

Clean Ohio Assistance Fund Policies

Introduction and Definitions

The following policies were established for the Clean Ohio Assistance Fund (Assistance Fund) pursuant to Ohio Revised Code (ORC) section 122.656. The Director of Development approved the Policies. The terms defined under ORC section 122.65, or the attached definitions section, apply to these Policies.

Section 1: Eligible Applicants

- 1.01 Eligible applicants for Clean Ohio Assistance Fund grants are: townships, municipal corporations, counties, port authorities, and conservancy districts that submit applications for a brownfield located within an eligible area. Eligible applicants may jointly apply for the same project.
- 1.02 Non-profit and for-profit organizations are eligible Development Partners if they have entered into an agreement with an applicant identified in Policy 1.01.
- 1.03 An eligible area is a distressed area, an inner city area, a labor surplus area or a situational distress area as defined in O.R.C section 122.65(H).
<http://www.clean.ohio.gov>
- 1.04 Applicants identified in Policy 1.01 shall be signatories on the Assistance Fund grant agreement entered into with the Director of Development and these entities. Parties identified in Policy 1.02 may not be signatories to the grant agreement.
- 1.05 COAF grants shall be disbursed by the Ohio Department of Development (Department) only to Applicants identified in Policy 1.01, pursuant to the grant agreement entered into between the Department and such Applicants.
- 1.06 Entities that caused or contributed to the contamination at the property are not eligible applicants, nor may they enter into an agreement with a third party to apply on their behalf. All applicants identified in Policy 1.01 and all parties identified in Policy 1.02 must sign a “clean hands” affidavit.
- 1.07 Applicants may not apply for COAF funds to conduct a “cleanup” as defined in O.R.C. section 122.65 (D) for a property at which the party that caused or contributed to the contamination is currently operating and/or will continue to operate.

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Section 2: Eligible Properties

- 2.01 Properties are eligible only if they are located in an eligible area as defined in Policy 1.03, and they meet the definition of a brownfield.
- 2.02 Properties are eligible only if they meet the definition of industrial, commercial, or Institutional property.
- 2.03 The property may contain more than one parcel, providing that parcels are contiguous. Parcels separated only by a street, alley or railroad track are considered contiguous. If a project contains more than one parcel, then each parcel must meet the definition of commercial, industrial, or institutional property.
- 2.04 The applicant must demonstrate that it possesses all necessary legal access to the property to complete the project. If the property or any portions of the property are subject to a lease agreement, the application must include a copy of the lease agreement or other agreement that provides the applicant with legal access to complete the project. In cases where the applicant is applying for funds to complete a Phase II Environmental Assessment and the party who may have caused or contributed to the contamination is still operating on the property, the applicant must include an option to purchase for the property that does not expire until after the project completion date, and a proposed redevelopment plan for the property. The option shall be for the applicant or a non-related third party to purchase the property.
- 2.05 Multiple Assistance Fund grant applications submitted by either the same or different applicants that are located within close proximity must demonstrate that the projects are not related. Evidence to support that projects are separate may include the following different characteristics: project inception, development partners, investors, certified professionals, type and nature of match, strategic plan and proposed end use.
- 2.06 The property legal description at the time of project completion must be identical to the property legal description identified in the application.

Section 3: Eligible Costs

- 3.01 The expenditures of Clean Ohio fund are to remove environmental conditions preventing redevelopment of a property and to address issues “where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum,” on a Brownfield.

The Director of the Ohio Department of Development may approve a project that does not meet the criteria of policies in 3.01, if in the Director’s judgment the

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investment is necessary to further the economic development initiatives of the Department and the state of Ohio.

- 3.02 Activities funded by the Clean Ohio Assistance Fund are environmental assessments, cleanup of hazardous substances and/or petroleum, and demolition. Assessment and cleanup activities must meet the definition of (1) assessment and (2) cleanup as defined in Divisions (C), (F), and (P) of O.R.C. section 122.65. Note: The acquisition of brownfield properties and the installation of infrastructure are NOT eligible costs.
- The maximum application request for a Phase II Environmental Assessment grant is \$300,000;
 - The maximum application request for a Cleanup grant is \$750,000;
- 3.03 Tire removal and disposal are not eligible costs.
- 3.04 Costs for a risk assessment are eligible costs, unless a risk assessment was previously funded under the Clean Ohio Assistance Fund for all or a portion of the property.
- 3.05 Only to the extent that hazardous substances or petroleum exceed applicable cleanup standards identified in the application will cleanup be funded.
- 3.06 For property that is the subject of an existing covenant not to sue, costs for additional cleanup are eligible costs. For the purposes of this Policy, the additional cleanup must result in the property's compliance with new applicable standards, which improve the applicable standards upon which the issuance of the existing covenant not to sue was based (e.g., allowing for a less restrictive land use or an alternate remedy not subject to operation or maintenance pursuant to O.A.C. Rule 3745-300-15).
- 3.07 For property that is in remedial response enforcement or the subject of a remedial response investigation or cleanup order issued by the Director of Environmental Protection or by a court of competent jurisdiction under O.R.C. Chapter 3734, the costs for cleanup and remediation may be eligible costs: a) if the property is an orphan property; b) if the property is not an orphan property, but only to the extent that the cleanup costs are in addition to the requirements of the Preferred Plan or Decision Document; or c) to the extent the cleanup costs required by the Preferred Plan or Decision Document exceed the potentially responsible parties' ability to pay.
- 3.08 For a property that is the subject of a solid waste permit or order or an open dumping order issued by the Director of Environmental Protection or by a court of competent jurisdiction under O.R.C. Chapter 3734, the costs for cleanup and remediation may be eligible costs: a) if the property is an

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- orphan property; b) if the property is not an orphan property, but only to the extent that the cleanup costs are in addition to the requirements of the permit or order as determined by the Ohio Environmental Protection Agency; or c) to the extent the cleanup costs required by the permit or order exceed the potentially responsible parties' ability to pay.
- 3.09 For a property that is the subject of a corrective action pursuant to a hazardous waste permit or order or subject to hazardous waste closure or generator closure pursuant to a hazardous waste permit or order issued by the Director of Environmental Protection or by a court of competent jurisdiction under O.R.C. Chapter 3734, the costs for cleanup and remediation may be eligible costs: a) if the property is an orphan property; b) if the property is not an orphan property, but only to the extent that the cleanup costs are in addition to the requirements of the permit or order as determined by the Ohio Environmental Protection Agency; or c) to the extent the cleanup costs required by the permit or order exceed the owner or operator's ability to pay.
- 3.10 Remedies addressing methane gas are not eligible costs, except to the extent that the methane is commingled with hazardous substances and petroleum.
- 3.11 Clearance activities are not eligible costs.
- 3.12 Project costs defined as markup are not eligible costs. The legislation governing the Clean Ohio program instructs the Department to make payments "only to pay the costs of the actual cleanup of a brownfield," (O.R.C. 122.658 (D)).
- 3.13 In accordance with O.R.C. Chapter 4115, prevailing wage rates may apply to all activities that are part of the cleanup's total project costs.
- 3.14 Removal of BUSTR (Bureau of Underground Storage Tank Regulation) regulated underground storage tanks and remediations of petroleum leaks from such tanks are not eligible costs.
- 3.15 Removal of solid waste is not an eligible cost, except to the extent that the solid waste is commingled with hazardous substances and petroleum.
- 3.16 Removal and disposal of Regulated Asbestos Containing Material (RACM) are eligible costs.
- 3.17 Recipients of Clean Ohio Assistance Funds may not use those funds for indirect and/or administrative costs, which include but are not limited to the costs of: application preparation, compliance with public participation

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requirements, legal counsel related to the application and/or project implementation, consulting fees and compliance with applicable local, state, and federal laws rules and policies governing the project and/or grant agreement.

- 3.18 The cost of employing a Certified Professional is an eligible cost.
- 3.19 The Assistance Fund will pay only for activities specifically required to undertake and complete the appropriate remediation to meet applicable cleanup standards under ORC Chapter 3734 and 3746.
- 3.20 Costs for eligible activities will be reimbursed based upon the submission of the required documents to the Ohio Department of Development.

Section 4: Project Costs

- 4.01 Total project costs are all dollars to be expended at the property for conducting an assessment or a cleanup of a brownfield. Applicants can only receive grant funds for eligible costs expended after the grant agreement has been executed.
- 4.02 The cost estimates must be signed by a Certified Professional for work to be completed under O.R.C. Chapter 3746, and an environmental/technical professional for work to be completed under O.R.C. Chapter 3734, and must be accompanied by a statement certifying that the cost estimates are reasonable and necessary and are no higher than for like expenditures on like projects in Ohio.
- 4.03 Applicants requesting funds for the purpose of conducting a Phase II Environmental Assessment of a brownfield property are to allocate a minimum of 60% of the Clean Ohio Assistance Fund dollars to field activities herein described as hard costs. Hard costs are defined as laboratory analytical services, drilling, surveying, disposal of derived wastes, travel, and supplies related to conducting work in the field at the project property. Soft costs are defined as any consultant time related to the project.
- 4.04 The Department of Development retains the right to require any additional documentation in support of the reasonable and necessary cost estimates. The burden will be on the applicant to show, to the Department's satisfaction, that the above standard has been met.
- 4.05 The total project costs must be presented in the application in a unit and itemized cost form. All subcontractor costs greater than \$15,000 for assessment projects and \$25,000 for cleanup project must be accompanied by a third party cost estimate for the services that would be provided.

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Section 5: Application Process

- 5.01 The Ohio Department of Development may establish deadlines for application funding, including the date an application may be filed with the Ohio Department of Development.
- 5.02 All applicants will submit an application to be on the Ohio EPA Brownfield Inventory prior to the submission of the application to the Ohio Department of Development.
<http://www.epa.state.oh.us/derr/SABR/Brown/BrownDtb/browndtb.html>
- 5.03 No Later than three (3) days following submission of the application to the public library, the applicant must send (2) disk copies of the application to the Ohio Department of Development, Urban Development Division, 77 South High St., 26th floor, Columbus, Ohio, 43215.
- 5.04 Following the 45 day public comment period and the public meeting, the applicant must send one (1) original copy of the application to the Ohio Department of Development, Urban Development Division, 77 South High St., 26th floor, Columbus, Ohio, 43215.
- 5.05 Upon receipt of the application, the Ohio Department of Development with assistance from the Ohio Environmental Protection agency shall have 10 business days to review the application for completeness. Following the review period, the Ohio Department of Development will provide the applicant an opportunity to submit missing information.
- 5.06 The Director of Development shall approve or disapprove in writing, applications submitted to the Ohio Department of Development for grants from the Clean Ohio Assistance Fund. Seventy-five percent of the funding available for grants shall be dedicated for the purposes of conducting Phase II Environmental Site Assessments.
- 5.07 All awards approved by the Director of Development are contingent upon the approval of the State Controlling Board.
- 5.08 Assessment projects must be completed within 18 months of the date that the grant agreement is signed by the Director of Development, unless an extension is granted by the Ohio Department of Development.
- 5.09 Cleanup projects must be completed within 30 months of the date that the grant agreement is signed by the Director of Development, unless an extension is granted by the Ohio Department of Development. Cleanup projects for public health purposes must enroll in the VAP Memorandum of Agreement (MOA Track).

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Section 6: Public Participation

- 6.01 No later than 45 days prior to the public meeting, the applicant must place a copy of the application in a public library, place a notice of the public meeting in a newspaper of general circulation in the county where the brownfield is located, and post a sign at the property.
- 6.01.1 A copy of the application must be provided to the public library nearest to the Brownfield. The applicant must post the following information on their website or other local government websites accessible to the community: application summary, legal notice and contact information. The web link will be displayed on the four feet by four feet sign.
- 6.01.2 The notice must be placed in a newspaper that circulates in the community where the majority of the brownfield is located. The notice may appear as either a classified legal notice or as a display advertisement.
- 6.01.3 The notice must include, at a minimum: the date, time and location of the public meeting; the location of the public library where the application is available for public review; and the intent of the applicant to apply for Clean Ohio Assistance Funds.
- 6.01.4 The sign must not be less than four feet by four feet unless prohibited by local ordinance, in which case the sign must be the maximum size allowed by local ordinance.
- 6.01.5 The sign must include the date, time and location of the public meeting; the location of the public library where the application is available for public review; the intent of the applicant to apply for Clean Ohio Assistance Funds; and the website address where application information can be accessed.
- 6.02 Evidence of the library receipt, the newspaper public notice, and the property sign should be faxed or emailed to the Urban Development Division within three days after the newspaper notice is printed. Please submit the fax to Urban Development at 614-466-4172. The email address is urban@development.ohio.gov.
- 6.03 The applicant must conduct the public meeting so as to allow for questions from the public and for public comment.

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- 6.04 At the public meeting, the applicant must address any written comments received during the 45-day public comment period.
- 6.05 The applicant must take the minutes of the meeting, including the number of individuals in attendance, and an accurate summary of the comments, questions, debate and discussion which occur at the meeting.
- 6.06 The following documentation must be included with the application when it is submitted to the Ohio Department of Development: a receipt from the public library for the application, proof and copy of newspaper publication of the notice, a photograph of the sign posted at the property, a copy of public comments received during the 45 day comment period, and minutes of the public meeting.

Section 7: Environmental Documents Required for Phase II and Cleanup Grants

All documents described in this section must be included with the application at the time a copy of the application is provided to the library.

- 7.01 The submittal for a Phase II assessment grant shall include:
- Completed application;
 - A Voluntary Action Program (VAP) consistent Phase I property assessment which also meets the requirements of the applicable regulatory program (O.R.C. 3746 or 3734);
 - Description of the proposed Phase II assessment activities that comply with the applicable regulatory program (O.R.C. Chapter 3746 or 3734) and the rules adopted thereunder.
- 7.02 An application for cleanup projects subject to a remedial response investigation or cleanup order issued by the director of environmental protection under O.R.C. Chapter 3734 shall include:
- Completed application;
 - The remedy proposed or selected by the director of environmental protection and a Preferred Plan or Decision Document.
- 7.03 An application for cleanup projects subject to O.R.C. Chapter 3746 (VAP), shall include:
- Completed application;
 - Copy of a VAP compliant Phase I property assessment;
 - Certified copy of portions of a VAP compliant Phase II property assessment that complies with the requirements of O.R.C. Chapter 3746 and rules adopted thereunder, and that characterizes the contamination at the property

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in a manner sufficient to support and justify the selection and cost estimation of a remedy that will meet applicable standards upon implementation.

- 7.04 For Cleanup projects where Regulated Asbestos Containing Materials (RACM) will be removed, and disposed, the application must include an Asbestos Inspection report. The Asbestos Inspection Report must be conducted by a professional who is Ohio Department of Health certified, and contain the following components: 1) identification of material, including locations and quantity 2) square footage or linear feet of material; 3) sampling that demonstrates RACM greater than 1%; 4) description of current condition; and 5) explanation of any planned demolition.
- 7.05 In addition to the required documents in Section 7.03, an application for cleanup projects under O.R.C. Chapter 3746 that rely on an Urban Setting Designation (USD) or a variance under O.R.C. Chapter 3746, and applicable rules adopted thereunder, shall include a copy of the approved USD or variance at the time a copy of the application is provided to the library.
- 7.06 An application for cleanup projects subject to solid waste closure requirements under O.R.C. Chapter 3734 shall include:
- Completed application;
 - Copy of the approval letter by the director of environmental protection for the solid waste closure plan that complies with applicable rules adopted under O.R.C. Chapter 3734.
 - The application must identify the portions of the closure for which the applicant seeks funding. If funded, the applicant must implement the closure plan in accordance with the plan. Detailed cost estimates on a per unit basis associated with the scope of work.
- 7.07 An application for assessment projects subject to hazardous waste closure requirements under O.R.C. Chapter 3734 shall include an assessment plan that is consistent with sections 3.1 to 3.5 and 3.11 to 3.19 of the Ohio EPA, Division of Hazardous Waste Management, "Closure Plan Review Guidance 2008" (CPRG). The assessment must be designed to achieve the objectives of section 4.1 to 4.3 of the CPRG. If funded, the applicant must implement the assessment plan in accordance with the plan, applicable rules adopted under O.R.C. Chapter 3734, and applicable Ohio EPA guidance.
- 7.08 An application for cleanup projects subject to hazardous waste closure requirements under O.R.C. Chapter 3734, and applying for closure funding shall include:
- Completed application;

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- A cleanup plan that includes an assessment of each hazardous waste unit, completed in accordance with Chapter 3 of CPRG. The Cleanup plan must be designed to achieve the objectives of a closure by removal or a risk-based closure as described in the CPRG.
- A copy of an itemized closure cost estimate developed pursuant to Ohio Administrative Code (O.A.C.) Rule 3745-66-42.
- If funded, the applicant must prepare, submit for approval by the director of environmental protection, and implement a closure plan that is consistent with O.A.C. Chapter 3745-66 and the CPRG.
- If an applicant has a closure plan that has already been approved by the director of environmental protection, the approved closure plan must be included with the application. If funded, the applicant must implement the applicable portions of the approved closure plan in accordance with applicable rules adopted under O.R.C. Chapter 3734 and applicable Ohio EPA guidance.

7.09 An application for cleanup projects subject to generator closure requirements under O.A.C. rule 3745-52-34 and Chapter 3745-66, shall include:

- Completed cleanup application;
- A cleanup plan for each generator accumulation area which should be sufficient to support and justify the selection of a closure that is consistent with section 1.1 (Generator Closure) of the CPRG.
- If funded, the application must implement the closure in accordance with OAC rule 3745-52-34 and section 1.10 of the CPRG.

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Definitions

Ability to pay - Legal solvency or having sufficient assets to pay the costs of cleanup or remediation.

Brownfield - An abandoned, idled, or under-used industrial, commercial, or institutional property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum as defined in O.R.C 122.65(D).

Cleanup - Any action to contain, remove, or dispose of hazardous substances or petroleum at a brownfield or public health project. 'Cleanup includes remediation and demolition performed at a brownfield.

Covenant not to Sue or covenant - The final findings and orders issued by the director of environmental protection pursuant to O.R.C. section 3746.12.

Decision document - The report that evidences Ohio EPA's cleanup or remediation plan for property that is the subject of a remedial response investigation or cleanup order issued by the director of environmental protection or by a court of competent jurisdiction under O.R.C. Chapter 3734. Preparation of the decision document takes into consideration any comments received regarding the preferred plan for the property.

Goods – All labor and materials related to the demolition, cleanup, and infrastructure activities to be undertaken at the brownfield property, as part of the Clean Ohio Assistance Fund grant, and provided by contracting entities that derive at least 51% of their revenues from the performance of demolition, remediation, or construction activities. Contracting entities must be solicited based upon project bid specifications and any other documents deemed appropriate by the political subdivision.

Institutional property - means property currently or formerly owned or controlled by the state that is or was used for a public or charitable purpose. However, "institutional property" does not mean property that is or was used for educational purposes as defined in O.R.C. 122.65(J).

Memorandum of Agreement or MOA - The Superfund Memorandum of Agreement Brownfields and Voluntary Action Plan Memorandum of Agreement Track entered into between the State of Ohio and U.S. EPA Region V on July 31, 2001.

Orphan property - Any property for which there is no person liable for cleanup or remediation costs under 42 USC § 9607 who has the ability to pay those costs.

Preferred plan - A document prepared by Ohio EPA that presents to the public Ohio EPA's preferred alternative for cleanup or remediation at a property subject to a remedial response investigation or cleanup order. The document includes a brief

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summary of the alternatives evaluated in the detailed analyses of the Feasibility Study, highlighting the key factors that lead to the identification of the preferred alternative.

Project - Those eligible activities in the grant agreement to be completed within the timeline of the grant agreement.

Property - Any parcel of real property, or portion of such a parcel, and any improvements to it.

Remedial Action Work Plan - The remedial action work plan developed in accordance with VAP-MOA Track procedures and the criteria of O.A.C. rule 3745-300-15 for implementation of remedial activities in the VAP.

Risk Assessment - A quantification of the risk posed by exposure of a human or ecological receptor to hazardous substances or petroleum that is performed in compliance with the criteria of the applicable regulatory program to demonstrate that a property meets the applicable cleanup standards for the property (e.g., for projects subject to VAP applicable standards, O.A.C. rule 3745-300-09; for projects subject to hazardous waste applicable standards, use of a risk assessment as a means to demonstrate compliance with the closure performance standard, etc.)

Services – Includes engineering, remedial design, environmental design, construction management, certified professional activities, project oversight, project certification and/or any other similar activities as part of a brownfield project. A service provider may not act as a contracting entity for goods.

Total project costs - All dollars expended (or to be expended) at the property for eligible activities in section 3 of these policies and other costs identified as match as defined by O.R.C. section 122.658.

Voluntary Action Program or VAP - The Voluntary Action Program established within the Ohio EPA under O.R.C. Chapter 3746. The rules adopted under O.R.C. Chapter 3746 are contained in O.A.C. Chapter 3745-300.