

To be used for determining eligibility of sites contaminated with Petroleum or Petroleum Products under community-wide Assessment Grants and RLF Grants.

Petroleum Site Eligibility

EPA Brownfields Grants are available to eligible entities for assessment and cleanup (or to establish a cleanup revolving loan program) of Brownfields Sites. Petroleum sites require a written site eligibility determination by the state or EPA. States performing site eligibility determinations may apply their own laws and regulations for making petroleum site eligibility determinations for the purposes of Brownfields. If the state has made the petroleum eligibility determination, the grantee must provide EPA with the letter from the state or other documentation. If the state was unable to make the determination, EPA must make the determination consistent with the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants <http://www.epa.gov/oswer/docs/grants/epa-oswer-obcr-07-01.pdf> (Note that EPA staff will make a determination based on Appendix 3 of the guidelines).

This checklist is based on the published proposal guidelines and is meant as a tool to help EPA Staff make (post award) site eligibility determinations for petroleum sites. Brownfields funds are available to eligible parties who are NOT LEGALLY RESPONSIBLE FOR THE CONTAMINATION. In addition, petroleum sites may not have a current or immediate past owner who is a VIABLE RESPONSIBLE PARTY. This checklist cannot summarize all potential issues and so, for a more complete discussion please refer to the proposal guidelines referenced above. Nothing in this checklist is intended to supplement or supersede the Proposal Guidelines or applicable law.

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

A. Grant Information

1. Grantee or RLF applicant Name:

2. Grant Number:

3. Grantee or RLF applicant Contact person:

4. Grant Type

- 104(k) Community Wide Assessment 104(k) RLF

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

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

6. Type of Site (check one):

- Petroleum or petroleum products contamination **co-mingled** with hazardous substance (e.g. waste oil) (Site not eligible for petroleum-only funding. Proceed to hazardous substances site eligibility determination checklist).
 Petroleum or petroleum products contamination **only** (Petroleum is defined under CERCLA as crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under that section.) (Continue to Section B.)

B. Site Information

1. Property Name:
2. Property Address:
3. Does the site meet the following definition of a Brownfields Site? Is the site “real property, the expansion, redevelopment or reuse of which is complicated by the presence or potential presence of hazardous substances, pollutants or contaminants”?
 Yes No *If No, the site is ineligible*
4. Provide a 1-2 paragraph explanation of how and when the site became contaminated including a description of any previous known uses and any known disposal of hazardous substances, pollutants or contaminants. If the land has been vacant for many years, indicate why you think the site is contaminated (If the site is mine scarred land please see description of “mine scarred lands” in proposal guidelines referenced on page 1). You may attach relevant pages of Phase I or other investigation reports, if available.
5. List known or suspected contaminant(s).

C. Sites Not Eligible for Funding By Statute

If the answer is Yes to any of the questions below (C1 –C5) the site is ineligible or may require a property specific determination.

1. Is the facility listed (or proposed for listing) on the National Priorities List?
 Yes *If Yes, the site is ineligible* 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 *(If Yes, the site is ineligible but may be re-considered for a Property Specific Determination. See Section D.)* No
3. Is the facility subject to the jurisdiction, custody, or control of the US government? (Does not apply to land held in trust by the US government for an Indian tribe)
 Yes *If Yes, the site is ineligible* No
4. Is the site subject to any order issued under Sec. 9003(h) of the Solid Waste Disposal Act (Federal LUST corrective action order)?
 Yes *(If Yes, the site is ineligible.)* No
5. Is the site considered “low risk” compared with other “petroleum-only” sites in the

state? Two key questions for this determination are:

- a. Is the site currently being cleaned up using Federal LUST trust fund monies?
 Yes *If Yes, the site is ineligible but may be re-considered for a Property Specific Determination. (See Section D)* No
- b. Is the site currently subject to a response under the federal Oil Pollution Act?
 Yes *(If Yes, the site is ineligible.)* No
- c. Is there any other reason why this site may be considered high risk?
 Yes *(If Yes, the site is ineligible.)* No

D. Sites Eligible for a Property Specific Determination by EPA

If the answer is Yes to any of the questions below (D1 –D7), a property specific determination is required. The grantee or RLF applicant will need to submit additional information. (See Appendix 4 of the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants.)

1. Is the site / facility subject to a planned or ongoing CERCLA removal action?
 Yes No
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 the Toxic Substances Control Act (TSCA)?
 Yes No
6. Has the site/facility received funding in the past for remediation from the Leaking Underground Storage Tank Federal (LUST) Trust Fund?

- Yes No

7. Is the Site an Excluded RCRA Facility? 1) RCRA permitted facilities. 2) RCRA Interim status facilities requiring corrective action or to address contamination such as facilities under RCRA §3008(a), §3008(h) §3013 and §7003. 3) Facilities under administrative orders on consent or judicial consent decrees under RCRA or CERCLA that require corrective action or to address contamination and 4) Land disposal units that have notified EPA or an authorized state of their intent to close or that have closure plans or permits.

- Yes No

E. Petroleum Site Eligibility – Responsible Party

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

1. Is the grantee or RLF applicant potentially liable for cleaning up the site? Has the grantee or RLF applicant (or its tenants) ever:

a. dispensed or disposed of petroleum or petroleum product at the site?

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

b. exacerbated the contamination at the site?

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

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

a. a judgment rendered in a court of law or an administrative order that would require any party to assess, investigate, or cleanup the site?

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

or b. a filed enforcement action brought by federal or state authorities that would require any party to assess, investigate, or cleanup the site?

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

or c. a citizen suit, contribution action or other 3rd party claim against the current or immediate past owner, that would, if successful, require that party to assess or clean up the site?

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

3 Did the Grantee/RLF applicant acquire the property?

- Yes *(If Yes, provide date of acquisition and type of proceeding below)* No

Date acquired: _____ (please provide month, date and year)

- Tax Foreclosure Donation Purchase
 Eminent Domain Other (Explain):

4. The current site owner is: _____

Has the current owner:

- a. dispensed or disposed of petroleum or petroleum product at the site?
 Yes No

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

- c. exacerbated the contamination at the site?
 Yes No

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

Describe:

5. The immediate past owner is: _____

Has the immediate past owner:

- a. dispensed or disposed of petroleum or petroleum product at the site?
 Yes No

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

- c. exacerbated the contamination at the site?
 Yes No

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

Describe:

** *“Reasonable steps: with regard to contamination at the site” includes, as appropriate; stopping continuing releases, preventing threatened releases, and preventing or limiting human, environmental or natural resource exposure in to earlier petroleum or petroleum product releases for more information see EPA’s March 6 2003 “Common Elements” guidance. See web link at: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>*

F. Petroleum Site Eligibility – Responsible Viable Party

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

- 1. Based on Section E above, for purposes of EPA Brownfields Grant Program funding only, is there a responsible party (*current or immediate past owner*) in

regard to the contamination?

- Yes *(continue to question F2)* No *(The site is eligible)*

2. If there is a responsible party, is that party financially viable? Is the party financially capable of satisfying obligations under applicable federal or state law to conduct the activities contemplated under the grant for assessing or cleaning up the site?

- Yes, there is a viable responsible party. *(The site is ineligible)*
 No *(The site is eligible)*

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

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

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

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