

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 4 BROWNFIELDS SITE ELIGIBILITY DETERMINATION CHECKLIST

To be used for determining site eligibility for Phase II Environmental Site Assessments and Cleanups.

EPA recently changed their funding policy for Cooperative Agreement Recipients (“CARs” or “grantees”). There is no longer separate funding for hazardous substances and petroleum; however, each Brownfield site must still be evaluated for its overall eligibility to receive Brownfields funds. There are different statutory requirements for determining eligibility for hazardous sites versus petroleum sites.

This checklist will provide the information necessary to determine eligibility for both hazardous and petroleum sites. The table below will help clarify the four primary categories of sites and guide users to the correct sections in which to determine eligibility.

<p><input type="checkbox"/> HAZARDOUS SUBSTANCE SITES: a site primarily contaminated with hazardous substances. This also includes mine-scarred lands or sites contaminated with controlled substances. Minimal petroleum contamination (hydraulic lifts, oil-filled equipment, etc.) may be present.</p> <p style="text-align: center;"><i>COMPLETE SECTIONS A through E</i></p>	<p><input type="checkbox"/> PETROLEUM SITE: a site with petroleum product remaining in underground or aboveground storage tanks or in associated piping or dispensing equipment, and/or where petroleum product has been dispensed, disposed or discharged from tanks, drums, piping, etc. Minimal hazardous substance contamination may be present.</p> <p style="text-align: center;"><i>COMPLETE SECTIONS A through D, F</i></p>
<p><input type="checkbox"/> COMMINGLED SITE: a site containing both hazardous substances and petroleum contamination, where they are indivisible (or nearly so) for purposes of assessment and/or cleanup. The contaminants are commingled and not readily separated.</p> <p style="text-align: center;"><i>COMPLETE SECTIONS A through E</i></p>	<p><input type="checkbox"/> COMBINED SITE: a site where there are both hazardous substances and petroleum contamination but where the location and distribution of sources and/or contamination generally are distinct and lend themselves to separate assessment and/or cleanup.</p> <p style="text-align: center;"><i>COMPLETE SECTIONS A through F</i></p>

A. GENERAL INFORMATION

- 1. Grantee/Targeted Brownfields Assessment (TBA) Applicant Name: _____
- 2. Grant/Applicant Type:
Assessment Cleanup Revolving Loan Fund (RLF) Multipurpose, or
TBA (Targeted Brownfields Assistance)
If a Grant, provide the Grant Number: _____
- 3. Work to be conducted:
Assessment, Cleanup Other
If "Other", please explain: _____
- 4. Provide the amount of funding estimated to be spent on the site: _____
(Assessments are limited to \$200,000 per site¹ unless a waiver is approved up to \$350,000. RLF subgrant cleanups are limited to \$350,000 per site. Multipurpose grant cleanups are limited to the amount in the EPA-approved budget.)
- 5. Date of proposed work: _____
- 6. Name and title of person completing this form: _____
- 7. Date Submitted to EPA: _____

B. BASIC SITE INFORMATION

- 1. Site Name and ACRES ID (if available): _____
- 2. Site Address (including County): _____
- 3. Name of the current owner of the site: _____

If the grantee/applicant does not own the site, describe their relationship with the owner, and the owner's role in the work to be performed: _____
- 4. Identify the operational history and how the site became contaminated and, to the extent possible, describe the nature and extent of contamination. If the land has been vacant for many years, why does the grantee/applicant think that it is contaminated? _____
- 5. Identify the current use(s) of the site. _____
- 6. Does the site meet the definition of a Brownfield?
 YES NO
- 7. Does grantee/applicant have access (or an access agreement) to this property?
 YES NO

¹ Per the Cooperative Agreement Terms and Conditions, the Cooperative Agreement Recipient is responsible for ensuring that EPA's Brownfields assessment funding received under this cooperative agreement, or in combination with any other previously awarded Brownfields Assessment cooperative agreements does not exceed the \$200,000 funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfield site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.

C. SITES NOT ELIGIBLE FOR FUNDING BY STATUTE

1. Is the facility listed (or proposed for listing) on the National Priorities List?
 YES NO
2. Is the facility subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to, or entered into by parties under CERCLA?
 YES NO
3. Is the facility subject to the jurisdiction, custody, or control of the US government? (Land held in trust by the US government for an Indian tribe is eligible.)
 YES NO

If the answer is YES to any of the above (C.1-3) the property is not eligible. Stop here.

D. SITES ONLY ELIGIBLE WITH A PROPERTY SPECIFIC DETERMINATION BY EPA:

1. Is the site/facility subject to a planned or ongoing CERCLA removal action?
 YES NO
2. Has the site/facility been the subject of a unilateral administrative order, court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or been issued a permit by the U.S. or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SWDA)?
 YES NO
3. Is the site/facility subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)), and has there been a corrective action permit or order issued or modified to require corrective measures?
 YES NO
4. Is the site/facility a land disposal unit that has submitted a RCRA closure notification under subtitle C of RCRA and is subject to closure requirements specified in a closure plan or permit?
 YES NO
5. Has the site/facility had a release of polychlorinated biphenyls (PCBs) that is subject to remediation under TSCA?
 YES NO
6. Has the site/facility received funding for remediation from the Leaking Underground Storage Tank (LUST) Trust Fund?
 YES NO

If the answer is YES to any of the above (D. 1-6), a property specific determination is required. Consult with your Project Officer.

E. HAZARDOUS SUBSTANCE SITES (for Petroleum-only sites, skip to F)

Answer E.1-7 if the grantee/applicant is the site owner. If the grantee/applicant does not own the site, skip to E.8.

1. How was the property acquired? Negotiated purchase Foreclosure Donation
 Eminent Domain Other (Explain): _____
2. What is the date that the grantee/applicant acquired the property? _____
3. Provide the name/identity of the party from whom the grantee/applicant acquired ownership:

4. Provide information about any familial, contractual, corporate, or financial relationships or affiliations the grantee/applicant has or had with all prior owners or operators (or other potentially responsible parties) of the property: _____
5. Did the grantee/applicant cause or contribute to any release of hazardous substances at the site? Did the grantee/applicant arrange for the disposal of hazardous substances or transport of hazardous substances to the site? YES NO ***If the answer is YES, the property is not eligible, stop here***
6. Did the grantee/applicant take reasonable steps² with regards to the contamination at the site?
 YES NO ***If the answer is NO, the property is not eligible, stop here.***
7. Defense to Liability - The site must meet one of the following conditions:

 Involuntary Acquisition: The grantee/applicant is a unit of local government who acquired the site through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances by virtue of its function as sovereign.
Nature of Acquisition: _____

 Bona Fide Prospective Purchaser: The grantee/applicant conducted a Phase I Environmental Site Assessment or other All Appropriate Inquiry investigation in compliance with ASTM standards prior to acquiring property.
Date and Type of Investigation: _____

 Publicly-Owned Brownfields: The grantee/applicant is a public entity who acquired the property prior to January 11, 2002, and did not cause or contribute to the contamination.
Explain: _____

If the site does not meet any of the scenarios in question 7, the property is not eligible, stop here.

Answer the following if the grantee/applicant is not the site owner:

8. Is the grantee/applicant potentially liable at the site as an: Operator, Arranger Transporter?
 YES NO ***If the answer is YES, the property is not eligible, stop here***
9. Is the grantee/applicant affiliated with the site owner (familial, contractual, financial)?
 YES NO ***If the answer is YES, this site requires discussion with your EPA Project Officer.***

² Reasonable steps for owners of brownfields are to stop continuing releases; prevent threatened future releases; and prevent or limit human, environmental, or natural resource exposure to earlier hazardous substance releases.

F. PETROLEUM CONTAMINATION SITES

If the State has made the petroleum eligibility determination, the grantee/applicant must provide EPA with the letter or email from the State. States may apply their own laws and regulations to petroleum eligibility determinations.

If the State has not made a determination, EPA will make the determination, based on the information below:

1. Identify the current and immediate past owner of the site:

Current owner: _____

Immediate Past Owner: _____

2. Identify when and by what method the current owner acquired the property (e.g., purchase, tax foreclosure, inheritance, etc.) _____

3. Responsible Party: did either the current or immediate past owner:

(i) dispense or dispose of petroleum or petroleum product contamination, YES NO

(ii) own the site when any dispensing or disposal of petroleum (by others) took place, YES NO

(iii) exacerbate contamination at the site, YES NO

(iv) fail to take reasonable steps with regards to contamination. YES NO

(If yes, explain): _____

4. (If grantee/applicant is not listed in Question 1) Identify whether the grantee/applicant dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site, and failed to take reasonable steps with regards to the contamination.

YES NO N/A

5. Has a responsible party been identified through either:

(a) 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

(b) 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

(c) 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.

YES NO

6. Is the site subject to any order under § 9003(h) of the Solid Waste Disposal Act (*subject to RCRA*)

YES NO

7. Financial Viability of Responsible Parties

If a responsible party has been identified in Question 3, 4, or 5 above, please provide information about whether they have the financial capability to satisfy their obligations under federal or state law to assess, investigate, or clean up the site³. _____

³ EPA will generally deem defunct or insolvent companies, as well as individual parties, to be not financially viable

G. SITE ELIGIBILITY DETERMINATION BY EPA PROJECT OFFICER

If there are any questions regarding site eligibility, the EPA Project Officer should consult with the Regional Brownfields Coordinator, and/or EPA legal counsel.

SITE IS / SITE IS NOT eligible for EPA Brownfields Funds

EPA Project Officer

Date: