

# Brownfield Voluntary Agreement: Tennessee Department of Environment and Conservation and Memphis Site Owner Execute Agreement



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03/12/2021

The Tennessee Department of Environment and Conservation Division of Remediation (“TDEC”) and the Montgomery Partnership (“Montgomery”) executed a February 26th Brownfield Voluntary Agreement (“BVA”) addressing a Memphis, Tennessee, site. See Site No. 79-943.

The property is described in the BVA as Wendy’s #246 Site (“Site”).

Montgomery is stated to intend to continue to operate a restaurant on the Site. In other words, it will not undertake redevelopment at the Site.

Many states (including Tennessee and Arkansas) and the federal government have statutes, regulations, and policies that are intended to address “brownfields.” Brownfields are often referred to as real property (improved or unimproved), the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substances, pollutants or contaminants.

Incentive provisions, liability exemptions, and action/cleanup standards have been utilized for a number of years to attempt to reduce the barriers for reuse or redevelopment of brownfield properties. The goal of the brownfield programs is to encourage redevelopment investment in such properties to increase the local tax base, facilitate job growth, utilize existing infrastructure, and take pressure off greenspace.

Tennessee has operated a Brownfield Redevelopment Program since 1996. The state’s program includes T.C.A. § 7-53-316 (Redevelopment of Brownfield Sites and Economically Disadvantaged Areas) which can provide in some instances tax increment financing for brownfield sites. It is intended to provide incentives for the redevelopment of urban brownfield redevelopment projects.

The BVA entered into between TDEC and Montgomery provides that:

... Pursuant to Tennessee Code Annotated section 68-212-224, the Commissioner is authorized to enter into an Agreement with a party who is willing and able to conduct an investigation and/or remediation of a hazardous substance site or Brownfield Project and who did not generate, transport, or release the contamination that is to be addressed at the Site.

The BVA sets out the actions required by Montgomery including the scope and schedule of activities at the Site in response to the actual, threatened, or perceived release of hazardous substances.

The BVA provides that Montgomery is not being required to fully remediate the pre-existing environmental conditions referenced. Instead, it is required to take certain actions specified in the Agreement to “ensure that the identified environmental impacts and conditions do not pose a threat to the human health or the environment.” In return, the BVA provides Montgomery certain agreed liability relief in regards to Site conditions.

Components of the BVA include:

- Site Location
- Eligibility
- Financial Requirements
- Identification and Documentation of Matters Addressed
- Agreed Liability Relief
- Administrative Settlement; Third Party Liability
- Agreed Actions to be Taken
- Additional Requirements
- Site Access
- Submission of Information, Reports, or Studies
- Reservation of Rights
- Site Description
- Summary of Technical Reports for the Site
- Notice of Land Use Restrictions

A copy of the Agreement can be downloaded [here](#).