

Use of Brownfields Mine-Scarred Land Initiative to Clean Up Abandoned Mines

Brownfields Amendment

A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. EPA's Brownfields Program provides funds to empower state and local governments, tribes, communities and non-profits (with some restrictions) to prevent, inventory, assess, clean up, and reuse brownfields sites. The purpose of this fact sheet is to raise awareness of the availability of this program to address "mine-scarred lands¹," most of which are legacy remnants of abandoned coal and hard rock mines.

A 2002 amendment to CERCLA (the law, 42 USC 9601 et seq.) defined Brownfields and explicitly included "mine-scarred land." In pilots, the EPA Region 8 application of this provision for mine-scarred lands focused on waste rock and tailings in the hard rock context and the Region 3 application in the coal mining context focused on surface clean-up of coal and tailings. The Brownfields Program makes available both contractual and grant resources to assist state, local, regional, and tribal governments (that are not potentially liable for any contamination at a property) in the assessment and cleanup of brownfields, including coal and hard rock mine-scarred land.² In the case of brownfields cleanup grants, eligible entities include non-profit organizations, as well as government entities; the amount of the grant can be \$200,000 per grant. To be eligible for a brownfields cleanup grant, an entity must be the sole owner of the site being cleaned up through the grant performance period.³ For assessment grants, the grantee does not need to be the owner of the property. The law limits the amount of a site-specific assessment grant⁴ to an eligible governmental entity for a single property to \$350,000 (if EPA grants a waiver of the normal \$200,000 per grant limit) and the amount of cleanup grant funds on a single

¹ Mine scarred-lands are defined as lands, associated waters and surrounding watersheds where extraction, beneficiation, or processing ore and minerals (including coal) has occurred. EPA Brownfields Mine-Scarred Lands Initiative, 2004.

² The discussion contained in this paper is based on the requirements for Brownfields grant funding in FY 2017; an interested party may check with the program to verify current requirements.

³ The Brownfields mine-scarred land cleanup scenario differs from the traditional Good Samaritan situation as the owner is either a non-liable non-profit or State/Tribal/county/municipal/governmental entity and in many cases is taking action to cleanup and reuse the brownfield.

⁴ Assessment grants provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. The grantees do not need to be the owner of the site. (see <https://www.epa.gov/brownfields/brownfield-overview-and-definition>)

property to \$200,000. Brownfield cleanup grants require a 20 percent cost share. (Note: The Brownfields Cleanup Revolving Loan Program, authorized by CERCLA 104(k)(3), allows grantees to offer loans to eligible recipients at funding levels above the ceilings noted above.) Funds are made available annually via a competitive grant solicitation for a national competition that is administered by EPA. Detailed requirements are contained in the requests for proposals issued by EPA on an annual basis (contingent on appropriations; see www.epa.gov/brownfields).

The assessment and cleanup of brownfields is generally overseen/approved/certified/regulated by a State Response/Voluntary Cleanup Program. The federal statute provides an enforcement bar for persons who conduct a response action in compliance with a State Response Program. In some cases, mining site cleanups may not be eligible for State Voluntary Cleanup Programs. In such cases, mining site cleanups may be overseen and approved by EPA.

Another tool is the EPA Targeted Brownfields Assessment (TBA) program. Communities, states, tribes and non-profits can request that EPA conduct free environmental assessments (generally Phase 1, Phase 2 assessments or prepare risk assessments or cleanup plans) on any brownfield site, including mine scarred-land. The request must be directed to EPA Regional Brownfields staff. EPA provides the services directly by deploying contracted environmental consulting firms to conduct the assessments and the reports are provided to the community free of charge.

When a response action at a site is satisfactorily completed and the grantee leaves the site, the grantee is no longer protected by any potential enforcement bar. From that point forward, EPA's December 12, 2012 guidance, Clean Water Act § 402 National Pollutant Discharge Elimination System (NPDES) Permit Requirements for "Good Samaritans" at Orphan Mine Sites, applies. In many cases, following the completion of response action, no on-going discharges will be present at the property. However, in those cases where the response action causes or maintains an on-going discharge to be present at a property after the grantee leaves the property, a responsible party must apply for and obtain a NPDES permit for the discharge. There may be situations where responsibility for the NPDES discharge falls upon the owner of the land, rather than the individual, or grantee, that conducted the response action.