

PUBLICATION

TDEC Develops New Model Brownfield Agreement, Further Regulatory Developments Planned

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The Tennessee Department of Environment and Conservation (TDEC) recently announced that it has developed a new template agreement for use under Tennessee's Voluntary Cleanup Oversight and Assistance Program, Tennessee Code Annotated Section 68-212-224, referred to as Tennessee's Brownfield or VOAP program. Under Tennessee's Brownfield program, the Commissioner of TDEC may enter into a Brownfield Voluntary Agreement (BVA) or a Consent Order for the investigation and/or remediation of a site at which the expansion, redevelopment, or reuse of the property is complicated by the presence of or potential presence of pollution.

The new model BVA addresses significant legal issues relating to environmental liability for contaminated property and supersedes any previous template utilized by TDEC.

The new and improved BVA model agreement is intended to achieve consistency across all TDEC regional offices in terms of basic format, definitions and liability provisions. However, while the new template recognizes that there are some provisions that may not be revised because they are based upon statutory or programmatic considerations, there is some flexibility to modify parts of the model based upon site-specific circumstances and the model provides optional language in some provisions for commonly encountered differing circumstances.

Once an application is made to enter into TDEC's Brownfield program, the model BVA is to be submitted for technical review to the Regional Brownfield Coordinator in TDEC's Division of Remediation for the location of the site. After technical review is complete, the draft BVA is submitted to TDEC's Brownfield and Voluntary Program Coordinator for review. TDEC's Office of General Counsel conducts the final review for the Department. Because the model BVA has been extensively reviewed by the Office of General Counsel, TDEC notes that proposing changes to the model BVA outside of those previously approved by TDEC will extend the review time for approval of a Brownfield Voluntary Agreement for a contaminated site.

In the near future (first quarter 2020), the publication of a revised model for the Notice of Land Use Restrictions (NLUR) is anticipated. The NLUR is applied as a deed restriction and is utilized at those contaminated sites at which institutional controls are required for a BVA approved by TDEC.

Following soon after, it is anticipated that TDEC will propose revisions to the Solid Waste and Disposal Regulations and the Hazardous Substances Remedial Action Regulations of the Department which will address contaminated soils. The new regulations will be intended to provide further guidance on "urban soils" and how to address soils that are contaminated above background concentrations but below any regulatory standards or guidance. These slightly, or moderately contaminated soils have been considered solid wastes by the Division of Solid Waste Management, requiring special handling.

For more information on the proposed revisions, please contact [Wayne Cropp](#).