

# Brownfield Continuous Program Improvement Workgroup Committee Recommendations

**Committee Name:** Liability

## **Issue Statement #1:**

Whether to use grant, loan and Act 381 funds to benefit a party that was not responsible for causing a release, but may be technically liable under Part 201.

## **Specific Action to be Taken:**

Statutory     Rule     Policy     Governance (Process)

## **Recommendations:**

Allow the use of grant, loan and Act 381 funds to benefit a party that is not responsible for a release.

## **Supporting Arguments:**

### I. Pros

There have been instances when a party acquired property for development and the party was technically liable because of a faulty BEA or failure to submit the BEA on a timely basis. There are other instances when an owner is technically liable because of strict liability, such as RCRA Corrective Action sites under Part 111 and PCB contamination under TSCA. It makes good policy sense to encourage development on those parcels when the property owner was not responsible for the activity resulting in the contamination. This also aligns with the substance of the Part 201 liability scheme.

### II. Cons

To the extent there are limited funds available (particularly for grants and loans), some funds may be used that would benefit a technically liable party and such funds would be unavailable to benefit a non-labile party.

## **Draft Legislative Language (if appropriate):**

Change Section 15(1)(c) to state as follows:

“Use taxes levied for school operating purposes captured from eligible property for response activities that benefit a party that is responsible for an activity causing a release at the eligible property, except that a municipality that established the authority they used taxes levied for school operating purposes captured from eligible property for response activities associated with a landfill.”

# Brownfield Continuous Program Improvement Workgroup Committee Recommendations

Draft similar change to Part 196 as needed.

## Recommended Follow up Actions (if appropriate):

Train DEQ staff that implement these programs.

## Issue Statement #2:

What funding should occur under these programs if a viable liable party exists?

## Specific Action to be Taken:

Statutory     Rule     Policy     Governance (Process)

## Recommendations:

1. If the developer is responsible for an activity causing a release, no funding would be available under these programs.
2. If the seller is responsible for an activity causing a release, due care activities would be eligible for grant, loan and/or Act 381 funds, but additional response activities would not be eligible.
3. If a viable party exists that is responsible for the activities causing release, but is neither the seller nor the developer, due care activities would be eligible for grant/loan/381 funds, and additional response activities would be eligible for loan and Act 381 funds (if approved by the DEQ), but not grant funds.

## Supporting Arguments:

### I. Pros

If the developer is responsible for activities causing a release, it should not receive any funds, even if the proposed development is desired. On the other hand, if the developer is not responsible for an activity causing a release, funds from these programs should be made available for due care activities, since due care activities often go beyond activities required of a liable party. But such funds should not be available for additional response activities, since those activities are more likely to overlap with the responsibility of the liable party. When neither the seller nor the developer is liable (i.e., responsible for an activity causing a release), but there is a viable liable party, it may be appropriate in some instances to allow certain additional response activities, such as source removal, to both facilitate the development as well as provide significant environmental benefit.

### II. Cons

## **Brownfield Continuous Program Improvement Workgroup Committee Recommendations**

There may be limited funds, particularly under the grant and loan programs.

### **Draft Legislative Language (if appropriate):**

A revision will be needed to Part 196 to provide that grant and loan funds can be used for additional response activities, as defined in Act 381.

### **Recommended Follow up Actions (if appropriate):**

Draft appropriate policy.

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