

401 KAR 102:010. Brownfield Redevelopment Program.

RELATES TO: KRS 224.1-010, 224.1-400, 224.1-405, 224.1-415, KRS Chapter 322, KRS Chapter 322A, 40 C.F.R. Part 312

STATUTORY AUTHORITY: KRS 224.1-415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-415 authorizes the Brownfield Redevelopment Program and authorizes the cabinet to implement the program. This administrative regulation establishes application procedures for a person who owns or intends to acquire property as defined in 401 KAR 102:005, Section 1(8). This administrative regulation also establishes the process and procedures for obtaining the cabinet's determination for the applicability of KRS 224.1-415 for a person who owns or intends to acquire property as defined in 401 KAR 102:005, Section 1(8).

Section 1. Application Procedures. An applicant shall submit to the cabinet a complete application that consists of the following:

- (1) A notarized Brownfield Liability Relief Eligibility Form, DEP 6056. This form shall be signed by the applicant and include a certification of the requirements in KRS 224.1-415(2)(a);
- (2) A copy of the most recently recorded deed for the property;
- (3) A property management plan as established in 401 KAR 102:020;
- (4) A check or money order for \$2,500 made payable to the Kentucky State Treasurer; and
- (5) Documentation that the applicant made an all appropriate inquiry into previous ownership and uses of the property prior to the acquisition of the property.
 - (a) For property acquired after February 1, 2014, documentation that an all appropriate inquiry was conducted in accordance with 40 C.F.R. Part 312 within 180 days prior to submission of the application; or
 - (b) For property acquired prior to February 1, 2014, documentation that:
 1. An all appropriate inquiry was conducted in accordance with generally accepted practices when the property was acquired; and
 2. An all appropriate inquiry was conducted in accordance with 40 C.F.R. Part 312 within 180 days prior to submission of the application.

Section 2. Cabinet Review and Notification. Within thirty (30) days of receipt of an application, the cabinet shall issue in writing to the applicant:

- (1) A Notice of Eligibility, in accordance with Section 3 of this administrative regulation;
- (2) A Notification of Concurrence, in accordance with Section 4 of this administrative regulation and as provided by KRS 224.1-415(2)(b); or
- (3) A notice from the cabinet that:
 - (a) The application is administratively incomplete; or
 - (b) A final determination has been made that the application does not meet the provisions of KRS 224.1-415.

Section 3. Notice of Eligibility.

- (1) An applicant who has met the requirements for the Notification of Concurrence in Section 4(1) of this administrative regulation with the exception of holding legal title to the property shall receive a Notice of Eligibility. The Notice of Eligibility shall serve as documentation that the applicant has met the requirements for the Notification of Concurrence with the exception of holding legal title to the property.
- (2) The Notice of Eligibility shall remain in effect for a period of 180 days from the date the all appropriate inquiry, submitted pursuant to Section 1(5)(a) of this administrative regulation, was conducted.

(3) The cabinet may extend the Notice of Eligibility's expiration date. Upon receipt of an updated all appropriate inquiry conducted pursuant to 40 C.F.R. Part 312 that does not alter the cabinet's finding or concurrence, the cabinet shall establish a new expiration date. The new expiration date shall not be greater than one (1) year from the date the all appropriate inquiry, submitted pursuant to Section 1(5)(a) of this administrative regulation, was conducted.

(4) The Notice of Eligibility that has not expired shall have the effect of a Notification of Concurrence letter upon the applicant obtaining legal title to the property until the applicant receives from the cabinet a Notification of Concurrence letter or denial of a Notification of Concurrence letter in accordance with subsection (6) of this section.

(5) The applicant who has a Notice of Eligibility that has not expired shall, upon obtaining legal title to the property, submit to the cabinet a copy of the recorded deed for the property, identifying the applicant as the owner of the property within sixty (60) business days of the deed being filed in the county clerk's office.

(6) The cabinet shall, within fourteen (14) business days of the cabinet's receipt of the documentation required in subsection (5) of this section, issue or deny a Notification of Concurrence as provided in Section 2(2) or (3) of this administrative regulation to an applicant previously issued a Notice of Eligibility letter.

Section 4. Notification of Concurrence.

(1) The Notification of Concurrence shall be issued to an applicant who has met the conditions in Section 1 of this administrative regulation and KRS 224.1-415.

(2) The Notification of Concurrence shall state:

(a) The cabinet concurs that the intended future use of the property will not interfere with the remediation of the release of petroleum, a hazardous substance, or pollutant or contaminant as required by the cabinet, increase the impacts of the release of petroleum, a hazardous substance, or pollutant or contaminant on human health or the environment, or expose the public and environment to unacceptable harm; and

(b) The cabinet finds that the applicant shall not be liable for performing characterization, correcting the effects of the release of petroleum, a hazardous substance, or pollutant or contaminant on the environment, or performing corrective action pursuant to KRS 224.1-400 or 224.1-405.

(3) An applicant who has received a Notification of Concurrence shall:

(a) Comply with the provisions of KRS 224.1-415; and

(b) Manage the property in accordance with the cabinet approved property management plan and the most recent amendments to the property management plan approved by the cabinet.

Section 5. Discovered Releases.

(1) The Notification of Concurrence shall apply to all releases of petroleum, a hazardous substance, or pollutant or contaminant certified by the applicant in the application and in future notifications submitted pursuant to subsection (2) of this section.

(2) If a release or evidence of a previously suspected release of petroleum, a hazardous substance, or pollutant or contaminant is discovered subsequent to acquisition of the property by an applicant who has been issued a Notice of Eligibility or a Notification of Concurrence, the applicant shall:

(a) Notify the Division of Waste Management in writing of the presence of the release within fourteen (14) business days of the release discovery; and

(b) If the release was not certified in the application and was not caused by the applicant, notify the Division of Waste Management in writing that the information submitted as part of the application in Section 1(1) of this administrative regulation is also applicable to the discovered release.

(3) If the applicant who was previously issued a Notice of Eligibility receives a letter denying a Notification of Concurrence in accordance with Section 3(6) of this administrative regulation, then the notification requirements in subsection (2) of this section shall no longer be applicable.

(4) All releases of petroleum, hazardous substances, or pollutants or contaminants caused by the applicant shall be addressed by the applicant in accordance with the applicable local, state, or federal law.

Section 6. Change in Property Use. Subsequent to a Notification of Concurrence, the applicant shall provide written notice to the Division of Waste Management if a change in property use is proposed that is different from the property use identified in the approved property management plan.

Section 7. Rescission of Notification. The director of the Division of Waste Management may rescind or modify in writing the Notice of Eligibility and the Notification of Concurrence if the applicant is not in compliance with Section 4(3) of this administrative regulation. The director of the Division of Waste Management shall rescind in writing the Notice of Eligibility and the Notification of Concurrence if the cabinet determines that the applicant submitted a false certification as part of its application package.

Section 8. Compliance with Other Laws. Nothing in this administrative regulation alters in any way any other legal obligations the applicant would be subject to pursuant to any local, state, or federal law.

Section 9. Incorporation by Reference.

(1) "Brownfield Liability Relief Eligibility Form", DEP 6056, November 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30p.m. This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

(28 Ky.R. 1258; 1606; eff. 1-14-2002; 38 Ky.R. 1643; 1846; eff. 6-1-2012; 40 Ky.R. 904; 1302; eff. 2-3-2014; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 8-13-2018; TAm eff. 5-7-2019.)