

The Brownfields and Voluntary Cleanup Program: Frequently Asked Questions

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The NDEE Brownfields and Voluntary Cleanup Program were established to assist Nebraska communities in revitalizing and redeveloping their blighted and underutilized properties (brownfields). The first step in any brownfield redevelopment project should be to complete a Phase I Environmental Site Assessment (ESA). A Phase I ESA will provide important historical information about the property and help identify any Recognized Environmental Conditions (RECs). Common RECs include historic dry cleaners, former fueling stations, auto repair shops, and manufacturing facilities. If RECs are identified, a Phase II ESA should be completed, which consists of collecting samples from various media (e.g., soil, soil gas, groundwater) to determine if there has been a release to the environment. Through the Brownfields Program, the NDEE has limited funding to complete these Phase I and Phase II ESAs at no cost to eligible applicants. An eligible applicant is any local government, non-profit, or other public entity that is not responsible for any release to the brownfield property. The purpose of this document is to provide more information and answers to frequently asked questions regarding the assessment, purchase, and cleanup of brownfield sites.

Am I required to report any contamination discovered during a Phase II ESA to the NDEE?

If a Phase II ESA reveals that *your* actions have caused a release to the environment, you have a duty to report it. However, if you are completing a Phase II ESA for a site you want to purchase or recently purchased, and you did not cause the contamination or release, you are not obligated to report the findings to the NDEE.

Will I be responsible for cleanup costs if I purchase contaminated property?

In 2002 the Small Business Liability Relief and Brownfields Revitalization Act was signed into law. A primary purpose of the Act is to encourage brownfield redevelopment by providing environmental liability protection to bona fide prospective purchasers of brownfield properties. Under the Act, a prospective purchaser may receive liability protection if they complete the "All Appropriate Inquiries (AAI)" before closing on the property. Completing a Phase I ESA that conforms to the latest version of the American Society of Testing and Materials standard E1527 (ASTM E1527) satisfies the AAI requirement. In addition, there are continuing obligations required by the US Environmental Protection Agency (USEPA) that must be satisfied in order to keep the liability protection viable. For more information on AAI and the continuing obligations, please refer to the "Common Elements" guide published by the USEPA (July 2019). Although the aforementioned actions provide a means to protect yourself from environmental liability, it is also recommended to consult with an environmental or real estate attorney regarding any liability concerns and questions you may have.

Does all contamination need to be cleaned up in order to redevelop a property?

It may depend on the future use of the property, the nature and extent of the contamination, and the resource value of the underlying groundwater. Many redevelopment projects allow contamination to remain in place with appropriate restrictions. For such projects, Activity and Use Limitations (AULs) are typically applied to the property, often in the form of an Environmental Covenant, to prevent direct contact with residual contamination and protect the health of occupants.

What is the Voluntary Cleanup Program?

The Voluntary Cleanup Program (VCP), established by the Remedial Action Plan Monitoring Act (RAPMA), is a fee-based remediation program that encourages a streamlined, results-based approach to environmental cleanups. Traditional federal cleanup programs follow a regimented process with extensive oversight. As a result, bringing a property back to productive reuse can take several years. The VCP may be a preferred alternative because it minimizes the number of steps in the regulatory review process while still adhering to all state and federal regulations. One of the many benefits of the program is that the NDEE will work directly with you to find the most cost-effective remedial option that is protective of human health and the environment. Once an approved remedy is complete, the NDEE may then issue a No Further Action letter. Additionally, the NDEE has entered into a Memorandum of Agreement with the USEPA Region 7 that ensures that the USEPA will not pursue remedial or removal action under Superfund at any site that is enrolled in the State VCP. More information about the VCP and application materials can be found at the following link.

<http://deq.ne.gov/NDEQProg.nsf/OnWeb/VCP>

How can I obtain a No Further Action Letter from the NDEE?

In order to receive a No Further Action Letter from the NDEE, you must enroll the site into the State Voluntary Cleanup Program and complete an approved cleanup plan. There are other options available for sites with petroleum hydrocarbon contamination due to leaking underground storage tanks (LUST). For sites with LUST related petroleum contamination only, please contact the NDEE Petroleum Remediation Section at (402) 471-8329 for information on obtaining a No Further Action Letter for petroleum releases.

How do I know if additional assessment work is needed?

For sites enrolled in the VCP, delineation of the complete nature and extent of all contamination is required. Therefore, if a Phase II ESA reveals the presence of contamination, NDEE recommends additional sampling until the extent of the contamination is defined – both horizontally and vertically. Additionally, the contamination should be defined to the most conservative (residential) VCP Remediation Goals (RGs). Depending on the future use of the property and the resource value of the groundwater, a site may not need to be cleaned up to these standards; however, the most conservative RGs must be used for investigative purposes. Technical guidance on recommended sampling and investigation procedures, as well as the VCP RGs, can be found in the VCP Guidance Document available on our website.

<http://deq.ne.gov/Publica.nsf/pages/05-162/#Sec>

Will the NDEE work with me to help identify additional assessment work needed?

At the request of the applicant, the NDEE can draft a data gap letter that outlines additional work needed to delineate the complete nature and extent of contamination for sites enrolled or planning to enroll in the State VCP. We may provide this service to those not planning to enroll a site into the VCP as well; however, our time will be prioritized to those in the program. Additionally, the NDEE requests at least a 30-day notice to draft a data gap letter. Depending on the number of requests and workload of Agency employees, additional time may be required.



For additional questions, please contact
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