**

* The DEQ Brownfields Program will make up the application review committee which includes, 3 project officers representing the 3 Brownfields Regions across the state and the Program Supervisor.
* An eligibility letter will be sent to each applicant within 30 days of the review process.
* Applications will be reviewed and approved on a **first come first serve basis and availability of funds**.

*The following will be considered when determining funding allocation:*

* Communities not currently supported by local or Federal Brownfields funding will be prioritized
* Sites where Federal Brownfields funds cannot address all the assessment, cleanup or redevelopment needs
* Sites with redevelopment plans and financing in place will be prioritized over sites without redevelopment plans and financing in place.
* Sites providing an economic benefit to the area by providing housing, jobs, public services, or recreational spaces

It is stated in the Brownfields Revitalization Act that the state will encourage and not limit the use of an eligible entity’s federal Brownfields funding and therefore the Brownfields program will evaluate, on an annual basis, which communities are not being supported by local or Federal Brownfields funds and prioritize those communities for state assistance. DEQ’s Brownfields Program will continue to work and partner with local and federal partners on redeveloping Brownfields properties and invites applications from across Montana.

# **6.0 Maximizing Assistance**

To ensure as many communities as possible are supported through the Brownfields Site Redevelop Fund, the DEQ Brownfields Program will assist a minimum of 10 sites, annually. With the fund receiving $200,000 each fiscal year the DEQ Brownfields Program will evaluate project costs and award funds accordingly to ensure this goal is met.