

Petroleum Site

Version 7/22/15 (Post Award) Brownfields Site Eligibility Evaluation

Site Name: EPA Project Officer Name: EPA Project Officer Approval: Yes No Date: ORC Name: ORC Recommends Approval: Yes No Date:

This document is based on the published proposal guidelines and is meant as a tool to help EPA staff make post award site eligibility determinations for community-wide site assessments and revolving loan fund site cleanups. State agencies have the authority to make Brownfield eligibility determinations for petroleum contaminated sites. Recipients should first request Petroleum site eligibility determinations from the relevant state agency. In the event that the state does not make the determination please submit information as outlined in the following document and EPA will a determination. EPA will make determinations for Indian Country.

The Brownfields Law outlines specific criteria by which petroleum contaminated sites may be eligible for EPA Brownfields grant funding. In contrast to eligibility of hazardous substance sites, which is related to the applicant's potential liability under CERCLA, Brownfields petroleum site eligibility is not related to potential liability under the Resource Conservation and Recovery Act (RCRA), which governs petroleum site liability. Instead, Congress set forth specific eligibility criteria as follows:

- the site must be of "relatively low risk",
- there can be no viable responsible party,
- the applicant cannot be potentially liable for cleaning up the site and the site must not be subject to a RCRA corrective action order.

This document cannot summarize all potential issues. For a more complete discussion please refer to the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants at: <http://www.epa.gov/brownfields/applicat.htm>. Nothing in this document is intended to supplement or supersede the Proposal Guidelines or applicable law.

The grantee or RLF applicant must provide answers to the following questions to the best of their knowledge:

A. Grant InformationA1. Grantee or RLF applicant Name: A2. Grant Number: A3. Grantee or RLF applicant Contact person:

A4. Grant Type

 Community Wide Assessment RLF

A5. Work to be conducted (please check all that apply):

 Phase I Assessment Phase II Assessment Supplemental Phase II RLF Loan RLF Subgrant

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A6. Property Name:

A7. Property Address:

A8. Type of Site (site must either be predominantly petroleum or have a distinguishable area of petroleum contamination be eligible for full or partial petroleum funding and to use this checklist):

The site is **primarily** contaminated with petroleum products.

Petroleum is defined under CERCLA as crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under that section. There may be some hazardous substances at petroleum sites but petroleum must be the predominant contamination. **If a site has distinguishable areas of hazardous substance and petroleum contamination it may be possible to use both hazardous substance and petroleum funding at the site for recipients who have both types of funding.** Petroleum sites are typically former gasoline or diesel dispensing, storage or processing facilities.

B. Ineligible Sites & Sites Which Require Property Specific Determination

Some sites are not eligible by statute, others sites may require different information than included in this document please complete **Attachment A**, before moving on to Section C.

C. Site Background Information

C1. Does the site meet the following definition of a Brownfields Site? Is the site “real property, the expansion, redevelopment or reuse of which is complicated by the presence or potential presence of hazardous substances, pollutants or contaminants”?

Yes No *(If No, the site is ineligible)*

C2. Provide below (next page) or attach a **1-2 paragraph explanation** of how and when the site became contaminated including a description of any previous known uses and any known disposal of hazardous substances, pollutants or contaminants. If the land has been vacant for many years, indicate why you think the site is contaminated. You may attach relevant pages of Phase I or other investigation reports, if available.

C3. List known or suspected contaminant(s).

D. Petroleum Site Eligibility – Responsible Party

The questions in this section will help answer Question F1 below (whether there is a **responsible party** at the site for the purpose of Brownfields Grant funding)

D1. Has the grantee or RLF applicant (or its tenants) ever:

- a. dispensed or disposed of petroleum or petroleum product at the site?
 Yes (If Yes, the site is ineligible) No
- b. exacerbated the contamination at the site?
 Yes (If Yes, the site is ineligible) No

D2. Has a responsible party been identified through any of the following?

- a. a judgment rendered in a court of law or an administrative order that would require any party to assess, investigate, or cleanup the site?
 Yes (If Yes, the site is ineligible) No
- or b. a filed enforcement action brought by federal or state authorities that would require any party to assess, investigate, or cleanup the site?
 Yes (If Yes, the site is ineligible) No
- or c. a citizen suit, contribution action or other 3rd party claim against the current or immediate past owner, that would, if successful, require that party to assess or clean up the site?
 Yes (If Yes, the site is ineligible) No

D3. The **current site owner** is:

Has the current owner:

- a. dispensed or disposed of petroleum or petroleum product at the site?
 Yes No
- b. owned the property during the dispensing or disposal of petroleum product at the site?
 Yes No
- c. exacerbated the contamination at the site?
 Yes No
- d. taken reasonable steps with regard to contamination at the site? *
 Yes No

Describe:

D4. The **immediate past owner** is:

Has the immediate past owner:

- a. dispensed or disposed of petroleum or petroleum product at the site?
 Yes No
- b. owned the property during the dispensing or disposal of petroleum product at the site?
 Yes No

- c. exacerbated the contamination at the site?
 Yes No
- d. taken reasonable steps with regard to contamination at the site? *
 Yes No

Describe:

**“Reasonable steps: with regard to contamination at the site” includes, as appropriate; stopping continuing releases, preventing threatened releases, and preventing or limiting human, environmental or natural resource exposure in to earlier petroleum or petroleum product releases for more information see EPA’s March 6 2003 “Common Elements” guidance. See web link at:*

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>

E. Petroleum Site Eligibility – Responsible Viable Party

Responsible Party: If either the current or immediate past owner dispensed or disposed of petroleum or petroleum product at the site; owned the site during the dispensing or disposing of petroleum product; exacerbated the contamination or did not take reasonable steps with regard to contamination, the site may be deemed to have a responsible party.

- E1. Based on Section D above, for purposes of EPA Brownfields Grant Program funding only, is there a responsible party (*current or immediate past owner*) in regard to the contamination?
 Yes (*continue to question E2*) No
- E2. If there is a responsible party, is that party financially viable? Is the party financially capable of satisfying obligations under applicable federal or state law to conduct the activities contemplated under the grant for assessing or cleaning up the site?
 Yes, there is a viable responsible party. (*The site is ineligible*)
 No

Please check box below and describe the basis for that conclusion:

- Applicant has information indicating that a responsible party is insolvent (e.g., bankrupt) or defunct (no longer in business).
- Applicant has searched records and databases to locate and determine financial capability of the responsible party.
 Other (Explain):

At a minimum the applicant must make reasonable efforts to locate the responsible party and determine financial status, such as by searching local or county records and other comprehensive publicly-available national database(s) (e.g. LexisNexis database - general locator and combined deed transfer, tax assessor records and mortgage record files).

Because of the complexities of Petroleum sites, consultation with legal counsel will be necessary. Your Project Officer will notify you of the site eligibility determination or if additional information is required.

Additional Information *(Please identify section needing further description):*

Attachment A

Ineligible Sites and Sites Requiring Property Specific Determinations

Property Name:

Property Address:

I. Sites Not Eligible for Funding By Statute*If the answer is Yes to any of the questions below the site is ineligible.*

1. Is the facility listed (or proposed for listing) on the National Priorities List?
If Yes, the site is ineligible.
 Yes No
2. Is the facility subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA? *If Yes, the site is ineligible.*
 Yes No
3. Is the facility subject to the jurisdiction, custody, or control of the US government? (*Question does not apply for land held in trust by the US government for an Indian tribe*). *If Yes, the site is ineligible.*
 Yes No

II. Sites Eligible for a Property Specific Determination by EPA*If the answer is Yes to any of the questions below (1 –7), a property specific determination is required. The grantee or RLF applicant will need to submit additional information. (See Appendix 4 of the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants.)*

1. Is the site / facility subject to a planned or ongoing CERCLA removal action?
 Yes No
1. Has the site/facility been the subject of a unilateral administrative order, court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or been issued a permit by the U.S. or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SWDA)?
 Yes No
3. Is the site/facility subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and has there been a corrective action permit or order issued or modified to require corrective measures?
 Yes No

Attachment A - continued

4. Is the site/facility a land disposal unit that has submitted a RCRA closure notification under subtitle C of RCRA and is subject to closure requirements specified in a closure plan or permit?
 Yes No
5. Has the site/facility had a release of polychlorinated biphenyls (PCBs) that is subject to remediation under TSCA?
 Yes No
6. Has the site/facility received funding for remediation from the Federal Leaking Underground Storage Tank (LUST) Trust Fund¹?
 Yes No
7. Is the Site an Excluded RCRA Facility? 1) RCRA permitted facilities. 2) RCRA Interim status facilities requiring corrective action or to address contamination such as facilities under RCRA §3008(a), §3008(h) §3013 and §7003. 3) Facilities under corrective action and 4) Land disposal units that have notified EPA or an authorized state of their intent to close or that have closure plans or permits.
 Yes No

If you answered NO to all questions in Attachment A – move on to Section C of the Brownfields Eligibility

¹ The Federal LUST Trust Fund is distinct from state cleanup funds such as the Underground Storage Tank Cleanup Fund run by the California State Water Resources Control Board.