

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 102:010. Brownfield Redevelopment Program.

6 RELATES TO: KRS 224.1-010, 224.1-400, 224.1-405, 224.1-415, KRS Chapter 322,

7 KRS Chapter 322A, 40 C.F.R. Part 312

8 STATUTORY AUTHORITY: KRS 224.1-415

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.1-

10 415 authorizes~~[establishes]~~ the Brownfield Redevelopment Program and authorizes the cabinet

11 to implement the program. This administrative regulation establishes application procedures

12 for a person who~~[that]~~ owns or intends to acquire property as defined in 401 KAR 102:005,

13 Section 1(8). This administrative regulation also establishes~~[outlines]~~ the process and

14 procedures for obtaining the cabinet's determination for the applicability of KRS 224.1-415 for a

15 person who~~[that]~~ owns or intends to acquire property as defined in 401 KAR 102:005, Section

16 1(8).

17 Section 1. Application Procedures~~[procedures]~~. An applicant shall submit to the cabinet

18 a complete application that consists of the following:

1 (1) A ~~notarized~~**[completed]** Brownfield Liability Relief Eligibility Form, DEP 6056.

2 This form shall be signed by the applicant and include a certification of the requirements in KRS
3 224.1-415(2)(a);

4 (2) A copy of the most recently recorded deed for the property;

5 (3) A property management plan as established in 401 KAR 102:020;

6 (4) A check or money order for \$2,500 made payable to the Kentucky State Treasurer;

7 and

8 (5) Documentation that the applicant made an all appropriate inquiry into previous
9 ownership and uses of the property prior to the acquisition of the property.

10 (a) For property acquired after February 1, 2014, documentation that an all appropriate
11 inquiry was conducted in accordance with 40 C.F.R. Part 312 within 180 days prior to
12 submission of the application; or

13 (b) For property acquired prior to February 1, 2014, documentation that:

14 1. An all appropriate inquiry was conducted in accordance with generally accepted
15 practices when the property was acquired; and

16 2. An all appropriate inquiry was conducted in accordance with 40 C.F.R. Part 312 within
17 180 days prior to submission of the application.

18 Section 2. Cabinet ~~Review~~**[review]** and ~~Notification~~**[notification]**. Within thirty (30)
19 days of receipt of an application, the cabinet shall issue in writing to the applicant:

20 (1) A Notice of Eligibility, in accordance with Section 3 of this administrative regulation;

21 (2) A Notification of Concurrence, in accordance with Section 4 of this administrative
22 regulation and as provided by KRS 224.1-415(2)(b); or

23 (3) A notice from the cabinet that:

- 1 (a) The application is administratively incomplete; or
2 (b) A final determination has been made that the application does not meet the provisions
3 of KRS 224.1-415.

4 Section 3. Notice of Eligibility. (1) An applicant who has met the requirements for the
5 Notification of Concurrence in Section 4(1) of this administrative regulation with the exception
6 of holding legal title to the property shall receive a Notice of Eligibility. The Notice of Eligibility
7 shall serve as documentation that the applicant has met the requirements for the Notification of
8 Concurrence with the exception of holding legal title to the property.

9 (2) The Notice of Eligibility shall remain in effect for a period of 180 days from the date
10 the all appropriate inquiry, submitted pursuant to Section 1(5)(a) of this administrative
11 regulation, was conducted.

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

18 (4) The Notice of Eligibility that has not expired shall have the effect of a Notification of
19 Concurrence letter upon the applicant obtaining legal title to the property until the applicant
20 receives from the cabinet a Notification of Concurrence letter or denial of a Notification of
21 Concurrence letter in accordance with subsection (6)[subsections (6) and (7)] of this section.

22 (5) The applicant who has a Notice of Eligibility that has not expired shall, upon
23 obtaining legal title to the property, submit to the cabinet a copy of the recorded deed for the

1 property, identifying the applicant as the owner of the property within sixty (60) business days of
2 the deed being filed in the county clerk's office.

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

7 Section 4. Notification of Concurrence. (1) The Notification of Concurrence shall be
8 issued to an applicant who has met the conditions in Section 1 of this administrative regulation
9 and KRS 224.1-415.

10 (2) The Notification of Concurrence shall state:

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

16 (b) The cabinet finds that the applicant shall not be liable for performing
17 characterization, correcting the effects of the release of petroleum, a hazardous substance, or
18 pollutant or contaminant on the environment, or performing corrective action pursuant to KRS
19 224.1-400 or 224.1-405.

20 (3) An applicant **who[that]** has received a Notification of Concurrence shall:

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

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

1 Section 5. Discovered Releases. (1) The Notification of Concurrence shall apply to all
2 releases of petroleum, a hazardous substance, or pollutant or contaminant certified by the
3 applicant in the application and in future notifications submitted pursuant to subsection (2) of
4 this section.

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

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

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

15 (3) If the applicant who was previously issued a Notice of Eligibility receives a letter
16 denying a Notification of Concurrence in accordance with Section ~~3(6)~~~~[3(7)]~~ of this
17 administrative regulation, then the notification requirements in subsection (2) of this section shall
18 no longer be applicable.

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

22 Section 6. Change in Property Use. Subsequent to a Notification of Concurrence, the
23 applicant shall provide written notice to the Division of Waste Management if a change in

1 property use is proposed that is different from the property use identified in the approved
2 property management plan.

3 Section 7. Rescission of Notification. The director of the Division of Waste Management
4 may rescind or modify in writing the Notice of Eligibility and the Notification of Concurrence if
5 the applicant is not in compliance with Section ~~4(3)~~~~[4(2)]~~ of this administrative regulation. The
6 director of the Division of Waste Management shall rescind in writing the Notice of Eligibility
7 and the Notification of Concurrence if the cabinet determines that the applicant submitted a false
8 certification as part of its application package.

9 Section 8. Compliance with other laws. Nothing in this administrative regulation
10 alters in any way any other legal obligations the applicant would be subject to **pursuant**
11 **to**~~**under**~~ any local, state, or federal law.

12 Section 9. Incorporation by Reference. (1) “Brownfield Liability Relief Eligibility
13 Form”, DEP 6056, **November**~~**September**~~ 2013, is incorporated by reference.

14 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
15 law, at the Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky
16 40601, Monday through Friday, 8:00a.m. to 4:30p.m.

17 (3) This material may also be obtained on the division’s Web site at waste.ky.gov.

18

401 KAR 102:010 approved for filing.

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes application procedures for the Brownfield Redevelopment Program for a person that owns or intends to acquire property, the redevelopment, expansion, or reuse of may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant, or petroleum. This administrative regulation also outlines the process and procedures for an applicant to obtain the cabinet's determination of the applicability of KRS 224.1-415.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish application procedures to implement the Brownfield Redevelopment Program. This administrative regulation is also necessary to outline the process and procedures for an applicant to obtain the cabinet's determination of the applicability of KRS 224.1-415.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines the process through which an applicant will certify their eligibility and the cabinet will find and concur that an applicant is eligible and the future use of the property is considerate of environmental conditions in conformance with KRS 224.1-415.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the development of a Brownfield Redevelopment Program as established by KRS 224.1-415 by establishing application procedures and outlining the process for obtaining the cabinet's determination of the applicability of KRS 224.1-415.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment 401 KAR 102:010 Section 3(3) was made to clarify the conditions under which the cabinet may extend the Notice of Eligibility. The amendment to 401 KAR 102:010 Section 5(2)(b) was made to clarify that the submittal of additional information would meet the requirement rather than an additional certification. Other amendments were made to meet requirements of KRS 13A.

(b) The necessity of the amendment to this administrative regulation: The amendments were necessary to ensure the administrative regulation functions as intended in conformance with KRS 224.1-415 and to be responsive to public comments. Other amendments were necessary as a requirement of KRS 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to Section 3(3) of this administrative regulation clarifies the process for obtaining an extension for a Notice of Eligibility's expiration date related to the cabinet's determination for the applicability of KRS 224.1-415. The amendment to Section 5(2)(b) of this administrative regulation also clarified the procedure for documenting a discovered release subsequent to the cabinet's determination of the applicability of KRS 224.1-415. Other amendments conform to the requirements of KRS 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to Section 3(3) of this administrative regulation assists in the effectiveness of the administration of the statute by clarifying the conditions under which an extension may be granted for a Notice of Eligibility. The amendment to Section 5(2)(b) of this administrative regulation assists in the effectiveness of the administration of the statute by clarifying the necessity to submit information rather than a redundant certification. Other amendments were made to conform to the requirements of KRS 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation may impact individuals, businesses, state and local governments, and organizations statewide. The number of individuals or organizations that will be affected will be based on the number of applications submitted as this is a voluntary program. This administrative regulation impacts the Division of Waste Management by creating the Brownfield Redevelopment Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require no action by the individuals, businesses, or local governments as it is a

voluntary program. State government is required by KRS 224.1-415 to administer the Brownfield Redevelop Program. This administrative regulation outlines the process and procedures that the cabinet must follow to review and act upon submittals from the applicants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation has no cost to individuals, businesses, or local governments as it is a voluntary program. However, if an entity chooses to participate in the program, the fee associated will be \$2,500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide entities that choose to participate a path for redeveloping environmentally impaired Kentucky properties for beneficial re-use without assuming responsibility for cleanup or characterization under KRS 224.1-400 and KRS 224.1-405. The positive effects of redeveloped properties include job creation, economic development, maximizing property value and tax base, and a positive impact on blighted properties. In addition, identification, re-use of a property through management of environmental issues, and any voluntary remediation effort by participants will increase the protectiveness of human health and the environment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The effort required for review of the applications will be heavily dependent on the complexity of the property. The personnel costs for review of applications are anticipated to range from \$740 to \$4000. The exact number of initial applications cannot be determined; however, there is considerable interest in the program.

(b) On a continuing basis: The personnel costs for review of notifications and amendments to property management plans will be heavily dependent on the complexity of the property. The personnel costs for review of notifications, verification of continued compliance, and review of amended property management plans are anticipated to range from \$420-\$1000 per year for each property that is managed under the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cost associated with the implementation and enforcement of this program will be partially funded by the application fee within this administrative

regulation. The additional costs of the program will be funded by the federal and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes a fee to partially fund the program, however there could be a need for additional funding which would be heavily dependent on the number of applications and the complexity of the projects received.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes a fee that will only apply to entities that voluntarily apply to the Brownfield Redevelopment Program. The fee is \$2,500 per application.

(9) TIERING: Is tiering applied? Tiering will not be applied. This administrative regulation treats all applicants the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 401 KAR 102:010

Contact Person: Louanna Aldridge

Phone number: 502-564-6716

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Redevelopment of impaired properties in Kentucky will benefit state and local governments by creating jobs, tax revenues, responsible management, and positively impacting blighted properties. The Division of Waste Management will have an increased workload to administer the Brownfield Redevelopment Program as required by KRS 224.1-415.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1-415

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate \$2,500 per application for the Division of Waste Management. This administrative regulation will also benefit state and local governments by creating increased tax revenues due to the redevelopment of properties within their jurisdiction. The amount of revenues generated will depend on the number of applications received and cannot be determined at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenues generated will depend on the number of applications received and cannot be determined at this time.

(c) How much will it cost to administer this program for the first year? The cost to administer the program will depend on the number of applications received and cannot be determined at this time. However, there is considerable interest in the program. It is anticipated that the average personnel costs to review each application received in the first year will be \$1,066. The application management, notification reviews, and amended property management plan reviews, if applicable during the first year, will depend on the complexity of the property and are unable to be determined at this time.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program in subsequent years will depend on the number of applications received and number of applications with ongoing oversight and cannot be determined at this time.

However, there is considerable interest in the program. It is anticipated that each property that has been approved for the program will have average personnel costs of \$420 per year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The exact fiscal impact will be dependent on the number of applications received and the complexity of the properties. The fiscal benefit to state and local governments will be increased jobs and tax revenues as a result of redevelopment. There will be an increased cost to state government to administer the program that will be partially funded by the fee proposed in this administrative regulation.

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the “Brownfield Liability Relief Eligibility Form”, DEP 6056, (November 2013). This document is to be submitted by entities requesting concurrence from the Cabinet as to the applicability of KRS 224.1-415.

This document consists of 3 pages.