

EPA Region 8 Brownfields Program Site Eligibility Determination Outline



To be used for determining site eligibility under
Community-Wide Assessment Grants & 128(a) Grant site-specific work

Today's Date:

Start date of Proposed Work:

A. GENERAL INFORMATION

1. Grantee Name:

2. Grant Number:

3. Grant Type:

104(k) Assessment

128(a) State & Tribal Response

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

Phase 1 Assessment

Phase 2 Assessment

Cleanup Planning

Cleanup Activities

5. Anticipated funding amount total:

5a. ANSWER ONLY FOR GRANTS AWARDED PRIOR TO DECEMBER 30, 2019:

Anticipated funding amount, if both hazardous substance and petroleum funding will be used:

Hazardous Substances amount:

Petroleum amount:

B. SITE INFORMATION

1. Property Name:

2. Property Address (Street, City, State, Zip):

3. Current Owner:

4. Date property was acquired, or date of planned acquisition:

5. Does grantee have access or an access agreement for this property?

YES

NO

6. Known or suspected contaminant(s)**:

Hazardous substances (including mine scarred lands and controlled substances)

Hazardous substances commingled with petroleum

Petroleum is the dominant contaminant

Hazardous substances are the dominant contaminants

Petroleum

****** *If suspected petroleum contamination is from a state-regulated source, an eligibility letter from the state will be required. If property is on tribal land, EPA must make the determination.*

7. Known or suspected contaminants:

8. Identify when and how the site became contaminated and describe previous known uses.

9. Provide detail on the planned expansion, redevelopment or reuse of the property.

10. How has the reuse of the site been inhibited by presence or potential presence of contamination?

11. Does the property have potential historic or cultural significance? The National Historic Preservation Act defines a historic property as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”

YES

NO

9.a. If there is a structure on the property, what year was it built?

9.b. Is there any known historical cultural significance associated with the property?

C. SITES NOT ELIGIBLE FOR FUNDING BY STATUTE

If the answer is Yes to any of the questions below (C1-3) the site is not eligible.

1. Is the property listed (or proposed for listing) on the National Priorities List?

YES

NO

2. Is the property subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act, also known as Superfund)?

YES

NO

3. Is the property subject to the jurisdiction, custody, or control of the US government?

YES

YES (property held in trust by the US government for an Indian tribe is eligible)

NO

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

If the answer is Yes to any of the below questions (D1-6), then a property specific determination is required. The grantee will need to submit additional information, which can be found in Appendix A to this document.

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 (SDWA)?

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

E. HAZARDOUS SUBSTANCE and/or HAZARDOUS SUBSTANCE PREDOMINANT



For petroleum only or petroleum predominant sites:
Skip to Section F.

1. Does the grantee own the site?

YES if YES, answer question E.2, a-k

NO if NO, skip to question E.3

2. Answer the following if the grantee is the current site owner:

a. Is the owner a Unit of State or Local Government or Other

b. If the owner is a governmental unit, how was the property acquired?

Tax Foreclosure

Donation

Eminent Domain

Bought it outright

Other (Explain):

Date acquired:

c. Did the owner conduct All Appropriate Inquiry (AAI) prior to acquiring property?

For more information about All Appropriate Inquiry (AAI), see:

<https://www.epa.gov/brownfields/brownfields-all-appropriate-inquiries>

YES

NO

d. Date of AAI:

e. If eligibility request is for cleanup activities, date of phase II environmental site assessment, or equivalent:

f. Detail the reasonable steps the owner has taken with regards to the contamination at the site:

g. Does the owner have a defense to CERCLA liability? **

YES – Bona Fide Prospective Purchaser (BFPP)

YES – Contiguous Property Owner

YES – Innocent Landowner

YES – Indian Tribe

YES – Government entity that acquired property before January 11, 2002 and did not cause or contribute to the release or threat of release of a hazardous substance at the property.

NO

**see <https://www.epa.gov/enforcement/common-elements-guidance>

h. Is the owner liable at the site as an Operator, Arranger, or Transporter

OR None Applicable

i. Did all disposal of hazardous substances at the site occur before the owner acquired the property?

YES

NO

j. Have there been any known releases?

YES

NO

k. Did the owner cause or contribute to any release of hazardous substances at the site?

YES

NO

3. Answer the following if the grantee is **not the site owner**:

a. Is the grantee liable at the site as an Operator, Arranger, or Transporter

OR None Applicable

F. PETROLEUM ONLY and/or PETROLEUM PREDOMINANT COMINGLED CONTAMINATION SITES



If petroleum is not the predominant contaminant on the site:
Skip this section and proceed to Section G.

1. Petroleum sites need a written site eligibility determination by the state or EPA. If the state has made the petroleum eligibility determination, the grantee must provide EPA with the letter from the state.

2. If the state was unable to make the determination or the site is located on tribal land, EPA must make the determination consistent with the Guidelines (note that EPA staff will need to refer to Appendices of the most recent ARC (Assessment, Revolving Loan Fund, Cleanup) grant guidelines to conduct the petroleum determination). The grantee must provide information regarding the following:

a. Whether there is a viable responsible party at the site. Key questions for this determination follow:
1. Was the site last acquired through tax foreclosure, abandonment or equivalent government proceedings?

YES

NO

2. Has a responsible party been identified through:

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

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

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, investigate, or clean up the site.

YES

NO



Skip to Question b.5 if the site was acquired through tax foreclosure, abandonment, or equivalent government proceedings. If not, answer Question b.3 and b.4.

3. The current owner is:

Has the current owner:

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

YES

NO

b) dispensed or disposed of or owned the property during the dispensing or disposal of petroleum or 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

4. The immediate past owner is:

Has the immediate past owner:

a) dispensed or disposed of or owned the property during the dispensing or disposal of petroleum or petroleum product at the site?

YES

NO

b) exacerbated the contamination at the site?

YES

NO

c) taken reasonable steps with regard to contamination at the site,

YES

NO

5. Based on the above, for purposes of Brownfields funding, is there a responsible party?

YES If "YES" go on to #6,

NO if "NO" proceed directly to F.2.C.

6. If there is a responsible party, is that party viable (has adequate financial resources to pay for assessment of the site).

YES

NO

If "NO", explain the basis for that conclusion:

If there is a viable responsible party, the petroleum site is ineligible. If there is no responsible party, or if there is a responsible party who is not viable, continue. NOTE: States may apply their own laws and regulations to make the petroleum site determination instead of the previous questions; if they do so, the grantee must submit their determination and rationale.

c. Whether the grantee is potentially liable for cleaning up the site. Key questions for this determination follow:

1. Has the grantee ever:

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

YES

NO

b) exacerbated the contamination at the site?

YES

NO

d. Is the site subject to any order issued under Sec. 9003(h) of the Solid Waste Disposal Act?

YES

NO

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END OF FORM FOR GRANTEES

SECTION G WILL BE COMPLETED BY THE EPA PROJECT OFFICER
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G. SITE ELIGIBILITY DETERMINATION BY EPA PROJECT OFFICER

Please Note: The Project Officer should consult with LEP (Amelia Piggott, Max Greenblum and Kayleen Castelli) before determining eligibility.

Site

is

is not eligible for site assessment activities using EPA Brownfields Funds

Site

is

is not eligible for cleanup activities using EPA Brownfields Funds

-- OR --

Site is eligible but requires an EPA Property-Specific Determination, for which additional information was provided.

EPA Project Officer Signature

Date

Once the signature is applied, the document is automatically saved and it cannot be renamed or copied without stripping off the signature having to re-sign it. Please save the document with the desired name and location before applying the signature to avoid problems.

APPENDIX A: [IF REQUIRED] INFORMATION TO SUPPORT PROPERTY SPECIFIC DETERMINATION by EPA

Grantee must explain why Brownfields financial assistance is needed and how it will protect human health and the environment and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways undeveloped property, other recreational property, or other property used for nonprofit purposes.