

INDIANA DEVELOPMENT FINANCE AUTHORITY

Indiana Voluntary Remediation Tax Credit (VRTC) Guidelines

INTRODUCTION

Indiana taxpayers that perform the remediation of an Indiana brownfield site may apply for the Voluntary Remediation Tax Credit (VRTC), a financial brownfields redevelopment tool administered by the Indiana Development Finance Authority (IDFA). The VRTC is available to any taxpayer that meets the statutory eligibility requirements and is subject to one or more of the following Indiana taxes: the state gross retail and use tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax. Eligible remediation projects may, but are no longer required to, enter the Indiana Department of Environmental Management's (IDEM) Voluntary Remediation Program (VRP) to receive the tax credit. VRTC applications are accepted on a rolling basis, but the credits are awarded in chronological order starting in the tax year that the remediation is completed. VRTC applicants are strongly encouraged to discuss their prospective project with IDFA prior to applying.

The VRTC amount will be the **lesser of 10% of the total cost of the remediation or \$100,000**. The costs identified during the final state certification of the project must be consistent with the remediation cost estimates that are submitted and approved in the application process.

OBTAINING THE VRTC

An applicant for the Indiana VRTC must complete the following general tasks in order to obtain the credit:

- Develop a remediation plan for its brownfield site;
- Complete a VRTC application (available at www.idfabrownfields.com). IDFA will transmit all application information, on behalf of the applicant, to the local legislature from which the credit will be sought. This information will assist the local legislature in making certain statutory findings, including a determination that the applicant has not contributed to, and has never had a business or personal interest in a party that contributed to, the contamination that is being remediated¹;
- Receive certification, provided jointly by IDFA and IDEM, that the remediation plan meets the criteria for a "qualified investment" (see the Additional Information section below for description of a qualified investment);
- Obtain a resolution from the local legislative body that approves the project and the associated credit (see the Additional Information section below for more information regarding the local approval process);
- Conduct the remediation;
- Receive final state certification that takes the form of either the IDEM **cost certification** (for non-VRP projects) **OR** the IDEM **Certificate of Completion** (for VRP projects);
- Submit required project documentation materials to IDFA and the Indiana Department of Revenue (IDR); and
- Conform to other eligibility requirements.

Exhibit A: "Eight Action Steps" provides a graphical and narrative description of the VRTC process and specific steps that must be taken to obtain the credit.

NOTE 1 "Contribute to Contamination"

A person will be considered to "Contribute to Contamination" if the person caused the release, exacerbated the contamination, or failed to take reasonable steps to prevent a release. Mere ownership of land does not constitute contributing to contamination.

VRTC APPLICATION INFORMATION

The application for the VRTC will solicit the following general information, in addition to other pertinent information as deemed necessary by IDFA:

- Contact and background information regarding the applicant;
- Information about the previous three (3) owners and occupants of the site, including type and nature of business activities performed on the site;
- Zoning information for the site;
- Redevelopment plans/proposal and timeline for the project;
- Sources and amounts of funding for the brownfield redevelopment project, including but not limited to acquisition, remediation, and redevelopment costs;
- Estimates of the number and type of jobs created or retained, and the wages of those jobs, as a result of the brownfield redevelopment project;
- Past site assessments and other pertinent environmental data, where applicable;
- Environmental remediation plan for the project with detailed cost estimates;
- Acknowledgement that the taxpayer did not contribute to, and has never had a business or personal interest in a party that contributed to, the contamination of the site; and
- Information that demonstrates a good faith effort to recover costs.

ADDITIONAL INFORMATION

Definition of a “qualified investment”

Per Indiana statute (IC 6-3.1-23-3), a “qualified investment” for the purpose of the VRTC consists of remediation costs:

- Resulting from work performed in Indiana to conduct a voluntary remediation of a brownfield;
- Not recovered by a taxpayer from another person after the taxpayer has made a “**good faith effort**” to recover the costs (see below for information regarding a “good faith effort”);
- Not paid from state brownfields financial assistance;
- Resulting in taxable income to any other Indiana taxpayer; and
- Approved by IDEM and IDFA.

*******NOTE*******

The qualified investment certification MUST be made prior to the start of remediation activities. Any costs incurred before the qualified investment certification will not be eligible for the credit.

“Good Faith Effort”

A “good faith effort” will be considered a pro-active effort by the taxpayer to recover the expected or actual costs of remediation. This effort will, at a minimum, require the taxpayer to take and demonstrate assertive steps to:

- (1) identify all responsible parties involved in the contamination of the project property;
- (2) determine the legal, financial, and administrative remedies that are available (to the taxpayer seeking the VRTC) to recover the remediation costs from the responsible parties; and
- (3) initiate action on reasonable remedies.

In most instances, completing these steps will require the taxpayer or a representative to correspond with the responsible parties, thereby requesting: information, performance of remediation or, reimbursement of expected or actual costs of remediation. Completing and demonstrating a good faith effort to recover costs may necessitate the use of legal, scientific, or financial professionals.

Approval of local legislative body

The local legislative body where the site is located must pass a resolution approving the brownfield redevelopment project and the associated credit. By statute, the taxpayer must submit to the legislative body the following information:

- Proposed redevelopment plan;
- Sources and amounts of funding for the project;
- Estimates of the value of the proposed redevelopment; and
- Proof that the taxpayer did not contribute to, or have a business or personal interest in a party that contributed to, the contamination at the project property.

The local legislative body must then pass a resolution approving the credit whereby the resolution makes the following findings:

- The estimates of the remediation and redevelopment are reasonable for a project of that nature;
- The project is in the best interests of the community
 - with specific consideration of, among other things, whether the proposed redevelopment results in the development of housing, greenspace, high technology jobs, or the creation/retention of high paying jobs; and
- The taxpayer did not contribute to, or have a business or personal interest in a party that contributed to, the contamination at the project property (See Note 1, Page 1).

IDFA will provide the local legislative body, on behalf of the taxpayer, all of the application information provided by the taxpayer in the application process. By doing so, all parties will have an expedited means of sharing pertinent information required in the tax credit process.

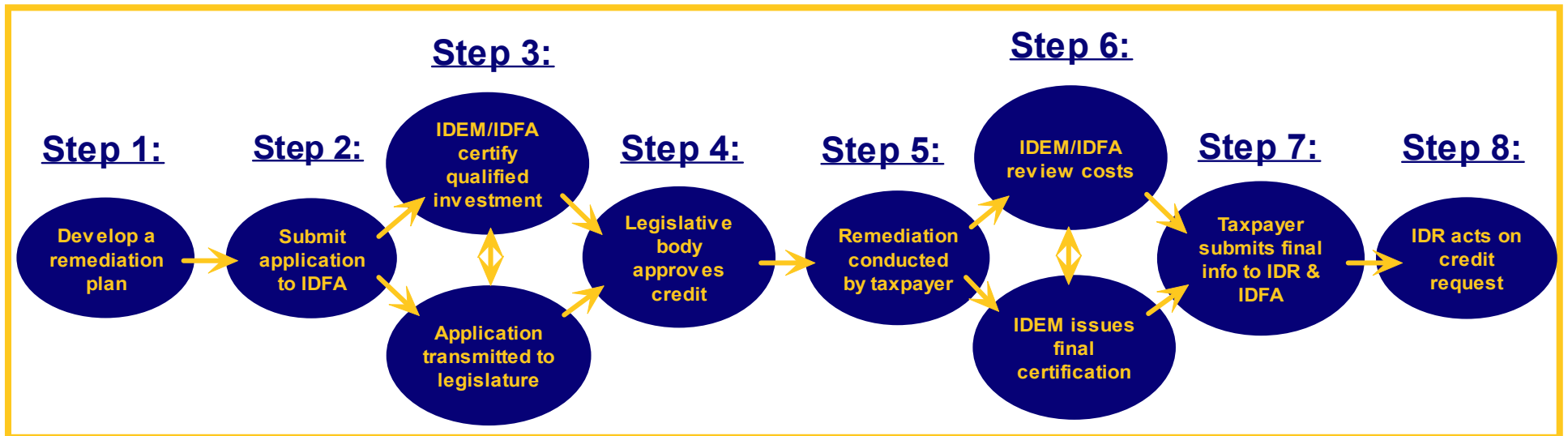
CONTACT INFORMATION

We welcome comments on the VRTC at any time. Questions regarding these guidelines or the VRTC may be directed to Calvin Kelly, IDFA deputy director, by email at ckelly@idfa.state.in.us or by phone at (317) 233-4332. These guidelines may be modified at any time by the IDFA Board to address demand and other issues to promote the effective and efficient administration of the IDFA Brownfields Program.

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Exhibit A
Voluntary Remediation Tax Credit (VRTC) Action Steps

- VRTC ACTION STEPS -



Step 1: Develop a remediation plan

In this initial step the taxpayer, together with an environmental professional, will develop a remediation plan that will be the basis for the tax credit. During this first step, the taxpayer also decides if the project will be enrolled in the IDEM's VRP. At this time, the applicant is also encouraged to consult with an IDFA staff member regarding details of the project and intentions to pursue the VRTC.

Step 2: Submit VRTC application to IDFA

The VRTC application will be available for completion using an Internet-based online submittal process. The application will solicit general applicant and project information including but not limited to: current and past owner information; remediation plan (including detailed cost estimates) and redevelopment plan

(Step 2 – Continued)

information; past environmental assessment information; zoning information for the site; sources and amounts of funding planned for the redevelopment; taxpayer confirmation that they did not contribute to, or have a business or personal interest in an entity that contributed to, the contamination at the site¹; and steps taken to perform a good faith effort to recover costs (see VRTC Guidelines for additional information on a “good faith effort”). At this stage, the taxpayer should initiate contact with the local legislative body in preparation for Step Four (below).

Step 3: Remediation plan certified

In this step, IDEM and IDFA will pre-certify the remediation plan as a qualified investment by examining the proposed remedial activities and their associated costs. When necessary, IDEM and IDFA will comment on any additions/corrections needed to the scope or associated costs of the remedial activities. NOTE: IDEM and IDFA must pre-certify all remediation plans as qualified investments in order to establish credit eligibility.

Step 4: Local legislature approves the credit

In approving the VRTC request by the taxpayer, the local legislative body must make certain findings through passage of a formal resolution. To facilitate this process, IDFA will transmit to the local legislative body all of the project information provided in the taxpayer application, in addition to the certification of the qualified investment (see Step Three, above). The local legislative body must consider certain project characteristics, as defined by statute, concluding that the project is in the best interest of the community. The legislative finding approving the tax credit completes this action step.

IDFA will provide educational assistance, as requested, to the local legislative body in its consideration of the credit application.

Step 5: Remediation by the taxpayer

The taxpayer initiates remedial activities at the brownfield site in this step. Recall that the taxpayer must receive confirmation of the qualified investment certification BEFORE remediation costs are incurred, in order for those costs to be offset by the credit. Furthermore, it should again be noted that the credit will not be viable until the local legislative body passes the approving resolution. During the course of remedial activities, the taxpayer should exercise appropriate care to document all costs incurred for the remedial activities that are performed.

Step 6: Final certification issued

Upon completing the remedial activities at the brownfield site, the taxpayer must submit copies of all applicable invoices to IDFA and IDEM, whereupon both agencies will examine the costs incurred. This review will determine if the costs incurred from remediation activities are consistent with those certified as a

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(Step 6 – Continued)

qualified investment (Step Three). Allowances for costs that differ from what was previously certified in the qualified investment phase will be granted by the IDEM and IDFA on a case-by-case basis, if at all.

Upon determination that the incurred costs are valid and consistent with what was previously certified as a qualified investment, IDEM will issue **either** a cost certification document (for non-VRP projects) **or** a Certificate of Completion (for non-VRP projects). One of the two aforementioned certificates, in addition to other documentation, must be submitted by the taxpayer to the Indiana Department of Revenue (IDR) to formally claim the VRTC.

Step 7: Taxpayer submits credit materials to IDR and IDFA

The taxpayer, upon completing all other requirements for the credit, will submit the applicable certification – and any other form(s) or information required by statute – to the IDR, with copies to IDFA.

Step 8: IDR approves or disapproves credit

After receiving all of the necessary submittals from the taxpayer, the IDR will examine the credit request and will act upon the request in the chronological order that the request was received and in keeping with the annual credit capacity available, as designated by the IDFA. If the IDR approves the credit, it will inform the taxpayer and the IDFA of the approval.

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