Brownfield Redevelopment Program

Missouri Department of Economic Development
Missouri Department of Natural Resources

IMPORTANT INFORMATION – PLEASE READ

To: DED Tax Credit Program Applicants
From: Sallie Hemenway, ED Operations Director
Date: August 30, 2005
Re: Tax Credit Issuance Fee

The 2005 legislative session provided authority (SB343 subsequently signed into law) to the Department of Economic Development to collect a fee of up to 2.5 percent of the value of the issuance of most tax credit programs. Programs exempted by statute and those where the fee is determined to be zero at this time are listed at the end of this memorandum.

The implementation of this fee will take effect on all applications received by the Department (and subsequently approved) after September 7, 2005. The fee shall require a payment of 2.5 percent of the requested amount of the issuance. The fee shall be payable prior to the issuance for deposit in the Economic Development Advancement Fund.

Applications for discretionary tax credit programs currently held by the Department pending the approval shall not be subject to the fee.

Pre-applications or applications for entitlement tax credit programs currently held by the department where hard construction commences by October 15, 2005 (as indicated by invoice or other source documentation) shall not be subject to the fee.

Applications for programs that may qualify annually for multiple year tax credit issuances shall be subject to the fee in the first year if the application or documentation is received after September 7, 2005. All on-going projects for these types of credits shall be subject to the fee in future years per this notice.

The purpose of the legislative authority is both to assist in off-setting administrative costs and to apply the funds in a manner that markets the state to increase future related business interests in Missouri.

Program administrators will provide successful applicants more detailed information regarding payment processes. Please do not hesitate to contact them individually or you may contact me at 573-522-4173 with any questions.

Programs exempt or with no 2.5 percent fee applied:

- Neighborhood Assistance Program
- Youth Opportunities Program
- Family Development Account
- Small Business Incubator
- Rebuilding Communities 1.5% Employee Credit
- Missouri Housing Development Commission- administered tax credit programs
- Missouri Development Finance Board-administered tax credit programs

State of Missouri

Brownfield Redevelopment Program

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For Further Information:

Missouri Department of Economic Development
Brownfield Program Administrator
P. O. Box 118, Jefferson City, MO 65102
573-522-8004
Fax: 573-522-9462
e-mail: cd@ded.mo.gov

Brownfield Redevelopment Program

A. General Information

1. Purpose: The purpose of the Brownfield Redevelopment Program is to provide incentives for the redevelopment of commercial/industrial sites abandoned or underutilized due to contamination caused by hazardous substances. The State of Missouri provides incentives to applicants that redevelop and remediate approved sites in accordance with voluntary clean up procedures established by the Missouri Department of Natural Resources. The program may be used to rehabilitate an existing building contaminated with hazardous substances, or to clear existing structures and build a new facility. The program may also be applicable for contaminated sites that have no existing structures.

2. Eligible Project: A project may be considered eligible if it meets the following criteria:

(a) Abandoned or Underutilized: The property must have been abandoned for at least **3** years from the date of the application or underutilized (Real property of which less than 35% of the commercially usable space of the property and improvements thereon, are used for their most commercially profitable and economically productive use);

(b) Owned by a Governmental Agency or Endorsed by City: The property may be owned by a governmental agency at the time an application is submitted for the determination of eligibility, or the property can be privately owned if endorsed by the city (or county if the property is not located in a city);

(c) Contamination: The property must be contaminated by hazardous substances and accepted into the Voluntary Cleanup Program at the Department of Natural Resources;

(d) Eligible Business: An eligible business (which is most businesses except housing) must occupy the majority of the property upon completion of the rehabilitation. The project may be a mixed-use facility (residential and commercial), but the state economic impact will be based only on the commercial operations.

3. Incentives: This program is structured to provide tax incentives that would facilitate a fair return on investment to the redeveloper. The redeveloper could be a business that will own the facility for its own operations, or it may be an owner who will lease space in the facility to others. The incentives to the owner for eligible projects include the following:

(a) The **"Remediation" Tax Credits,** which can reimburse the applicant for up to 100% of all eligible capital and operating costs of the remediation of hazardous substances. The owner must demonstrate the credits are the least amount necessary for the project to occur and are limited to the net state economic benefit of the eligible project.

4. Basis for Approval of Eligible Projects: The remediation tax credits will be limited to the lesser of the least amount necessary for the project to occur or the positive net state economic impact. Consideration will be given for a project's potential for enhancing the redevelopment of nearby blighted property. Other entitlement tax credits, such as the Historic Rehabilitation Tax Credit, will be included in the calculation of economic benefit as a state cost.

The positive net state economic impact is the benefits (new state taxes caused by the project) less the incentives provided (tax credits). Other entitlement tax credits, such as the Historic Rehabilitation Tax Credit, will be included in this calculation as a state cost.

5. Employment Conditions: The eligible project is projected to create at least ten new jobs, or retain twenty-five jobs, or combination thereof, with each job providing not less than an average of thirty-five hours of employment per week. When determining a combination of new and retained jobs for eligibility purposes, a retained job will be equal to forty percent (40%) of a new job. The total must be equal to ten jobs.

A business with 20 retained jobs and 5 new jobs would provide a combination with a total of 13 jobs. (20 retained jobs X 40% = 8 jobs; 8 + 5 new jobs = 13 total jobs for eligibility purposes.)

6. Approval: The Missouri Department of Economic Development will review applications to determine eligibility for participation in the Brownfield Program. The Department of Natural Resources will review applications to determine eligibility under the Voluntary Cleanup Program. Upon the approval of a Voluntary Cleanup Plan by DNR, the Department of Economic Development may determine the amount of available financial assistance based upon the application submitted to DED. The owner must also obtain any permits or rezoning necessary from the appropriate state or local governmental agency.

7. Application: Submission of an application for tax credits may be made at any time prior to beginning of project to: Redevelopment Section, Missouri Department of Economic Development, P.O. Box 118, Jefferson City, MO 65102. Telephone # 573-522-8004 .

8. Authorization: This program is authorized by Section 447.700 to 447.718, RSMo, as amended. In the event there is any conflict between the statute and these guidelines, the statute shall prevail over guidelines.

B. APPLICATION PROCESS

Please use the Application Checklist included in the back of this booklet when preparing an application.

1. Eligibility Determination: A prospective owner or governmental agency will submit Sections A, B, and C of the Application Checklist including Exhibits A, B, E, and F to determine whether the project is eligible. The owner must submit the Voluntary Cleanup Program application to the Department of Natural Resources for the determination of eligibility into the VCP program.

2. DED/DNR Approval: DNR will enter into an agreement with the owner regarding oversight of the remediation activities subject to the Voluntary Cleanup Program. Upon DNR's approval of a Remedial Action Plan and after due diligence has been conducted, DED will require the submission of three bids for the implementation of the remedial action plan. *Only hazardous substances as defined in sections 260.565 to 260.575, RSMo are eligible to receive remediation tax credits.*

3. Negotiate Purchase: If the prospective purchaser decides to proceed with the eligible project, they may negotiate a purchase price with the governmental agency that owns the eligible project (or private owner), discuss the process of rezoning and permits, and apply for loans from local lenders for the remediation/rehabilitation of the abandoned property.

4. Incentives Approval: Upon the determination that financial incentives are needed to cause the remediation/rehabilitation to proceed, the department may approve Remediation tax credits after the submission of the relevant portions of the application.

5. Construction: Upon approval by the lender, DED, DNR, and the appropriate local agency, the remediation and rehabilitation work may begin.

6. Remediation Tax Credits: After approval by DED and meeting program requirements, no more than seventy-five percent (75%) of earned remediation tax credits may be issued when the remediation costs are paid.

7. Completion: DNR will issue a "Certificate of Completion" or covenant not to sue when the remediation work is successfully completed. At this time DED can issue the remaining remediation tax credits.

C. DEFINITIONS

1. "Abandoned Property": Real property previously used for, or which has the potential to be used for, commercial or industrial purposes. The property may have been acquired by a governmental agency through donation, purchase, tax delinquency, foreclosure, default or settlement, including conveyance by deed in lieu of foreclosure; or a privately owned property endorsed by the city, or county if the property is not in a city, for inclusion in the program which will be transferred to a person other than the potentially responsible party as defined in chapter 260, RSMo, and has been vacant for a period of not less than three years from the time an application is made to DED.

2. "DED": Missouri Department of Economic Development, administrator of the Brownfield Redevelopment program.

3. "DNR": Missouri Department of Natural Resources, administrator of the Voluntary Cleanup Program.

4. "Eligible Business": A revenue creating enterprise located at the eligible project involved in industry; commerce, distribution, and research, or any combination thereof, the operation of which will meet the employment conditions of the Brownfield Redevelopment Program. Businesses classified in SIC's ("Standard Industrial Classification Manual" as prepared by the Office of Management and Budget, Executive office of the President.) 01 through 89, except 8733, are included. Ineligible businesses include residential facilities (owner occupied and rental), facilities owned by a governmental agency for its internal operations (except for revenue producing enterprises), religious-based organizations or facilities, facilities for political organizations, or others as determined by DED at its discretion.

If an eligible project will contain some eligible businesses and some ineligible businesses, it may qualify for financial assistance if at least one of the eligible businesses will have at least 10 new jobs or 25 retained jobs. However, the Net State Economic Benefit would be calculated based only upon those businesses that qualify as eligible.

5. "Eligible Project": The abandoned or underutilized property to be acquired, expanded, remodeled, rehabilitated or modernized for an eligible business, whether the eligible business is operated by an operator or a lessee. The eligible project must include voluntary remediation of hazardous substances conducted pursuant to sections 260.565 to 260.575, RSMo, and the obligations of the prospective owner and the governmental agency shall be defined in a written agreement signed by both parties. The eligible project, when completed, shall be operated in compliance with all applicable federal, state and local environmental statutes, regulations and ordinances. Any property immediately adjacent to any abandoned or underutilized property may also be an "eligible project".

6. "Eligible Remediation Costs": Materials, supplies, equipment, labor, professional engineering, consulting and architectural fees, permitting fees and expenses, and direct utility charges for performing the voluntary remediation activities for the pre-existing hazardous substance contamination and releases. Also included may be the costs of performing

operation and maintenance of the remediation equipment at the facility beyond the year (limited to a time period specified by DED) in which the systems and equipment are built and installed at the facility. Ineligible costs for Remediation tax credits include, but are not limited to, interest, legal fees, and others not specified above. Any costs incurred prior to DED's approval of the amount of Remediation tax credits are ineligible.

Demolition of walls or other structures to remediate hazardous substances on the property maybe an eligible cost, but the reconstruction or rebuilding of those structures is not an eligible cost. Also, the removal and disposal of asbestos shingles are acceptable remediation costs, but the replacement of the roof is not.

7. "Financial assistance": Direct loans, loan guarantees, and grants from the Brownfield fund; or Remediation tax credits or Brownfield tax benefits, or abatements.

8. "Full-time basis": Employees of an operator or lessee working an average of no less than thirty-five hours per week (on a non-seasonal basis).

9. "Governmental action": Any action by a state, county or municipal agency relating to the establishment, development or operation of an eligible project that the governmental agency has authority to take or provide for the purpose under law, charter or ordinance, including but not limited to, actions relating to contracts and agreements, zoning, building, permits, acquisition and disposition of property, public capital improvements, utility and transportation service, taxation, employee recruitment and training, and liaison and coordination with and among governmental agencies.

10. "Governmental Agency": The state, county and municipality and any department, division, commission, agency, institution or authority, including a municipal corporation, township, and any agency thereof and any other political subdivision or public corporation; the United States or any agency thereof; any agency, commission or authority established pursuant to an interstate compact or agreement and any combination of the above.

11. "Hazardous Substances": (From Section 260.565(1), RSMo): Any hazardous substance specified in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC sections 9601 (14) (A-F), as amended, and any hazardous waste as defined in section 260.360 or any rules promulgated under sections 260.350 to 260.480, RSMo. Some substances may not qualify as "hazardous" under the Voluntary Cleanup Section. Questions should be directed to the DNR's Voluntary Cleanup Program at (573) 526-8913.

12. "Least Amount Necessary to Cause the Project to Occur": Sections 447.702.1(2), 447.704.1(2), 447.708.3, RSMo indicate that the loans, loan guarantees, and remediation tax credits shall be the "least amount necessary to cause the project to occur." As such, the entity to receive a loan, loan guarantee, or remediation tax credits must demonstrate that the projected internal rate of return is below a market rate for comparable projects without such incentives, and the Brownfield incentives will provide only up to a market rate. Market rate must be demonstrated to DED as a pre-tax internal rate of return; however, risk and return factors will be considered. The return should be demonstrated over a period of 5-10 years. Other State incentives should not be included as equity in this calculation.

13. "Net State Economic Benefit": The present value of new state tax revenues projected to be caused by the eligible project over a period of 8 years from the start of the project, discounting the amount of incentives provided for the eligible project, the negative impact of the eligible project to competing local businesses, and the new public costs associated with the eligible project. The economic benefit will be determined by DED using the IMPLAN or REMI models (or other acceptable models), which factors the amount of new payroll, the amount of new capital investment, purchases of Missouri made machinery/equipment or inventory, and the type of business. Other entitlement tax credits, such as the Historic Rehabilitation Tax Credit, will be included in this calculation as a state cost.

14. "New Job": A person employed in connection with the eligible business on a full-time basis (after the approval of DED for the incentives of this program) and not previously employed by the taxpayer or a related taxpayer within the twelve-month period immediately preceding the time the person was employed by that taxpayer to work at, or in connection with, the eligible project on a full-time basis. "New job" does not include full-time equivalents or seasonal employees.

15. "New Qualified Investment": The value of real and depreciable tangible personal property which are used at or in connection with the eligible project during the tax period the credits are being claimed. New qualified investment shall not include small tools (portable and hand held), supplies, working capital, and inventory. Trucks, truck-trailers, truck semi-trailers, rail and barge vehicles and other rolling stock for hire, track, switches, barges, bridges, tunnels and rail yards and spurs shall not constitute new qualified investment. The total value of such property during such taxable year shall be:

(a) Its original cost if owned by the taxpayer; or

(b) Eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The new qualified investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the new business facility is in operation for less than an entire taxable year, the new qualified investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the eligible business was in operation by the number of full calendar months during such period;

16. "Owner": The titleholder of the abandoned property on which the eligible project remediation will occur. The owner may be a developer, an operator, or a governmental agency.

17. "Operator": An owner that will be conducting eligible business operations in an eligible project.

18. "Person": Any individual, firm, partnership, association, limited liability company, corporation or governmental agency, and any combination thereof.

19. "Project Facilities": Buildings, structures and other improvements and equipment and other property or fixtures, excluding small tools, supplies and inventory, and any one, part or combination of the above, comprising all or part of, or serving or being incidental to, public capital improvements.

20. "Public capital improvements": Capital improvements that a governmental agency owns and maintains, including but not limited to, highways, roads, streets, electrical, gas, water and sewer facilities, railroad and other transportation facilities, and air and water pollution control and solid waste disposal facilities. Ineligible costs would include administrative facilities or operating expenses; facilities owned or operated by a private entity; vehicles, other personal property, or inventory, except for equipment related to the operation of a public facility such as a sewer or water treatment facility. Costs incurred prior to DED's approval are ineligible.

21. "Related Taxpayer": Any of the following:

(a) A corporation, partnership, trust or association controlled by the taxpayer;

(b) An individual, corporation, partnership, trust or association in control of the taxpayer; or

(c) A corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer.

"Control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote.

"Control of a partnership or association" shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association;

"Control of a trust" shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust; ownership shall be determined as provided in section 318 of the U.S. Internal Revenue Code.

22. "Retained Jobs": A person previously employed by the taxpayer, or related taxpayer, at a closed Missouri facility similar to the eligible project. The closing must have occurred prior to the end of the tax period in which the credits are earned, and the person must have been employed by the taxpayer within the tax period immediately preceding the time of his/her employment at the eligible project.

The owner or lessee shall provide DED with a written statement explaining the reason for discontinuing operations at the closed facility. The statement shall include a comparison of the activities performed at the closed facility prior to the date the facility ceased operating to the activities performed at the eligible project, and a detailed account describing the need and rationale for relocating to the eligible project. If DED finds the relocation to the eligible project significantly impaired the economic stability of the area in which the closed facility was located, or that such move was detrimental to the overall economic development efforts of the state, DED may deny the taxpayer's request to claim tax benefits.

23. **"Taxpayer":** An individual, proprietorship, or corporation, described in Section 143.441 or
143.471, RSMo, or partnership subject to the tax imposed by Chapter 143, RSMo.

24. **Underutilized:** Real property of which less than thirty-five percent (35%) of the commercially usable space of the property and improvements thereon, are used for their most commercially profitable and economically productive use.

25. **"Voluntary remediation":** An action to remediate hazardous substances pursuant to sections 260.565 to 260.575, RSMo, as approved by DNR.

D. DETERMINATION OF INCENTIVES

1. Remediation Tax Credits: The amount must be the "least amount necessary to cause the project to occur." The remediation tax credits will be limited to the net state economic impact and the Eligible Remediation Costs. DED will only consider increasing the approved Remediation tax credit amount if documentation can be provided to reflect the detection of additional hazardous substances. Remediation of the additional contamination must not have begun before DED's approval. However, the increased amount cannot exceed the net state economic impact analysis.

Remediation that is performed prior to receipt of a written authorization for remediation tax credits from DED will not be eligible for tax credits and may jeopardize the project's overall eligibility for the program.

Up to seventy-five percent (75%) of Remediation tax credits may be issued to the applicant when the costs are paid and the remaining percentage when the Department of Natural Resources provide a "Certificate of Completion" letter or covenant not to sue.

2. Projected State Economic Benefit: The total amount of state funding, tax credits, or tax exemptions for each eligible project shall be limited to the projected state economic benefit of the eligible project. DED may consider the direct and indirect economic benefits projected to be created by the eligible project.

3. Repayment: In the event the owner sells the abandoned or underutilized property within a five-year period after the receipt of remediation tax credits subject to sections 447.700 to 447.718 RSMO, the owner shall repay a portion of the tax credits provided based on the percentage of the owner's investment for the project to the department of economic development's total financial assistance, upon achieving an annual internal rate of return of twenty-five percent. The internal rate of return calculation shall be documented by the owner's capital gains tax calculation. Owner investment is equity and debt for the eligible project.

In the event the owner sells the property to a related taxpayer, the calculation of a possible repayment will continue for the 5-year period. This provision is found in section 447.701.

E. REMEDIATION TAX CREDITS

1. Approval: DED, with the approval of the Department of Natural Resources, may grant Remediation tax credits to the applicant of an eligible project. The eligible project may be redeveloped by a private entity or a governmental agency. The approval is based on the "least amount necessary to cause the project to occur," and limited to the net state economic impact and the actual amount of Eligible Remediation Costs. The project must be projected to create at least ten new jobs or twenty-five retained jobs, or combination thereof, as determined by DED. The eligible project must operate in compliance with applicable environmental laws and regulations requirements, including permitting and registration requirements, of this state as well as the federal and local requirements.

2. DED Review of Remediation Cost: Upon the approval of a remedial action plan by the Voluntary Cleanup Program at DNR, DED will require the owner to submit three bids for the implementation of the remedial action plan from a contractor that is not related to the owner.

3. Eligible Costs for Remediation Tax Credits: The Remediation tax credits may be for up to 100% (as determined by DED) of the costs incurred after the date of DED's approval of Eligible Remediation Costs. Remediation tax credits may only be provided for costs related to the remediation of **hazardous substances** pursuant to sections 260.565 to 260.575, RSMo.

4. Ineligible Costs: The Remediation tax credits shall not include any costs associated with ongoing operational environmental compliance at the facility or remediation costs arising out of spills, leaks, or other releases arising out of the ongoing business operations of the facility by the owner or a lessee.

Remediation that is incurred or performed prior to receipt of a written authorization for remediation tax credits from DED will not be eligible for tax credits and may jeopardize the project's overall eligibility for the program.

5. Time Period: The costs of performing the voluntary remediation activities over a period not in excess of four tax years following the taxpayer's tax year in which the system and equipment were first put into use at the eligible project are eligible, provided the remediation activities are the subject of a plan submitted to and approved by the Department of Natural Resources pursuant to the Voluntary Cleanup Program, sections 260.565 to 260.575, RSMo.

6. Issuance of Remediation Tax Credits: Taxpayers claiming the remediation tax credit must file all applicable tax credit applications, forms and schedules prescribed by DED during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use, or during the taxpayer's tax period immediately after the tax period in which the voluntary remediation activities were performed.

No more than seventy-five percent of earned remediation tax credits may be issued when the remediation costs are paid, and the remaining percentage may be issued when the

Department of Natural Resources issues a "Certificate of Completion" letter or covenant not to sue following completion of the voluntary remediation activities.

7. Length of Time to Use Remediation Tax Credits: The remediation tax credit may be taken in the same tax year in which the tax credits are received or may be taken over a period not to exceed twenty years. The project facility shall otherwise comply with the employment conditions.

8. Taxes Applicable to the Credits: The Remediation tax credits shall be used to offset the tax imposed by chapter 143, RSMo (corporate and personal income tax), excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo (corporation franchise tax), or the tax otherwise imposed by chapter 148, RSMo (financial institution tax).

9. Termination, Suspension, or Revocation of Tax Credits: DED may terminate, suspend or revoke the tax credits and exemptions described in this program if the eligible project facility fails to continue to meet the conditions set forth in these guidelines. In making such a determination, DED shall consider the severity of the condition violation, actions taken to correct the violation, the frequency of any condition violations, and whether the actions exhibit a pattern of conduct by the taxpayer (owner or lessee). DED shall also consider changes in general economic conditions and the recommendation of the Department of Natural Resources concerning the severity, scope, nature, frequency, and extent of any violations of the environmental compliance conditions. The qualified project facility owner or operator may appeal the decision regarding termination, suspension or revocation of any tax credit or exemption in accordance with the procedures outlined in subsections 4 to 6 of section 135.250, RSMo.

10. Recapture: In the event the owner sells the abandoned or underutilized property within a five-year period after the receipt of remediation tax credits, grants, loans, or loan guarantee, subject to section 447,700 to 447.718, the owner shall repay a portion of the tax credits and grant funds provided based on the percentage of the owner's investment for the project to the department of economic development's total financial assistance, upon achieving an annual internal rate of return of twenty-five percent. The internal rate of return calculation shall be documented by the owner's capital gains tax calculation. Owner investment is equity and debt for the eligible project.

11. Maximum Tax Credits: The amount of Remediation tax credits is limited to the lesser of:

(a) The amount necessary to induce the owner to proceed with the eligible project (See Section C13);

(b) The Net State Economic Benefit (See Section C14); or

(c) Eligible remediation costs.

12. Transferability of Remediation Tax Credits: The recipient may assign, sell or transfer, in whole or in part, the Remediation tax credits.

To perfect the transfer, the assignor (person selling the tax credits) shall provide written notice to DED of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address and the assignee's tax period and the amount of tax credits to be transferred. The assignee shall provide written notice to DED specifying the number of consecutive tax periods the transferred tax credits are to be claimed; except that, the number of tax periods during which the assignee may subsequently claim the tax credits shall not exceed twenty tax periods, less the number of tax periods the assignor previously claimed the credits before the transfer occurred.

13. Distribution of Tax Credits: For the purpose of the state tax benefits described in this section, in the case of a corporation described in section 143.471, RSMo, or partnership, in computing Missouri's tax liability, such state benefits shall be allowed to the following:

(a) The shareholders of the corporation described in section 143.471, RSMo;

(b) The partners of the partnership; and shall be apportioned to the entities described in proportion to their share of ownership on the last day of the taxpayer's tax period.

F. IMMUNITY / LIABILITY

1. Terms: As used in section 447.712, RSMo, the following terms shall mean:

(a) "Harm", injury, damage, restitution, death or loss to persons or property, including equitable damages or injunctive relief, caused by or arising out of exposure to a hazardous substance or petroleum at the location of the eligible project, but shall not include harms arising from other causes even if the harm occurs on the remediation site;

(b) "Tort action", a civil action for harm, as defined in this subsection, including an action for recovery for costs of conducting a voluntary remediation as part of a eligible project, but does not include a civil action for damages for a breach of contract or another agreement between a governmental agency and one or more persons, or for breach of an express warranty contained in such agreement.

2. Immunity: A governmental agency, any officer or employee thereof, and the owner are immune from liability and are not liable in a tort action resulting from, or arising out of, performance of an eligible project, including harm inflicted in the performance of any voluntary remediation associated with the eligible project. This immunity shall extend to acts, and failures to act, of the governmental agency and its officers and employees which are required by law or authorized by law as necessary or essential to the exercise of the powers and duties described in sections 447.700 to 447.718. This immunity shall also include the actions or failures to act which were within the discretion of an officer or employee of the governmental agency with respect to policy-making, planning, implementation or enforcement responsibilities under sections 447.700 to 447.718. This immunity of the governmental agency and its employees and the prospective purchaser shall also include any actions and failures to act by the eligible project contractors, subcontractors, suppliers or materials as it may apply to performance of the voluntary remediation. The tort immunity described in this subsection shall cease upon issuance by the department of natural resources of written approval of the completed voluntary remediation.

3. Exceptions to Immunity: The immunity described in this section shall not apply to acts or failures to act of a governmental agency or its officers and employees which were:

(a) Manifestly outside the scope of employment, duties or responsibilities; or

(b) Committed maliciously, in bad faith, or in a wanton and reckless manner.

4. Tort Liability Exemption: No state, county or municipal government or any agency, officer or employee thereof shall be liable in tort or under the state's environmental laws for the ownership of real or personal property acquired by foreclosure upon or acceptance of a

deed in lieu of foreclosure pursuant to a defaulted loan issued under section 447.702, RSMo or repurchase and reversion of the property to the original governmental agency owner under subsection 6 of section 447.704, RSMo, provided the agency did not directly cause or contribute to the cause of the new contamination. Such state, county or municipal governments or agencies thereof shall receive the creditor protections afforded financial institutions under sections 427.011 to 427.041, RSMo.

5. Owner Liability Release: For any eligible project, the owner shall be released from further liability to the extent described in this section based upon the voluntary remediation work actually performed and consistent with the level of risk to human health and the environment remaining after performance of the voluntary remediation activities to remedy the existence of hazardous substances on the property, the release of which occurred prior to the date of acquisition.

6. Department of Natural Resources: For any eligible project, the Department of Natural Resources shall:

(a) Issue a letter requiring no further action from an owner who has performed a Phase I
and Phase II environmental site assessments, as defined at 10 CSR 25-15.010 (2)(A)7 and 8, which demonstrate that no remedial action is necessary to protect the public health and welfare and the environment;

(b) Issue a letter requiring no further action from an owner who has performed voluntary remediation action, as part of a eligible project, pursuant to the requirements of sections 260.565 to 260.575, RSMo, the owner certifies to the department of natural resources that the goals of the owner's voluntary remediation plan have been attained, attainment of the remediation plan goals is verified by the department and, when completed, the voluntary remediation does not treat all hazardous substances present to levels below regulatory action levels due to use of alternative clean up goals, risk reduction solutions, institutional controls, including, but not limited to, use restrictions contained in the deed or other alternative actions. The department of natural resources shall not issue a no further action letter unless the voluntary remediation activities significantly restore, in whole or in part, the environment so as to minimize the harmful effects from a release of a hazardous substance to acceptable risk levels;

(c) Provide a covenant not to sue to an owner who has performed voluntary remediation action, as part of an eligible project, pursuant to the requirements of sections 260.565 to 260.575, RSMo, the owner certifies to the department of natural resources that the remediation goals have been attained, attainment of the remediation goals is verified by the department and, when completed, the voluntary remediation has treated all hazardous substances of concern to levels below then existing regulatory action levels; or

(d) To receive a covenant not to sue from the department of natural resources, the corrective action plan must be submitted for public comment and a public hearing must be held by the department after not less than thirty days' notice to determine

the effectiveness of the remedy for the intended use of the eligible project. The public hearing shall be held in a community where the eligible project is located.

7. Owner Immunity of Liability: Upon successful completion of a voluntary remediation action, as part of an eligible project, the owner shall be immune from liability in a civil action brought by any third party to recover clean-up costs, response costs or other legal or equitable damages, including costs of restitution. Such immunity shall not apply to the failure to remediate hazardous substances in accordance with the voluntary remediation action site plan, statutes and regulations or the failure to operate the facility in compliance with applicable federal, state and local environmental statutes, regulations and ordinances.

8. Exceptions of Owner Immunity: The department of natural resources shall not release the owner for liability arising from, or associated with:

(a) Conditions not identified or addressed in the voluntary remediation action work

(b) Contamination or violations caused or contributed to by the owner after acquiring the abandoned property; except that, this shall not include contamination existing prior to acquisition of the abandoned property or releases of those prior existing contaminants occurring in the course of performing the voluntary remediation activities; and

(c) Unknown hazardous substance contamination or conditions at the time of performance of the eligible project, including the voluntary remediation activities.

9. Report of Violations: Any taxpayer who operates an eligible project facility shall properly report any event or condition which may be suspected to affect or violate any statute, regulation, ordinance, permit condition or order to the affected agency and shall act to investigate all suspected events or conditions with reasonable promptness not to exceed thirty (30) days. The taxpayer shall resolve or initiate appropriate efforts to correct any events or conditions that may constitute or lead to a violation.

G. DNR VOLUNTARY CLEANUP PROGRAM

1. Department of Natural Resources (DNR): The Division of Environmental Quality of DNR administers the "Voluntary Cleanup Program" (also known as the Hazardous Substances Environmental Remediation Program). DNR provides oversight of the cleanup actions and an approval once the remediation has been completed. Upon that approval, the owner and any lenders are immune from further liability, unless they cause new hazardous waste after the approval is made.

2. Voluntary Cleanup Program procedure: For more information on DNR's Hazardous Substances Environmental Remediation Program, call 573/536-8913.

a. Environmental assessments are done on commercial and industrial property as part of most property transfers. These assessments, often required by the lending institution, result from the liability provisions of the federal Superfund law.

b. If hazardous contamination is found, property owners frequently request guidance from the Missouri Department of Natural Resources (DNR) in cleaning up the site. The Hazardous Substances Environmental Remediation Law provides DNR with the resources and the authority to provide such oversight.

c. The owner ("applicant") contacts DNR. DNR provides the applicant with forms (Intent to Participate Agreement and Consent for Access to Property) and instructions.

d. The applicant completes and returns both forms and a $200 application fee. DNR reviews the forms for completeness and regulatory authority and notifies the applicant of acceptance status within 90 days.

e. DNR and the applicant enter into an "Oversight Agreement."

f. The applicant posts a deposit, not to exceed $5,000, with DNR and submits within 90 days of notification a Phase I Assessment and records of any other environmental investigators.

g. Within 180 days, DNR reviews and determines if further site assessment work or remediation is needed.

h. Applicant submits remedial action work plan within 90 days. DNR reviews and approves the remedial action plan within 90 days.

i. Applicant implements the approved plan and schedule with DNR oversight. Oversight can include document review, collecting or splitting samples and field activities to observe remedial actions.

j. Applicant provides quarterly progress reports on DNR forms and a final report once the cleanup is completed.

k. Applicant reimburses DNR for all oversight costs. The application fee and the deposit, which will be deposited into the Hazardous Waste Fund, will be drawn against first. If oversight costs are more than these initial participation fees, DNR will bill the applicant quarterly for the additional costs. If oversight costs are less than the initial participation fees, DNR will reimburse the remainder to the applicant.

l. DNR issues a notice of completion (also called a "clean letter") when the cleanup meets the remedial action plan requirements or when it is determined that no remedial action is required.

m. Applicants can withdraw participation at any time by providing DNR with written notification by certified mail. DNR can terminate applicants from the environmental remediation program for causes as outlined in the law.

n. Applicants can appeal any DNR action to the Hazardous Waste Management Commission within 30 days of the action. Appeals must be submitted in writing to DNR by certified mail.

H. MISCELLANEOUS

Pursuant to the Tax Credit Accountability Act of 2004 (Senate Bill 1099, Sections 135.800 through 135.830, RSMo) the Brownfield Redevelopment program is subject to the following:

1. Reporting Requirements (Section 135.805, RSMo)
A recipient of a redevelopment tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming whether the property is used for residential, commercial, or governmental purposes, and the projected or actual project cost, labor cost, and date of completion.

2. Penalty Provisions (Section 135.810, RSMo)
After credits have been issued, any failure to meet the annual reporting requirements established in section 135.805 or any determination of fraud in the application process shall result in penalties as follows:

(1) Failure to report for more than six months but less than one year shall result in a penalty equal to two percent of the value of the credits issued for each month of delinquency during such time period;

(2) Failure to report for more than one year shall result in a penalty equal to ten percent of the value of the credits issued for each month of delinquency during such time period up to one hundred percent of the value of the credit issued is assessed by way of penalty;

(3) Fraud in the application process shall result in a penalty equal to one hundred percent of the credits issued. No taxpayer shall be deemed to have committed fraud in the application process for any credit unless such conclusion has been reached by a court of competent jurisdiction or the administrative hearing commission.

3. Verification of applicant's tax payment status, when, effect of delinquency (Section 135.815, RSMo)
Prior to authorization of any tax credit application, an administering agency shall verify through the department of revenue that the tax credit applicant does not owe any delinquent income, sales, or use taxes, or interest or penalties on such taxes, and through the department of insurance, financial institutions and professional registration that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that the amount of credits issued shall be reduced by the applicant's tax delinquency.

Closed Records (Sections 610.255 and 620.014, RSMo) Prior to August 28, 2004 and pursuant to Section 620.014, DED had the authority to close certain records except for the name of the tax credit recipient and the amount of the tax credit. SB 1099 removes this broad exception but DED retains the authority to close records or documents that "relate to financial

investments in a business, or sales projections or other business plan information which may endanger the competitiveness of a business" or as also allowed by law.

Fee Imposed on Tax Credit Recipients (Section 620.1900, RSMo)
The department of economic development may charge a fee to the recipient of certain tax credits issued by the department, in an amount up to two and one-half percent of the amount of tax credits issued. The fee shall be payable for deposit in the Economic Development Advancement Fund prior to the issuance of tax credits.

Federal Employment Authorization (Sections 285.525 to 285.555, RSMo) Business entities and employers are prohibited from knowingly employing, hiring, or continuing to employ illegal aliens to perform work in Missouri. Participation in a federal work authorization program which enables employers to electronically verify employment eligibility is required for all public employers and business entities receiving a state contract or grant in excess of $5,000 or a state-administered tax credit, tax abatement, or loan from the state. Participation in a federal work authorization program is an affirmative defense to an allegation that a business entity knowingly hired an illegal alien. A violation of the prohibition against employing illegal aliens by a business entity awarded a state-administered tax credit from the state will result in the suspension or debarment of the business entity from doing business in this state for a period of three years. A second or subsequent violation will result in the permanent suspension or debarment of the business entity from doing business in this state.

For more information regarding the Brownfield Redevelopment Program and other business financing sources, contact:

Missouri Department of Economic Development
Brownfield Program Administrator
P.O. Box 118
Jefferson City, MO 65102
(573) 522-8004
Fax: (573) 522-9462
e-mail: cd@ded.mo.gov
Web: http://www.ded.mo.gov

Missouri Department of Natural Resources
Voluntary Cleanup Program
Hazardous Waste Section
P.O. Box 176
Jefferson City, MO 65102-0176
(573) 526-8913
Fax: (573) 526-8922
Web: http://www.dnr.mo.gov

Brownfield Redevelopment Program

Missouri Department of Economic Development
Missouri Department of Natural Resources

Application Checklist
For Remediation tax credits

NOTE: Refer to the Brownfield Program Guidelines for definitions and rules. There are no deadlines for the submission of an application. Applications may be submitted to the **Missouri Department of Economic Development, Redevelopment Section, P.O. Box 118, Jefferson City, MO 65102. Also submit a copy of the Voluntary Cleanup Program application to the VCP Section, Hazardous Waste Programs, MO Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102-0176.**

Section A: Program Eligibility

_____**1. Eligible Project Description:** Briefly describe the proposed eligible project, including the name of the past owner(s) (and operators, if other than the owner), and the nature of the use(s) of the abandoned property by the prior owner(s) for the previous 5 years. Provide information on any pending or completed lawsuits against the former owner(s) as it relates to the contamination of the abandoned property.

_____**2. Abandoned or Underutilized:** Provide documentation that the property has been vacant for the previous 3 years or that less than 35% of the space is being utilized. (See guidelines and definitions for more detail.)

_____**3. Current Owner:** Provide the name of the current owner of the property, the date which the operations ceased and the facility was completely vacated (must be at least 3 years ago) or documentation that the property qualifies as "underutilized." Provide a certified copy of the warranty deed.

_____**4. Prospective Owner:** Provide the legal name of the entity that proposes to purchase the property; federal identification number; contact person and title; address, city, state, zip, telephone number and fax number of contact person. Indicate the legal organization of the prospective owner (C or S Corporation, LLC, state of incorporation, year established, headquarters address if different from contact person's address.) Indicate the status of a sales contract for the abandoned or underutilized property, the proposed sales price, and the estimated date of the sale. Provide a copy of the proposed or completed sales contract, if available.

_____**5. Location of the Property:** Indicate the street address of the abandoned or underutilized property. Provide a map (showing local streets) and a legal description to identifying the eligible project site. Indicate the square footage of the abandoned or underutilized property.

_____**6. Eligible Business:** Indicate the intended uses of the abandoned or underutilized property. (Exhibit B should be the completed by each proposed business to occupy the property.) Indicate the primary SIC code of the operator or committed lessees.

_____**7. Stockholders of Owner:** Provide a listing of all stockholders (or members of an LLC) of the prospective owner with their respective percentage of ownership. If any of the stockholders/members are NOT a US citizen, or are presently under indictment, parole, or probation, or have been convicted of any criminal offense other than a minor motor vehicle violation, it must be noted. Failure to do so could result in rejection of assistance, and if approved, repayment of all assistance plus penalties, and possible criminal prosecution. (See Exhibit A.)

_____**8. Delinquent Taxes:** State whether the owner, operator, or lessee has any delinquent state, federal, or local taxes, and if so, what actions are being taken to correct the problem. Indicate whether any delinquent taxes are under a payment agreement with a taxing authority.

_____**9. Lawsuits:** Provide information on any pending or completed lawsuits against the prospective owner or lessee, or major stockholders of the owner or lessees that may affect the viability of the business, including the names of the parties, nature of the complaint, status of the lawsuit, settlements completed, verdicts rendered, amount and terms of disposition or settlement, etc.

_____**10. Voluntary Cleanup Program (VCP):** Provide documentation of acceptance into the Voluntary Cleanup Program at the Department of Natural Resources. An applicant may also submit a copy of the application sent to VCP.

SECTION B: Request for Remediation Tax Credits

Submit the following if Remediation Tax Credits are requested for an eligible project.

_____**1. Estimates:** Provide three estimates for the cost of remediation. Three bids should be submitted and the chosen estimate should be noted. Any remediation costs incurred prior to DED and DNR's approval will be ineligible.

_____**2. Lessees** (if applicable): Provide a list of committed or prospective lessees and the type of business of each. Indicate the lease term, lease rate, and square footage used for each. Describe the status of lease execution and a contact person (with telephone number) of prospective lessees.

_____**3. Eligible Project Uses of Funds:** Provide a description of the proposed use of funds for the eligible project (including the sources of cost estimates) as certified by a licensed architect or a professional engineer. Separately identify the capital and ongoing operating costs to be incurred related to the remediation of hazardous substances at the proposed project. Include a sources of funds not only for the remediation, but also for the entire project.

_____**4. Eligible Project Sources of Funds:** Provide a detailed description (name, term, rate, amount and collateral requirements) and PROOF of all proposed or approved sources of financing for the eligible project, and the status of approval for each source. Include a sources of fund not only for the remediation, but also for the entire project. If there is bank financing, provide documentation from the bank verifying debt and equity amounts. Also provide copies of proposals and applications submitted to banks for financing. Justify the amount of Remediation tax credits requested, based on the limitations and requirements set forth in the Program Guidelines, Sections D and E. Indicate the approved amount or the likelihood of use of other State and Federal development incentives. Also, please supply documentation from entities that are guarantying the financing for this project.

_____**5. Appraisal:** Provide a copy of an appraisal of the abandoned or underutilized property (if there is bank financing, provide a copy of the appraisal given to the bank) by a certified appraiser.

_____**6. Least Amount Necessary:** Document that the Remediation tax credits is the "least amount necessary to cause the project to occur" through an internal rate of return analysis. Refer to defined term #13 on page 9.

_____**7. Year-end and Current Financial Statements:** Provide a copy of year-end financial statements (balance sheet, income statement) of the borrower (and parent companies or subsidiaries) for the 2 prior fiscal years, and current (less than 60 days old) interim financial statements of the current fiscal year. Provide tax returns for the past 2 years if the financial statements are unaudited.

_____**8. Projected financial statements:** Provide 5-10 years of projected financial statements, including cash flow statements and a pro forma. Include a detailed justification of the projections and note any significant variation compared to past financial statements. The projections must include the proposed sources of financing and uses of funds as identified herein.

_____**9. Existing Loans/Leases:** For each existing loan or capital lease to the borrower, indicate the name of the lender, current balance, original amount and date, maturity, amortization, interest rate, monthly payment, collateral securing the loan, and status (current or delinquent). For lines of credit, indicate the maximum terms of drawdowns, such as 80% of receivables and 50% of inventory.

_____**10. Owner Compensation:** Indicate the current and proposed amount of compensation (salaries, dividends, fees, bonuses or other withdrawals not including reimbursement of business expenses) to stockholders/members of the borrower and relatives.

SECTION C: Exhibits

_____1. **Exhibit A: Certification of Applicant**

_____2. **Exhibit B: Projected State Economic Benefit**

_____3. **Exhibit C: Local Government Endorsement**

_____4. **Exhibit D: DNR Voluntary Cleanup Program Application**

_____5. **Exhibit F: Certification of Alien Employment**

_____6. **MOU Memorandum of Understanding (attachment to Exhibit F)**

The Memorandum of Understanding Certification certifies that your organization does not employ illegal immigrants (undocumented workers) and the information contained in the application is true, correct, and complete.

The **E-Verify Program**, conducted jointly by the U.S. Citizenship and Immigration Services (USCIS) Verification Division and the Social Security Administration (SSA) is designed to provide employment status information to determine the eligibility of applicants for employment.

E-Verify program requires participating commercial employers use the automated Verification Information System (VIS to check the SSA and the USCIS databases to verify the employment authorization of **ALL** newly hired employees.
To certify that your business / organization do not employ illegal immigrants, **all applicants must:**

- Enroll in E-Verify. Currently an employer's participation in E-Verify is free. To access E-Verify website, go to: https://www.vis-dhs.com/employer_information.htm

- Sign Exhibit F Certification of Alien Employment confirming enrollment and participation in E-Verify

- Provide supporting documentation by including a copy of the executed Memorandum of Understanding.