

# NJIT TAB & USEPA RLF Workshop October 13 & 14, 2010



RLF 101  
Site & Borrower/Subgrantee  
Eligibility



# Topics

- Eligible Sites
- Property Specific Determinations
- Eligible Borrowers & Subgrantees
  - Hazardous Substances
  - Petroleum



# Eligible Sites

- The site must be a Brownfield:  
*“real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant”*





# Eligible Sites

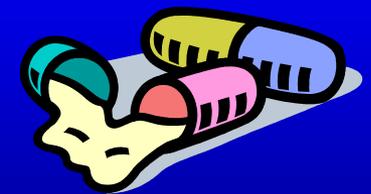
- Hazardous Substances

- ✓ Metals, PAHs, PCBs, etc.
- ✓ Asbestos
- ✓ Lead paint
- ✓ See CERCLA § 101(14) & § 101(33)



- Controlled Substances Sites

- ✓ Methamphetamine labs
- ✓ See Section 102 of the Controlled Substances Act, 21 USC § 802





# Eligible Sites

- Mine-Scarred Land Sites

- ✓ Abandoned coal mines
- ✓ Abandoned lands scarred by strip mining
- ✓ Associated support and processing areas



- Petroleum Sites





# Eligible Sites

- Sites **Not** Eligible

- ✓ Listed or proposed for listing on National Priorities List (NPL)

- ✓ Subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued or entered into under CERCLA

- ✓ Subject to the jurisdiction, custody, or control of the US Government (does not include tribal land)





# Property Specific Determinations

- Sites Requiring Property Specific Determinations
  - ✓ Planned or ongoing CERCLA removal action
  - ✓ Permit issued under Solid Waste Disposal Act, FWPCA, TSCA, or SDWA
  - ✓ Subject to corrective action under RCRA 3004(u) or 3008(h)
  - ✓ Land disposal unit submitting a closure notification under RCRA subtitle C
  - ✓ Release of PCBs subject to remediation under TSCA
  - ✓ Received funding from LUST Trust Funds



# Property Specific Determinations

- Property Specific Determination criteria:
  - ✓ Protect human health & the environment AND either:
    - Promote economic development or
    - Enable the creation, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or non-profit purposes





# Eligible Borrowers & Subgrantees

- Eligible Borrowers

- ✓ States
- ✓ Municipalities
- ✓ Political Subdivisions
- ✓ US Territories
- ✓ Indian Tribes
- ✓ Non-Profits
- ✓ Private Developers

- Eligible Subgrantees

- ✓ States
- ✓ Municipalities
- ✓ Political Subdivisions
- ✓ US Territories
- ✓ Indian Tribes
- ✓ Non-Profits





# Eligible Borrowers & Subgrantees

- Petroleum Sites

✓ States or EPA make statutory determinations:

- Site is relatively low risk
- No viable responsible party
- Applicant is not liable for contamination
- Site not subject to corrective action under RCRA §9003(h)





# Eligible Borrowers & Subgrantees

- Petroleum Sites

- ✓ Borrower or subgrantee is not responsible party at site
  - Did not dispense or dispose of any contamination at the site
  - Did not own the site at the time of dispensing or disposal of contamination at the site
  - Did not exacerbate contamination at the site
  - Took reasonable steps with regard to contamination at the site
    - Stop continuing releases
    - Prevent future releases
    - Limit exposure to earlier petroleum releases



# Eligible Borrowers & Subgrantees

- Hazardous Substances Sites
  - ✓ The borrower or subgrantee cannot be potentially liable under CERCLA § 107; liable parties under CERCLA include:
    - Current owners and operators of facility
    - Past owners or operators at time of disposal of hazardous substances
    - Generators or transporters of hazardous substances



# Eligible Borrowers & Subgrantees

## Hazardous Substances

- CERCLA Liability Protections or Defenses

- ✓ Bona fide prospective purchaser
- ✓ Involuntary acquisition by units of state or local government
  - Tax delinquency or foreclosure
  - Eminent domain
  - Abandonment
  - Bankruptcy
- ✓ Contiguous property owner
- ✓ Innocent landowner





# Eligible Borrowers & Subgrantees

## Hazardous Substances

- General requirements for most CERCLA liability protections

Property owner must:

- ✓ Conduct All Appropriate Inquiries PRIOR to acquiring property
- ✓ Not be potentially liable or affiliated with any person who is potentially liable through:
  - Familial relationship
  - Contractual, corporate, or financial relationship OTHER THAN
    - One through which title to the facility is transferred or financed
    - Contract for sale of goods and services
- ✓ Comply with all continuing obligations AFTER acquiring property



# Eligible Borrowers & Subgrantees

## Hazardous Substances

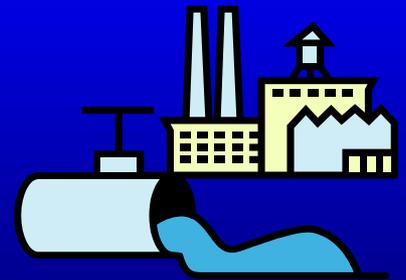
- Bona fide prospective purchaser (BFPP)
  - ✓ All disposal of hazardous substances occurred PRIOR to acquisition of property
  - ✓ Conducted all appropriate inquiries (AAI) PRIOR to acquisition of property
  - ✓ Not liable for contamination at site or affiliated with any other person potentially liable for response costs at site
  - ✓ Exercises appropriate care regarding contamination including
    - Stopping any continuing releases
    - Preventing future releases or exposures.



# Eligible Borrowers & Subgrantees

## Hazardous Substances

- Bona fide prospective purchaser (BFPP) con't.
  - ✓ Provides all legally required notices
  - ✓ Provides access to persons authorized to conduct response actions
  - ✓ Cooperates with persons authorized to conduct response actions if release of hazardous substances occurs on the property.
  - ✓ Complies with any land-use restrictions on the property.





# Eligible Borrowers & Subgrantees

## Hazardous Substances

- Innocent landowner

- ✓ Property acquired AFTER disposal of hazardous substances
- ✓ Must perform AAI PRIOR to acquisition
- ✓ DID NOT KNOW or have reason to know that hazardous substances were disposed of on property
- ✓ The act causing release of hazardous substances was by a third party with whom property owner has no relationship



# Eligible Borrowers & Subgrantees

## Hazardous Substances

- Contiguous property owner
  - ✓ Must perform AAI prior to acquisition of property
  - ✓ DID NOT KNOW or have reason to know that property was or could be contaminated by hazardous substances from contiguous property
  - ✓ Not affiliated with person potentially liable for response costs



# Eligible Borrowers & Subgrantees

- Additional subgrantee eligibility requirements:
  - ✓ The subgrantee must own the site (fee simple title) at the time the subgrant is awarded and throughout the period of performance of the subgrant
  - ✓ You must document how each subgrant will:
    - Facilitate the creation or preservation of greenspace;
    - Benefit the needs of low income communities who have limited sources of funding for cleanup & redevelopment;
    - Facilitate the use of existing infrastructure; and
    - Promote the long-term use of RLF funds



# Eligible Borrowers & Subgrantees

- Subgrant flexibility & limitations:
  - ✓ RLF grantee **CANNOT** subgrant to itself
  - ✓ Maximum \$200k per property (more with waiver)
  - ✓ Can combine with \$200k EPA cleanup grant
  - ✓ Can combine subgrants from two or more RLFs from separate entities



# Acronyms

- AAI – All Appropriate Inquiries
- BFPP – Bona Fide Prospective Purchaser
- CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
- FWPCA – Federal Water Pollution Control Act
- LUST – Leaking Underground Storage Tanks
- NPL – National Priorities List
- PAH – Polycyclic Aromatic Hydrocarbons
- PCB – Polychlorinated Biphenyls
- PRP – Potentially Responsible Party
- RCRA – Resource Conservation and Recovery Act
- SDWA – Safe Drinking Water Act
- TSCA – Toxic Substances Control Act



# Questions?





# Eligibility Exercise

- Read the three example projects
- For each example site consider:
  - Is this an eligible site?
  - What information led you to make this decision?
  - Is the borrower or subgrantee eligible?
  - What information led you to make this decision?
  - Is the information provide enough to make these determinations?
  - What additional information do you need?
  - Would the site and borrower or subgrantee be eligible if you received additional information?