

Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
DEPARTMENT OF ENERGY RESOURCES

**SOLAR MASSACHUSETTS RENEWABLE TARGET PROGRAM 3.0
(225 CMR 28.00)**

GUIDELINE

Guideline Regarding the Definition of Brownfield

1) Purpose and Background

This document provides guidance regarding the manner in which a property may qualify as a Brownfield under the Department of Energy Resource's (Department) Solar Massachusetts Renewable Target (SMART) Program at 225 CMR 28.00.

A primary focus of the SMART program is to promote optimal siting of solar away from greenfield and open space land uses. For the SREC II program implemented under 225 CMR 14.00, the Department, in consultation with the Massachusetts Department of Environmental Protection (MassDEP), established a definition of Brownfield. The SMART program will continue to utilize that definition in the SMART Program.

All capitalized terms in this Guideline are defined in 225 CMR 28.02.

2) Definition of a Brownfield in SMART

225 CMR 28.02: Definitions defines Brownfield as follows:

A disposal site that has received a release tracking number from MassDEP pursuant to 310 CMR 40.0000: Massachusetts Contingency Plan, the redevelopment or reuse of which is hindered by the presence of oil or hazardous materials, as determined by the Department, in consultation with MassDEP. For the purposes of 225 CMR 28.02: Brownfield, the terms "disposal site," "release tracking number," "oil," and "hazardous materials" shall have the meanings giving to such terms in 310 CMR 40.0006: Terminology, Definitions and Acronyms. No disposal site that otherwise meets the requirements of 225 CMR 28.02: Brownfield shall be excluded from consideration as a Brownfield because its cleanup is also regulated by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921 - 6939g, or any other federal program.

The regulatory definition has two major components: (a) the presence of a disposal site that has been assigned a release tracking number (RTN) by MassDEP and (b) the presence of oil or hazardous materials that hinder redevelopment or reuse of a disposal site. Each component is discussed in greater detail below.

a) A disposal site that has received a RTN from MassDEP pursuant to 310 CMR 40.0000:

MassDEP maintains a database of approximately 58,000 releases of oil or hazardous materials that have been assigned a RTN as of January 2025. Typically, MassDEP will assign

a RTN to a disposal site when someone with knowledge of the release reports it to MassDEP, or if MassDEP discovers the release through its own investigations.

MassDEP regulates the cleanup of these sites under M.G.L. c. 21E and the Massachusetts Contingency Plan (“MCP”) at 310 CMR 40.0000. A complete inventory of disposal sites with RTNs is available online and can be searched by RTN, disposal site name, address, status, and/or chemical type. Results include lists of site actions, maps, and links to both electronically submitted and scanned documents. The list is found here:

<https://eeaonline.eea.state.ma.us/portal#!/search/wastesite>.

Of the releases that have received an RTN, as of January 1, 2025:

- 6% (3,300) are “open” and undergoing cleanup;
- 77% (45,000) have reached regulatory closure with a permanent solution under the MCP. Of these releases that have reached a Permanent Solution:
 - 90% have a Permanent Solution with No Conditions
 - 10% have a Permanent Solution with Condition
- 2.5% (1,100) require deed notices or use restrictions as part of the remedy.
- 1% (600) of sites have achieved a Temporary Solution; and
- 16% (10,000) of sites fall into other site categories (including being linked to other RTNs).

Some disposal sites with RTNs are also regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675 (CERCLA), the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921 – 6939g (RCRA), or some other federal program. The regulation of such sites under a federal program does not automatically exclude it from consideration as a potential Brownfield under the Department’s regulation.

- b) The redevelopment or reuse of property is hindered by the presence of oil or hazardous materials, as determined by the Department, in consultation with MassDEP:

The presence of oil or hazardous materials that hinders redevelopment or reuse of property was inherent to the crafting of the Department’s definition of Brownfield. The incentives are intended to recognize, and help overcome, the disincentives to reuse or redevelopment that may result from the presence of oil or hazardous materials in environmental media.

The following are examples of common activities or expenses that could hinder redevelopment or reuse of properties at which oil or hazardous materials are present. These activities and expenses could arise during predevelopment or the development phase. The following list is not intended to be exhaustive:

- i. Predevelopment:
 - (1) Agreements to manage liability and other risk management activities;
 - (2) Evaluation of site conditions to characterize the nature and extent of contamination;
 - (3) Evaluation of actual or potential limitations on future site use based on the documented nature and extent of contamination at the site ;and
 - (4) Other environmental due diligence.
- ii. Development:
 - (1) Cleanup costs;

- (2) Costs associated with compliance with environmental restrictions, such as installation of ballasted systems and raised conduits (i.e. to avoid digging); and
- (3) Soil management.

The Department, in consultation with MassDEP, reads the definition of Brownfield broadly to recognize a wide array of costs and other disincentives associated with the presence of oil or hazardous materials. Generally, “open” sites, or sites that have not reached a permanent solution under the MCP, are eligible for consideration as a Brownfield, assuming cleanup costs and other issues arising out of the presence of oil or hazardous materials are a real and demonstrable hindrance to reuse or redevelopment. “Closed” sites may, in some circumstances, be considered Brownfields. For example, environmental restrictions or activity and use limitations (“AULs”) may hinder numerous forms of development, making the property a good candidate for solar development. Even sites without AULs but cleaned up to a level of no significant risk and/or for unrestricted use, may in some circumstances be burdened with material soil management or other material disincentives that hinder future development.

Sites may not qualify where the presence of contamination, or the costs and other disincentives associated with that contamination, are merely speculative or are *de minimis* in comparison to the overall development project, or where the presence of oil or hazardous materials have not been demonstrated to reasonably hinder reuse or redevelopment. Sites cleaned up to background are unlikely to be considered a Brownfield.

i. Appropriate Reuse or Redevelopment

A significant collateral benefit of the reuse or redevelopment of Brownfields is the protection and preservation of natural resources on undeveloped land. The Department established the Brownfield incentives to acknowledge that the reuse or redevelopment of contaminated property may have a higher cost than a similar “green field” development project. A project receiving the Brownfield adder must demonstrate that it is facilitating the “redevelopment or reuse” of a disposal site. If the disposal site is on largely undeveloped land and the Project Footprint extends beyond the disposal site boundaries, the Applicant must demonstrate how the contamination has hindered the redevelopment or reuse of the property that is outside the disposal site boundaries and why the most appropriate redevelopment or reuse of that portion of the property is not for it to remain undeveloped.

3) Submission of Pre-Determination Request

The Department’s regulation states that the Department, in consultation with MassDEP, will make a determination as to whether a project is located on a Brownfield.

An Applicant planning to submit a Statement of Qualification Application for a project with a Brownfield Location Based Adder must submit to the Department a Brownfield Pre-Determination Request Form prior to submitting a Statement of Qualification Application. The Pre-Determination Request Form should be accompanied by all necessary supporting documentation, that demonstrates that the project is sited on land that would meet the definition of a Brownfield. A copy of the Brownfield Pre-Determination Request Form is included as Attachment A to this Guideline.

The Pre-Determination Request Form requires the applicant to provide the following:

- i. Documentation of the Authorized Representative or Owner for Statement of Qualification under 225 CMR 28.00.

- ii. Documentation of the receipt/assignment of an RTN.
- iii. Documentation showing that the redevelopment and/or reuse of the property is hindered by the presence of oil or hazardous materials, including:
 - (1) Estimate(s) of past, present and/or future cleanup costs from one or more Licensed Site Professionals (LSPs) as to how much any remaining cleanup will cost, or other credible and specific evidence of future cleanup costs, as well as documentation as to how cleanup will be achieved (required if on-going cleanup obligations remain).
 - (2) Evidence showing that the marketability or development of the site has been hindered by the presence of oil or hazardous materials, including, for example and if applicable:
 - Evidence that the property containing the disposal site has been on the market at fair market value but remains unsold, due to costs and other issues associated with oil or hazardous materials present at the site;
 - Evidence showing that the owner of the property containing the disposal site has been unable to obtain financing due to costs and other issues associated with oil or hazardous materials present at the site;
 - Evidence showing that environmental restrictions or AULs materially hinder redevelopment and reuse of the property;
 - Evidence of the site being abandoned by the current or recent owners due to the presence of oil or hazardous materials; or
 - Any other evidence
 - (3) If the disposal site is on largely undeveloped land and the Project Footprint extends beyond the disposal site boundaries, evidence as to how the contamination has hindered the redevelopment or reuse of the property that is outside the disposal site boundaries and why the most appropriate redevelopment or reuse of that portion of the property is not for it to remain undeveloped.

A Pre-Determination Request Form and accompanying documentation must be submitted electronically to doer.smart@mass.gov.

The Department will respond to a Pre-Determination Request Form either with a request for additional information or the issuance of a Brownfield Pre-Determination Letter. Prior to the issuance of a Brownfield Pre-Determination Letter, the Department will consult with MassDEP. The Department's Brownfield Pre-Determination Letter is not a final agency decision, is not binding on the Department or MassDEP and does not give rise to any appeal right under M.G.L. c. 30A, or any other law. The Brownfield Pre-Determination Letter is based on the information provided to the Department consistent with this Guideline. The Department reserves the right to make a different determination in its Statement of Qualification should information provided to the Department in connection with a Pre-Determination Request prove to be materially inaccurate or incomplete.

4) Exception to the 5,000 kW Requirement

Under 225 CMR 28.07(5)(b)1.b, Solar Tariff Generation Units (STGUs) applying as a Brownfield or Landfill are permitted to be sized up to 10,000 kW. Such systems shall receive the Base Compensation Rate for 1,000 – 5,000 kW STGUs.

Existing Brownfield STGUs under 225 CMR 20.00 or 225 CMR 28.00 that would like to increase the size of the system are eligible to construct an additional system under 225 CMR 28.08(5)'s Project Segmentation rules. The new system will need its own SMART application and Statement of Qualification, but the property will not be required to submit a new Pre-Determination application. In place of a Pre-Determination application, the

Applicant shall self-certify that the change in the project size does not change or contradict the information included in their prior Brownfields Pre-Determination application.

Applicants shall also demonstrate that the full dimensions of the new, larger facility are located on the property that was determined to be a Brownfield. The additional system must meet all applicable requirements of 225 CMR 28.00 and this Guideline. The Department may request additional documentation as necessary to evaluate new system applications. The Department will issue a revised Pre-Determination Letter for the new system to qualify for the Brownfield Locational Compensation Rate Adder.

5) Project Segmentation

Under 225 CMR 28.08(5)(a)5., an STGU on a Brownfield may be located on the same parcel as another STGU on a Brownfield, provided that the two STGUs are separately metered and their total combined capacity is $\leq 10,000$ kW. This segmentation exception is only necessary if the existing Brownfield is qualified for SMART 3.0 under 225 CMR 28.00, as STGUs under SMART 1.0 and 2.0 (225 CMR 20.00) are not subject to the project segmentation rules under 225 CMR 28.05(5).



ATTACHMENT A: Pre-Determination Request Form

Massachusetts Department of Energy Resources (DOER) and Massachusetts Department of Environmental Protection (MassDEP)

“Brownfield Pre-Determination Request Form” (225 CMR 28.00)



A. Name of Entity that will Apply For Statement of Qualifications under 225 CMR 28.00 (please print)

Name of Applicant

Company Name (if applicable)

Type of Entity:

☐ Corp. ☐ Trust ☐ Partnership ☐ LLC ☐ Nonprofit ☐ Other:

Mailing Address

City/Town

State/Zip

Email Address

Telephone Number

Cell ☐ Home ☐ Office ☐

B. Assignment of a Release Tracking Number (RTN)

Does the property on which the Generation Unit will be located contain a disposal site that has received a Release Tracking Number (RTN) in accordance with 310 CMR 40.0000? [Link to Site List: [Sites](#)]

☐ No

☐ Yes RTN(s)

Notification Date

City/Town of Disposal Site

Release Address

Site Name/Location Aid

C. Redevelopment Or Reuse Is Hindered By The Presence Of Oil Or Hazardous Materials

Provide the following supporting documents for each category [check where attachments provided] explanation to

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1. Estimate of Cleanup Costs

Estimate(s) of past, present and/or future cleanup costs from a Licensed Site Professionals (LSPs) as to how much any remaining cleanup will cost, or other credible and specific evidence of future cleanup costs, as well as documentation as to how cleanup will be achieved. (Required if cleanup obligations remain.)

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2. Evidence of Marketability

Evidence showing that the marketability or development of the site has been hindered by the presence of oil and/or hazardous materials: (check all that may apply):

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a. Evidence that the property containing the disposal site has been on the market at fair market value but remains unsold, due to costs and other issues associated with oil and/or hazardous materials present at the site.

☐

b. Evidence showing that the owner of the property containing the disposal site has been unable to obtain financing due to costs and other issues associated with oil and/or hazardous materials present at the site.

☐

c. Evidence showing that environmental restrictions or Activity Use Limitations materially hinder redevelopment and reuse of the property.

☐

d. Evidence of the site being abandoned by the current or recent owners due to the presence of oil and/or hazardous materials.

☐

e. Other evidence.

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3. Evidence as to Appropriate Reuse

If the disposal site is on largely undeveloped land and the Project Footprint extends beyond the disposal site boundaries, evidence as to how the contamination has hindered the redevelopment or reuse of the property that is outside the disposal site boundaries and why the most appropriate use of that portion of the property is not for it to remain undeveloped.

C. Signature Statement. [to be signed by authorized representative of Owner or Operator of Potential Generation Unit, or Authorized Agent of Owner or Operator, as defined by 225 CMR 28.02]

I, _____, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all supporting documents accompanying this form, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. I/the person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate, or incomplete information.

Printed name

Signature

Date