

ASSISTANCE FOR BROWNFIELDS REDEVELOPMENT IN KENTUCKY

Kentucky Division of Waste Management

Revised August 2017



This document is intended for use under KRS 224.1-415, 401 KAR 102 and Form DEP 6056. It may be revised without notice.

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1.0 INTRODUCTION

In the 2012 Regular Session, the Kentucky Legislature passed House Bill 465 (HB 465), an act related to Brownfield redevelopment. The law is codified as Kentucky Revised Statute Chapter (KRS) 224.1-415, with additional effects on KRS 224.060-135. The change to KRS 224.60-135 provide that a property owner who is not also the petroleum storage tank owner or operator shall have no obligation to perform corrective action for a release into the environment from a petroleum storage tank and KRS 224.60-138 was changed to indicate that notice of no further action for an underground storage tank regulated by KRS 224.60 shall indicate that the property is not subject to additional actions under KRS 224.1-400 or KRS 224.1-405.

The administrative regulations are now effective and may be found at the following links:

- [401 KAR 102:005](#) – Definitions for 401 KAR Chapter 102
- [401 KAR 102:010](#) – Brownfield Redevelopment Program
- [401 KAR 102:020](#) – General requirements for a Property Management Plan

This document is provided to assist property owners, prospective owners, their contractor/consultants and Kentucky regulators in utilization of KRS 224.1-415 and 401 KAR 102.

2.0 ELIGIBILITY

To qualify for the Brownfield Redevelopment Program established by KRS 224.1-415, the applicant must certify that they meet the following:

- Release(s) of petroleum or hazardous substances, pollutants or contaminants occurred prior to the applicant's ownership.
- Meet all of the requirements of "All Appropriate Inquiry" according to 40 C.F.R. Part 312 prior to purchase.
 - For applicants planning to purchase a property, a Phase I Environmental Site Assessment (Phase I ESA) must be performed prior to purchase. The Kentucky Division of Waste Management (KDWM) will only accept Phase I ESA reports that meet all requirements of ASTM E1527-13.
 - For applicants that purchased the property years ago, due diligence according to a practice generally accepted at the time of purchase must have been performed prior to purchase.
- Not impede the effectiveness of any remedy, including compliance with any institutional control required for the property.
- Not be affiliated with any person who is potentially liable for the historical release(s) through familial relationships, contractual, corporate, or financial relationship (excluding relationships created by instruments conveying title or for the sale of goods or services) or by reorganization of a business entity that was potentially liable.
- Have not caused or contributed to the release(s).
- Submit a complete application package.
- Own the property identified in the application package (401 KAR 102 provides that approval may be obtained prior to ownership, but ownership is required to limit the requirement to perform characterization or corrective action).

- Manage the use of the property with respect to the historical use and presence of contaminants according to a plan that has the concurrence of the KDWM.

3.0 APPLICATION PACKAGE

In an effort to maintain the regulatory requirement for timely review, and to facilitate timely property transfer, the Kentucky Division of Waste Management will only review complete application packages as provided in 401 KAR 102:010. Complete packages should include the application form, deed, Property Management Plan (PMP), check or money order for \$2,500 made payable to the Kentucky State Treasurer, documentation of All Appropriate Inquiry, and any other environmental data, reports, maps or other attachment that may be applicable. The application package should be submitted to:

Division of Waste Management
Superfund Branch
300 Sower Blvd., 2nd Floor
Frankfort, Kentucky 40601

Application Form

The completed form should include the signed certification, notary seal and signature, and the required and optional attachments. An application form has been incorporated by reference into the regulations. It has been attached in Appendix A.

Deed

Provide a copy of the most recently recorded deed for the property. This will help to ensure accuracy in dealing with the appropriate property and its boundaries.

Property Management Plan

A PMP must be included in the application package. The PMP must be signed by a Professional Engineer (PE) or a Professional Geologist (PG) licensed to publicly practice in the Commonwealth of Kentucky. The PMP must include a statement that the PMP, based upon the Phase I Environmental Site Assessment (Phase I ESA) and all other available information, and the planned future use of the property will not interfere with the remediation of the release as required by the cabinet, increase the impacts of the release on human health and the environment and will not create additional potential for harm for the public and the environment. Assistance for the preparation of the PMP is provided as Appendix B.

Check or Money Order

The check or money order should be for \$2,500 and made payable to the Kentucky State Treasurer.

Documentation of All Appropriate Inquiry

The applicant must have made an All Appropriate Inquiry into previous ownership and uses of the property prior to their acquisition and submit documentation with their application. If the applicant already owns the property, or acquired the property prior to February 1, 2014, all appropriate inquiry may have been performed in accordance with generally accepted practices at the time of property acquisition. If the generally accepted practices standard is used to qualify for the program, a new Phase I ESA must still be performed and submitted as part of the application package. For property acquired after February 1, 2014, the All Appropriate Inquiry must be compliant with 40 CFR Part 312.

All applications, regardless of ownership of the property, must include a Phase I ESA that complies with

ASTM E1527-13 and that remains timely, as required by 40 CFR Part 312.

4.0 CABINET REVIEW & NOTIFICATION

The cabinet will review application packages within 30 days of submittal. Upon review, the cabinet will provide one of the following responses:

- **A Notification of Concurrence** – this letter documents that, consistent with 401 KAR 102, the cabinet finds the property owner has certified the conditions in KRS 224.1-415(2)(a) to be true, and the cabinet has concurred with the plan for management and the conclusion by a Kentucky PE/PG that KRS 224.1-415(2)(b) has been met.

The result of the letter is that the owner shall not be liable for performing characterization, correcting the effects of the release on the environment, or performing corrective action of the release pursuant to KRS 224.1-400 or KRS 224.1-405. The Notice of Concurrence remains in effect for the property owner and identified property provided the owner remains compliant with KRS 224.1-415 and complies with the PMP. The provisions of Brownfield Redevelopment Program are property- and owner-specific and do not transfer with title.

- **A Notice of Eligibility letter** – this letter documents that the applicant has met all qualifications for a Notification of Concurrence with the exception of ownership of the property for which the application was submitted. Notification of Eligibility will remain in effect until the applicant owns the property or the Phase I ESA expires (consistent with 40 CFR Part 312 and ASTM E1527-13).

The Notice of Eligibility, if it has not expired upon acquisition of the property in the application, shall have the effect of the Notification of Concurrence after the property is purchased until the applicant receives a Notification of Concurrence. The Notice of Eligibility letter may be extended by the cabinet by extending the viability of the Phase I ESA consistent with the updating provisions in 40 CFR Part 312 and ASTM E1527-13.

- **An informal discussion** via email, telephone or meeting to discuss or clarify the reason why the package cannot be approved as it was submitted. The cabinet will use this mechanism to ensure that the process is completed as quickly as possible out of consideration for the time-sensitive nature of many property transactions and to achieve the timeline set forth in 401 KAR 102:010.
- **A final determination** that the cabinet has information which indicates the conditions in KRS 224.1-415(2)(a) cannot be certified to be true.

5.0 ONGOING REQUIREMENTS & THE PROPERTY MANAGEMENT PLAN

[401 KAR 102:020 describes the regulatory requirements for a PMP.](#) Appendix B includes suggestions to assist the PMP preparer in creating a PMP that can be expeditiously reviewed by the KDWM. A property owner must use the property consistent with the PMP submitted in the application or a subsequent amendment that has the concurrence of the KDWM. Failure to adhere to the agreed management approach may result in rescission of the Notification of Concurrence.

The PMP must remain considerate of known environmental conditions and property use to be effective. When new information is discovered or a change in property use is planned to occur, the PMP must be

amended to ensure that the owner meets obligations to prevent interference with remediation of a release as required by the cabinet, increase the impacts of the release on human health or the environment, or expose the public and environment to unacceptable harm. Changes to the PMP require the submittal of a full plan.

If institutional or engineering controls will be utilized in the management of the property, 401 KAR 102:020 requires that the PMP should include a schedule for inspection and reporting of the controls to the KDWM if any are present. KDWM will also validate on some frequency the controls detailed in the PMP.

6.0 RELEASE IDENTIFIED SUBSEQUENT TO NOTIFICATION OF CONCURRENCE

If a property owner causes a release after ownership of a property where the owner has qualified to participate in the Brownfields Redevelopment Program, the property owner is required to perform as required by KRS Chapter 224 as applicable to that release. Having a release does not invalidate the provisions of KRS 224.1-415 for releases prior to ownership.

If a property owner discovers evidence of a historical release that was not previously known and, therefore, was not included in the application package for the Brownfields Redevelopment Program, the property owner must:

- Report the information to the Division of Waste Management in writing within 14 business days of discovery.
- Take steps to minimize the effects of the release; an example is putting a discovered drum into an over-pack or placing contaminated soil on plastic and covering pending disposal. The cabinet will work with the property owner to determine how to appropriately dispose of the material. For additional assistance, please see Section 8 Frequently Asked Questions (FAQ).
- Evaluate the need to revise the PMP to ensure that it remains effective in its purpose.

7.0 RECISSION OF A NOTIFICATION OF CONCURRENCE OR NOTICE OF ELIGIBILITY

If information becomes known that an applicant or a property owner is not compliant with KRS 224.1-415 or a property owner fails to comply with their PMP, the Director of the Division of Waste Management may rescind or modify a Notice of Eligibility or a Notification of Concurrence in writing. Only the Director of the Division of Waste Management may rescind or modify a Notice of Eligibility or a Notification of Concurrence.

8.0 FREQUENTLY ASKED QUESTIONS

- **What is a brownfield?**

A "brownfield" is not explicitly defined in 401 KAR 102:005, but is generally defined as a real property where expansion, redevelopment, or reuse is complicated due to real or perceived environmental contamination that occurred prior to acquisition of the property by the applicant.

- **What does "All Appropriate Inquiry" mean?**

For the purpose of this program, and according to generally accepted environmental practice, "All Appropriate Inquiry" generally consists of a Phase I Environmental Site Assessment

conducted according to ASTM E1527-13, as required by 401 KAR 102 and 40 CFR Part 312.

- **I already own my property. Can I apply for the Brownfield Redevelopment Program?**

KRS 224.1-415 does not have a start date; therefore persons who already own a property may be eligible for the program. To be eligible, they must submit a complete application and must have performed an All Appropriate Inquiry prior to purchase. More recently, this takes the form of an ASTM E1527-compliant Phase I ESA, however prior to the existence of one of these standards, an owner must have conducted an All Appropriate Inquiry according to generally accepted practices at the time of purchase. Existing property owners must still conduct a full ASTM E1527-13 Phase I ESA for their application and it must still be timely. In this case, the Phase I ESA helps to document the environmental history of the property during their ownership.

- **How does the KDWM determine if a Phase I ESA has expired or should be updated?**

ASTM Standard E1527-13 provides information on updating and expiration. It indicates that an environmental site assessment meeting or exceeding the standard and completed less than 180 days prior to the date of acquisition of the property is presumed to be valid. An environmental site assessment updated within one year prior to the date of acquisition of the property may be used provided the interviews with owners, operators and occupants, searches for recorded environmental cleanup liens, reviews of federal, tribal, state and local government records, visual inspection of the property and adjoining property and the declaration by the environmental professional are updated within 180 days of the date of acquisition. The dates used for this determination will be the date of the individual activity. This approach is consistent with 401 KAR 102 and 40 CFR Part 312.

- **What if my purchase of the property is delayed after the issuance of a Notice of Eligibility?**

A Notice of Eligibility may be extended, provided the Phase I Environmental Site Assessment remains timely. As provided in the ASTM standard, certain elements can be updated within 180 days and the report ultimately expires (even with updates) after 12 months. If a property transaction is delayed, the Notice of Eligibility may be extended in concert with the necessary Phase I updates and provided that the Property Management Plan is either updated to reflect consideration of any new information resulting from the update(s) or a letter is provided by the signatory Professional Engineer or Professional Geologist indicating that information discovered in the update of the Phase I does not require modification of the Property Management Plan.

- **Is an Environmental Covenant required for participation in the Brownfield Redevelopment Program?**

The regulation and supporting statute for the Brownfield Redevelopment Program does not require an environmental covenant. For a variety of business and liability reasons, some applicants may choose to place an environmental covenant on the property, before their acquisition, which would have to be filed by the current owner, or they may choose to place the covenant after they acquire the property. In either case, this would not be required by the Brownfield Redevelopment Program. However, the applicant must comply with all land use restrictions for the property, including deed restrictions or environmental covenants.

- **Can property in this program be used for residential purposes?**

The specific future use of a property entered into or intended for the Brownfield Redevelopment Program is generally a function of the property owner or prospective owner's desire for future

use but must be considerate of the environmental conditions present. In considering a Property Management Plan for its concurrence, the Division of Waste Management will evaluate the planned future use, the extent of knowledge of the environmental conditions, and the prospective risk(s) posed by the planned future use. If the result of the management proposed in the PMP is that it does not increase the impacts of the release(s) to human health and the environment or expose the public and environment to unacceptable harm, a residential use is permissible under the Brownfield Redevelopment Program.

- **How does the program work with leased properties?**

The Brownfield Redevelopment Program is limited to the authority of its statute and regulations, which speak specifically only to property owners. The burden of abiding by the PMP that has the concurrence of the Division of Waste Management would always be upon the owner. The owner must ensure that those they contract with for property use abide by the PMP with which the Division of Waste Management has concurred. The details of that should be worked out as a function of the contract under which the property is leased. KRS 224.1-415 does not supersede KRS 224.1-400 or KRS 224.1-405 or another applicable law that would hold an owner or lessee responsible for a release they cause.

- **Do the benefits of this program transfer to a new owner if I sell my property?**

The Brownfield Redevelopment Program is not transferrable and applies only to the specific property and owner/prospective owner identified in the application package. Each applicant will have to provide their own application package for each individual property they would seek to enter into the program.

- **Can an “Environmental Professional” under 40 CFR Part 312 and the ASTM standard sign a Property Management Plan?**

The Property Management Plan must be reviewed and signed by a Kentucky-licensed Professional Engineer or Professional Geologist. The “Environmental Professional” may sign with a PE/PG, but not in place of a PE/PG.

- **Does a property in this program still have to be cleaned up to the same standards?**

The Brownfield Redevelopment Program does not alter requirements of a responsible party under KRS 224.1-400 or KRS 224.1-405. It speaks only to the exempt status of a qualifying property owner for characterizing, remediation or correcting the effects of a release of hazardous substances, pollutants or contaminants, or petroleum. Responsible party(s) for a release will still be required to meet provisions for characterization and remediation under those statutes, as applicable.

- **If a historical suspected release is somehow confirmed, does someone who has received a Notice of Eligibility or Notification of Concurrence have new liability? If a release that no one knew about is discovered later...is that “covered”?**

Someone who has received a Notice of Eligibility and/or Notification of Concurrence is not required to perform characterization or corrective action on releases that occurred prior to their ownership of the property. Provided the new information pertains to a release that occurred prior to their ownership, they are not required to characterize or remediate based on the new information. They would only be required to notify the Division of Waste Management in writing within 14 business days of discovery of a release or evidence of a previously suspected release. The qualified owner may be required to update the Property Management Plan if the new

information makes a change necessary to ensure the use of the property remains considerate of environmental conditions.

- **What if I have received my Notification of Concurrence and there is a new release?**

The Brownfield Redevelopment Program does not relieve anyone who has caused a release of their obligations under KRS 224.1-400 or KRS 224.1-405. So if the owner has caused a release at the property they will be responsible for their release. This does not necessarily result in a loss of status under the Brownfield Redevelopment Program. The effect on an owner's status in the program will be determined by the release's effects on historic release(s) at the property.

- **Who do I need to hire to help me through this program?**

The only specific requirements for professional assistance in the program are the requirements of a Kentucky-licensed Professional Geologist or Professional Engineer and the "Environmental Professional" as defined in ASTM E1527-13 for the Property Management Plan, and the Notary Public as required for the application. While an attorney is not specifically required by the program, an applicant may elect to engage the assistance of an attorney at their discretion.

- **Is ASTM E1527-05 accepted for this program?**

No. Only ASTM E1527-13 (the standard as of the effective date of the Brownfield Redevelopment Program regulations) will be accepted.

- **How is indoor air/vapor intrusion handled under this program?**

While the issue of indoor air contamination is not specifically discussed in this regulation, it is considered in the course of following the ASTM E1527-13 standard for All Appropriate Inquiry and will be considered by Division of Waste Management staff in evaluating a Property Management Plan, along with the condition of soil and ground water and their potential to harm human health or the environment.

- **Can I perform investigation and/or cleanup at my property if I want to (even though I'm not required)?**

It is recognized that a property may not be valued at its highest and best use without some effort to characterize and/or remediate the effects of historic use. A property owner may elect to perform characterization and/or remediation on a voluntary basis, or it may be necessary as part of future use or construction efforts. The Division of Waste Management will be pleased to work with those who choose to do so, and there are tax credits available for those owners who acquire properties and conduct remediation on a voluntary basis (see KRS 141.418), subject to qualification. It is important, however, that the voluntary effort be performed in accordance with a Property Management Plan that has received the concurrence of the Division to ensure that the effort will not inadvertently increase the effects of the release on human health or the environment, which could risk the status of a participant in the program.

- **What constitutes a change in property use that would require an amended Property Management Plan?**

A change in property use that would require amendment of the Property Management Plan is one that would alter the risk posed to human health or the environment. For example, if an area that was previously planned to be paved parking will now be a garden; the prospect of those using the property to come into contact with contamination must be evaluated differently. As the

Property Management Plan is a guide for how to use your property while minimizing risk of making conditions worse or bringing harm to human health or the environment, it is very important to ensure that the Plan is considerate of actual use and that the use matches the plan. In general, if the use of the property or part of the property changes from commercial/industrial to residential, the Property Management Plan would have to be evaluated to determine if it would require amendment.

- **Do I still need a Property Management Plan if the property already has an approved Site Management Plan as part of a Corrective Action Plan?**

A Property Management Plan and Site Management Plan differ in their purpose, and therefore they should work together, but the Site Management Plan cannot serve as a substitute to completion of a Property Management Plan. While a Site Management Plan is written as a part of a corrective action approach that includes management of the entire extent of a property with broad consideration of property use, the Property Management Plan is written specifically to be a guide for appropriate care and use of a contaminated property. A Property Management Plan is likely to be more specific but to fit within the remedial management approach of the property.

- **What if I want the property cleaned up more than the responsible party would like to clean up?**

A responsible party must characterize and remediate a property in this program in accordance with KRS 224.1-400 or KRS 224.1-405. The guiding statutes provide the responsible party with options for environmental closure that include management of the release (which typically includes land-use restrictions). This program includes a requirement that a person who purchases property under this program must comply with all land use restrictions and not impede the effectiveness of a release. The Brownfield Redevelopment Program does not modify the requirements or provisions for a responsible party under KRS 224.1-400 or KRS 224.1-405. A person who chooses to purchase a property and participate in the Brownfield Redevelopment Program should be aware of these provisions prior to purchase.

- **Can a bank use this program in foreclosure on a property?**

Yes. Banks may elect to use this program prior to foreclosing on a property.

A bank foreclosing on a property where the owner had received a Notification of Concurrence may have additional benefits. The program was developed with certain provisions in mind, specifically to encourage lending on brownfield properties. One of those provisions is that a bank may require a borrower to include a scenario in their Property Management Plan that speaks to what would happen to a property if all operations there cease ("mothballing") and reliance for the lender on the Property Management Plan. If the Property Management Plan includes these provisions, a bank can foreclose on a property where the owner held a Notification of Concurrence and use the same Property Management Plan in their package.

In either case, the bank must apply for the program and perform its own ASTM E1527-13 Phase I Environmental Site Assessment for eligibility.

- **Does this program have any funding for redevelopment or voluntary characterization/remediation activities?**

The Brownfield Redevelopment Program can assist with assessment and cleanup in a variety of ways. The program provides Phase I and Phase II Environmental Site Assessments free of charge to local governments and non-profits, and assistance with grant-writing (based upon

availability of federal grant funding) and identifying funding sources. Kentucky also has property tax incentives and income tax credits for individuals and businesses that completed cabinet-approved cleanups on qualified properties. In addition, the program will soon be offering cleanup sub-grants (to local governments and non-profits) and cleanup loans (to private entities, local governments and non-profits). There is more information on available funding and incentives at <http://dca.ky.gov/brownfields/Pages/Funding%20For%20Brownfields.aspx>.

APPENDICES

Appendix A

Brownfield Liability Relief Eligibility Application DEP Form 6056

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This document is not regulation and is intended only to provide assistance in working with KRS 224.1-415, 401 KAR 102 and Form DEP 6056. It does not provide any additional requirements and may be revised without notice.



Mail completed form with attachments to:

ENERGY AND ENVIRONMENT CABINET
 DEPT. FOR ENVIRONMENTAL PROTECTION
 DIVISION OF WASTE MANAGEMENT
 300 SOWER BOULEVARD, SECOND FLOOR
 FRANKFORT, KY 40601
 (502) 564-6716
Waste.ky.gov

Brownfield Liability Relief Eligibility Form, DEP 6056 (November 2016)

I. Applicant Information

1. Ownership Status (check one):

Property Owner

Prospective Property Owner

2. Applicant applying for liability protection as (check one):

Individual

Government

Estate/Trust

Incorporated

Partnership

Public Service Corporation

Sole Proprietorship

LLC

Non-Profit

Other:

3. Applicant Name:

4. Applicant Mailing Address:

5. City:

6. State:

7. Zip Code:

8. Contact Person (if different than applicant):

9. Title:

10. E-Mail Address:

11. Phone #: () - ext.

12. Other #: () -

II. Property Information

13. Property Location (physical address):

14. County:

15. Agency Interest # (if applicable):

16. City:

17. Zip Code:

18. Date purchased: OR Prospective Closing Date:



III. Certification Statement of Applicant

All releases of petroleum governed by KRS 224.01-405 or a release of a hazardous substance, pollutant, or contaminant governed by KRS 224.01-400 occurred prior to the applicant's acquisition of the property;

The applicant made all appropriate inquiries into previous ownership and uses of the property in accordance with generally accepted practices;

The applicant has provided all legally required notices under this chapter with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;

The applicant is in compliance with all land use restrictions and will not impede the effectiveness or integrity of any institutional control required for the property;

The applicant complied with any information requests by the cabinet under KRS Chapter 224.

The applicant is not and has not been affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135 through:

- a. Direct or indirect familial relationship;
- b. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
- c. Reorganization of a business entity that was potentially liable; and

The applicant has not caused or contributed to the releases of petroleum governed by KRS 224.01-405 or the releases of a hazardous substance, pollutant, or contaminant governed by KRS 224.01-400.

“I certify under penalty of law that the information contained in this application and all attachments thereto, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information.”

Applicant Name (type or print):

Signature: _____

Date Signed: - - -

COMMONWEALTH OF KENTUCKY)
)ss.:
COUNTY OF _____)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by _____ on this the ____ day
of _____, _____.

My commission expires: _____.

NOTARY PUBLIC



IV. Attached Documents

Please attach documents in the following order:

- 1. Copy of the deed for property;
- 2. Property management plan as described in 401 KAR 102:020;
- 3. Check or money order for \$2,500.00 made payable to the Kentucky State Treasurer;
- 4. All appropriate inquiry documentation;
- 5. Additional Environmental Data, Reports and Maps (if applicable); and
- 6. Other (if applicable).

Appendix B

Property Management Plan Assistance Outline

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This document is not regulation and is intended only to provide assistance in working with KRS 224.1-415, 401 KAR 102 and Form DEP 6056. It does not provide any additional requirements and may be revised without notice.

Property Management Plan Assistance Outline

The following is an outline that is recommended to use in preparation of a Property Management Plan. Although following this specific outline is not required by KRS 224.1-415 or 401 KAR 102:020, the following outline is intended to help to ensure expeditious review of the Property Management Plan as part of a Brownfield Redevelopment Program application package. In the interest of timely review, please include the sections as numbered and ordered, below.

1. CERTIFICATION STATEMENT OF PE/PG

401 KAR 102:020 requires that a statement be made and signed by a Professional Engineer or Professional Geologist licensed to publicly practice in the Commonwealth of Kentucky that the intended future use of the property will not interfere with any remediation efforts (if there are any), increase the impacts of the release or harm the public or environment. This statement should appear on a cover sheet or the sheet immediately following the cover sheet. The example below may be used but is not required:

By my signature below I, [name] am licensed in Kentucky to practice as a [Professional Geologist/Professional Engineer] and confirm that I have reviewed the Phase I Environmental Site Assessment dated [cover date of Phase I], this Property Management Plan and any other relevant documents made available to me for [physical property location, City, State, Zip].

The intended future use of the property, including the proposed management of future use and any proposed institutional or engineering controls, will not interfere with remediation of the release of petroleum, hazardous substances, pollutants or contaminants, increase the impacts of the release on human health and the environment, or expose the public and environment to unacceptable harm.

Signature:_____ Date Signed:_____

KY License/Registration Number:_____

2. INTRODUCTION

The introduction should include the purpose of the Property Management Plan (PMP), an overview of property conditions and details, and general description of the subject property and future use.

3. SITE DESCRIPTION & BACKGROUND

This section should be a detailed description of the subject property and improvements. Include a brief overview of history of property and structures, including details revealed during Phase I Environmental Site Assessment (Phase I ESA), an overview of environmental concerns raised by

property ownership and use history, as well as all recognized environmental conditions (RECs), to include historical and controlled RECs.

Describe any known environmental investigations, including those performed to facilitate the current transaction as well as those performed for other purposes. It serves the buyer/owner best if this includes ALL investigation and characterization performed as a result of regulatory obligation and those performed electively. Include a detailed discussion of analytical results derived from previous investigations. If there are known releases on the property, a map depicting location(s), contaminant(s) and concentration(s) must be included as required in 401 KAR 102:020.

Include in the site description any engineering or institutional controls that may prevent exposure and/or migration that are currently in place.

4. INTENDED FUTURE USE

Provide a description of planned future use in as much detail as is currently available. An interim use is acceptable (e.g. vacant, or demolition, or construction), but a revised Property Management Plan (PMP) may be necessary for long-term use if an interim-type plan is submitted.

PMPs are intended to be living documents, revised as information or intentions change. This allows for future modification to add detail or make wholesale changes in plans. However, in order to effectively evaluate the conditions, the potential for interference with any ongoing remediation, exacerbation of conditions, and to minimizing future risk to human health and the environment, as much information as possible is most effective. Description of the intended future use should include all known aspects of future construction (building construction, walkways, parking, planters, storm water control and grading) and should include consideration and inventory of all known environmental conditions.

5. BANKING PROVISIONS

In this section of the Property Management Plan, indicate if any specific provisions are being made with respect to a lender. For example, if reliance is extended to the mortgage holder, they may use the Property Management Plan in the event of foreclosure. It is suggested that a Property management Plan with a mortgage holder who may seek to use this approach include a provision for owning the property in a non-operational state. The Cabinet's position on this approach is detailed in the Statement of Consideration Relating to 401 KAR 102:020 (item 3(b)).

6. PLANNED VOLUNTARY ASSESSMENT OR REMEDIATION (OPTIONAL)

If voluntary or additional characterization or remedial action is planned, such as to demonstrate baseline conditions, to facilitate reuse, or other purpose, it should be detailed in this section of the PMP. If not, please include the section and simply indicate that no assessment or remediation is planned.

If assessment will be undertaken, describe the area planned to be assessed, the planned assessment activities, and the planned analysis. If additional assessment is planned prior to ownership, it should be considered in evaluating and managing the future use of the site. If it is to be conducted after ownership, describe how that information will be shared with KDEP (along with any considerations for potential changes to elements of this plan that may result).

If remediation will be undertaken, generally describe the planned remediation activities, locations/areas and any planned analysis. Describe how that information will be shared with KDEP (along with any considerations for potential changes to elements of this plan that may result).

Formal approval of planned assessment and/or remediation conducted at the discretion of someone eligible for protection under KRS 224.01-415 will not be given in response to the PMP. Instead, the PMP should consider these actions in terms of management of the site. The PMP should include an indication that the applicant will work with KDEP to ensure that the work is completed safely and adequately documented in KDEP files (such as an as-built or construction completion report).

7. EXPOSURE PATHWAY EVALUATION

In this section, consider the planned future use (including the potential for construction, operation and maintenance) and describe the contaminant(s), media and exposure pathway(s) that are present. Ensure that pathway evaluation considers any subsurface work that could be required in normal construction and operation of the property in the future (landscaping, utility work, etc.).

Please consider always including an evaluation and possible remedy or presumptive remedy of vapor intrusion in planning for long-term use. Although a successful applicant under KRS 224.01-415 is relieved of the requirement to characterize and correct environmental impacts they do not cause, they still have a responsibility to use the property in a manner that is safe for human health, considering the conditions.

If long-term use or construction is not currently planned sufficiently to make these determinations, the PMP must account for the risk present in whatever state the property will remain in until a revised PMP is submitted.

8. CONSTRUCTION MANAGEMENT

The contents of this section should describe how the complete pathways during the construction phase, discussed previously, will be abated to ensure that potential for interference with any ongoing remediation, exacerbation of conditions and minimizing future risk to human health and the environment is addressed. In addition, please describe any institutional and engineering physical controls that will be implemented in construction, and any waste handling that may be necessary in construction and any regarding or drainage management proposed as part of construction.

Compliance with applicable law (such as OSHA 1910.120) should be considered and the PMP should indicate that the work will be conducted in accordance with applicable law.

If no construction is planned, please retain the section and indicate that no construction is planned.

9. LONG-TERM MANAGEMENT

In this section, describe how the complete pathways identified to exist in the long-term planned use for the property will be abated to ensure that potential for interference with any ongoing remediation, exacerbation of conditions and minimizing future risk to human health and the environment is addressed. Also describe any individual or combination of institutional, engineering or physical controls that will be implemented in long-term use, include the contaminant, media and pathway(s) they are intended to abate, and describe any regarding or drainage management proposed in long-term management not described as part of construction management.

Please ensure that all applicable worker scenarios are considered, including employees, contractors, etc., and that any potential exposure to the public is addressed. Consideration of applicable law (such as OSHA 1910.120) may be re/visited in this section, depending on the nature of the redevelopment.

In planning for long-term use, please always consider including an evaluation and possible remedy or presumptive remedy of vapor intrusion. Although a successful applicant under KRS 224.01-415 is relieved of the requirement to characterize and correct environmental impacts they do not cause, they may still have some responsibility where vapor intrusion is concerned.

If long-term use is not currently planned sufficiently to make these determinations, the PMP must account for the risk present in whatever state or condition the property will remain in until a revised PMP is submitted.

10. CONTINGENCY PLANNING & NOTIFICATION

To the extent possible, consider and plan, in general terms, what should be done in the event that an unexpected event should arise. For example, what if a buried container is discovered during construction? What if "free product" is discovered while digging to plant a tree? While the provisions of KRS 224.01-415 offer relief from characterization and corrective action, a qualified owner must still take steps to prevent exacerbation of the discovery or a threatened release. Please also describe notification procedures in the event that new environmental information is discovered.

11. INSPECTIONS/MAINTENANCE – PROPERTY OWNER RESPONSIBILITIES

This section should include a brief summary of any institutional or engineering controls employed to make the reuse of the property safe.

If institutional or engineering controls are necessary for safe reuse of the property, it is recommended that there be a checklist and inspection schedule provided in the plan for the benefit of the property owner. This will assist the property owner in both understanding their management tools and in documenting the performance of the tools. Both the frequency and nature of inspection should be proposed by the Professional Geologist or Professional Engineer to ensure that the controls being relied upon remain in an adequate state to perform, and to document the performance for the benefit of the property owner.

Inspection checklists should be prepared in such a manner as to allow a property owner with no particular environmental training or expertise to perform the inspection. It should avoid subjective measures. As an example “Is the cap is performing adequately” should be avoided in favor of “Are there any cracks in the concrete parking surface that are larger than one inch wide?”

12. CONDITIONS FOR CHANGE (OPTIONAL)

Not all property use changes impact risk or controls employed to make a property safe for reuse. Therefore, it is valuable to include in the plan the conditions under which the property may change that would necessitate the revision of the PMP. For example, a change from a restaurant to a retail store without structural construction may not change risk assumptions. However, a change from an office space to a child care facility would necessitate a change because of the change in risk of potential exposure.

Attach any necessary FIGURES, TABLES and APPENDICES as necessary to adequately convey the material presented in the report. This should include a figure depicting the location of known environmental concern (due to RECs, sampling or other information).