

Environmental Liability Release Program

Contaminated Property Redevelopment Act



Our Mission: To protect and improve the health and environment of all Kansans.

Contaminated Property Redevelopment Act

Certificate of Environmental Liability Release ("CELR")

- July 1, 2016
- Prospective purchasers of contaminated properties
- Municipalities, governmental entities, or lending institutions acquiring property through seizure, condemnation, foreclosure, or default
- State liability only

Our Mission: To protect and improve the health and environment of all Kansans.

CELR

Eligibility

1. Property **must be** contaminated
(exclusions: radon, lead-based paint or asbestos)
2. Applying entity is not the responsible party for the identified contamination



Both conditions shall be met in order to be considered for a CELR.

CELR Eligibility

Property Criteria

- ✓ Not Retroactive; property acquired after **July 1, 2016**
- ✓ Contamination does not result from lead-based paint (LBP) or Asbestos Containing Material (ACM)
- ✓ Is not subject to Nuclear Energy Development and Radiation Control Act K.S.A. 48-1601
- ✓ Is not the source of contamination for a site listed or proposed for listing on the NPL
(i.e., Superfund Sites under CERCLA)

Our Mission: To protect and improve the health and environment of all Kansans.

CELR Eligibility

Property Criteria

- ✓ If property is the contaminant **source** and is eligible for cleanup under the Kansas Storage Tank or Drycleaner Trust Funds, must be enrolled in the appropriate program.



CELR Eligibility

Prospective Purchaser Criteria

- ✓ Does **not** currently own the property
 - CELR must be issued prior to taking ownership
- ✓ Has not exacerbated the contamination
- ✓ No direct or indirect familial relationship with the owner **or** the party responsible for the contamination
- ✓ No contractual, corporate or financial relationship with the owner **or** the party responsible for the contamination
 - Excludes that by which the property is conveyed or financed
- ✓ Has not provided **indemnification** or release of environmental liability to any other party
- ✓ Not the **subject** to a contract, agreement, or order with the intended purpose of performing investigation or remediation of contamination at the property

Our Mission: To protect and improve the health and environment of all Kansans.

CELR Eligibility

Current Owner Criteria

(governmental entity or financial institution)

- ✓ Acquired property through seizure, condemnation, foreclosure or default; or
- ✓ Governmental entity or local municipality (State of Kansas, county township, city, school district, etc.)
 - Did not know and could not have reasonably foreseen the threat of contamination; or
 - Did know of potential contamination and took reasonable steps to prevent exacerbation
- ✓ Has not exacerbated the contamination
- ✓ No direct or indirect familial relationship with the owner or the party responsible for the contamination

Our Mission: To protect and improve the health and environment of all Kansans.

CELR Eligibility

Current Owner Criteria Cont.

(governmental entity or financial institution)

- ✓ No contractual, corporate or financial relationship with the owner **or** the party responsible for the contamination
 - Excludes that by which the property is conveyed or financed
- ✓ Has not provided **indemnification** or release of environmental liability to any other party
- ✓ Not the **subject** to a contract, agreement, or order with the intended purpose of performing investigation or remediation of contamination at the property

Our Mission: To protect and improve the health and environment of all Kansans.

CELR Application



KANSAS CERTIFICATE OF ENVIRONMENTAL LIABILITY RELEASE APPLICATION

Please read each section carefully to ensure a complete and accurate response. Any incorrect or incomplete sections could result in processing delays or render the application void. The applicant must be able to demonstrate and provide the necessary documentation (Section 4) that contamination exists on the property. If this requirement cannot be met, please do not proceed with the application process.

Section 1. APPLICANT

Applicant Name:		Contact Name:	
Address:	City:	State:	Zip Code:
Primary Phone:		Alternate Phone:	
Email:			

The applicant as identified above ("APPLICANT"), hereby certifies to the State of Kansas that the APPLICANT is *[mark only one box]*

- a prospective purchaser
- the current owner (must be a governmental entity or financial institution)

of real property ("PROPERTY") located at the address identified below and seeks a Certificate of Environmental Liability Release ("CELR").

Property Address:		
City (or Township):	County:	Zip Code:
Tax Lot # or Parcel Identification #:		
Legal Description:		

Section 2. PROPERTY OWNERSHIP

If APPLICANT is the current owner, per Section 1, please check the following boxes *[mark all that apply]*:

- APPLICANT acquired the PROPERTY through seizure, condemnation, foreclosure or default.
Date of PROPERTY acquisition: _____
Please attach all documentation necessary for verification purposes.
- APPLICANT is the State of Kansas or subdivision thereof, a county, township, city, school district, or other political or taxing subdivision of the state.
- APPLICANT did not know and could not have reasonably foreseen the threat of contamination.
- APPLICANT knew of potential contamination on the PROPERTY and took reasonable steps to prevent the exacerbation of the identified contamination.

Please provide details in the space provided on page 2 about the known conditions of the property at the time of acquisition and any actions that may have been performed to address any identified contamination. Please provide supporting documentation, if available, for KDHE consideration.

If APPLICANT is a prospective purchaser, per Section 1, provide the following PROPERTY ownership information.

Owner Name:		Contact Name:	
Address:	City:	State:	Zip Code:
Primary Phone:		Alternate Phone:	
Email:			
Anticipated Property Transfer/Closing Date:			

Section 3. CONFLICTS, AGREEMENTS, and INDEMNIFICATION

The APPLICANT affirms *[mark all that apply]*:

- no direct or indirect familial relationship with the current PROPERTY owner;
- no direct or indirect familial relationship with the party responsible for the contamination;
- no contractual, corporate, or financial relationship with the current PROPERTY owner or the party responsible for the contamination, other than that by which such APPLICANT'S interest in the PROPERTY was conveyed or financed;
- it has not entered into nor is the subject of any contracts, agreements, or orders with the intended purpose of performing investigation or remediation of contamination at the PROPERTY; and,
- it has not provided indemnification or release of environmental liability to any other party regarding contamination at the property.

[Not marking all of the boxes in Section 3 may render the APPLICANT ineligible for a CELR. Please provide an explanation in the space below for any unmarked boxes and provide supporting documentation for KDHE consideration].

CELR Application

Section 4. CONTAMINATION AND DOCUMENTATION

Documentation of the presence of contamination at the PROPERTY is required to issue a CELR. Please indicate which of the below documents have been completed and will be provided to KDHE for consideration [mark all that apply].

- A current Phase I Environmental Site Assessment prepared on behalf of the APPLICANT
- A current Phase II Environmental Site Assessment prepared on behalf of the APPLICANT.
- Other Environmental Assessment Reports which document the presence of contamination on the PROPERTY or any other information to facilitate KDHE's review.

The APPLICANT must provide a list of all reports and other documents, including those referenced in previous sections, to be submitted to KDHE in support of this application. Please indicate whether such reports and documents are enclosed with this application or if the APPLICANT prefers to upload via KDHE MoveIT web portal.

Document Title (Attach additional list as needed)	Enclosed		MoveIT
	Hard Copy	CD, flash drive	

*KDHE will accept either hard copies or electronic copies (i.e., compact disc or flash drive) of the documents as attachments to this application. Alternatively, the APPLICANT may select to upload the documents via KDHE MoveIT web portal. If the APPLICANT selects the KDHE MoveIT option, following receipt of the application, KDHE will send an invite to the APPLICANT with instructions for uploading.

Section 5. SIGNATURE

By signing this document, the undersigned acknowledges they are the authority to sign this application and certifies that [please mark all that apply]:

- the applicant is not the party responsible for the contamination;
- the applicant has not caused nor exacerbated the contamination on the PROPERTY;
- the information provided herein is true, accurate, and complete to the best of the applicant's knowledge;
- the applicant agrees to provide immediate notification to KDHE BER in the event new information becomes available that may be contrary to that provided herein; and,
- upon receiving a CELR, the applicant agrees to adhere to the future obligations set forth in KDHE BER Policy No. BER-RS-058

Please note, this application will not be approved if any of the boxes in Section 6 remain unchecked.

The undersigned has enclosed the appropriate application fee (mark only one).

- Class I CELR Property \$700
- Class II CELR Property \$1,000
- Class III CELR Property \$2,000

Providing false, inaccurate, or incomplete information to BER or failing to provide updated information as required may render the Site ineligible to receive a CELR. Execution of this application form does not constitute a CELR, and the undersigned may terminate this application at any time by notifying KDHE BER.

The application and associated fee should be submitted to:

Environmental Liability Release Program
 Attn: Long-term Stewardship Unit Chief
 KDHE Bureau of Environmental Remediation
 1000 SW Jackson, Suite 410
 Topeka, KS 66612-1367
 Phone: 785-296-1673

Name (print or type): _____ Title: _____

Signature: _____ Date: _____

.....

State of _____

County of _____

This instrument was acknowledged before me on insert date _____ by Name of property owner _____ whose identity was proved to me on the basis of satisfactory evidence.

Notary Public

Property Classifications

Class I - Prospective Purchasers - \$700

- Phase I ESA Report w/title search ←
- Phase II or other report to demonstrate contamination
- Straightforward ownership history in addition to current and historical operations being similar in nature
- Affirmation statements in Section 3 are all marked and require no explanation

Property Classifications

Class II - Prospective Purchasers or Current Owner - \$1,000

- Phase I ESA Report w/title search ←
- Assessment report to demonstrate contamination
- Applicant may be current owner (meet previous criteria)
- Ownership history slightly more complex but current and historical operations have been similar in nature
- Affirmation statements in Section 3 are all marked and require no explanation

Property Classifications

Class III - \$2,000

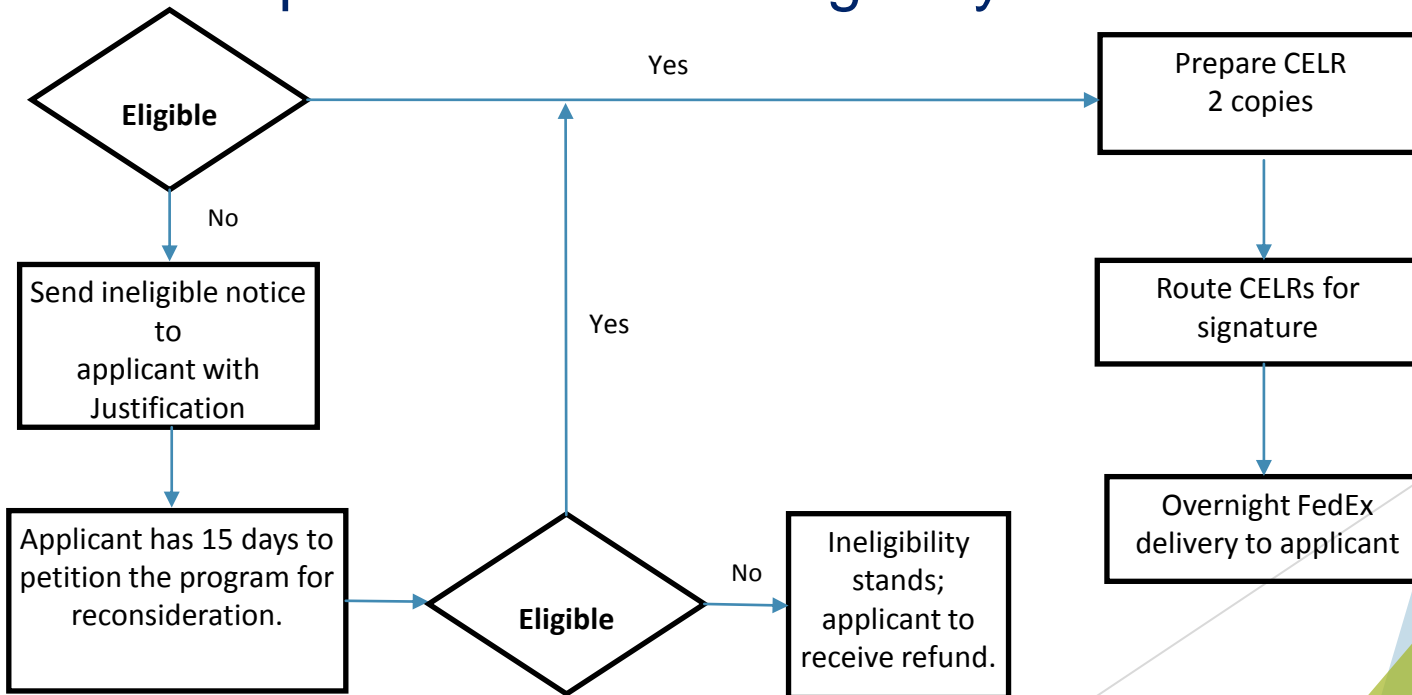
- No Phase I ESA Report
- Phase II or other report to demonstrate contamination onsite
- Applicant may be current owner (meets previous criteria)
- Complex ownership history and various facility uses and past operations
- Affirmation statements in Section 3 are all marked and require no explanation
- Property may contain multiple parcels

Our Mission: To protect and improve the health and environment of all Kansans.

Processing Timeline

15 business days to make determination following receipt of complete application

- KDHE will send notice within 3 to 5 days
- Complete review and eligibility determination



Our Mission: To protect and improve the health and environment of all Kansans.

Certificate Holder

Future Obligations

- ✓ Provide reasonable access for future environmental investigation and remediation by KDHE or other party performing activities under KDHE oversight;
- ✓ Cannot exacerbate or otherwise increase risk posed by contamination associated with the property or interfere with a department-approved remedy on the property;
- ✓ Comply with all requirements specified in any environmental use control agreements or risk management plans established for the property;
- ✓ Provide notification to KDHE within 30 days of sale or transfer of the property to which the Certificate Holder is a party; and,
- ✓ Disclose the CELR to any future purchasers of the property, until such time as the cleanup levels for unrestricted use have been attained at the property.

Our Mission: To protect and improve the health and environment of all Kansans.

Certificate Holder

Future Obligations - Redevelopment

If proposed redevelopment will encounter or is likely to encounter impacts

- strongly recommend participation in a state program like Voluntary Cleanup
- help to ensure that redevelopment does not exacerbate existing impacts

Example – metals in near surface soils; redevelopment consists of new building with basement. Likely to encounter metal-impacted soils during excavation. State response program can assist in ensuring you do not generate hazardous waste, which you are then responsible for addressing, regardless of CELR

Example – TCE in groundwater, which is 20 ft bgs; redevelopment consists of continued use of the existing building, as is. Unlikely to encounter impacts; therefore, unlikely to exacerbate or increase risk

- Unless that continued use is a drycleaner!

Our Mission: To protect and improve the health and environment of all Kansans.

Certificate Holder

Not in Compliance

- KDHE to provide written notice advising of the conditions/requirements not being met and provide direction and establish a deadline for getting back into compliance
- Certificate Holder will have up to 30 days, or less when more immediate actions are required, to correct non-compliance issues.
- Certificate Holder remains out of compliance – KDHE may **revoke** the CELR

Our Mission: To protect and improve the health and environment of all Kansans.

Latest Stats

As of April 1, 2018

- 67 applications have been received
 - Of those, 4 have been determined to be ineligible
- A majority of the applications are processed within a week of receiving a complete application

Our Mission: To protect and improve the health and environment of all Kansans.



Questions



Our Mission: To protect and improve the health and environment of all Kansans.

Andrea Schiller

Unit Manager

KDHE: Bureau of Remediation

1000 SW Jackson, Suite 410

Topeka, KS 66612-1367

phone: (785) 296-0489

Andrea.schiller@ks.gov



www.kdheks.gov

Our Mission: To protect and improve the health and environment of all Kansans.