

Frequently Asked Questions (FAQs) for Fiscal Year (FY) 15 Brownfields Assessment and Cleanup Grants

EPA prepared these Frequently Asked Questions and Answers to assist prospective applicants with preparing Brownfields Assessment and Cleanup Grant proposals for the FY15 competition. Please review the FY 2015 Proposal Guidelines/Request for Proposals (RFP) published in October 2014 when preparing your proposal. If there is a conflict between the answer to a question and the statute, regulation, or the Guidelines, the statute, regulation or the Guidelines take precedence. The FAQs will be updated periodically as we continue to receive questions.

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Brownfields Grant Guidelines Frequently Asked Questions (FAQs)

Applicants are encouraged to pay careful attention to Section IV of the RFP “Proposal Submission Information” and follow the instructions and formatting requirements for submitting a proposal. Applicants should thoroughly review the Ranking Criteria (Section V.B) prior to submitting a proposal.

I. CHANGES TO THE GUIDELINES – New in FY15

Q1. How have the Assessment, Revolving Loan Fund and Cleanup (ARC) Grant Request for Proposal (RFP) changed since the FY14 competition?

A1. EPA has made several revisions to the ARC RFP in FY15. The most significant changes are below. Additional changes are described in the “Summary of FY15 Brownfields Assessment and Cleanup (AC) Guideline Changes” document, which is available on the Office of Brownfields & Land Revitalization website (www.epa.gov/swerosps/bf/applicat.htm).

A. General changes to the FY2015 ARC RFP are as follows:

- 1) *Proposal Submission*: If an applicant opts to submit their proposal in hard copy, two hard copies should be submitted. One copy should be mailed to Environmental Management Support, Inc., as described in IV.C of the RFP. The second copy should be mailed to the EPA Regional Brownfields Contact listed in Section VII of the RFP.
- 3) *Point Distribution*: The points available for Assessment proposal is 200 points and for Cleanup proposals is 105. Additionally, the point distribution between the criteria have changed. Applicants are encouraged to closely review the new point distribution structure in Section V.B. of the RFP.
- 4) *Ranking Criteria Structure and Language*: While the nature of the information requested is the similar that of prior RFPs, applicants will notice a slightly different order and more sub-criteria for evaluation. Applicants are encouraged to closely review the new structure and language of the Ranking Criteria in Section V.B. of the RFP.
- 5) *Significant Altered Criterion – Community Engagement & Partnerships*: In FY2014, applicant were required to discuss their planned efforts to partner with a health agency. The revised criterion language clarifies that applicants must only describe their partnership with a ‘health agency’ when the health agency is the environmental authority or when the health agency is relevant to the project goals and activities.
- 6) *“Other Factors” and the “Other Factors” Checklist* are updated with additional considerations and the ‘Climate Change’ other factor has been deleted. Documentation of relevant “Other Factors” should be included in the 15-page narrative proportion of the proposal. New and revised factors include the following.
 - Community experienced manufacturing plant/power plant closure(s) (2008 or later) tied to the targeted brownfield sites or project area, including communities

experiencing auto plant/power plant closures due to bankruptcy or economic disruptions.

- Recent (2008 or later) significant economic disruption (unrelated to a natural disaster or manufacturing/auto plant/power plant closure) has occurred within community, resulting in a significant percentage loss of community jobs and tax base.
- Applicant is one of the 12 recipients, or a core partner/implementation strategy party, of a “manufacturing community” designation provided by the Economic Development Administration (EDA) under the Investing in Manufacturing Communities Partnership (IMCP). To be considered, **applicants must clearly demonstrate in the proposal the nexus between their IMCP designation and the Brownfield activities.** Additionally, **applicants must attach documentation** which demonstrates either designation as one of the 12 recipients, or relevant pages from a recipient’s IMCP proposal which lists/describes the core partners and implementation strategy parties. A core partner/implementation strategy party is a local partner organization/jurisdiction that will carry out the proposed strategy, as demonstrated in letters of commitment or memoranda of understanding which documents their contributions, roles, and responsibilities to the partnership. EDA may provide to EPA a list of the core partners/implementation strategy parties for each of the 12 “manufacturing community” designees, which EPA would use to verify this other factor.
- Applicant will serve an area designated as a federal, state, or local Empowerment Zone or Renewal Community. To be considered, **applicant must attach documentation** which demonstrates this current designation.
- Applicant is a HUD Promise Zone community. To be considered, **applicant must attach documentation.**

7) **ASTM Standard:** All statements regarding Phase I assessments being performed in accordance with ASTM E1527-05 now reference the ASTM E1527-13 standard.

B. Changes to Threshold Criteria are as follows:

There are no changes to the Assessment or Cleanup threshold criteria.

C. Changes specific to the Assessment RFP are as follows:

Threshold: Applicants who received an Assessment Grant from EPA in Fiscal Year 2014 (FY14) **are** eligible to apply under this competition. If the applicant was a member of a coalition that was awarded a grant in FY14, that applicant is also eligible to apply under this assessment competition.

D. Changes specific to the RLF Grant RFP are as follows:

Availability of Revolving Loan Fund Grants: A solicitation for new Revolving Loan Fund grants will not be issued in FY2015. EPA expects to requests from existing, high performing RLF grantees through a Federal Register notice for supplemental RLF funding.

E. Changes specific to the Cleanup Grant RFP are as follows:

There are no changes to the Cleanup RFP.

II. DEFINITIONS

Q2. **What is a Brownfields Site?**

- A2. For the purposes of EPA’s Brownfields grant program, a “Brownfields Site” is: “...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.” In order to be eligible for Brownfields grant funding, the site(s) covered by your application must meet the definition of a Brownfield site.

Brownfield sites also include, but are not limited to, three specific types of properties eligible for funding:

- (1) sites contaminated by petroleum or a petroleum product;
- (2) sites contaminated by controlled substances; and
- (3) mine-scarred lands.

Some sites are excluded from the definition of a Brownfield site, though many of these may be eligible if EPA makes a “property-specific determination” that allows grant funds to be used at that site. This process is explained in Appendix 1, section 1.5 of the Brownfields Grant Proposal Guidelines.

For a more detailed discussion on Brownfields sites eligible for funding, please refer to the Appendices of the Proposal Guidelines for Brownfields Assessment and Cleanup Grants on the EPA website at www.epa.gov/brownfields.

Q3. **How does EPA interpret “non-profit organizations” and how can such organizations participate in brownfields revitalization under the 2002 Brownfields Law amendments?**

- A3. For the purposes of the Brownfields grant program, EPA will use the definition of non-profit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107, 31§ USC 6101, Note.

This law defines non-profit organizations to mean any corporation, trust, association, cooperative, or other organization that:

- is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- is not organized primarily for profit; and
- uses net proceeds to maintain, improve, or expand the operations of the organization.

EPA will accept documentation from the U.S. Internal Revenue Service (e.g., 501(c)(3) tax exempt status) or from a State or tribal government that has authority under its laws to grant non-profit status to an organization.

Non-profit organizations, with the exception of organizations subject to section 501(c)(4) of

the Internal Revenue Code that lobby, are eligible to receive cleanup grants. Private nonprofit educational institutions are eligible to compete for these grants.

Non-profit organizations are not eligible to receive Brownfields Assessment Grants under 104(k)(2).

Q4. How does EPA interpret “general purpose unit of local government” for the purposes of eligibility for brownfields grants?

A4. The Agency follows the definition of “Local Government” under 40 CFR 31.3 which states the following: Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Q5. Does EPA require that all applicants notify the community about their intent to submit a brownfields grant application?

A5. No. Responses to the threshold Community Notification criterion are required only for Cleanup Grant proposals. This criterion is pass/fail. If the applicant fails to conduct the appropriate notification the proposal will not be evaluated by national panels.

Q6. How do cleanup grant applicants comply with the Community Notification criterion?

A6. The applicant is responsible for providing Community Notification and opportunity for public comment about the applicant’s plans for cleaning up the site that is the subject of its grant proposal. Community Notification may be conducted by or on behalf of the applicant. The applicant’s proposal must demonstrate how the applicant’s personnel were involved in the community notification (i.e., attended a public meeting, responded to comments, etc.), even if another party acts on behalf of the applicant.

The draft proposals must include, as an attachment, a draft Analysis of Brownfield Cleanup Alternatives (ABCA), which briefly summarizes information about the site and contamination issues, cleanup standards, applicable laws, cleanup alternatives considered, and the proposed cleanup. The draft ABCA should also include information on the effectiveness, the ability of the grantee to implement each alternative, the cost of each proposed cleanup alternative and an analysis of the reasonableness of the various cleanup alternatives considered including the one chosen. Please note that the draft ABCA submitted as part of the proposal is intended as a brief preliminary document.

The applicant must describe how the community was notified. The requirements for Community Notification are outlined in the Guidelines. The applicant must publish an ad in the local newspaper or an equivalent means that the applicant uses to communicate to the community targeted by the proposal and conduct a public meeting regarding its grant proposal. The notice must be made at least two weeks prior to the proposal submission date. The notice must state the time and place of a public meeting and must indicate a draft of the grant proposal will be available for comment. Any comments received and responses to those

comments must be attached as part of each cleanup grant proposal.

Many communities use local newspapers to provide information to their residents. Some communities may have other customary means of communicating with their residents. Some examples of “equivalent” notice to an ad in the local newspaper include:

- website screen shot;
- mass mailer;
- placing an ad on a community bulletin board; and
- notifying affected residents door-to-door.

Applicants may describe other methods that were used to notify the community.

Even if an applicant has notified the community regarding a proposal submitted under a previous EPA Brownfields grant competition, the applicant must notify the community of its FY15 Cleanup Grant proposal, hold a meeting and respond to public comments.

Q7. Are the costs of Community Notification allowable under cleanup grants?

A7. No. Costs for Community Notification are pre-award costs that will be incurred prior to selection under the competition and more than 90 days prior to award. Pre-award costs incurred more than 90 days prior to award require EPA approval to be allowable. Under 2 CFR Parts 225 and Parts 230, pre-award costs must be incurred directly pursuant to negotiation and in anticipation of an award. Costs incurred prior to a competitive selection in the competition do not meet this standard. In addition, EPA will not, as a matter of policy, approve pre-award costs for Community Notification due to the limited amount of funding (\$200,000) the Agency can provide for actual site cleanup work. Also, because the Agency cannot reimburse unsuccessful applicants for Community Notification costs, as a matter of fairness, it will not reimburse successful applicants for such costs.

Q8. What are examples of organizations that meet the definition of "community organization" for the purposes of the Brownfields Grant Guidelines?

A8. The EPA Brownfields Grant Proposal Guidelines require applicants to provide letters of commitment from community organizations involved in the applicant's project. Examples of community organizations include (but are not limited to): non-governmental civic and non-profit organizations such as service clubs, veterans' organizations, local universities and community colleges or other education institutions, fraternal orders, youth organizations, watershed protection groups, and faith-based organizations.

Examples of organizations that do not qualify as community organizations include the mayor's office or other elected officials or for-profit engineering, law or consulting firms that will compete for contracts to provide the applicant with professional services to carry out its grant.

Please keep in mind that EPA is most interested in the role each organization will play with regard to the proposed project and will not favorably evaluate proposals based on the sheer number of letters submitted. Also, please note that any financial transactions between the applicant and its supporting community organizations must comply with EPA regulations governing procurement contracts and subgrants.

Q9. What types of “roles” might community organizations play with regard to brownfields projects?

- A9. Community organizations can play a number of valuable supporting roles with regard to brownfields projects including (but not limited to):
- financial (e.g., hosting fundraising events);
 - educational (e.g., the creation, reproduction or distribution of project information to the community);
 - direct on-the-ground assistance (e.g., assisting in the identification of sites for a community-wide assessment); and
 - in-kind contributions of facilities, equipment or materials (e.g., hosting public meetings).

Please note that any financial transactions between the applicant and its supporting community organizations must comply with EPA regulations governing procurement contracts and subgrants. For example, fundraising costs are not allowable costs under EPA Brownfields grants.

Q10. For the purposes of the Community Need criterion for brownfields grants, what are examples of demographic information I could provide about my community? Where do I find demographic information about my community?

- A10. EPA does not require that applicants use specific types of demographic information but has provided the following weblinks as possible sources of health, environmental and demographic information that may be useful to consider in preparing your grant application. Applicants should select the type of demographic information to support their proposals based on their assessment of what information will make the best case that their community needs brownfields funding. The below are examples only. Applicants may choose to provide different or additional information. The applicant is responsible for assessing the importance of types of demographic information that will best describe the specific challenges of the community being served.

Health/Welfare/Environment:

- Asthma rates among children
- The incidence of illness amongst the population in contact with the site
- Cancer, diabetes, obesity rates in the community
- Health care access
- Teen pregnancy rate
- Number of vulnerable inhabitants (women of child-bearing age, children, the elderly)
- Information showing that the targeted community is disproportionately impacted by the environmental issues of the site (e.g., sizes and numbers of brownfields sites, suspected or known level of contamination, past uses of the site etc.)
- Crime rate
- Education levels and other education statistics (e.g., graduation rate, dropout rate)

Tools for locating this information for your community:

While not exhaustive, many authoritative public health information sources from the

Department of Health and Human Services Agencies, US EPA, US Census and other sources are listed below.

Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA)

Provides state profiles for medical professional shortage areas and grants for health care, datawarehouse.hrsa.gov/.

Agency for Toxic Substances and Disease Registry (ATSDR)

ATSDR has toxicity profiles, health consultations and education tools, www.atsdr.cdc.gov/.

Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS)

CDC has a National Vital Statistics System (NVSS) that includes national birth and death statistics, www.cdc.gov/nchs/nvss.htm.

A FastStats section provides summary statistics and links to state and territorial data sources on:

- Asthma, www.cdc.gov/nchs/fastats/asthma.htm
- Diabetes, www.cdc.gov/nchs/fastats/diabetes.htm
- Heart disease, www.cdc.gov/nchs/fastats/heart-disease.htm

National Institutes of Health (NIH), National Cancer Institute (NCI)

NCI has a webpage that provides state specific cancer statistics, cancer trends and maps, statecancerprofiles.cancer.gov/.

NIH, National Institute of Diabetes and Digestive and Kidney Diseases

NIDDK compiles and presents national diabetes statistics on the following website, diabetes.niddk.nih.gov/statistics/index.aspx.

Office of Minority Health, Department of Health and Human Services

General health and racial, and health disparities data can be found at minorityhealth.hhs.gov/.

Indian Health Service, Health Promotion Disease Prevention: www.ihs.gov/hpdp/index.cfm.

US Census Bureau, US Department of Commerce

The American Community Survey maps county level data based on the 2010 Census and 2012 American Community Survey estimates, www.census.gov/acs/www/.

Bureau of Labor Statistics, US Department of Labor

The Department of Labor provides national, state and local unemployment and employment data, www.bls.gov/bls/unemployment.htm.

US Department of Housing and Urban Development (HUD)

HUD has grants for community-lead hazard abatement, training and to support creating healthy homes and other community programs: www.hud.gov/offices/lead/ and portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment.

US Environmental Protection Agency

Air Quality Index, www.airnow.gov/.

America's Children and the Environment, www.epa.gov/economics/children/index.html.

Cleanups in My Community, iaspub.epa.gov/Cleanups/.

Fish/Shellfish Consumption Advisories, water.epa.gov/scitech/swguidance/fishshellfish/fishadvisories/index.cfm.

My Environment, www.epa.gov/myenvironment/.

Radon Zone Map, www.epa.gov/radon/zonemap.html.

Toxic Release Inventory, www.epa.gov/tri/.

State and Territorial Environmental Agency links, www.epa.gov/epahome/state.htm.

Water: Where You Live map, water.epa.gov/type/location/.

Socio-Economic:

- Low property values
- Low tax base for the community
- Percentage of the community unemployed/underemployed
- Percentage of the community below the poverty line
- Factors that make leveraging funds for addressing the site difficult
- Percentage of community on welfare

Tools for locating this information for your community:

Fedstats

This website provides links to all relevant agencies based on your search criteria, such as income, health, labor, education, and crime levels and allows you to search by state as well (fedstats.sites.usa.gov/).

US. Census Bureau

U.S. Census Bureau webpage provides statistics on economics, employment, health, housing, employment, and other categories. You can search by state, and find detailed reports on each state at www.census.gov.

US Census Bureau, American Fact Finder

This webpage provides information on a more specific area than Census.gov. You can search by state, but also by zip code to find statistics on your specific community at factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

Q11. What types of contamination are eligible for brownfields hazardous substances funding?

A11. Sites eligible for hazardous substance funding are those sites with presence or potential presence of hazardous substances, pollutants or contaminants, sites contaminated with controlled substances and/or mine-scarred lands. The following examples include, but are not limited to, the types of contaminants that can be addressed using brownfields hazardous substances funding:

- heavy metals
- polynucleararomatic hydrocarbons (PAHs)
- volatile organic compounds (VOCs)

- brine
- asbestos
- a site contaminated with controlled substances (e.g., a methamphetamine laboratory)

III. APPLICANT ELIGIBILITY

Q12. Who is eligible to apply for the Brownfields grants?

A12. The Brownfields law defines entities eligible to receive grants, based on the type of grant requested:

- *Assessment grants* – eligible entities include: state, local, and tribal governments (with the exception of Indian tribes in Alaska), as well as a range of government entities, including general purpose unit of local governments, land clearance authorities or other quasi-governmental entities operating under the control, supervision, or as agents of local governments, governmental entities or redevelopment agencies created or sanctioned by a State, and regional council of governments. Alaska Native Regional Corporations and Alaska Native Village Corporations, as those terms are defined in the Alaska Native Claims Settlement Act, and the Metlakatla Indian community are eligible.
- *Cleanup grants* - include those eligible governmental entities identified above as well as non-profit organizations and non-profit educational institutions. (Please see Q3 for EPA’s definition of a non-profit organization that applies to this program.) All eligible entities, including non-profit organizations, must have sole ownership of the site **at time of proposal submission**.
- For-profit organizations are not eligible for Brownfields grant funding from EPA.

Q13. Are tribes considered "potentially responsible parties" (PRPs) and therefore prohibited from using Brownfields grant funds to pay for response costs at a site for which the recipient is potentially liable under CERCLA §107?

A13. Generally, EPA has not considered tribes to be liable as PRPs under CERCLA and, therefore, they are not subject to the statutory prohibition (however, the other prohibitions on uses of Brownfields funds may still apply). Applicants should contact their Regional Brownfields Contacts for additional information.

Q14. Are Alaskan Native Villages eligible for grant funding?

A14. No, only Indian Tribes other than those located in Alaska are eligible for grant funding. However, Alaska Native Regional Corporations, Alaska Native Village Corporations, and Metlakatla Indian Community are eligible for grant funding. Alaska Native Regional Corporations and Alaska Native Village Corporations are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following). For a listing of these corporations, please see the following websites. Please note that the U.S. government does not maintain these websites and is not responsible for their content or accuracy.

[Alaska Department of Natural Resources - Alaska Native Region - Village - Corporation Index](http://dnr.alaska.gov/mlw/trails/17b/corpinde.cfm)
dnr.alaska.gov/mlw/trails/17b/corpinde.cfm

[National Congress of American Indians - Alaska Native Corporations](http://www.ncai.org/tribal-directory/alaska-native-corporations)
www.ncai.org/tribal-directory/alaska-native-corporations

[University of Alaska Anchorage Justice Center](http://justice.uaa.alaska.edu/index.html)
justice.uaa.alaska.edu/index.html

Q15. Does EPA consider a Limited Liability Corporation (LLC) a non-profit organization that is eligible to receive grant funds for cleanup activities?

A15. Maybe. Although most LLCs are structured to yield profits to their owners, in certain circumstances when an LLC has a sole owner and that sole owner is recognized by the IRS as tax exempt under 501(c)(3) or another provision that provides a tax exemption based on non-profit status, then the LLC itself will qualify as a non-profit for the purposes of eligibility to receive Brownfields grant funds upon submission of supporting documentation. Please refer to Q3 for definition of non-profit.

IV. ADMINISTRATIVE COST PROHIBITION

Q16. What grant activities cannot be paid for with Brownfields grant funds?

A16. Grant funds may not be used for the payment of:

- a penalty or fine;
- a federal cost-share requirement (for example, a cost share required by other federal funds);
- an administrative cost (see below);
- a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA §107;
- a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; or
- unallowable costs (e.g., lobbying and fund raising) under OMB Circulars A-21, A-87, or A-122, as applicable.

Q17. What is the Administrative Cost Prohibition?

A17. The Brownfields Law prohibits the use of any “part of a grant or loan” for the payment of an administrative cost. In implementing this prohibition, EPA has made a distinction between prohibited administrative costs and eligible programmatic costs.

Administrative Costs. Prohibited administrative costs are direct costs, including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the Uniform Administrative Requirements for Grants contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration are ineligible even if the grantee or subgrantee is required to carry out the activity under the grant

agreement. **Prohibited administrative costs include indirect costs the recipient incurs under the OMB Cost Principles found at 2 CFR Parts 220, 225, or 230 and Subpart 31.2 of the Federal Acquisition Regulation. Please note that prohibited administrative costs also include proposal preparation costs.**

Management Fees. Recipients must not include management fees or similar charges in excess of the direct costs in budgets for Brownfields grants. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under Brownfields grants as administrative costs.

Q18. When does the Administrative Cost Prohibition not apply?

A18. There are certain instances where the Administrative Cost Prohibition does not apply. The Administrative Cost Prohibition does not apply to direct costs, including costs incurred under properly awarded contracts for:

1. Investigation and identification of the extent of contamination;
2. Design and performance of a response action; or
3. Monitoring of a natural resource.

Programmatic Costs. EPA has determined that the administrative cost prohibition does not apply to "programmatic" costs, i.e., costs for activities that are integral to achieving the purpose of the grant, even if EPA considered the costs to be "administrative" under the prior Brownfields program. These costs are programmatic, not administrative. Direct costs, as defined in the applicable OMB Cost Principle Circular, for the following programmatic activities are not subject to the administrative cost prohibition:

1. In the case of grants for site characterization and assessment, expenses for inventorying, characterizing, assessing, and conducting planning related to brownfield sites.
2. In the case of grants for direct use by eligible entities and nonprofit organizations in remediation of brownfield sites under CERCLA §104(k)(3)(A)(ii), expenses for site remediation activities.
3. In the case of grants for implementation of brownfields programs under CERCLA §104(k)(6), expenses for providing training, research, and technical assistance.
4. Costs incurred for complying with procurement provisions of 40 CFR Part 30 and 31 are considered eligible programmatic costs only if the procurement contract is for services or products that are direct costs for performing activities specified above in Section B, "Statutory Exclusions," or Section C, "Programmatic Costs."
5. Costs for performance and financial reporting required under 40 CFR 30.51 and 30.52, and 40 CFR 31.40 and 31.41 are eligible programmatic costs. Performance and financial reporting are essential programmatic tools for both the recipient and EPA to ensure that grants are carried out in accordance with statutory and regulatory requirements.

Eligible programmatic costs can include expenses for travel, training, equipment, supplies, reference materials, and contractual support if those costs are reasonable and allocable to tasks specified in a grantee's approved scope of work for carrying out the activities described in "Statutory Exclusions," or "Programmatic Costs."

Eligible programmatic costs may be used to help meet the direct cleanup grant recipients' 20 percent cost share. Prohibited administrative costs may not be used to meet recipients' cost share.

For further information on these prohibitions, contact your Regional Brownfields Contact listed in Section VII of the Guidelines at www.epa.gov/brownfields.

Q19. If I am a successful applicant, will EPA reimburse me for the costs of paying a consultant to prepare my grant application?

A19. No. Proposal preparation costs are prohibited administrative costs. Additionally, post-selection grant application preparation is administrative and is an ineligible cost.

Q20. If I am a successful applicant and I properly contract with an environmental services contractor to perform services within the scope of the grant (such as investigation of the contamination, or performance of a response action), does the prohibition on administrative costs prevent me (the grant recipient) from using the grant money to reimburse the indirect costs of the contractor?

A20. No. The administrative cost prohibition applies to the grant recipient's indirect costs and not to costs the grantee incurs under a contract for eligible programmatic costs.

Section 104(k)(4)(B)(ii) of CERCLA provides that the administrative cost prohibition does not apply to costs for investigation and identification of the extent of contamination and the design and performance of a response action. Appendix 1 of EPA's Guidelines provides that eligible programmatic costs are expenditures for activities that are integral to achieving the purpose of the grant. It states that eligible programmatic costs include costs for ". . . contractual support if those costs are reasonable and allocable to tasks specified in a grantee's approved scope of work for carrying out the activities" that are excluded by statute from the reach of the administrative cost prohibition. A contractor's indirect costs that are otherwise reasonable (e.g., are covered by an indirect cost rate agreement with its cognizant federal audit agency) and normally charged to cost reimbursement contracts are programmatic rather than administrative.

V. USE OF GRANT FUNDS

Q21. What is the amount of funding available through individual grants?

A21. Under the Brownfields Law, an eligible entity may apply for:

Assessment Grants. An eligible entity may apply for up to \$200,000 to assess a site contaminated by hazardous substances, pollutants, or contaminants (including hazardous

substances co-mingled with petroleum) and up to \$200,000 to address a site contaminated by petroleum. Applicants may either combine requests for hazardous substances funding and petroleum funding into one proposal if both types of funding will address the same target community, for a total not to exceed \$400,000; or applicants may submit separate proposals requesting up to \$200,000 each for hazardous substances and petroleum funding. Whether the applicant combines proposals or not, applicants may only apply for a maximum of two Community-wide Assessment Grants.

An applicant may apply for one Site-specific Assessment Grant not to exceed \$200,000. For site specific proposals, applicants may seek a waiver of the \$200,000 limit and request up to \$350,000. Such waivers must be based on the anticipated level of hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) or petroleum at a single site. Due to budget limitations, no one entity may apply for more than \$750,000 in assessment funding or submit more than three Assessment Grant proposals (two Community-wide and one Site-specific).

A coalition comprised of three or more eligible entities may apply for one Assessment Grant up to \$600,000. All Assessment Coalition grant proposals must be community-wide. The lead coalition member and any other members **cannot** apply for individual Assessment Grants in the year they apply as part of a coalition. The performance period for an Assessment Grant is three years.

Cleanup Grants. Grants may be awarded up to \$200,000 per site for cleanup. Due to budget limitations, no entity may apply for funding cleanup activities at more than three sites. Applicants must submit a separate proposal for each site. The performance period for a Cleanup Grant is three years.

EPA reserves the right to partially fund proposals, including the right to only fund the hazardous substance or the petroleum requests if applicants request both in their proposal.

Q22. If my application is successful, will EPA reimburse me for eligible programmatic costs I incurred prior to the award?

A22. It depends. EPA may reimburse successful applicants for pre-award costs incurred up to 90 days prior to award, even if the applicant did not request prior approval to incur pre-award costs provided the costs are eligible, allowable, and included in the approved budget and work plan for the grant. For example, costs for contracts are allowable only if the contract was entered into in a manner that complies with the competitive procurement provisions of EPA's grant regulations. Costs incurred more than 90 days prior to award require specific approval of an EPA award official.

Please note that applicants incur pre-award at their own risk and that EPA is not obligated to reimburse applicants for pre-award costs that are not included in the workplan and budget the Agency approves. EPA has no obligation to reimburse unsuccessful applicants for pre-award costs.

Q23. If funds have been expended at a site under a Cleanup Grant, can additional brownfields funding be provided for additional cleanup work at the same site?

A23. Yes, a cleanup grant recipient may apply for additional funding through a Brownfields Revolving Loan Fund grant. A cleanup grant recipient may also request that a state or tribe conduct additional cleanup with CERCLA 128 State and Tribal Response Program funding. A city/town or other eligible entity may also apply for a Cleanup Grant for a site on which a state or tribe has already expended CERCLA 128 funds.

Q24. How does EPA enforce the requirement for cost sharing for Cleanup grants?

A24. The Agency requires recipients to report on their cost sharing in financial status reports. Recipients must have documentation to support cash and in-kind contributions of labor, material and services for cost sharing expenses to be eligible and allowable. If a recipient fails to provide its agreed upon cost share, EPA may take action to recover all or part of the grant as well as take other enforcement actions authorized by Agency grant regulations.

Q25. Can I use brownfields grant funds to purchase environmental insurance?

A25. Yes. Entities that receive grants or loans to perform characterization, assessment or cleanup of a brownfields site may use a portion of their brownfields grant or loan funds to purchase environmental insurance. This amount must be less than 100 percent of the total grant or loan funds awarded under the Brownfields Law. Purchases must be consistent with the applicable OMB Cost Circulars: A-21 is applicable to universities and educational institutions, A-87 is applicable to governmental units, and A-122 is applicable to non-profit organizations.

Q26. What kind of environmental insurance can I purchase with a brownfields grant?

A26. Companies can offer many different kinds of environmental insurance policies for brownfields sites. Typically, these policies cover risks related to cleanup cost overruns, third-party liability, and lender liability. Insurance carriers do not use the same names for these policies, and coverage is generally negotiated to cover site-specific risks. Therefore, successful applicants are encouraged to work closely with EPA to ensure any policy to be purchased with EPA funds does not cover ineligible expenses. Ineligible expenses include, but are not limited to:

- paying for a penalty or fine;
- paying a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority; and
- paying for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA §107.

Q27. As a local government applicant, what program activities can be funded under the 10% provision of the 2002 Brownfields Law amendments?

A27. Under section 104(k)(4)(C) of CERCLA, a local government may use not to exceed 10 percent of the grant funds in three ways to develop and implement a brownfields program. These activities may include use of up to 10 percent of its grant funds for: monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site; and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site.

To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities. Local government applicants may not exceed 10% in total for all three types of activities planned and the budget submitted as part of the proposal should reflect the tasks to be conducted with the 10% of funds.

Q28. Can the Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) funds be used as a cost share on a Brownfields Cleanup Grant?

A28. In general, funds from one federal grant (from any agency) may not be used to meet a statutory cost share requirement on another federal grant (from any agency) unless there is specific statutory authority that provides otherwise. The CDBG statute is an example of statutory authority to use federal funds for a cost share on another grant.

VI. PROPERTY-SPECIFIC DETERMINATIONS

Q29. How do I know if a site identified in the proposal requires a Property-Specific Determination?

A29. Grant applicants must determine if any of the properties, or facilities, included in their proposal require a property-specific determination. Although excluded from the definition of a brownfield site, the following types of properties are eligible for brownfields funding if a property-specific determination is made that funding for assessment or cleanup activities will meet the criteria set forth in the statute and meet the goals and criteria of the brownfields program. These types of properties include the following below.

- 1) Properties subject to planned or ongoing removal action under CERCLA.
- 2) Properties that include facilities subject to an administrative or judicial order or consent decree, or to which a permit has been issued by the U.S. or authorized state, under RCRA, FWPCA, TSCA, or SDWA.
- 3) Properties that include facilities subject to RCRA orders requiring corrective action (§3004(u) or §3008(h)).
- 4) Properties that are land disposal units that have submitted a RCRA closure notification or that are subject to closure requirements specified in a closure plan or permit.
- 5) Properties where there has been a release of PCBs and all or part of the property is subject to TSCA remediation.
- 6) Properties receiving monies for cleanup from the LUST trust fund.

Grant applicants must determine whether the property or properties that are the subject of their proposal fall within the scope of one or more of the exclusions listed above. In their grant proposal, applicants should identify which funding exclusion is applicable to their property and describe why each property falls within that exclusion. Please see Appendix 1.5 in the Proposal Guidelines for more information on each of these exclusions (www.epa.gov/brownfields).

Q30. Who makes the Property-Specific Determination on whether of site is eligible for brownfields funding?

A30. A determination of eligibility for or exclusion from funding will be made by EPA at the time of proposal evaluation based upon information provided by the applicant. To aid EPA in making this determination, if one or more properties that are the subject of a grant proposal fall within the scope of any of the types of properties listed above in Q29, the grant proposal must specifically identify the properties, identify the applicable funding exclusion from the list above in Q29, and describe why each property falls within that exclusion (e.g., RCRA permit for hazardous waste storage, CERCLA removal action on-going, etc.).

Q31. What characteristics of a site does EPA look for in order to make a Property-Specific Determination for brownfields funding eligibility?

A31. The types of sites listed in Q28 may qualify for brownfields funding if EPA makes a Property-Specific Determination that brownfields funding will protect human health and the environment **and** will either promote economic development **or** the creation, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

Q32. Why do some sites require Property-Specific Determinations to be eligible for funding?

A32. Congress specifically prohibited certain types of sites from the definition of “brownfield site” in CERCLA § 101(39)(B) and, therefore, from being eligible for brownfields funding. However, Congress listed certain sites that would normally be prohibited from funding, but could be allowed to be considered for funding if an eligibility determination was made specific to that site. In keeping with this prohibition, property-specific brownfields funding determinations will be made based upon the availability of funding and the extent to which applicants can provide documentation that funding for particular sites offer opportunities to protect human health and the environment and enhance economic development or create or preserve greenspace.

Q33. What sites are not eligible for Property-Specific Determinations?

A33. The Brownfields Law excludes the following three types of properties from funding eligibility and prohibits EPA from making Property-Specific Determinations on these properties:

- 1) facilities listed (or proposed for listing) on the National Priorities List (NPL);
- 2) facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees issued to or entered into by parties under CERCLA; and
- 3) facilities that are subject to the jurisdiction, custody or control, of the United States government. (Note: Land held in trust by the United States government for an Indian tribe **is generally eligible** for brownfields funding.)

Q34. What information must I include if a site in the proposal requires a Property-Specific Determination?

A34. If an applicant includes within the scope of a grant proposal a facility that requires a Property-Specific Determination, the proposal must include, on a separate page, the information below (to the extent this information replicates information requested elsewhere in the proposal, the applicant may directly copy the text to this page).

- 1) Basic site identification information and eligible entity identification information.
- 2) The specific circumstance that requires the grantee to request a Property-Specific Determination (from the list above in Q29).
- 3) A short explanation of why the site falls within the identified circumstance requiring the Property-Specific Determination.
- 4) An explanation of how providing brownfields funding for the site will meet the criteria necessary for making a Property-Specific Determination. See below for description of the necessary criteria to address.
- 5) The degree to which other funding is or is not available for the assessment or cleanup of the site.
- 6) An explanation of whether or not the applicant is responsible for the contamination at a site.

The information provided will be used in making a Property-Specific Determination for funding purposes, which will take place during the proposal evaluation process.

Grant proposals for brownfields funding that include, within the scope of planned assessment or cleanup activities, sites, properties, or facilities that potentially fall within any of the funding exclusions listed above, should specifically identify such circumstances and explain, in as much detail as possible, why the availability of brownfields funding will protect human health and the environment **and** promote economic development **or** the creation or preservation of greenspace (or other listed objectives). Information provided by the applicant in addressing these criteria will be used in documenting EPA's decision in making Property-Specific Determinations for funding eligibility.

Again, an applicant must show how financial assistance, if awarded, will protect the human health and the environment **and** either promote economic development **or** enable the creation of, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The three areas are discussed in more detail below.

1. Protection of Human Health and the Environment

Grant applicants must provide a detailed discussion of how financial assistance for brownfields assessment or cleanup activities at each property for which a Property-Specific Determination for funding eligibility must be made will result in the allocation of funding in accordance with legislative intent. Each proposal for financial assistance whose proposal includes one or more sites for which a Property-Specific Determination must be made must include a discussion of how brownfields funding will ensure protection of human health and the environment. Documentation supporting a determination that brownfields funding will ensure protection of human health and the environment should include documentation of one or more of the items below.

- Specific examples of human health risks that will be mitigated by activities funded under a brownfields grant.
- Specific environmental improvements that can reasonably be expected to result from activities funded under a brownfields grant.
- Specific examples of contamination that will be addressed, including the specific hazardous substances, pollutants, or contaminants of concern and the environmental media that will be addressed.
- Description of how the proposed clean up and redevelopment of the property will ensure that the property will be protective of human health and the environment and that the remedy will be both protective and consistent with the planned reuse of the property.

2. Promote Economic Development

Applicants also must provide detail on how financial assistance will promote economic development or the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

Documentation of economic development activities should include information such as the items below.

- A description of economic development activities that can reasonably be expected to occur as a result of brownfields funding (e.g., number of jobs created, estimated increase in the property and/or profits/sales tax base to community, additional business expansion or new business relocation that may occur within the community).
- A description of how the redevelopment of the brownfields property will contribute to community-wide redevelopment and revitalization plans with a specific emphasis on how funding for the brownfields redevelopment is integral to the success of the community-wide plan.
- A description of new businesses or business expansions that are planned for the brownfields property.

3. Creation of, Preservation of, or Addition to Parks, Greenways, Undeveloped Property, other Recreational Property, or Other Property Used for Nonprofit Purposes

If brownfields funding will be used by the applicant to preserve or create greenspace, recreational areas, undeveloped property, or property to be used for nonprofit purposes, the applicant should provide specific documentation of these activities in the proposal. Grant proposals should provide specific information documenting how brownfields funding will result in the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes, such as the items below.

- A description of the proposed park, recreational property, greenspace, undeveloped space, or other type of property to be used for nonprofit purposes, including size, use, and surrounding environment that will be preserved or created as a result of brownfields funding.
- A description of how the property will be used and by whom.

- A description of how the property will be integrated with surrounding properties or environments.
- A description of how the property will be maintained or preserved for its continued use as a greenspace, recreational area, etc.

When documenting compliance with these criteria, applicants may copy information provided elsewhere in their proposal, if such information directly addresses the criteria. However, all documentation must be comprehensive and specific to actual events that will be mitigated or can reasonably be expected to occur as a result of federal brownfields funding, should the applicant receive brownfields funding.

VII. SITE ELIGIBILITY

Q35. Are properties on lands held in trust by the Federal government for Indian tribes eligible for brownfields grant funding?

A35. Generally, properties on lands held in trust by the Federal government for Indian tribes are eligible for brownfields grant funding. You should contact your Regional Brownfields Contact for further information.

Q36. What happens if I accidentally include an ineligible site in my proposal or I didn't realize I needed a Property-Specific Determination?

A36. Applicants may not substitute sites if EPA determines a site is not eligible. EPA may provide applicants a limited opportunity to clarify site eligibility issues during the proposal application process. If EPA has reason to believe a site that falls in the "excluded" category is eligible for a Property-Specific Determination, EPA may seek clarification from the applicant before making that determination. EPA strongly encourages applicants to evaluate their site against the information provided in Appendix 1 of the Guidelines. In addition, applicants should contact their Regional Brownfields Contact for pre-application assistance on site eligibility. EPA may clarify eligibility issues; however, if the site is found to be ineligible, an applicant's proposal may fail if it was based on that particular single site.

Applicants may not substitute sites if EPA determines a site is not eligible.

Q37. What happens if my site is only partially eligible?

A37. While applicant may not substitute a site, if EPA determines a site is not eligible, EPA may find a portion of the site is eligible. The eligible portion of the site will be forwarded for national ranking review and EPA will notify the applicant which portion is ineligible during the threshold review process. If the eligible portion of the site scores within the recommendation to be selected for funding, the applicant may be awarded a portion of the requested amount for the eligible portion of the site.

Q38. Are RCRA sites eligible for Brownfields grant funding?

- A38. Some Resource Conservation and Recovery Act (RCRA) sites may be eligible. RCRA facilities that may be eligible for Brownfields funding (subject to meeting all other Brownfields grant eligibility requirements) include:
- RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;
 - RCRA interim status facilities that are subject to administrative or judicial orders or consent decrees that do not include corrective action requirements or any other cleanup provisions (e.g., RCRA 3008(a) orders without provisions requiring the owner/operator to address contamination); and
 - parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order to conduct corrective action.

Facilities subject to an administrative or judicial order or consent decree, facilities with permits issued under the authorities of RCRA, Toxic Substances and Control Act (TSCA), and the Safe Drinking Water Act (SDWA), as well as facilities with permits issued under section 1321 of the Clean Water Act (the oil and hazardous substance liability provisions) are excluded from the definition of brownfield site but **may be eligible for funding if the EPA makes a Property-Specific Determination**. Without a Property-Specific Determination provided for in §101(39)(C), these specified RCRA facilities cannot receive grant or loan funding.

When making this determination, EPA assesses whether Brownfields funding for assessment or cleanup activities will:

- ensure protection of human health and the environment; **and** either
- promote economic development; or
- promote the creation, preservation, or addition to parks, greenways, undeveloped facility, other recreational facility, or other property used for non-profit purposes.

Q39. Are former military installations that have been closed and subsequently turned over to local and/or state governments or non-profit organizations eligible for funding?

A39. Yes. Generally, former military installations that are no longer owned or under the custody or control of the U.S. government, including properties that have been closed and subsequently turned over to governments or non-profit organizations may be eligible for brownfields funding. For example, the following types of facilities may be eligible for brownfields funding:

- privately-owned, Formerly Used Defense Sites (FUDS);
- privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP); properties; and
- other former federal properties that have been disposed of by the U.S. government.

Facilities owned by, or under the custody or control of the federal government **are not eligible** for brownfields funding with the exception of land held in trust for an Indian tribe. Applicants should contact their Regional Brownfields Contacts for additional information.

VIII. GENERAL GUIDELINES QUESTIONS

Q40. What were the results of the FY2014 competition process?

A40. EPA was pleased to receive 590 proposals representing 823 Brownfields grants in FY2014. Continued national interest in the program resulted in a highly competitive selection process, with a total of 264 grants announced nationwide in FY2014.

Q41. How do I submit my application and what is the deadline for submission in FY2015?

A41. Proposals are due December 19, 2014. Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically to www.grants.gov. Only one method should be used for the submission of the original, complete proposal. **Facsimile or email delivery of proposals is not permitted and will not be considered.**

Additionally, a second complete copy of the proposal must be mailed to the Regional Brownfields Contact listed in Section VII of the Request For Proposals (RFPs).

Hard Copy Submissions

Proposals sent through the U.S. Postal Service or a commercial delivery service must be postmarked by December 19, 2014. Two copies of the complete proposal is required.

Mail one complete, original proposal to: Environmental Management Support, Inc., Attn: Edie Findeis Cromwell, 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910. Phone 301-589-5318. (Note: Overnight mail must include the phone number in the address.)

Proposals postmarked by the USPS/commercial delivery service after December 19, 2014 will not be considered.

Electronic Submissions

Proposals sent electronically to www.grants.gov must be received by 11:59 p.m. Eastern Time on December 19 2014. **Proposals received after 11:59 p.m. Eastern Time on December 19, 2014 will not be considered for funding.** Refer to Appendix 2 for specific instructions on the use of grants.gov. In the event that an applicant experiences difficulties transmitting its proposal(s) through www.grants.gov, please refer to the procedures in Appendix 2.

Note: There is a registration process to complete for electronic submission via grants.gov, which may take **a week or more to complete**. Occasionally, technical and other issues arise when using www.grants.gov. EPA encourages applicants to submit their proposals early.

Q42. Can I submit my proposal electronically?

A42. Applicants may submit proposals electronically to www.grants.gov. Proposals submitted to www.grants.gov must be received by December 19, 2014, 11:59pm Eastern Time to receive consideration.

The electronic submission of your application must be made by an official representative of your institution who is registered with www.grants.gov. For more information, go to www.grants.gov. **Note that the registration process may take a week or longer.**

EPA strongly encourages applicants to review Appendix 2 of the Brownfields Grant RFPs for specific instructions on submitting proposals electronically via www.grants.gov.

Q43. What is the grant application process in FY2015?

A43. The process for applying for Assessment and Cleanup Grants is a one step process as discussed in the Guidelines: www.epa.gov/brownfields.

Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically through www.grants.gov. Only one method should be used for the submission of the original, complete proposal. **The deadline for proposals is December 19, 2014.**

Prior to December 19, 2014, EPA Regions may conduct open meetings with potential applicants. Please check with your regional office for date and location information. EPA Regions will also respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to **ranking criteria**.

Proposals initially will be reviewed by the appropriate EPA Regional Office to determine compliance with the applicable threshold criteria. The threshold criteria are pass/fail. Applicants deemed ineligible for funding consideration as a result of the threshold criteria review will be notified within 15 calendar days. All proposals that pass the threshold criteria review will then be evaluated by national evaluation panels chosen for their expertise in the range of activities associated with the National Brownfields Program. The national evaluation panels will be composed of EPA staff and potentially other federal agency representatives. National evaluation panels will base their evaluations solely on the responses to the applicable ranking criteria and will assign a total point score to each proposal.

Completed evaluations will then be referred to the Selection Official, who is responsible for further consideration of the proposals and final selection of grant recipients. Proposals will be selected for award by this Official based on their evaluated point scores, the availability of funds, and consideration of, if any, other factors. (See Q51 for the list of Other Factors.)

Funding requests for each grant type will be **evaluated and ranked separately**.

EPA will inform successful and unsuccessful proposal applicants in writing.

Funding will be awarded as a cooperative agreement. EPA anticipates substantial involvement with the cooperative agreement recipient. The applicants whose proposals are selected will be asked to submit a cooperative agreement application package to their EPA Regional office.

EPA reserves the right to reject any or all proposals and make no awards.

EPA anticipates that successful applicants will be notified in the Spring of 2015. EPA estimates that \$59.9 million will be available to award approximately 255 grant awards, contingent upon the availability of funds in FY2015.

For additional information regarding the FY2015 grant application process for brownfields Assessment and Cleanup Grants, contact your EPA Regional Brownfields Contact listed in Section VII of the Requests For Proposals.

Q44. How do I get help in understanding and responding to the grant proposal Guidelines?

A44. EPA urges applicants to review the grant proposal Guidelines carefully and any supplemental information on the EPA Brownfields website. EPA HQ will conduct a webinar to all interested potential applicants to review the Guidelines. In addition, regional offices may host additional webinars or workshops in their region which are also open to everyone.

EPA Regions will respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to **ranking criteria**.

Applicants may contact their EPA Regional Brownfields Contacts for general information or questions regarding the threshold criteria, including eligibility. Contact information for EPA Regional Brownfields Contacts can be found in Section VII of the RFPs at www.epa.gov/brownfields.

EPA has also awarded Technical Assistance to Brownfield Communities (TAB) cooperative agreements to four groups: New Jersey Institute of Technology (NJIT) serves communities in EPA Regions 1 and 3; Kansas State University (KSU) serves communities in Regions 5, 6, 7 and 8; and Center for Creative Land Recycling (CCLR) serves communities in Regions 2, 4, 9, and 10. The TAB grantees can provide technical assistance to communities including assistance to better understand the threshold eligibility requirements, and facilitating discussions within the community related to the proposal. Please note, however, that while a TAB grantee is a source of technical assistance, they **will not** write a proposal for you. More information about the TAB grantees is available at www.epa.gov/brownfields/tools/index.htm.

One of the TAB grantees, Kansas State University (KSU), has also developed a software tool called "TAB EZ" that can assist communities who are applying for Assessment and Cleanup Grants under EPA's Fiscal Year 2015 Brownfields Assessment and Cleanup Grant competition. TAB EZ was developed by KSU and CABEM Technologies, Inc. as a public service and is available free of cost to anyone nationwide. More information about TAB EZ is available at www.tabez.org/.

All proposals will be reviewed and evaluated objectively against the criteria identified in the Grant Guidelines and ranked based upon their written response. **Applicants are responsible for making decisions on the content of their proposals.**

Q45. Do applicants for brownfields grants need to inform their State regarding the submission of a grant proposal to EPA?

A45. Yes. Applicants (other than a State or tribal environmental authority) must provide a letter

from a State or Tribal environmental authority that acknowledges the applicant's planned activities in their grant proposal and if specific sites are identified, eligibility determination on those sites, where appropriate. Only one letter reflecting all proposed activities is needed if the applicant applies for multiple grant types or multiple grants.

Q46. If I name a consulting, law or engineering firm as a “partner” in the application is it proper to award that firm a sole source contract on that basis?

A46. No. All contracts for professional services must be awarded competitively to the maximum extent practicable and in compliance with requirements to consider small and disadvantaged businesses and cost or price analyses. The market for consulting, legal and engineering services is robust and it is unlikely that competition is impractical. Please refer to Section V of the Proposal Guidelines for detailed guidance.

Q47. What should I do when a consultant has offered to prepare our application for a Brownfields grant?

The terms of the contract requires us to hire the consultant to provide environmental services necessary to perform grant if EPA selects the application for funding or pay the consultant a \$5,000 application preparation fee if we hire a different consultant. What are EPA's views on this practice?

A47. If your organization entered into an agreement along the lines you describe, EPA may consider the practice to be a violation of the procurement requirements in EPA's grant regulations because it may provide the consultant who prepared the application an unfair competitive advantage. The Agency's grant regulations require recipients to fully and openly compete professional services contracts. As stated in EPA's Fiscal Year 2015 Proposal Guidelines for Brownfields Grants (Guidelines), the fact that a consultant prepared an applicant's proposal for funding does not justify a sole source procurement contract with that consultant.

Environmental consulting services are widely available in the commercial market place. EPA would not accept a justification for a sole source contract on the grounds that your organization would be forced to pay the consultant an application preparation fee if the consultant did not receive a contract to perform environmental services under the grant. Additionally, if your organization did conduct a competition to procure environmental services, and the consultant that prepared the application won the competition, EPA may question whether the decision to select the consultant was based on an improper factor such as the requirement to pay the consultant the \$5,000 application fee otherwise. The Agency would be particularly concerned if other consultants with comparable qualifications offered to provide the environmental services at lower rates than the consultant who prepared the grant application. Finally, as provided in the Guidelines, application preparation fees are ineligible administrative costs under section 104(k) of CERCLA, the statute which authorizes EPA to award Brownfields grants.

Q48. If I have never had a federal or non-federal grant, do I need to address the Adverse Audit criteria in Section V.B.5.b?

A48. Yes. This criterion should be addressed regardless of whether or not you have had a federal or

non-federal assistance agreement.

Q49. How do I demonstrate leveraging commitments to the proposed project?

A49. An applicant can show leveraging by providing a copy of the notifying letter that the organization received funding and attaching the signatory letter or cover sheet of grant funding. Additionally, an applicant can provide a letter from the entity identifying committed leveraged funds to the project.

Q50. How can I incorporate the Livability Principles into my proposed project?

A50. The EPA is requesting that applicants “describe how your approach to revitalize brownfield sites will incorporate equitable development practices or livability principles; such as improved transportation choices, affordable housing, and other considerations as described in Section I.D. of these Guidelines.” Section I.D. provides examples how Brownfields Assessment and Cleanup approaches can be linked to Sustainable and Equitable Development Outcomes.

Q51. What is the “Other Factors Checklist” and how do I address it in my proposal? How is it used in the national evaluation?

A51. The Other Factors Checklist can be found in Appendix 3. The other factors include:

- fair distribution of funds between urban and non-urban areas including an equitable distribution to “micro” communities (those communities with populations of 10,000 or less);
- a balanced distribution of funds among EPA’s ten Regions and among the states and territories or the project is assisting a Tribe or territory;
- compliance with the 25 percent statutory petroleum funding allocation;
- whether the applicant is a federally recognized Indian tribe or United States territory;
- the need to provide funding to address specific types of contamination identified in the Brownfields law such as whether a site is mine-scarred or contaminated with controlled substances;
- the needs of communities adversely affected by natural disasters (2006 or later);
- whether the project primarily focuses on Phase II assessments (assessment only);
- implementation of green remediation plans (cleanup only);
- demonstrated firm leveraging commitments for facilitating brownfield project completion by identifying amounts and contributors of funding in the proposal and have included documentation that tie directly to the project;
- community experienced manufacturing plant/power plant closure(s) (2008 or later) tied to the targeted brownfield sites or project area, including communities experiencing auto plant/power plant closures due to bankruptcy or economic disruptions;
- recent (2008 or later) significant economic disruption (unrelated to a natural disaster or manufacturing/auto plant closure/closed power plant) has occurred within community, resulting in a significant percentage loss of community jobs and tax base;
- whether the applicant is one of the twelve recipients or a core partner/implementation strategy party of a “manufacturing community” designation provided by the Economic Development Administration (EDA) under the Investing in Manufacturing Communities Partnership. A core partner/implementation strategy party is a local partner

organization/jurisdiction that will carry out the proposed strategy, as demonstrated in letters of commitment or memoranda of understanding which documents their contributions, roles, and responsibilities to the partnership. EDA may provide to EPA a list of the core partners/implementation strategy parties for each of the 12 “manufacturing community” designees, which EPA would use to verify this other factor. Applicants must clearly demonstrate there is a nexus between their IMCP designation and the proposed Brownfields activities;

- whether the applicant will serve an area designated as a federal, state or local Empowerment Zone or Renewal Community;
- whether the applicant is a recipient or a core partner of a HUD-DOT-EPA Partnership for Sustainable Communities (PSC) grant that is directly tied to the project area, and can demonstrate that funding from a PSC grant has or will benefit the project area. To be considered, **the applicant must attach documentation** which demonstrates this connection to a HUD-DOT-EPA PSC grant;
- whether the applicant is a HUD Promise Zone community; and/or
- whether the applicant is the recipient of an EPA Brownfields Area-Wide Planning grant.

Documentation of relevant “Other Factors” should be included in the 15-page narrative proportion of the proposal. The “Other Factors” checklist chart should cross-reference the documentation in the narrative portion of the proposal. The Selection Official may take into consideration the Other Factors when making grant award decisions.

IX. ASSESSMENT GRANTS

Q52. If I am requesting a Site-specific Assessment grant waiver for \$350,000, what must I include in my proposal to the EPA? What criteria does EPA use to evaluate Site-specific Assessment waiver requests?

A52. The Brownfields Law allows for applicants who have identified an eligible site that will require more than \$200,000 to complete assessment activities to apply for a waiver of the funding limit and request up to \$350,000 to assess an eligible site. In order for the waiver request to be considered the applicant must include a one-page justification describing the site and the reason(s) for the additional funding request. An applicant must include the following in the written justification: a description of the site, why the assessment costs exceed the funding limit, and specific information regarding the circumstances which justify the extra costs (e.g. fiscal state of the community, size of the site, expected level of contamination etc.). Please see Section I.A.2. of the Guidelines for more information on the assessment waiver request.

EPA will base all decisions on site-specific assessment waiver requests on the information the applicant provides in the one-page attachment and will evaluate the information on the size of the site, the status of ownership of the site, and/or the anticipated level of contamination at the site. EPA will take into account only the information provided and will base all decisions on the justification of the need.

Q53. I have identified a specific site for assessment in our Brownfields grant proposal. What

sort of information should I have available when I ask EPA to determine its eligibility for funding?

A53. The Guidelines provide information on sites eligible for brownfields funding under CERCLA §104(k) in Appendix 1. Section III.C.4 of the Assessment Grant Guidelines outlines the types of information necessary to make an eligibility determination. Below are the types of information that will need to be considered.

Basic property and grant eligibility information, such as:

- the property's name and address;
- the grant recipient's name;
- the type of assessment proposed (Phase I, Phase II, etc.);
- how the property has been used in the past (from today going back to its first known use);
- why the property is thought to be contaminated, especially if it's been vacant for many years;
- whether the property is a "brownfield site," as defined by the statute (including whether the property is subject to any of the exclusions to the definition of "brownfield site" and if so, whether it is eligible for a property-specific determination); and
- whether the CERCLA Section 107 prohibition applies (i.e., whether you are potentially liable as an owner/operator (current or at the time of disposal), arranger, or transporter).

Information about the current owner that will be of interest:

- the current property owner's name;
- what your relationship is with the owner and what will be their role in the work that is to be performed; and
- whether you have access to the property, or if not, how you will obtain access to the property.

If you are the current owner, EPA will also want to know:

- if and when you conducted All Appropriate Inquiries and whether you are affiliated with a liable party;
- whether you can take advantage of a CERCLA liability protection (i.e., are a Bona Fide Prospective Purchaser, a Contiguous Property Owner, an Innocent Land Owner, or not); and
- if you are a municipality, how you acquired the property (e.g., foreclosure, donation, eminent domain, purchased, etc.).

For petroleum sites you will also need to:

- obtain a written determination of statutory eligibility by the state LUST contact (talk to your Regional Brownfields Contact listed in Section VII of the Guidelines);
- if the state is unable to make the determination, you will need to have available information regarding:
 - whether the site is of "relatively low risk" compared to other petroleum-only sites in the state;
 - whether there is a viable responsible party that can address the petroleum contamination at the site (whether a party is "responsible" and "viable" is defined in the Guidelines);

- whether you, the applicant, are potentially liable for cleaning up the site, as defined in the Guidelines (be prepared to provide information regarding whether the party having such legal obligations has adequate financial resources to meet the obligation); and
- whether the site is subject to an order issued under 9003(h) of the Solid Waste Disposal Act.

Please note that some sites may either require a property-specific determination or may not be eligible at all for funding (see Section VI. Property-Specific Determinations in these Frequently Asked Questions.)

Q54. Do assessment activities include production of reports including Phase I, Phase II, and the trenching, boring, and testing?

A54. Yes - assessment activities include the above listed items. In general, conducting an assessment is the process of evaluating whether or not contamination is present and the extent of that contamination prior to cleanup. Assessment activities can also include evaluating alternatives as the extent of the contamination is determined. However, once an alternative has been selected, ensuing activities no longer are considered assessment activities.

Q55. Does redevelopment planning include obtaining a brownfields covenant not to sue, a feasibility study to use for community involvement, and the legal and project manager costs of rezoning if needed?

A55. Assessment funding is appropriate for a study on community involvement. Assessment funding is NOT appropriate for costs associated with securing a covenant not to sue or for rezoning. One definition of planning for assessment purposes is considering end uses for the site, Institutional Controls, community involvement and organizing a design charette.

Q56. If I am applying for two Community-Wide Assessment Grants in one proposal, how should I demonstrate the project budgets for both the hazardous substances and petroleum requests?

A56. It is the applicants' responsibility to clearly demonstrate the tasks associated with the petroleum and hazardous substances funding requests. Applicants may combine the budget in one table, but must clearly distinguish between petroleum and hazardous substances funded activities. Alternatively, applicants may submit two separate budget tables (one hazardous substances and one petroleum).

ASSESSMENT COALITIONS

Note: for additional information on Assessment Coalitions please refer to the coalition fact sheet located on the EPA Brownfields website (www.epa.gov/brownfields/grant_info/assess/acfs_062408.pdf) or to section I.A.3 in the Brownfields Assessment Grant Guidelines.

Q57. What are Assessment Coalitions, who is eligible to apply for an Assessment Grant and what requirements must an Assessment Coalition meet?

A57. An Assessment Coalition is comprised of three or more eligible entities described at CERCLA 104(k)(1). The lead coalition member submits a Community-wide Assessment Grant proposal on behalf of itself and the other members for assessment work that will be performed within the boundaries of the coalition members. The coalition may request up to **\$600,000** to work on a **minimum of five** hazardous substance and/or petroleum sites.

Eligible entities, including those with existing brownfields grants, are: state, local and tribal governments, with the exception of certain Indian tribes in Alaska; general purpose units of local government, land clearance authorities, or other quasi-governmental entities; regional councils; redevelopment agencies; and states. Nonprofit organizations are **not** eligible to apply.

The grant recipient (lead coalition member) **must** administer the grant, be accountable to EPA for proper expenditure of the funds, and be the point of contact for the other coalition members. A **Memorandum of Agreement (MOA)** documenting the coalition's site selection process must be in place prior to the expenditure of any funds that have been awarded to the lead coalition. It is up to the coalition to agree internally about the distribution of funds and the mechanisms for implementing the assessment work.

Q58. What does the Assessment Coalition Memorandum of Agreement (MOA) contain? How do I obtain a copy of a sample MOA?

A58. The MOA is a simple, two-page agreement that all coalition members must sign prior to the expenditure of any awarded assessment funds. The MOA provides all members' contact information, how often the members will meet, how many sites the coalition will assess, how many Phase Is and IIs the members will perform and other specifics on the managing of contractors, community involvement plans and site prioritization.

The MOA is posted on the EPA Brownfields website at:
www.epa.gov/brownfields/grant_info/assess/fy2009moa.pdf

Q59. May non-profit organizations be members of an Assessment Coalition?

A59. No. Only "eligible entities" as described at CERCLA 104(k)(1) that are themselves eligible for assessment grants may be members of an Assessment Coalition. Non-profit organizations (with the exception of councils of governments) are not eligible to receive assessment grants.

Q60. Are Assessment Coalition members also eligible to apply for individual Community-wide or Site-specific Assessment Grants?

A60. If the applicant was a member of a coalition that was awarded a grant in FY14, that applicant is eligible to apply in the FY15 assessment competition.

Q61. Can a city and a redevelopment agency be coalition partners even though they are from the same city?

A61. Yes, provided the entities are separate legal entities under state and local law and meet the definition of an eligible entity as described in the Assessment Grant Guidelines.

Q62. Can two separate state agencies be Assessment Coalition members?

A62. No. Two state agencies cannot be coalition members. They are not separate legal entities. Under the definition of “grantee” at 40 CFR 31.3, the recipient is the entire governmental unit even if only one component of the government is named in an application.

Q63. Can two separate parts of a city or county government be Assessment Coalition members? For example, can the City Parks and Recreation and the City Economic Development Agency come in with another eligible entity as a coalition for an Assessment Grant?

A63. No. Two city or county agencies cannot qualify as coalition members. They are not separate legal entities. Under the definition of “grantee” at 40 CFR 31.3, the recipient is the entire governmental unit even if only one component of the government is named in an application.

Q64. Can an Assessment Coalition member drop out or be added after selection and/or award of the grant?

A64. No. Members cannot drop out and another member. Members should contact the EPA if concerns arise regarding coalition members.

Q65. If several Councils of Governments (COGs) are applying for an Assessment Coalition grant, can three cities/towns that are part of the COGs’ geographic service area apply separately for their own Assessment Coalition grant?

A65. Yes. The COGs and the cities/towns are separate legal entities that are independently eligible for assessment grants. Although the cities/towns are within the COGs’ geographic service area, they are not members of the COGs’ Assessment Coalition and are therefore eligible to apply separately for their own coalition grant.

X. REVOLVING LOAN FUND GRANTS

Q66. Are Revolving Loan Fund grants available in the FY2015 competition?

A66. No. A solicitation for new Revolving Loan Fund Grants will not be issued in FY15. EPA expects to requests from existing, high performing RLF grantees through a Federal Register notice for supplemental RLF funding.

XI. CLEANUP GRANTS

Q67. What does EPA mean by an "equivalent" Phase II report in the cleanup grant proposal requirements? If my site is a mining site does the Phase II report requirement still apply?

A67. EPA has no requirement to what a Phase II report must conform. However, EPA is looking to see that the applicant has a basic understanding of what contaminants need to be cleaned up on the site, even if further Phase II assessment work is required. Most Phase II assessment

reports for brownfield sites will typically conform to the American Society for Testing and Materials (ASTM) standards. Other brownfields may be assessed in compliance with standards required by their state voluntary cleanup programs or other state regulatory programs (for example, underground storage tank reports, asbestos surveys or lead paint surveys). For abandoned coal mine sites, Office of Surface Mining assessments of physical and safety hazards are considered Phase II equivalent reports. Applicants applying for cleanup grants should provide an explanation of the type of assessment completed and the date it was finalized and summarize the findings.

Q68. Must I own the site that is the subject of my Cleanup Grant proposal at the time of proposal submission?

A68. Yes. Applicants must have sole ownership of the site at time of proposal submission for the FY15 Cleanup Grant competition. For purposes of grant eligibility and the guidelines only, ownership is fee simple title as evidenced by a recorded deed; unless EPA approves a different ownership arrangement. If an applicant does not own the site, EPA will deem that site ineligible for funding under the FY15 grant cycle, and the applicant may reapply in future years when it obtains ownership of the site.

Q69. Do tribes “own” tribal trust lands for purposes of Brownfields Cleanup Grants?

A69. Generally, EPA believes tribes have a sufficient ownership interest in tribal trust lands to “own” such lands for purposes of Brownfields Cleanup Grants and RLF cleanup subgrants. Applicants should contact their Regional Brownfields Contact for additional information.

Q70. What is an Analysis of Brownfields Cleanup Alternatives (ABCA)? What should my ABCA contain to meet cleanup grant threshold requirements?

A70. Applicants should supply the following key components for the draft ABCA attached to their proposal for threshold eligibility purposes. This document must be available, along with the proposal, for public comment prior to submission to EPA for Brownfields Cleanup Grants. The information should be derived from the response to the Project Description criterion.

For example, the document should start with an **Introduction & Background** section in which the site location (address), previous uses of the site, past site assessment findings and the project goal (reuse plan) are summarized. The applicant should briefly summarize the environmental investigations that have occurred at the site, including what the Phase I and Phase II assessment reports revealed in terms of contamination present, if applicable.

Second, the document should contain a discussion of **Applicable Regulations and Cleanup Standards**. For example, the applicant should provide a discussion of the Cleanup Oversight Responsibility (identify the entity, if any, that will oversee the cleanup, e.g., the state, Licensed Site Professional, other required certified professional), the cleanup standards for major contaminants (briefly summarize the standard for cleanup e.g., state standards for residential or industrial reuse) and the laws & regulations that are applicable to the cleanup (briefly summarize any federal, state, and local laws and regulations that apply to the cleanup).

Finally, the document should contain an **Evaluation of Cleanup Alternatives**. For example,

the applicant should provide a discussion of the cleanup alternatives considered (minimum two different alternatives plus 'No Action'), the impact of potential climate changes to that remedy should it be selected, the cost estimate of cleanup alternatives, a brief discussion of the effectiveness, implementability, and a preliminary cost estimate for each alternative, and the 'Recommended Cleanup Alternative'.

Q71. How do I demonstrate that I considered potential changing climate conditions in the draft Analysis of Brownfields Cleanup Alternatives (ABCA)?

A71. You should evaluate how the commonly accepted changing climate conditions modeled for your locale might impact proposed cleanup remedies. For example, you should evaluate if a proposed remedy is still protective if the site is along a coast line, near a flood plain, in an area with potential increase of drought, and what the potential impact of increased frequency and intensity of storms, etc. would be.

EPA acknowledges that there are limitations related to this analysis and expects you to rely on existing information instead of generating new data specifically to develop the ABCA. Please use the following websites as resources to identify risks and regional trends: scenarios.globalchange.gov/ and www.epa.gov/brownfields/sustain_plts/factsheets/EPA_OBLR_Climate_Adaptation_Checklist.pdf.

The ability to evaluate potential changing conditions will improve as more tools become available.

XII. ALL APPROPRIATE INQUIRIES

Q72. What is "All Appropriate Inquiries" and who conducts "All Appropriate Inquiries" under the Brownfields Law?

A72. The Brownfields Law establishes that site characterizations or assessments conducted with the use of brownfields grants awarded under CERCLA Section 104(k)(2)(B)(ii) must be conducted in accordance with the federal "all appropriate inquiries" standards established under CERCLA and addressed in EPA's final rule setting standards and practices for all appropriate inquiries at 40 CFR Part 312.

All appropriate inquiries also refers to the requirements for assessing the environmental conditions of a property prior to its acquisition, for purposes of establishing certain landowner liability protection under subtitle B of Title II of the Brownfields Law. These landowner liability protections require that a person perform "all appropriate inquiries" into the previous ownership and uses of a property before acquiring title to the property. The landowner liability protections include the bona fide prospective purchaser, innocent landowner, and contiguous property owner provisions of CERCLA (see below).

- To qualify as a bona fide prospective purchaser, a person must meet the criteria set forth in § 107(r) and 101(40) of CERCLA (both threshold criteria and continuing obligations after

purchase), purchase the property after January 11, 2002, and must perform all appropriate inquiries prior to purchase. These parties may buy knowing, or having reason to know, of contamination on the property. **Please note that brownfields grant applicants that otherwise would meet the requirements for a bona fide prospective purchaser, except for having purchased the property prior to January 11, 2002, are eligible for federal brownfields funding.**

- To qualify as a contiguous property owner, a person who owns property that is contiguous or otherwise similarly situated to a facility that is the only source of contamination found on his/her property must meet the criteria set forth in CERCLA § 107 (q)(1)(A). Contiguous property owners must perform all appropriate inquiries prior to purchase and cannot know, or have reason to know, of contamination on the property.
- To qualify as an innocent land owner, a person must meet the criteria set forth in CERCLA § 107(b)(3) and 101(35), perform all appropriate inquiries prior to purchase of a property and cannot know, or have reason to know, of contamination on the property. Applicants should note that there are continuing obligations after purchase that are relevant to these liability protections.

Q73. What are the federal standards for conducting “All Appropriate Inquiries?”

A73. As of November 1, 2006, parties must comply with either the standards and practices set forth in the final rule on all appropriate inquiries (40 CFR 312 see www.epa.gov/fedrgstr/EPA-WASTE/2005/November/Day-01/f21455.htm) or use the process established in ASTM E1527-13, Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process (available at www.astm.org/).

Q74. What are the statutory criteria for conducting “All Appropriate Inquiries?”

A74. Congress directed EPA to establish, by regulation, standards and practices for conducting all appropriate inquiries. In the Brownfields Law, Congress directed EPA to include, within the standards for all appropriate inquiries, the nine criteria shown below. Each of these criteria is addressed in the final rule establishing federal standards and practices for all appropriate inquiries (70 FR 66070):

- the results of an inquiry by an environmental professional;
- interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility;
- reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land-use records, to determine previous uses and occupancies of the real property since the property was first developed;
- searches for recorded environmental clean-up liens against the facility that are filed under Federal, State, or local law; Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records concerning contamination at or near the facility;

- visual inspections of the facility and adjoining properties;
- specialized knowledge or experience on the part of the defendant;
- the relationship of the purchase price to the value of the property if the property was not contaminated;
- commonly known or reasonably ascertainable information about the property; and
- the degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate investigation.

Q75. How do I demonstrate “All Appropriate Inquiries” was conducted?

A75. Brownfields funding cannot be used at sites for which the grantee is a potentially responsible party (PRP) under CERCLA. If an applicant is a PRP, the applicant must demonstrate that it qualifies for one of the CERCLA liability defenses or protections, for example by being a bona fide prospective purchaser, innocent landowner, or contiguous property owner. To qualify for these protections, the applicant must have conducted “All Appropriate Inquiries” (AAI) prior to acquiring the property. The particular standard that may have been used to meet the pre-acquisition AAI requirement depends when the property was acquired.

The 2002 Brownfields Amendments to CERCLA directed EPA to promulgate a regulatory standard for AAI, which EPA did in its final rule on AAI, published November 1, 2005. The AAI final rule took effect on November 1, 2006. Therefore, if the property was acquired after November 1, 2006, parties seeking a CERCLA liability protection must demonstrate compliance with either the standards and practices set forth in the AAI final rule (40 CFR 312) or use the process established in ASTM E1527-13 “Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process”.

For properties acquired between January 2002 and November 1, 2006, the purchaser must demonstrate that prior to acquiring the property, the purchaser conducted AAI or a Phase I Environmental Site Assessment using the ASTM E1527 standard for Phase I environmental site assessments available at the time of purchase (i.e. E1527-97, E1527-00 or E1527-05).

Prior to the enactment of the 2002 Brownfield Amendments, the standard for AAI contained in CERCLA was that a party must show they conducted AAI into the previous ownership and uses of the property consistent with good commercial or customary practice. This is generally evaluated by looking at commercial or customary practice at the time and place the property was acquired. Depending on the specific circumstances, this may be anything from a title search to a full environmental assessment. However, as of 1997, the ASTM E1527 standard for Phase I environmental site assessments was the generally accepted commercial standard for due diligence. Therefore, if the property was acquired after 1997, compliance with the relevant version of the ASTM E1527 standard (i.e. the ASTM E1527-97, E1527-00 E1527-05 or E1527-13 Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process) is sufficient to demonstrate that the applicant has satisfied its AAI obligations.

The site eligibility determination is a site-specific process and each individual application is

reviewed and verified based on the circumstances in which the party acquired the property. For more information on site eligibility, please contact your Regional Brownfields Contact listed in Section VII of the Guidelines.

XIII. PETROLEUM BROWNFIELDS

Q76. Can a petroleum brownfields grant be used for the incidental assessment and/or cleanup of hazardous substances?

A76. Yes. As long as the principal purpose of the assessment or cleanup grant is to assess or clean up a site potentially or actually contaminated with petroleum, a petroleum brownfields grant may be used for the incidental assessment and/or cleanup of hazardous substances.

Q77. What statutory determinations must my state (or EPA) make to assure that petroleum-contaminated sites (or portions of properties contaminated with petroleum) are eligible for brownfields funding.

A77. The Brownfields Law outlines specific criteria by which petroleum sites may be eligible for brownfields grant funding if EPA or the state makes a petroleum eligibility determination. Non-tribal applicants must provide the information required for a petroleum site eligibility determination to the state, so that the state can make the necessary determination on petroleum site eligibility. Applicants must provide EPA with a copy of the state determination letter as an attachment to each proposal. EPA or the state must determine:

1. the site is of “relatively low risk” compared with other ‘petroleum-only’ sites in the state; and
2. there is no viable responsible party; and
3. funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.

In addition, petroleum-contaminated sites must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

With the exception of Tribes, applicants must first request that their state make these determinations. If the state is unable to make the determinations, the applicant may request that EPA make the determinations. **For further information see Guidelines Appendix 1, Section 2.3.2, Contamination by Petroleum or Petroleum Product.**

Q78. What information must I provide to a state or EPA so that my petroleum contaminated site is eligible for grant funding?

A78. Generally, petroleum site eligibility will be determined by EPA or the state, as appropriate. Where the state is unable to make the eligibility determination, EPA will make the determination. Additionally, applicants must provide EPA with a copy of the state determination letter as an attachment to each proposal.

The following information is required for EPA or the state to make the petroleum site

eligibility determination:

- i. Current and Immediate Past Owners. Identify the current and immediate past owner of the site. For purposes of petroleum eligibility determinations in these Guidelines only, the current owner is the entity that will own the site by December 19, 2014. For cleanup grants, this must be the applicant.
- ii. Acquisition of Site. Identify when and by what method the current owner acquired the property (e.g., purchase, tax foreclosure, donation, eminent domain).
- iii. No Responsible Party for the Site. Identify whether the current and immediate past owner (which includes, if applicable, the applicant) (1) dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site; and (2) took reasonable steps with regard to the contamination at the site.
- iv. Cleaned Up by a Person Not Potentially Liable. Identify whether you (the applicant) dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site, and whether you took reasonable steps with regard to the contamination at the site.
- v. Relatively Low Risk. Identify whether the site is of “relatively low risk” compared to other petroleum or petroleum product-only contaminated sites in the state in which the site is located, including whether the site is receiving or using Leaking Underground Storage Tank (LUST) trust fund monies.
- vi. Judgments, Orders, or Third Party Suits. Provide information that no responsible party (including the applicant) is identified for the site through, either:
 - a judgment rendered in a court of law or an administrative order that would require any person to assess, investigate, or clean up the site; or
 - an enforcement action by federal or state authorities against any party that would require any person to assess, investigate, or clean up the site; or
 - a citizen suit, contribution action, or other third-party claim brought against the current or immediate past owner, that would, if successful, require the assessment, investigation, or cleanup of the site.
- vii. Subject to RCRA. Identify whether the site is subject to any order under section 9003(h) of the Solid Waste Disposal Act.
- viii. Financial Viability of Responsible Parties. For any current or immediate past owners identified as responsible for the contamination at the site, provide information regarding whether they have the financial capability to satisfy their obligations under federal or state law to assess, investigate, or clean up the site. **Note:** If no responsible party is identified in iii. or vi. above, then the petroleum-contaminated site may be eligible for funding. If a responsible party is identified above, EPA or the state must next determine whether that party is viable. **If any such party is determined to be viable, then the petroleum-contaminated site may not be eligible for funding.** For more information, see Appendix 1, Section 2.3.2.

If you are not able to provide EPA or the state with all the above information, then your request to the state or EPA for the determination on site eligibility also must include a brief explanation as to why the information requested above is not available.

Q79. What happens if I do not receive a determination letter back from my state prior to the

proposal deadline?

- A79. Instances where the applicant has requested the state to make a petroleum determination, but does not receive a determination letter prior to proposal due date must attach a copy of the request submitted to the state and indicate the date you submitted your request to the state. EPA will then coordinate with the state and EPA will make the petroleum determination if necessary.
- Q80. If a site is contaminated with petroleum, diesel, and lead from gasoline, can a petroleum grant address all three contaminants?**
- A80. Yes. CERCLA § 101(39) (D) (ii)(II)(aa) provides that a brownfield site includes a site that is “contaminated by petroleum or a petroleum product excluded from the definition of ‘hazardous substance’ ...” “Diesel” and “lead from gasoline” would fall within the purview of “petroleum or a petroleum product” and thus a site contaminated by those substances would meet the definition of a brownfield site.
- Q81. Can tanks be pulled under a petroleum Brownfields Assessment Grant?**
- A81. Maybe. An underground storage tank may be pulled under an assessment grant only if the recipient determines that the tank must be pulled in order to conduct the assessment. The grant recipient is accountable for any decision made to pull a tank and will need to document the reasons for its decision for audit purposes.
- Q82. What happens if I want to clean up my petroleum brownfields site to a higher cleanup standard than required under state law or regulation, but a responsible party exists that is required to clean up the site to meet the standard in the state law or regulation?**
- A82. You may still be eligible for the grant, even if another party is responsible for the initial cleanup to meet regulatory requirements as long as that party is not under a legal obligation to perform the same cleanup activities identified in your grant proposal. EPA or the state is required to determine that there is no viable responsible party that can address the petroleum contamination at the site. This analysis is twofold -- EPA or the state must first determine whether a responsible party exists, and if a responsible party is identified, then determine whether that party is viable for the activities identified in the grant proposal. Applicants are responsible for providing information in their proposal that demonstrates that the activities for which they seek funding have no liable or viable responsible party EPA will consider a party to be viable if the party is financially capable of conducting the activity (i.e., assessment, investigation, or cleanup) identified in the grant proposal. In this case, even though the responsible party is financially capable of conducting the cleanup, the party may not be responsible for cleaning up the petroleum site to the applicant’s desired level and the site may be eligible for brownfields funding consideration.
- Q83. Can a state or tribe use LUST Trust Fund money from a cooperative agreement to pay for its preparation of its own Brownfields petroleum application under the CERCLA §104(k)?**
- A83. Not as a direct cost. Under CERCLA § 104(k)(4)(B)(i)(III) administrative costs may not be

charged to brownfields grants. 2 CFR Part 225, Appendix B, Item 34 requires EPA approval for states to charge proposal preparation costs directly to grants. EPA considers the costs of preparing Brownfields Grant proposals to be an administrative cost. In accordance with 2 CFR Part 225 Attachment A, Paragraphs C 3.c. and F. 3.b. administrative costs that are not recoverable under one Federal grant cannot be shifted to another Federal grant and EPA cannot grant approval for a state or tribe to charge the costs of a competitive brownfields grant proposal as a direct costs. Proposal preparation costs may be allowable as part of a state's indirect cost pool without EPA approval under 2 CFR Part 225. States would then need to follow their internal policies and procedures to determine whether proposal preparation costs may be included in their indirect cost calculations. However, keep in mind that states may not charge indirect costs to CERCLA 104(k) Brownfields grants.

Q84. Can a state or tribe use LUST Trust Fund money as a direct cost under its RCRA §9003(h) grant to pay for providing advice, technical assistance, or (in the case of states) making determinations related to another eligible entity or nonprofit organization's brownfields application?

A84. It depends. As a threshold matter, under the LUST Trust Fund, the Brownfields application must be for corrective action for releases of petroleum from federally regulated USTs. Activities a state carries out in connection with applications for non-petroleum, non-corrective action activities and/or for non-federally regulated USTs would not be an eligible cost under a LUST cooperative agreement and would not qualify for financial support from the LUST Trust Fund. For example, assisting an eligible entity or non-profit organization apply for a brownfields hazardous substance grant would not be an eligible use of the LUST Trust Fund under RCRA § 9003(h).

However, providing advice and assistance to applicants for Brownfields/petroleum grants, including a state making determinations under CERCLA § 101(39)(D)(ii)(II)(bb), is a legitimate use of the LUST Trust Fund because it is an eligible cost under RCRA § 9003(h) associated with corrective action for petroleum releases. The Region awarding the grant would have to examine whether EPA's LUST Trust Fund cooperative agreement with the state allows for this type of activity within its scope of work. If the activity is within the scope of work, it would be eligible as a direct cost.

XIV. BROWNFIELDS AND PUBLIC HEALTH

Q85. Our community is concerned about health problems that may be related to brownfield sites. How do we apply for funds to conduct health monitoring at our brownfield sites?

A85. Under the Brownfields Law, only local governments are eligible to use up to 10% of brownfield grant funds to monitor the health of populations that may be exposed to hazardous materials or monitor institutional controls to ensure they continue to protect public health.

Interested applicants may wish to review the fact sheet on Brownfields, health monitoring and public health on the Brownfields website (www.epa.gov/brownfields/tools/finalphandbfbfact.pdf) to learn more about current examples of funded activities or other potential eligible activities.

They should also contact and involve their local or state health department in preparing their grant proposal application and in determining what types of health monitoring may be appropriate given the brownfield sites in their community and the likely types of contaminants or exposures that may occur.

The Agency for Toxic Substances and Disease Registry (ATSDR) and Centers for Disease Control and Prevention (CDC) also have valuable tools to provide communities with information and assistance on environmental health issues. Please see their websites at www.atsdr.cdc.gov/ and www.cdc.gov/ for additional information that may relate to environmental contaminants that pose health risks or ways to create healthier communities.

For additional information, applicants should contact their EPA Regional Brownfields Contact to learn more about the brownfields grant program or the application process.

Q86. Can brownfields grant funds be used to assess or cleanup sites contaminated with PCBs?

A86. Yes. All portions of properties potentially contaminated with PCBs may be eligible for Brownfields Assessment and Cleanup Grants (without a property-specific determination), except where EPA has initiated an involuntary action to address PCB contamination at the facility or a portion of a facility. In cases where EPA has initiated an action under the Toxic Substances and Control Act against a property owner to address the illegal disposal of PCBs, the property still may be eligible for brownfields funding if an applicant can demonstrate that the funding will ensure protection of human health and the environment and promote either economic development or the creation or preservation of greenspace.

Q87. What is a risk and what is a stressor?

A87. EPA's Risk Assessment Portal (www.epa.gov/riskassessment/) provides the following definitions.

While there are many definitions of the word 'risk', **EPA considers risk to be the chance of harmful effects to human health or to ecological systems** resulting from exposure to an environmental stressor.

A stressor is any physical, chemical, or biological entity that can induce an adverse response. Stressors may adversely affect specific natural resources or entire ecosystems, including plants and animals, as well as the environment with which they interact.

Q88. What is a sensitive population?

A88. There is no one definition of a sensitive population. Research has found your age can make a difference for risk to pollutants in the environment, either because you may be more highly exposed, or because you may have a greater response to exposures. Research has documented that risk to environmental pollutants can be greater for the very young and adults over 65 years of age.

Individuals are exposed to multiple chemical and non-chemical stressors that can have the potential to negatively affect their health. EPA traditionally has used the risk assessment

paradigm to assess exposures and risks to single chemicals. However, recently EPA has assessed risk to multiple contaminants like organophosphate pesticides and hazardous air pollutants. Additionally, the traditional [risk assessment](#) has not been used to assess the interaction of non-chemical stressors (e.g., stress, poverty) and environmental exposure to chemicals.

Different communities face different exposures to chemical and non-chemical stressors. Some communities may be more vulnerable to such stressors, due to genetics, social or other environmental factors. For many years, the [environmental justice](#) movement and local communities have been asking EPA to assess cumulative exposures. Community-based risk assessment (CBRA) is an attempt to address exposures and environmental health risks in real world contexts.

EPA and researchers also are involved in 'life stage research'. The goal of life stage research is to provide a fundamental understanding of the many factors that can lead to increased risk to sensitive populations. Research will focus on how exposure to pollutants may be impacted by life stage, determine if there are unique biological responses, and evaluate the developmental time periods (i.e., so called "windows of susceptibility") during which children may be more susceptible to certain environmental toxicants. This research focuses on three general approaches: (1) research on the long-term effects following developmental exposure; (2) development of tools to measure exposure and effects in older populations; and (3) studies on specific exposures and associated effects in children.

XV. BENEFITS of BROWNFIELDS PROJECTS

Q89. What are some of the benefits associated with assessing and cleaning up a Brownfield site?

A89. There are numerous economic, environmental and social benefits that a community can expect upon the assessment and cleanup of brownfields sites. Examples include, but are not limited to, the benefits listed below.

- Economic benefits include an increase in local tax base and new job growth. There are numerous tax incentives from both state and local governments available for brownfields projects.
- Environmental/social benefits include: reuse of existing infrastructure, development pressure taken off undeveloped land, prevention of sprawl, cleaner air and reduced natural habitat destruction.
- Up to 33% of assessments conducted with Brownfields grants reveal that no cleanup is necessary and that the site is ready for development. This quick re-use is good for the developer, the local government which has been losing tax revenue, and the local community which has been living with a potentially toxic site blighting their neighborhood.

Q90. What are examples of activities and EPA Initiatives that support the sustainable reuse of

brownfield sites?

A90. There are many different activities and EPA Initiatives that support the sustainable reuse of brownfield properties. Several activities and EPA Initiatives are listed below. Please note that while EPA encourages applicants to incorporate elements of sustainable reuse in their brownfields projects, not all of the activities in the initiatives identified below will be eligible costs under the brownfields grant. Please contact your Regional Brownfields Contact listed in Section VII of the Guidelines if you intend to seek brownfields grant funding for any of these activities.

1) Clean Energy/Energy Efficiency at a brownfield site

- Consider the use of renewable sources of energy such as solar, wind, geothermal or biomass for power on your brownfield site.
- Consider ways to reduce the use of conventional, hydrocarbon power on your brownfield site by using energy efficient appliances and fixtures.

For more information on Clean Energy and Energy Efficiency go to www.epa.gov/cleanenergy, www.epa.gov/greenpower or www.energystar.gov.

2) Water Efficiency at a brownfield site

- Consider ways to conserve water on your brownfield site by incorporating high efficiency water fixtures and toilets into any new or revitalized buildings.
- Consider ways to promote water conservation techniques and sustainable practices at the brownfield site through such techniques as Low Impact Development (LID) or Storm Water Retention.
- By promoting water efficiency at the brownfield site a storm water management plan can prevent untreated storm water from washing contaminants from the brownfield site into waterways.

For more information on water efficiency go to www.epa.gov/watersense/our_water/why_water_efficiency.html

For more information on storm water retention go to water.epa.gov/polwaste/npdes/stormwater/index.cfm, and water.epa.gov/polwaste/npdes/stormwater/Stormwater-Discharges-From-Construction-Activities.cfm (specifically related to construction concerns).

For more information on Low Impact Development go to water.epa.gov/polwaste/green/.

3) Green Remediation of a brownfield site

- Green Remediation is defined by the EPA as “the practice of considering all environmental effects of remedy implementation and incorporating options to maximize net environmental benefit of cleanup actions.”
- Consider ways to incorporate sustainable practices when cleaning up a brownfield site including: ways to reduce harmful air emissions, minimize water consumption, reduce land and ecosystem impacts during the cleanup and reduce material consumption and waste generation.

For more information on Green Remediation practices at brownfield sites go to www.clu-in.org/download/remed/Green-Remediation-Primer.pdf.

4) Construction and Demolition Recycling

- Consider ways of incorporating construction and demolition materials recycling into the assessment, cleanup, or redevelopment of your brownfield site.
- If your site has buildings that need to be demolished, plan to recover and sell, donate, or reuse the uncontaminated usable materials rather than disposing of them in a landfill. Materials such as clean untreated wood, gypsum wallboard, metal, asphalt paving, concrete, brick, roofing material, and architectural salvage materials are commonly recycled.
- If your project will include new construction, plan to use recycled materials such as those from deconstruction projects or from materials that have been made out of recycled goods.

For more information on Construction and Demolition Recycling at brownfields sites got to www.epa.gov/brownfields/tools/cdbrochure.pdf.

5) Diesel Emission Reduction at brownfields sites, especially during the cleanup of your brownfield site

- Consider ways to reduce harmful emissions released by the burning of diesel fuels by incorporating modifications to operations such as: reducing operating and idle times of machinery, keeping engines well-tuned and maintained in accordance with engine manual (i.e., change air filters, check engine timing, fuel injectors and pumps) or replacing existing engines with cleaner diesel engines, hybrid or alternative fuels.

For more information on diesel emission reduction go to www.epa.gov/diesel/.

Q91. How can I successfully respond to engaging with local environmental job training programs?

A91. One way applicants can show they are engaged with a local environmental training program is to connect with an organization that received an Environment Workforce Development and Job Training Grant from EPA.

Even where no environmental job training programs or EPA funded Job Training Programs currently exist, applicants have the ability to foster local hiring and stimulate their local economies working through their local Workforce Investment Board (WIB) or One-Stop Center to identify ways to hire locally. These organizations are dispersed throughout every state and metropolitan area in the United States. By promoting local hiring, assessment and cleanup grantees are helping to ensure the economic benefits derived from brownfields revitalization benefit local residents - those who the program was intended to help.

The National Institute of Environmental Health Sciences (NIEHS) also has established job training grant programs throughout the country from which local residents have gained the certifications and skills to perform assessment and cleanup work. These programs should also be investigated to see if one exists in the targeted community.

Q92. What is equitable development and what is its role in redeveloping brownfields?

A92. The principle of equitable development is coordinating housing, transportation, and environmental policy to support equitable, healthy, and prosperous communities. For example, families can reduce their combined housing and transportation costs by locating homes close to jobs, services, and high-quality public transportation; encourage healthy walking and bicycling by bringing destinations closer together and investing in sidewalks and bicycle infrastructure; and bring new opportunities to existing communities like urban centers and rural villages through reinvestment. Removing environmental uncertainty and contamination from brownfields can promote equitable development by creating the opportunity to reuse existing infrastructure, incentivizing infill development, creating urban green space, etc.

Examples of equitable development include, but are not limited to, redevelopment of brownfields, affordable housing options, viable transportation options, conducting community planning to prioritize investments, preserve neighborhood character, promote urban greening, etc.