

The BRELLA Program

The environmental liability limitation program is established under the Brownfields Reuse and Environmental Liability Limitation Act (BRELLA) codified at 10 V.S.A. §6641-§6656. Participation in the program is open to persons who intend to purchase a brownfield property, as well as persons who already own a brownfield property, provided that they did not cause or contribute to the contamination and conduct corrective action at the site in support of a redevelopment.

Achieving Liability Protection

BRELLA was created to provide applicants with protections from certain liabilities located in §6615, provided they work with VTDEC to complete the process described below. This same basic process applies to all sites on the State's Hazardous Sites List, but the end result under the BRELLA Program is a Certificate of Completion (COC), instead of a Site Management Activities Complete (SMAC) designation. The COC provides liability protection against changes in standards, new findings at the site or new regulated chemicals, while a SMAC designation does not provide any guarantee. To obtain a COC, in general, an enrollee must:

- 1) **Complete a Site Investigation.** Following approval of a work plan by VTDEC, a site investigation shall be conducted that defines the nature, source, degree, and extent of contamination and determines the risk to human health and the environment. The site investigation must address all Recognized Environmental Conditions (RECs) that are identified in a Phase I Environmental Site Assessment. After the site investigation, the applicant shall submit a site investigation report to VTDEC that describes the information gathered and provides recommendations.
- 2) **Submit a Corrective Action Plan.** If the approved site investigation report concludes that abatement, removal, remediation, or monitoring activities are required to adequately protect human health and the environment, the applicant shall submit a Corrective Action Plan (CAP) that clearly describes a proposed cleanup strategy, taking into consideration the proposed redevelopment for the property. The applicant shall evaluate at least two Corrective Action Alternatives as part of an Evaluation of Corrective Action Alternatives (ECAA) prior to submitting a CAP.
- 3) **Implement the Corrective Action Plan.** The applicant shall perform all investigation, abatement, remediation, removal, and monitoring activities in accordance with the approved CAP and any amendments to the plan. Following implementation, a corrective action completion report must be submitted.

General Obligations

A complete description of obligations of BRELLA Applicants can be found in the Vermont Statutes: 10 V.S.A. §6641-§6656. Included in this, an applicant shall:

- 1) Not provide any information by fraud, intentional misrepresentation, failure to disclose material information, or providing false certification;
- 2) Not engage in any activity that is inconsistent or interferes with monitoring, investigation, abatement, removal or remediation activities or the conditions or restrictions in a Certificate of Completion. This may include construction, demolition, and other redevelopment activities, unless pre-approved by VTDEC;



- 3) Comply with all rules and procedures required by VTDEC and obtain all necessary permits, certifications, and other required authorizations prior to beginning any site investigation or CAP;
- 4) Provide VTDEC with all documents and info relating to the performance of the investigation, abatement, removal, remediation, and monitoring activities.

Benefits of the BRELLA Program

Certain incentives are provided to encourage enrollment in the BRELLA program. They include:

Certificate of Completion (COC). A COC protects BRELLA enrollees from changes in regulatory standards, additions of new regulated substances, and releases that are not new but were also not identified during the Phase II ESA or during CAP implementation. A COC also provides protection against contribution claims from past owners and offers the applicant a release from liability. A COC is transferable to subsequent property owners. If a Certificate of Completion has been issued and the corrective action fails, the State can request that any liable person EXCEPT the BRELLA participant (or their successor(s)) complete the work necessary to address the failing remedy.

Access to funds. Enrollment in the BRELLA program provides access to revolving loan funds (RLFs) administered by the Agency of Commerce and Community Development (ACCD), offering low interest loans and grants for the implementation of Corrective Action Plans. BRELLA applicants will have an advantage when applying for other funding options, as well, including EPA Cleanup Grants and VTDEC Technical Assistance Grants.

Protection from Enforcement Action. The State may not bring action against an enrollee based on liability pursuant to 10 V.S.A. §6615, provided that the enrollee is working *in good faith** toward meeting the obligations pursuant to 10 V.S.A. §6641 - §6656.

Exemption from the Hazardous Waste Tax. Hazardous Wastes that must be shipped off-site as a result of any Corrective Action activities are not subject to the typical Hazardous Waste Tax.

Release from Natural Resource Damages. BRELLA applicants who have obtained a COC will not be subject to the Natural Resource Damages Assessment (NRDA) Restoration Program.

Some additional benefits apply only when an applicant enters the BRELLA program *before* purchasing a property. Additional benefits **for prospective purchasers include:**

COC upon “Substantial Completion.” A COC can be issued upon substantial completion of the Corrective Action Plan. This means that if the CAP has been implemented, but long-term monitoring and recording of institutional controls are required, the COC can be issued prior to completion of these remaining activities.

30% cost cap on Corrective Action Plan amendments. A BRELLA enrollee who entered the program as a prospective purchaser will not be responsible for Corrective Action Plan amendments that increase the completion costs by more than 30% of the original estimated costs.

Early program withdrawal. A BRELLA participant may withdraw from the program at any time, provided they have stabilized the site and continue to comply with the general obligations outlined in 10 V.S.A §6644. If a Corrective Action Plan has already been approved, a participant may receive personal liability protection from the Secretary of the Vermont Agency of Natural Resources (ANR). Personal liability protection cannot be passed on to subsequent owners.

*A word on working *in good faith*. The VT DEC generally considers a BRELLA participant to be working in good faith if said applicant is working within the confines of the schedule provided in their program application. If, due to extenuating circumstances, an applicant cannot meet the deadlines established in their application, the VT DEC is willing to accept a revised schedule.

If you would like to discuss any of the above items or have other questions regarding BRELLA, contact Trish Coppolino at patricia.coppolino@vermont.gov or by phone at 802-249-5822.