Hazardous Waste Contamination and Cleanup
Exemption from Liability
for
Regional Development Corporations -
Regional Planning Commissions
and
Municipalities

Program Overview and Guidance

Background: The purpose of this form is to record the satisfaction of requirements of 10 V.S.A. § 6615(d)(4) regarding liability protection for regional development corporations (RDC) or regional planning commissions (RPC), as owners, that acquire contaminated property. These provisions, contained in No. 55 of the Acts of the 2013 Session (Adj. Session), allow an RDC or RPC to acquire property voluntarily, to market the property for sale to a subsequent purchaser/developer, and remain in a position outside of the comprehensive liability system that applies to owners of contaminated property.

A municipality shall not be liable under subdivision (a)(1) of this section as an owner provided that the municipality can show all the following:
(A) The property was acquired by virtue of its function as sovereign through bankruptcy, tax delinquency, abandonment, or other similar circumstances.
(B) The municipality did not cause or, contribute to the contamination of, or worsen a release or threatened release of a hazardous material at the property.
(C)(i) The municipality has entered into an agreement with the secretary regarding sale of the property acquired or has undertaken abatement, investigation, remediation, or removal activities as required by subchapter 3 of this chapter Secretary, prior to the acquisition of the property, requiring the municipality to conduct a site investigation with respect to any release or threatened release of a hazardous material and an agreement for the municipality's marketing of the property acquired.
(ii) The Secretary shall consult with the Secretary of Commerce and Community Development on the plan related to the marketing of the property.
(iii) The municipality may assert a defense to liability only after implementing a site investigation at the property acquired and taking reasonable steps defined by the agreement with the Secretary to market the property.
(iv) In developing an agreement regarding site investigation, the Secretary shall consider: the degree and extent of the known releases of hazardous materials at the property; the financial

ability of the municipality; and the availability of state and federal funding when determining what is required by the agreement for the investigation of the site.
To ensure that the liability protections are maintained, prior to acquiring such a property, the RPC, RDC or Municipality must enter into an agreement (this document) with the Secretary of the Agency of Natural Resources (ANR) and Secretary of the Agency of Commerce and Community Development (ACCD). By entering such an agreement, the RPC, RDC or municipality may take charge of finding a prospective purchaser for the contaminated property after assessing the environmental conditions through a site investigation or cleanup, if necessary, and furnishing this information to prospective developers. The agreement is used to specify the activities required to be conducted to remediate an immediate threat to human health or the environment, or those activities that the applicant considers necessary to successfully market the property. The applicant must also consult with the ACCD on a proposed plan to market the property. Only after implementing a site investigation and taking reasonable steps to actually market the property can the applicant claim a defense to liability as owner of the site.

It should be understood that a prospective purchaser may likely desire that additional environmental assessment or corrective action be implemented before a property transaction especially if the liability protections afforded by the Vermont Brownfields Reuse and Environmental Liability Limitation Act (BRELLA) are desirable. Unlike the protections afforded to successors of a project completed through BRELLA, the protections from liability afforded to applicants under this agreement are not conveyed to the successors or assigns.

Phase I Environmental Site Assessment

Although the provisions in § 6615(d) do not require that a Phase I Environmental Site Assessment be performed as part of this agreement, the ANR is requiring a that a current Phase I Environmental Site Assessment prepared in accordance with ASTM 1527-05 (or the most current update) be performed. Information included in the Phase I will be used to determine what actions will be performed through this agreement and also ensure that the applicant is conducting appropriate investigation to be considered a Bona Fide Prospective Purchaser by the US Environmental Protection Agency.

Pre-Agreement Meeting

It will be a requirement of the program to hold a pre-agreement meeting with the applicant representatives and representatives of ANR to go over the project proposal, including the type and schedule for reuse; discuss timeframes (purchase and sales, Phase I ESA, funding, etc.); and the content of this agreement. This meeting should be held well in advance of the purchase and sales agreement if possible.

Proposed future use

Identify the applicants proposed plan for the future use of the property, the schedule for redevelopment, target developer (type of developer targeted rather than the name of a developer), tax liability and expectation for repayment of taxes from the redeveloper. *This agreement will*

have a timeframe that it will be effective and the redevelopment plan and marketing plan will need to inform the “expiration” for this agreement. It is recognized that there may not be a specific plan for future use. The schedule for reuse and type of reuse may affect the need for further investigation or corrective action, and will need to be detailed in the agreement and discussed in the pre-meeting.

Financial Ability

The financial ability (financial statements and information regarding any state and/or federal funding, including grants) of the applicant should be considered along with the degree and extent of the known releases of hazardous materials for consideration in the development of an agreement regarding site investigation.

This requirement of 10 V.S.A. § 6615(d)(4) will need to be discussed in the pre-meeting, and shall include financial resources of the applicant, available federal grants/loans, and a discussion of potential reductions of the sale of the property to cover costs in the Phase II or contributions from the seller of the property.

Marketing Plan

Requirements of 10 V.S.A. § 6615(4)(c)(ii). This plan must take into consideration the timeframe for this agreement and propose additional steps if the property does not sell within the initial timeframe. ACCD believes that the following criteria must be in the marketing plan (this is coming)