

## *Appendices • Content*

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## Appendix A. • *Acronyms*

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- AAI** ..... All Appropriate Inquiry
- ABCA** ..... Analysis of Brownfields Cleanup Alternatives
- ACH (Vendor Payment System)** ..... Automated Clearing House Vendor Payment System
- ASAP** ..... Automated Standard Application for Payments
- ASTM** ..... American Society for Testing and Materials
- ATSDR** ..... Agency for Toxic Substances and Disease Registry
- BCRLF** ..... Brownfields Cleanup Revolving Loan Fund
- BEDI** ..... Brownfields Economic Development Initiative (HUD)
- BFPP** ..... Bona Fide Prospective Purchaser
- BMS** ..... Brownfields Management System
- CAR** ..... Cooperative Agreement Recipient
- CDBG** ..... Community Development Block Grants (HUD)
- CERCLA** ..... Comprehensive Environmental Response, Compensation, and Liability Act
- CIP** ..... Community Involvement Plan
- CFR** ..... Code of Federal Regulations
- CPO** ..... Contiguous Property Owner
- D&B** ..... Davis-Bacon Act
- DOT** ..... United States Department of Transportation
- EDA** ..... United States Department of Commerce, Economic Development Administration
- EPA** ..... United States Environmental Protection Agency
- EPA-EFT (Payment System)** ..... Environmental Protection Agency Electronic Funds Transfer Payment System
- ESA** ..... Endangered Species Act
- FAQ** ..... Frequently Asked Question
- FWPCA** ..... Federal Water Pollution Control Act
- GAO** ..... United States General Accounting Office
- GPRA** ..... Government Performance and Results Act

## APPENDIX A

**HUD** ..... United States Department of Housing and Urban Development

**ILO** ..... Innocent Landowner

**IPA** ..... Intergovernmental Personnel Act

**LSP** ..... Licensed Site Professional

**LUST** ..... Leaking Underground Storage Tank

**MOA** ..... Memorandum of Agreement

**MOU** ..... Memorandum of Understanding

**MPO** ..... Metropolitan Planning Organization

**NCP** ..... National Oil and Hazardous Substances Pollution Contingency Plan

**NEPA** ..... National Environmental Policy Act

**NPL** ..... National Priorities List

**OMB** ..... United States Office of Management and Budget

**OPA** ..... Oil Pollution Act

**PCBs** ..... Polychlorinated Biphenyls

**QAPP** ..... Quality Assurance Project Plan

**QEP** ..... Qualified Environmental Professional

**RAP** ..... Remedial Action Plan

**RCRA** ..... Resource Conservation and Recovery Act

**RLF** ..... Revolving Loan Fund

**SBA** ..... United States Small Business Administration

**SF** ..... Standard Form

**SDWA** ..... Safe Drinking Water Act

**TCSP** ..... Transportation & Community System Preservation

**TSCA** ..... Toxic Substances Control Act

**TIF** ..... Tax Increment Financing

**USACE** ..... United States Army Corps of Engineers

**USDA** ..... United States Department of Agriculture

**VCP** ..... Voluntary Cleanup Program

## Appendix B. • *Glossary of Specialized Terms*

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The following provides a glossary of terms, phrases, and titles frequently used in discussions of RLFs.

**Administrative Record.** All documents considered or relied on in selecting the cleanup action at an RLF site. The cooperative agreement recipient is required to establish an administrative record file for each RLF site.

**All Appropriate Inquiry.** Standards that must be applied by prospective property owners in order to qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner liability limitations. A property owner must perform "all appropriate inquiry" into the previous ownership and uses of property before acquisition of the property. The Brownfields Law states that purchasers of property before May 31, 1997 shall take into account such things as commonly known information about the property, the value of the property if clean, the ability of the defendant to detect contamination, and other similar criteria. For property purchased on or after May 31, 1997, the procedures of the American Society for Testing and Materials (ASTM), including the document known as Standard E1527 - 97, entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," are to be used. Provisions are specified in CERCLA § 101(35)(B)(iv).

**American Society for Testing and Materials (ASTM) Phase I/Phase II assessment.** Provides standards for conducting an environmental site assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and petroleum products. This practice is intended to permit a user to satisfy one of the requirements to qualify for the innocent landowner defense to CERCLA liability: that is, the practices that constitute "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" as defined in 42 USC § 9601(35)(B).

**Analysis of Brownfields Cleanup Alternatives (ABCA).** An analysis of cleanup alternatives the cooperative agreement recipient must conduct to choose and document the most appropriate cleanup action considering the site characteristics, surrounding environment, land-use restrictions, and potential future uses.

**Automated Standard Application for Payments (ASAP).** A federal payment mechanism that transfers cash to recipients of federal assistance using electronic transfers managed by the Treasury and the Federal Reserve Bank of Richmond.

**Bona Fide Prospective Purchaser (BFPP).** A limited liability provision for property owners that have purchased the property after January 11, 2002, with knowledge of contamination after performing all appropriate inquiry. These landowners may still qualify for the landowner liability protection, provided they meet the other criteria set forth in CERCLA § 101(40).

**Borrower.** A borrower is a public or private entity that uses RLF funds for cleanup and cleanup related activities, and agrees to the terms and conditions of a loan agreement between itself and the cooperative agreement recipient. With the exception of an intra-governmental loan, the borrower cannot be the cooperative agreement recipient or an entity filling any of the RLF roles.

**Brownfields.** 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.

**Brownfields Cleanup Revolving Loan Fund (BCRLF).** The original EPA pilot grant program initiated to fund cleanup and encourage redevelopment of brownfields properties. This program was amended by the January 2002 enactment of the *Small Business Liability Relief and Brownfields Revitalization Act* (the “Brownfields Law”), and is now called the RLF grant program.

**Brownfields Economic Redevelopment Initiative.** An organized effort, developed by EPA, to assist communities in revitalizing brownfields both environmentally and economically. The Initiative is based on the principle that a clean and healthy environment is vital to a growing and robust economy.

**Brownfields Management System (BMS).** The Brownfields Management System is a database that maintains records of EPA Brownfields pilots nationwide. It contains quarterly data for all sites under the Brownfields Initiative.

**Cleanup Action.** Action associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant, or contaminant.

**Cleanup Subgrantee.** Eligible governmental and non-profit entities that receive RLF funds from the recipients as subgrants to fund eligible site cleanup activities.

**Code of Federal Regulations (C.F.R.).** This document codifies all rules of the executive departments and agencies of the federal government. It is divided into 50 volumes known as titles. Title 40 of the C.F.R. (references as 40 C.F.R.) lists environmental regulations.

**Community Relations Plan (CRP).** Specifies the community involvement activities that the cooperative agreement recipient expects to undertake during the cleanup, based on community interviews and other relevant information, prior to completion of the ABCA or its equivalent. The cooperative agreement recipient is required to prepare a community involvement plan for EPA review and approval.

**Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).** Commonly known as Superfund, this law was enacted by Congress on December 11, 1980. CERCLA provides broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment.

**Contiguous Property Owner (CPO).** A limited liability provision that "protects parties that are essentially victims of pollution incidents caused by their neighbor's actions." Contiguous property owners must perform all appropriate inquiry prior to purchasing property. Persons who know, or have reason to know, prior to purchase, that the property is or could be contaminated, cannot qualify for the contiguous property owner liability protection. A landowner must meet the criteria set forth in CERCLA § 107(q)(1)(A) to qualify as a CPO.

**Cooperative Agreement.** An assistance agreement whereby EPA transfers money, property, services or anything of value to a state, local or tribal government, university, non-profit, or not-for-profit organization for the accomplishment of authorized activities or tasks. In the case of the RLF program, the cooperative agreement awards federal funds according to specified standard terms and conditions, as well as any special terms and conditions, related to environmental management and cleanup requirements, loan administration reporting requirements, record keeping, etc.

**Cooperative Agreement Recipient (CAR).** Eligible entity that enters into a cooperative agreement with EPA to receive grant funding and initiate a revolving loan fund program.

**Cost-Share.** The requirement that cooperative agreement recipients contribute a percentage of federal award funds. In the RLF grant program, cooperative agreement recipients must contribute 20% of the total cooperative agreement award (i.e., EPA-awarded funds) towards the RLF. The cost-share contribution may be in the form of cash, labor, material, or services from non-federal sources.

**Cross-cutting federal requirements.** Those requirements which are applicable to the RLF by operation of statutes, executive orders, and regulations other than CERCLA and associated administrative authorities.

**Disbursement.** The transfer of funds from the cooperative agreement recipient to the borrower or cleanup subgrantee.

**Eligible Entity.** An entity that qualifies for a cooperative agreement. These entities include a general purpose unit of local government; a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government; a government entity created by a State legislature; a regional council or group of general purpose units of local government; a redevelopment agency that is chartered or otherwise sanctioned by a State; an Indian Tribe other than in Alaska; or an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act and the Metlakatla Indian community.

**Fund Manager.** Each cooperative agreement recipient must act as or enlist the services of a fund manager responsible for financial management of initial RLF funding as well as program income resulting from the lending of pilot funds.

**Greenfields.** Greenfields are generally parkland, undeveloped open space and agricultural lands located near the outskirts of towns, cities and larger metropolitan areas. These areas help delineate one village, city or town from another, or where development is occurring and where it is not. When they are protected, greenfields can serve to promote growth in already-developed areas and curb urban sprawl. As parks and greenways, they also provide the green infrastructure essential to livable communities.

**Innocent Landowner (ILO).** A limited liability provision for property owners who have performed an all appropriate inquiry prior to purchase and cannot know, or have reason to know, of contamination. A person must meet the criteria set forth in CERCLA § 107(b)(3) and CERCLA § 101(35) to have a viable defense as an innocent landowner.



**Memorandum of Understanding (MOU).** A method to express mutual commitments to work together in advancing mutual objectives. It is a vehicle for obtaining or providing other non-monetary support, including supplies, equipment, chemicals, personnel, etc.

**National Oil and Hazardous Substances Pollution Contingency Plan (NCP).** The federal regulation that guides determination of the sites to be corrected under the Superfund program and the program to prevent or control spills into surface waters or elsewhere. Before enactment of the Brownfields Law, RLF funding came from the Superfund trust fund. Thus, the NCP also governs some of the requirements of the RLF program. Some provisions of the NCP still pertain to Brownfields cleanup activities.

**Non-profit Entity.** 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. The term “non-profit organization” means any corporation, trust, association, cooperative, or other organization which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, and/or expand its operations. See OMB Circular A-122 for more information on non-profit entities.

**Payment.** EPA’s transfer of funds to the cooperative agreement recipient.

**Program income.** The gross income received by the cooperative agreement recipient, directly generated by the cooperative agreement award or earned as a result of the cooperative agreement. It includes repayments of principal, interest and loan fees.

**Prudent lending practices.** The establishment of interest rates, repayment terms, and collateral requirements, as well as practices related to loan management and timing of disbursements.

**Qualified Environmental Professional (QEP).** The official designated to coordinate and direct cleanup actions at an RLF site or sites. He/she helps the cooperative agreement recipient carry out its responsibilities on a site-specific basis, and must be a qualified employee working on behalf of the cooperative agreement recipient. The QEP serves the role of the On-Scene Coordinator (OSC), as defined by the NCP, but does not have to be a government official.

**Quality Assurance and Analysis Plan (QAAP).** A process for obtaining data of sufficient quality and quantity to satisfy data needs. Sampling and analysis plans shall be reviewed and approved by EPA. The sampling and analysis plans shall consist of two parts: (1) the field sampling plan, which describes the number, type, and location of samples and the type of analyses; and (2) the quality assurance project plan, which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the cleanup action.

**Recipient.** see Cooperative Agreement Recipient.

**Revolving loan fund.** Financing tool that recycles funds by providing loans, receiving loan repayments, and then providing further loans. An RLF is a revolving loan fund.

**Revolving Loan Fund (RLF) Grant Program.** EPA grant program under the Brownfields Economic Redevelopment Initiative described in this administrative manual. The program funds cleanup and encourages redevelopment of brownfields properties by offering low-interest loans and subgrants with liability protection for eligible borrowers and sites. See also Brownfields Cleanup Revolving Loan Fund.

**Uniform Administrative Rules - 40 C.F.R. Parts 30 and 31.** 40 C.F.R. Part 30 - This federal regulation establishes uniform administrative rules for federal grants and agreements awarded to institutions of higher education, hospitals, and non-profit organizations. These regulations will be applicable to subgrants awarded to non-profit organizations. 40 C.F.R. Part 31 - This federal regulation establishes consistency and uniformity among federal agencies in the management of grants and cooperative agreements with state, local and federally recognized Indian tribal governments. see Code of Federal Regulations (C.F.R.).

**Voluntary cleanup program (VCP).** State-operated cleanup programs focused on addressing the environmental, legal, and financial barriers that often hinder the redevelopment and reuse of contaminated properties. RLF funds may be used to clean up a site pursuant to a state VCP so long as the RLF cleanup meets the substantive and procedural requirements of CERCLA and the NCP and all terms and conditions of the cooperative agreement are met.

## Appendix C. • *Standard Forms*


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The following standard forms are required by the RLF program and are discussed throughout this manual. They are located at the listed Internet addresses.

- **Standard Form 269** - *Financial Status Report*  
<http://www.whitehouse.gov/omb/grants/sf269.pdf>
  
- **Standard Form 270** - *Request for Advance or Reimbursement*  
<http://www.whitehouse.gov/omb/grants/sf270.pdf>
  
- **Standard Form 271** - *Outlay Report and Request for Reimbursement for Construction Programs*  
<http://www.whitehouse.gov/omb/grants/sf271.pdf>
  
- **Standard Form 424** - *Application for Federal Assistance*  
<http://www.whitehouse.gov/omb/grants/sf424.pdf>
  
- **Standard Form 424A** - *Budget Information - Non-Construction Programs*  
<http://www.whitehouse.gov/omb/grants/sf424a.pdf>
  
- **Standard Form 424B** - *Assurances - Non-Construction Programs*  
<http://www.whitehouse.gov/omb/grants/sf424b.pdf>
  
- **Standard Form 3881** - *ACH Vendor Payment System*  
<http://pacific.fvs.gov/jobs/orojitw/document/pdf/sf-forms/sf-3881.pdf>

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Appendix D. • Property Profile

		<b>United States</b> <b>ENVIRONMENTAL PROTECTION AGENCY</b> <b>Washington, DC 20460</b>		Form Approved. OMB No. 2050-0192 Expires 08-31-2006
<b>PROPERTY PROFILE FORM</b> <b>Brownfields</b>		Public reporting burden for this collection of information is estimated to average 1.25 hours per response, including the time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Environmental Protection Agency, Office of Environmental Information, Code 2822T, Washington, DC 20460 and to the Paperwork Reduction Project, Office of Management and Budget, Washington, DC 20503. DO NOT RETURN your form to either of these addresses. Send your completed form to the address provided by the issuing office.		
<b>PART I – GRANT RECIPIENT INFORMATION</b>				
1. Grant Recipient Name				
2. Grant Number				
<b>PART II – PROPERTY INFORMATION</b>				
<b>3. Property Background Information</b>				
3a. Current Owner		3b. Property Name		
3c. Street Address				
3d. City	3e. State	3f. Zip Code	3g. Size (in acres)	
<b>4. Property Geographic Information</b> (EPA Headquarters, or its contractors, will provide lat/long information if grant recipients are unable.)				
4a. Latitude		4b. Longitude		
4c. Horizontal Collection Method		4d. Source Map Scale Number (only if a map/photo was used)		
4e. Reference Point		4f. Parcel Number(s)		
<b>5. Property History Information</b> (optional)				
5a. Property Description / History / Past Ownership				
5b. Current Use(s)				
<b>PART III – ENVIRONMENTAL ASSESSMENT INFORMATION</b> (optional for cleanup and RLF grant recipients)				
<b>6. Environmental Assessment Activity Information</b> (use mm/dd/yyyy format)				
6a. Phase I (preliminary assessment / all appropriate inquiry) Report Completion Date(s)		6b. Phase II (supplemental assessment) Report Completion Date(s)		6c. Phase III (cleanup planning) Report Completion Date(s)
<b>7. Environmental Assessment Findings</b>				
<b>7a. Classes of Contaminants Found</b> (check all that apply)		<input type="checkbox"/> VOCs <input type="checkbox"/> Lead <input type="checkbox"/> Other Metals <input type="checkbox"/> PAHs <input type="checkbox"/> Other (describe) _____		
<input type="checkbox"/> Petroleum / Petroleum Products <input type="checkbox"/> Controlled Substances <input type="checkbox"/> Asbestos <input type="checkbox"/> PCBs				

<b>7b. Media Affected</b> (check all that apply) <input type="checkbox"/> Soil <input type="checkbox"/> Air <input type="checkbox"/> Surface Water	<input type="checkbox"/> Ground Water <input type="checkbox"/> Drinking Water <input type="checkbox"/> Sediments <input type="checkbox"/> Unknown	<b>7c. Cleanup Required</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	
<b>8. Environmental Assessment Funding Information</b> <b>Table A – Funds Used to Perform Assessment Activities</b>			
<b>Source</b>	<b>Amount</b>	<b>Source</b>	<b>Amount</b>
<b>8a.</b> US EPA – Brownfields Assessment Grant		<b>8d.</b> Local Funding	
<b>8b.</b> Other Federal Funding		<b>8e.</b> Private Funding	
<b>8c.</b> State / Tribal Funding		<b>8f.</b> Other Funding	
<b>PART IV – ENVIRONMENTAL CLEANUP INFORMATION</b> (mandatory for cleanup and RLF grant recipients only; optional for assessment grant recipients)			
<b>9. Cleanup Activity Information</b>			
<b>9a.</b> Cleanup Completion Date (use mm/dd/yyyy format)	<b>9b.</b> Institutional Controls Required? <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>9c.</b> If “yes,” indicate category (check all that apply) <input type="checkbox"/> Proprietary Controls <input type="checkbox"/> Governmental Controls <input type="checkbox"/> Enforcement / Permit Tools <input type="checkbox"/> Informational Devices  Address of Data Source (URL if available): _____	
<b>10. Cleanup Results</b>			
<b>10a.</b> Classes of Contaminants Removed/Addressed (check all that apply) <input type="checkbox"/> Petroleum / Petroleum Products <input type="checkbox"/> Controlled Substances <input type="checkbox"/> Asbestos <input type="checkbox"/> PCBs <input type="checkbox"/> VOCs <input type="checkbox"/> Lead <input type="checkbox"/> Other Metals <input type="checkbox"/> PAHs <input type="checkbox"/> Other (describe) _____	<b>10b.</b> Media Addressed (check all that apply) <input type="checkbox"/> Soil <input type="checkbox"/> Air <input type="checkbox"/> Surface Water <input type="checkbox"/> Ground Water <input type="checkbox"/> Drinking Water <input type="checkbox"/> Sediments	<b>10c.</b> Acres Cleaned Up	
<b>11. Environmental Cleanup Funding Information</b> <b>Table B – Funds Used to Perform Cleanup Activities</b>			
<b>Source</b>	<b>Amount</b>	<b>Source</b>	<b>Amount</b>
<b>11a.</b> US EPA – Brownfields Cleanup Grant		<b>11e.</b> State / Tribal Funding	
<b>11b.</b> US EPA – Brownfields RLF Loan (Borrower Name)		<b>11f.</b> Local Funding	
<b>11c.</b> US EPA –Brownfields RLF (Subgrantee Name)		<b>11g.</b> Private Funding	
<b>11d.</b> Other Federal Funding		<b>11h.</b> Other Funding	

<b>PART V – REDEVELOPMENT AND OTHER LEVERAGED ACCOMPLISHMENTS</b>			
<b>12. Redevelopment Information</b>			
<b>12a. Redevelopment Underway</b>		<b>12b. Acres of Green Space Created</b>	
<input type="checkbox"/> Yes (Start Date _____ use mm/dd/yyyy format) <input type="checkbox"/> No			
<b>13. Jobs Information</b>			
<b>13a. Number of Cleanup and Redevelopment Jobs Leveraged:</b>			
<b>14. Redevelopment Funding Information</b>			
<b>Table C – Funds Used to Perform Redevelopment Activities</b>			
<b>Source</b>	<b>Amount</b>	<b>Source</b>	<b>Amount</b>
<b>14a. Federal Funding</b>		<b>14d. Private Funding</b>	
<b>14b. State / Tribal Funding</b>		<b>14e. Other Funding</b>	
<b>14c. Local Funding</b>			
<b>PART VI – PROPERTY OWNERSHIP INFORMATION</b>			
(mandatory for cleanup and RLF grant recipients only; optional for assessment grant recipients)			
<b>15. During the life of the grant, did ownership change?</b>		<b>16. Did Superfund federal landowner liability protections factor into the ownership change?</b>	
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	
<b>PART VII – ANECDOTAL PROPERTY INFORMATION</b> (optional for all grant recipients)			
<b>17. Property Highlights</b>			
<b>18. Property Photograph Information</b>			
<b>18a. Photographs Available</b>		<b>18b. Video Available</b>	
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>PART VIII - APPROVALS</b>			
<b>19. Grant Recipient Project Manager</b>			
Name	Signature		Date
<b>20. US EPA Regional Representative</b>			
Name	Signature		Date

## **Instructions for Completing Brownfields Grant Profile Form**

### **GENERAL INSTRUCTIONS**

#### **OVERVIEW:**

As specified in your grant terms and conditions, all assessment, cleanup, and Revolving Loan Fund (RLF) grant recipients must report to EPA on a regular basis. This OMB and EPA approved reporting form (OMB Form 2050-0192, EPA Form 9310-3), supplements your Quarterly Reports with specific property information. Please note that, in most instances, all reported information is accessible by the public under the Freedom of Information Act (FOIA) and may be distributed by EPA to the public unless one of the FOIA exclusions is applicable.

All grant recipients must develop and regularly maintain a Brownfields Property Profile form (Property Profile) for each property targeted with EPA brownfields grant assistance. The Property Profile is divided into eight parts. Unless otherwise indicated, reporting in each section is mandatory for all grant recipients. Additional instructions and definitions for completing this form are provided below. Please contact your EPA Regional representative if you have any questions when completing this form.

Compared to the Quarterly Reports, each Property Profile contains information relating only to a specific property targeted by the grant recipient. Quarterly Reports should not contain property specific information except to identify area-wide/regional redevelopment projects and their relation to one or more targeted properties.

**Leveraged Accomplishments Note:** Several pieces of information in the Property Profile refer to "leveraged" activities or accomplishments. Typically, these leveraged activities and accomplishments are natural results/outcomes of the EPA funded activities (e.g., cleanup jobs/funding at a property assessed with EPA brownfields assessment grant funding; reuse jobs/funding at a property cleaned up with EPA brownfields cleanup or RLF grant funding). To be reportable, there must be a demonstrable link or connection between the EPA funded activity and the leveraged activity/funding/accomplishment. Usually, activities/funding/accomplishments that occur prior to award of the EPA grant should not be reported as leveraged since the activity predates the award. In addition, the leveraged activity/funding/accomplishment should be reported only when actually manifested (i.e., projected numbers and other data, including expected jobs or uncommitted funding, should not be reported).

#### **WHEN TO SUBMIT:**

**Original Property Profiles.** Grant recipients must create a Property Profile when the grant recipient targets a property for EPA brownfields grant funded activities.

- For assessment grants, this will typically mean when assessment or planning activities are initiated at the property using the grant funds.
- For cleanup and RLF grants, this will typically mean when cleanup activities are initiated at the property using the grant funds.
- For RLF grants, this may also mean when a subgrant or loan package is completed for a specific property.

**Updated Property Profiles.** Property Profiles must be updated as activities (e.g., assessment, cleanup, redevelopment) and accomplishments (e.g., cleanup completed, redevelopment underway, significant leveraged funding committed) dictate and then submitted along with the next required Quarterly Report. For example, a Property Profile should be updated upon: completion of a Phase II assessment; receipt of a no cleanup action document or determination; completion of cleanup activity; and/or initiation/completion of the planned redevelopment project. In addition, a Property Profile should be updated as the property background information changes or if there are other anecdotal information and successes that the grant recipient wants to share with EPA. Grant recipients should also revise and submit updated Property Profiles for all targeted properties when the grant is being closed-out.



**TO WHOM TO SUBMIT:**

Grant recipients must submit the Property Profile forms to their EPA Regional Representative identified in the terms and conditions of the cooperative agreement and the EPA Headquarters Data Manager.

**HOW TO SUBMIT:**

EPA is undertaking a two-phased process to facilitate electronic reporting and information dissemination system to facilitate future grant recipient reporting. In the first phase, EPA will prepare electronic versions of this and other required reporting forms for the grant recipients to complete and submit via e-mail. In the second phase, EPA will develop a web-based database that will allow entry of the information directly by the grant recipient or the Region. As needed, EPA will continue to provide contractor data entry and quality assurance support. Electronic reporting is optional; hard copy reports always will be acceptable.

## **DETAILED INSTRUCTIONS For Completing Each Item on Form**

**PART I – GRANT RECIPIENT INFORMATION**

(mandatory for all grant recipients)

- 1. Grant Recipient Name.** Enter the grant name. Use the official name of the grant recipient as provided in the cooperative agreement, unless otherwise directed by the EPA Regional Representative.
- 2. Grant Number.** Enter the grant number. Use the number of the grant as provided in the cooperative agreement.

**PART II - PROPERTY INFORMATION**

(mandatory for all grant recipients)

- 3. Property Background Information.** Provide basic background information about the targeted property. To a large extent, much of this information is historical (e.g., name, street address, lat/long, size, description/history) and should be provided in the original version of the Property Profile, with updates only as necessitated by changed circumstances.

For purposes of grant recipient reporting, a “property” is defined as a contiguous piece of land under unitary ownership, at the time it first benefits from EPA brownfields grant funded activities. A property may contain several smaller components, parcels, or areas; all reporting, unless otherwise indicated, should be provided for the property as a whole.

- 3a. Current Owner.** Enter the name of the owner of the targeted property. If the ownership changes during the term of the grant, provide the new owner’s name.
- 3b. Property Name.** Enter the name of the property. The property name should include the primary reference to the property, as well as any aliases. If multiple names are listed, indicate the primary name first followed by any aliases (separated by commas).
- 3c. Street Address.** Enter the address of the property. The street address provided should

reflect the primary entrance to the property. If no street address is available, please report the names of the streets for the intersection closest to the primary property entrance.

**3d. City.** Enter the name of the city in which the property is located.

**3e. State.** Enter the two-letter abbreviation for the name of the state in which the property is located.

**3f. Zip Code.** Enter the zip code (with plus four code, if available) for the property.

**3g. Size.** Enter the number of acres contained within the property's boundary. Acreage for the entire property, not just the potentially contaminated portions, should be provided.

**4. Property Geographic Information.** The grant recipient must provide latitude and longitude (lat/long) information for the property. The coordinates should be taken at the primary entrance to the property (i.e., at the street address listed in 3c). The five required lat/long data elements are described below (4a-4d). EPA Headquarters, or its contractors, will provide latitude /longitude and parcel number information if grant recipients are unable. Additional guidance regarding EPA's Data Standards for geographic information can be found at <http://www.epa.gov/edr> and is also available from your EPA Regional Representative.

**4a. Latitude.** Enter the latitude coordinate for the property's primary entrance. Please indicate, in degrees and decimal degrees (up to a maximum of six decimal positions), the measure of the angular distance on a meridian north or south of the equator. Where degrees latitude are less than 10, leading zeros should be given (e.g., 09 degrees latitude). Latitude measures should be preceded by a plus (+) symbol for points on or north of the equator and a minus (-) symbol for points south of the equator.

**4b. Longitude.** Enter the longitude coordinate for the property's primary entrance. Please indicate, in degrees and decimal degrees (up to a maximum of six decimal positions), the measure of the angular distance on the meridian east or west of the prime meridian. Where degrees longitude are less than 100, leading zero(s) should be given (e.g., 006 or 089 degrees longitude). Longitude should always be preceded by a minus (-) symbol for points west of the prime meridian and a plus (+) symbol for points on or east of the prime meridian.

**4c. Horizontal Collection Method.** Enter the method used to determine the latitude and longitude coordinates.

**4d. Source Map Scale Number (only if a map/photo was used).** Unless a Global Positioning System (GPS) was used to determine the coordinates, please indicate the scale of the map/photo used to determine the latitude and longitude coordinates (i.e., the number that represents the proportional distance on the ground for one unit of measure on the map or photo).

**4e. Reference Point.** Enter the reference point. If the latitude/longitude coordinates were not taken at the primary entrance to the property, please indicate the place for which the coordinates were established.

**4f. Parcel Number(s).** Enter the universal identification number for the property (i.e., parcel number). Please list all applicable parcel numbers for the property. If multiple parcel numbers are listed, indicate the primary parcel number first (i.e., that which encompasses the primary entrance for the property), followed by any other parcel numbers (separated by commas).

**5. Property History Information** (optional). Provide a brief narrative description about the property by providing information about the history of the property including past owners and past uses leading to any real or perceived environmental contamination.

**5a. Property Description/History/Past Ownership.** Provide a brief narrative description about the property by providing information about the history of the property including past owners and past uses leading to any real or perceived environmental contamination. Please indicate the specific past use(s) (e.g., textile mill, automotive manufacturing plant, shopping center) as well as the general category of the past use(s) (e.g., industrial, commercial, residential, recreational, public purpose use, mixed-use).

**5b. Current Uses(s).** Provide a brief narrative description about the current use(s), zoning, and/or ownership of the property. If the property is not currently in active use (e.g., abandoned, idled), please indicate. Please also indicate the specific current use(s) (e.g., textile mill, automotive manufacturing plant, shopping center) as well as the general category of the current use(s) (e.g., industrial, commercial, residential, recreational, public purpose use, mixed-use).

### **PART III - ENVIRONMENTAL ASSESSMENT INFORMATION**

(mandatory for assessment grant recipients only; optional for cleanup and RLF grant recipients)

**6. Environmental Assessment Activity Information.** In this section, the grant recipient should provide information relating to: (A) assessment activities conducted or leveraged by the EPA grant; and (B) basic information (e.g., contamination, media impacted) discovered during the assessment activity. Any assessment information provided by cleanup and RLF grant recipients should be limited to “leveraged” assessment activities (i.e., where the designation of the EPA cleanup/RLF grant award facilitated the assessment assistance/funding for the property). Use the following format when entering the date: mm/dd/yyyy.

**6a. Phase I Report Completion Date(s).** Enter the date(s) on which any Phase I reports (e.g., preliminary assessment, all appropriate inquiry) were completed. A Phase I report is final when an environmental professional or state official has prepared an environmental assessment report in accordance with the all appropriate inquiry standard set forth in the Brownfields Law (CERCLA Section 101(35)), that has been accepted by the grant recipient. If multiple Phase I reports are completed for the property during the term of the grant, list them all (separate by commas).

**6b. Phase II Report Completion date(s).** Enter the date(s) on which any Phase II reports (e.g., supplement assessment, site investigation) were completed. A Phase II report is final when an environmental professional or state official has prepared an environmental assessment report that has been accepted by the grant recipient. If multiple Phase II reports are completed for the property during the term of the grant, list them all (separate by commas).

**6c. Phase III Report Completion Date(s).** Enter the date(s) on which any Phase III reports (e.g., cleanup planning) were completed. A Phase III report is final when an environmental professional or state official has prepared an environmental assessment report that has been accepted by the grant recipient. If multiple Phase III reports are completed for the property during the term of the grant, list them all (separate by commas).

**7. Environmental Assessment Findings.** Provide information relating to the results from the environmental assessment activities performed at the property, including information on the types of contaminants found, the media impacted, and whether cleanup activities will be required. Update this section as additional information becomes available.

**7a. Classes of Contaminants Found.** Indicate which categories of contaminants have been identified through the assessment activities. Mark the boxes for each and every class of contaminants that have been detected. The eight specific classes listed are defined below. To the extent available, the Chemical Abstract Services (CAS) numbers are also provided below. If contaminants are identified that do not fall into one or more of these classes, please indicate “other” and provide a brief description the contaminant(s) identified during the assessment activities. Please consult with your EPA Regional Representative if you need additional assistance in classifying the contaminants at your targeted properties.

- **Petroleum/Petroleum Products** (CAS Number: 8002-05-9)

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 subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).” (40 USC Section 9601).

Please note that the Brownfields Law restricts eligibility for EPA brownfields funding to petroleum contaminated properties that EPA or the state determines: (1) are of “relatively low risk” compared with other “petroleum-only” sites in the state; and (2) for which there is no viable responsible party and will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site. In addition, petroleum-contaminated properties must not be subject to a corrective action order under a Resource Conservation and Recovery Act (RCRA) Section 9003(h) order.

- **Controlled Substances** (CAS Number: None)

The Brownfields Law refers to Section 102 of the Controlled Substances Act (21 USC Section 802) to define a “controlled substance” as “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title (21 USC Section 812). The term does not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954 (26 USC Section 5001 et seq.).”

Please note that properties eligible for brownfields funding include real property, including residential property, that is contaminated by a controlled substance. For example, properties eligible for brownfields funding may include private residences, formerly used for the manufacture and/or distribution of methamphetamines or other illegal drugs where there is a presence or potential presence of controlled substances or pollutants, contaminants, or hazardous substances (e.g., red phosphorous, kerosene, acids).

- **Asbestos** (CAS Number: 1332-21-4)

EPA’s Substance Registry System defines asbestos as “a grayish, noncombustible fibrous material. It consists primarily of impure magnesium silicate minerals.” The Agency for

Toxic Substances and Disease Registry further defines asbestos as “a group of six different fibrous minerals (amosite, chrysotile, crocidolite, and the fibrous varieties of tremolite, actinolite, and anthophyllite) that occur naturally in the environment.”

- **PCBs** (CAS Number: 1336-36-3)

The regulations issued under the Toxic Substances Control Act (TSCA, 15 USC 2601 et seq.), 40 CFR Section 461.3, define polychlorinated biphenyls or PCB and PCBs as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.”

Please note that the Brownfields Law excludes from funding eligibility portions of facilities where there has been a release of PCBs that are subject to remediation under TSCA.

- **VOCs** (CAS Number: None)

Organic compounds are chemicals composed of carbon. Volatile organic compounds (VOCs) produce vapors readily. At room temperature and normal atmospheric pressure, vapors escape easily from volatile liquid chemicals. Volatile organic compounds include a variety of chemicals such as gasoline, benzene, toluene, xylene, formaldehyde, tetrachloroethylene, and perchloroethylene.

- **Lead** (CAS Number: 7439-92-1)

The Agency for Toxic Substances and Disease Registry defines lead as “a naturally occurring bluish-gray metal found in small amounts in the earth’s crust.”

- **Other Metals** (CAS Number: None)

A metal is an element characterized by a tendency to give up electrons and by good thermal and electrical conductivity. These chemical elements cannot be broken down by any chemical or biological process and includes elements such as arsenic, mercury, cadmium, and chromium.

- **PAHs** (CAS Number: 1340489-29-2)

The Agency for Toxic Substances and Disease Registry defines polycyclic aromatic hydrocarbons (PAHs) as “a group of over 100 different chemicals that are formed during the incomplete burning of coal, oil and gas, garbage, or other organic substances like tobacco or charbroiled meat. PAHs are usually found as a mixture containing two or more of these compounds, such as soot. Some PAHs are manufactured. These pure PAHs usually exist as colorless, white, or pale yellow-green solids. PAHs are found in coal tar, crude oil, creosote, and roofing tar, but a few are used in medicines or to make dyes, plastics, and pesticides.”

**7b. Media Affected.** Indicate which types of media (i.e., soil, air, surface water, ground water, drinking water, sediments) are impacted by the identified contaminants. Mark the boxes for each and every media impacted at levels that are actionable under state, tribal, and/or federal standards. To the extent that the future reuse plans impact whether the contamination in the media is actionable, consider providing a brief description in Part VII. If the assessment activity is preliminary in nature and does not report potential affects by media, mark the “unknown” box. When the media affected become known, please update this section.

**7c. Cleanup Required.** Indicate whether cleanup is required as soon as sufficient assessment has been conducted to make a determination. An “environmental cleanup” is defined as any cleanup that is required at a property as a result of contamination by any hazardous substance, petroleum product, controlled substance, or solid waste at levels that pose a threat to human health and the environment. The “no cleanup required” determination is generally made by the grant recipient or property owner—typically made in conjunction with state voluntary response officials and/or certified environmental professionals following an environmental assessment of the property—to indicate that the property does not have any contaminants at levels that pose a threat to human health or the environment. A grant recipient may not know whether a cleanup is required if additional assessment work is required or where the cleanup level is dependent on the future use and the future use has not been determined. In these instances, indicate “unknown” and update this section when a determination is made. A no cleanup determination may include situations where a cleanup does not occur but use of either engineering controls (e.g., capping) or institutional controls (e.g., land use restrictions) assures any residual contamination left on the property does not pose a threat to human health or the environment.

**8. Environmental Assessment Funding Information.** In Table A, describe all funds used to perform assessment activities at the property during the term of the grant. Indicate the amount of funding provided by each listed source. Add additional rows to the table if needed. Assessment activities conducted and funded prior to the awarding of the grant typically should not be provided (i.e., pre-award activities are not considered leveraged and should not be reported). Supplemental narrative information about the funding may be further described in Part VII (e.g., describe use of innovative funding sources, use of loans and/or insurance mechanisms to facilitate assessment).

**8a. U.S. EPA— Brownfields Assessment Grant.** For assessment grant recipients, indicate the amount of grant funds used to perform assessments at the property. For cleanup and RLF grant recipients, provide the amount of any assessment activity funded by an EPA brownfields assessment grant (optional; if provided, also provide the assessment grant number).

**8b. Other Federal Funding.** Indicate the source(s) and amount(s) of other federal funds used to perform assessment activities at the property (e.g., HUD CBDG - \$100,000, HUD BEDI - \$25,000).

**8c. State/Tribal Funding.** Indicate the source(s) and amount(s) of any state or tribal funds used to perform assessment activities at the property (e.g., state brownfields assessment grant - \$100,000, state economic development grant - \$25,000).

**8d. Local Funding.** Indicate the source(s) and amount(s) of any local public funds used to perform assessment activities at the property (e.g., local bond/tax increment financing - \$100,000).

**8e. Private Funding.** Indicate the source(s) and amount(s) of any private funds used to perform assessment activities at the property (e.g., company XYZ - \$100,000, developer ABC - \$25,000).

**8f. Other Funding.** Indicate the source(s) and amount(s) of any other funds used to perform assessment activities at the property (e.g., non-profit MNO - \$100,000).

**PART IV - ENVIRONMENTAL CLEANUP INFORMATION**

(mandatory for cleanup and RLF grant recipients only; optional for assessment grant recipients)

**9. Cleanup Activity Information.** In this section, the grant recipient should provide information relating to: (A) cleanup activities conducted or leveraged by the EPA grant; and (B) basic information relating to the cleanup activity and results. This section is mandatory for cleanup and RLF grants. For assessment grant recipients, cleanup activities must be reported only if the cleanup activity is undertaken at a property that has been assessed under the assessment grant, directly or through leveraging, during the term of the assessment grant.

**9a. Cleanup Completion Date.** Enter the date that cleanup activities at the property were completed. Use the following format when entering the date: mm/dd/yyyy. Cleanup activities are considered complete when the property is made available for reuse. This typically occurs when one of the following conditions applies:

- (1) a “clean” or “no further action” letter (or its equivalent) has been issued by the state or tribe under its voluntary response program (or its equivalent) for the cleanup activities at the property; or
- (2) the grant recipient or property owner, upon the recommendation of an environmental professional, has determined and documented that on-property work is finished and any needed institutional or engineering controls are in place and functional. Ongoing operation and maintenance activities or monitoring may continue after a cleanup completion designation has been made.

**9b. Institutional Controls Required.** Indicate whether institutional controls are required as part of the cleanup or containment activity to help minimize the potential for exposure to contamination and/or restrict land or resource use.

**9c. Category of Institutional Controls Required.** Indicate which category(ies) of institutional controls are required. Mark the boxes for each and every category of institutional control that is required. Although the definitions of institutional controls vary across localities and states, there are four general categories: proprietary controls (e.g., easements, covenants); governmental controls (e.g., zoning, building codes, drilling permit requirements); enforcement/permit tools (e.g., orders, permits, consent decrees); and informational devices (e.g., state registries, deed notices, advisories). Provide the address where information about the institutional control (e.g., specific type of control) can be found; if the information is available on-line, provide the world wide web address or URL. For additional information on institutional controls, please refer to

EPA guidance [the current December 2002 draft guidance is entitled “Institutional Controls: A Guide to Implementing, Monitoring and Enforcing Institutional Controls at Superfund, Brownfields, Federal Facility, UST and RCRA Corrective Action Cleanups”] or contact your EPA Regional Representative.

**10. Cleanup Results.** Provide information relating to the results from the environmental cleanup activities performed at the property, including information on the types of contaminants addressed, the media addressed, and the acres cleaned up. Update this section as additional information becomes available.

**10a. Classes of Contaminants Removed/Addressed.** Indicate which categories of contaminants have been removed or otherwise addressed (e.g., treated on the property or treated/disposed at another location) in compliance with the applicable state, tribal, or federal standards. Mark the boxes for each and every class of contaminants that have been removed/addressed. Definitions for these contaminant classes are provided above in Part III (Environmental Assessment Findings).

**10b. Media Addressed.** Indicate which types of media (i.e., soil, air, surface water, ground water, drinking water, sediments) have been addressed as a result of the cleanup activities. Mark the boxes for each and every media addressed.

**10c. Acres Cleaned Up.** Enter the number of acres that have been cleaned up. Provide only the acreage for the portion of the property that has been addressed by environmental cleanup activities. Property is considered cleaned up when it is made available for reuse as a result of the environmental cleanup activity. A more detailed description of cleanup completion is provided previously in this Part IV (Cleanup Completion Date).

**11. Environmental Cleanup Funding Information.** In Table B, describe all funds used to perform environmental cleanup activities at the property during the term of the grant. Indicate the amount of funding provided by each listed source. Add additional rows to the table if needed. Cleanup activities conducted and funded prior to the awarding of the grant should typically not be provided (i.e., pre-award activities are not considered leveraged and should not be reported). Funding for activities used to prepare the property for redevelopment (e.g., demolition, site clearing) should be reported in Part V (Table C). Supplemental narrative information about the cleanup funding may be further described in Part VII (e.g., describe use of innovative funding sources, use of loans and/or insurance mechanisms to facilitate cleanup).

**11a. U.S. EPA—Brownfields Cleanup Grant.** For cleanup grant recipients, indicate the amount of grant funds used to perform environmental cleanup activities at the property.

**11b. U.S. EPA—Brownfields RLF Loan.** For RLF grant recipients, indicate the amount of the loan used to perform environmental cleanup activities at the property. Also indicate the name of the borrower. Loan amounts should be reported when the loan is issued to the borrower (i.e., when the loan document is signed and legally binding).

**11c. U.S. EPA—Brownfields RLF Subgrant.** For RLF grant recipients, indicate the amount of the subgrant used to perform environmental cleanup activities at the property. Also indicate the name of the subgrantee. Subgrant amounts should be reported when the subgrant is awarded (i.e., when the subgrant is signed and legally binding).

**11d. Other Federal Funding.** Indicate the source(s) and amount(s) of other federal funds used to perform environmental cleanup activities at the property (e.g., HUD CBDG - \$100,000, HUD BEDI - \$25,000).

**11e. State/Tribal Funding.** Indicate the source(s) and amount(s) of any state or tribal funds used to perform environmental cleanup activities at the property (e.g., state brownfields cleanup grant - \$100,000, state economic development grant - \$25,000).



**11f. Local Funding.** Indicate the source(s) and amount(s) of any local public funds used to perform environmental cleanup activities at the property (e.g., local bond/tax increment financing - \$100,000).

**11g. Private Funding.** Indicate the source(s) and amount(s) of any private funds used to perform environmental cleanup activities at the property (e.g., company XYZ - \$100,000, developer ABC - \$25,000).

**11h. Other Funding.** Indicate the source(s) and amount(s) of any other funds used to perform environmental cleanup activities at the property (e.g., non-profit MNO - \$100,000).

## **PART V - REDEVELOPMENT AND OTHER LEVERAGED ACCOMPLISHMENTS**

(mandatory for all grant recipients)

In this section, provide information relating to redevelopment activities and other non-assessment/cleanup accomplishments leveraged by the EPA grant and basic information relating to the leveraged activities. The term “leveraged” refers to those non-EPA brownfields grant funds and activities that have some link or nexus to the efforts of an EPA grant-funded activity, or where the EPA grant-funded activity was a catalyst for the leveraged accomplishments. This section is mandatory for all grant recipients where targeted properties undergo subsequent redevelopment activities, but should only be updated when real accomplishments are realized (e.g., anticipated leveraged funding should not be reported until it is committed to the property). This Part should be updated by all grant recipients as redevelopment activities are undertaken or leveraged funds are committed for the property during the term of the grant.

**12. Redevelopment Information.** Provide information relating to redevelopment activities leveraged by the EPA grant.

**12a. Redevelopment Underway.** Indicate whether redevelopment activities have been initiated at the property. If redevelopment activities have begun, indicate the date on which the activities started. Use the following format when entering the date: mm/dd/yyyy. The start date can be triggered by a variety of events (e.g., infrastructure preparation, property preparation, groundbreaking ceremony). Conceivably, the redevelopment start date can precede the date of the completion of a cleanup when various portions of the property are undergoing simultaneous cleanup and redevelopment activities. However, environmental cleanup activities necessary to prepare the property for redevelopment should not be considered a trigger for the redevelopment start date.

**12b. Acres of Green Space Created.** Enter the number of acres that have been newly created or made available as green space (i.e., acres of green space created). Provide only the acreage for the portion of the property that constitutes green space. Green space typically refers to vegetated or water-covered space that is in a natural or unbuilt condition, meaning not covered with buildings, roads, or other paved areas, thus providing environmental, recreational, and other benefits (e.g., parks, wildlife refuges, nature trails).

**13. Jobs Information.** Provide information relating to the jobs leveraged by the EPA grant at the targeted property.

**13a. Number of Cleanup and Redevelopment Jobs Leveraged.** Enter the total number of all jobs leveraged during the term of the grant at the property. The number listed should include jobs of a short-term nature (i.e., with a duration of less than one year) typically leveraged during the assessment, cleanup, and construction stage; and jobs of a long-term nature that typically occur as a result of the new or enhanced reuse at the property (i.e., with a duration of more than one year). Only actual jobs should be reported; planned or expected jobs should not be reported until they are realized.

**14. Redevelopment Funding Information.** In Table C, describe all funds linked and leveraged by the grant to support additional, related activities at the property. Indicate the amount of funding provided by each listed source. Add additional rows to the table if needed. Only funding committed to the property should be reported; anticipated funding should not be reported until it is committed. Supplemental narrative information about the leveraged redevelopment funding may be further described in Part VII (e.g., describe innovative funding sources/uses, additional details on what each funding source was used for).

Redevelopment may include non-commercial reuses (e.g., parks, wildlife refuges, nature trails, and green spaces, non-profit community health care facility) as well as commercial or industrial uses (e.g., the expansion or remodeling of an existing manufacturing facility, the construction of a new retail space) and residential and public purpose uses (e.g., courthouse, public health clinic). Redevelopment activities conducted and funded prior to the awarding of the grant should not be provided (i.e., pre-award activities are not considered leveraged and should not be reported). Leveraged funds may be used to support allowable activities (e.g., inventory, assessment, cleanup) as captured in the previous sections (Tables A and B, respectively) and activities that cannot be funded by the EPA grant (e.g., demolition, site preparation, redevelopment construction, transportation improvements) that should be reported in this section.

To the extent that funding for program/grant-level activities and/or redevelopment activities have been leveraged but cannot be discretely allocated to one or more targeted properties, the leveraged funding should only be described in the Quarterly Report (i.e., not in the Property Profile). In addition to describing the amount leveraged, use the Quarterly Report to identify the type of activity funded, funding source, and which specific properties or areas (if any) benefit from the funding.

**14a. Federal Funding.** Indicate the source(s) and amount(s) of federal funds used to perform redevelopment activities at the property (e.g., HUD CBDG - \$100,000, EDA Public Works grant - \$25,000).

**14b. State/Tribal Funding.** Indicate the source(s) and amount(s) of any state or tribal funds used to perform redevelopment activities at the property (e.g., state brownfields grant - \$100,000, state economic development grant - \$25,000).

**14c. Local Funding.** Indicate the source(s) and amount(s) of any local public funds used to perform redevelopment activities at the property (e.g., local bond/tax increment financing - \$100,000).

**14d. Private Funding.** Indicate the source(s) and amount(s) of any private funds used to perform redevelopment activities at the property (e.g., company XYZ - \$100,000, developer ABC - \$25,000).

**14e. Other Funding.** Indicate the source(s) and amount(s) of any other funds used to perform redevelopment activities at the property (e.g., non-profit MNO - \$100,000).

## PART VI - PROPERTY OWNERSHIP INFORMATION

(mandatory for cleanup and RLF grant recipients only; optional for assessment grant recipients)

**15. Ownership Change.** Indicate whether, during the term of the grant, ownership for the property has changed. For reporting purposes, a property “ownership change” is defined as a property transaction that, a transaction involving a long-term lease (e.g., 99 years) should be considered as a property ownership change (i.e., the landlord would be considered the seller and the tenant would be considered the buyer).

**16. Superfund Federal Landowner Liability Protection Factor.** For any ownership changes during the term of the grant, indicate whether the bona fide prospective purchaser (BFPP) liability protection, provided in the Brownfields Amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), was a factor in the property transfer. Check the “unknown” box, if you do not know whether the BFPP liability protection had an impact on the property transfer.

## PART VII - ANECDOTAL PROPERTY INFORMATION

(optional reporting for all grant recipients)

**17. Property Highlights.** Briefly describe other, anecdotal information about the property. Information relating to the grant award criteria (e.g., community need, sustainable reuse/brownfields prevention, reduction of environmental threats, use of existing infrastructure, community involvement) should be highlighted as much as possible. The grant recipient may also want to highlight any innovative or unique issues, activities, technologies, or approaches; any disenfranchised or sensitive populations impacted; planned or actual reuse(s); and/or any other significant accomplishments or upcoming events, such as groundbreaking or ribbon cutting ceremonies, associated with the targeted property.

In addition, the grant recipient should provide information relating to any allowable, but non-assessment/cleanup activities (e.g., health monitoring studies, insurance) funded and/or leveraged through the grant at the targeted property. Any such activities that are not linked directly to a single property should be described in the Quarterly Report.

EPA will use this additional information for use in its evaluation of the success of the grant and for its use in developing communications materials to promote the brownfields program and grants.

**18. Property Photography Information.** Provide information on the availability of photographs or video footage depicting pre-grant property conditions, grant funded activities, redevelopment activities, and/or the property after redevelopment construction has been completed. As with the

anecdotal narrative, EPA will use any photographs to illustrate the progress and successes of each grant recipient in regional and national communications materials.

**18a. Photographs Available.** Indicate whether still photographs depicting the property have been taken and are available.

**18b. Video Available.** Indicate whether video footage depicting the property has been taken and is available.

## **PART VIII - APPROVALS**

(mandatory for all grant recipients)

**19. Grant Recipient Project Manager.** Type or print the name of the grant recipient project manager. The project manager must also sign and date the completed Property Profile form before submission.

**20. U.S. EPA Regional Representative.** Type or print the name of the EPA Regional Representative. The EPA representative should also sign and date the reviewed Property Profile form.

## Appendix E. • *Guidance on Sites Eligible for Brownfields Funding Under CERCLA §104(k)*

The most current version of this Appendix can be found in the *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants*, available on the Internet at <http://www.epa.gov/swerosps/bf/applicat.htm>

### Introduction

The information provided in this appendix should be used by applicants as a guide in determining the eligibility of any property for brownfields funding. The following guidance provides EPA's preliminary views on the types of sites that may be appropriate for funding. EPA is providing this information as guidance to applicants to assist you in developing your proposals for funding under CERCLA §104(k). This guidance provides preliminary interpretations and policy guidance that EPA intends to use as a guide when we exercise our authority to award funds under §104(k). However, we believe that further development may impact our view of these provisions, and we will reevaluate our preliminary views in light of the factual information we receive with each proposal, as well as over the course of implementing the §104(k) grant program.

This guidance does not impose legally-binding requirements. Applicants are free to raise questions about the appropriateness of these preliminary views, and EPA will consider whether these preliminary views are appropriate at that time. Any decision by EPA to apply this preliminary guidance will be made based on the applicable statutory provisions.

### General Definition of Brownfield Site

#### The new Brownfields Law defines a "Brownfield Site" to mean:

"...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."

Brownfield sites include all "real property," including residential, as well as commercial and industrial properties.

### Additional Areas Specifically Eligible for Funding

The Brownfields Law identifies three types of properties that are specifically eligible for funding:

1. Sites contaminated by *controlled substances*.
2. Sites contaminated by *petroleum or a petroleum product*.
3. *Mine-scarred lands*.

See below for guidance on determining the scope of each of these three types of sites. Applicants should identify properties included within their funding proposals that fall within the scope of any of the following three areas.

### Contamination by Controlled Substance

Sites eligible for funding include real property, including residential property, that is contaminated by a controlled substance. A "controlled substance" is defined under the Controlled Substances Act as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title (21

USC Section 812). The term does not include distilled spirits, wine, malt beverages, or tobacco...”

For example, sites eligible for brownfields funding may include private residences, formerly used for the manufacture and/or distribution of methamphetamines or other illegal drugs where there is a presence or potential presence of controlled substances or pollutants, contaminants, or hazardous substances (*e.g.*, red phosphorous, kerosene, acids).

## Contamination by Petroleum or Petroleum Product

Petroleum-contaminated sites (except those sites receiving LUST trust fund monies) may be eligible for brownfields funding if the applicant can provide information that will enable EPA or the state to make certain statutory determinations, as described in *Appendix 4*. (EPA will make the statutory determinations for tribes). Petroleum-contaminated sites (or portions of properties contaminated with petroleum) that are eligible for brownfields funding include certain sites that are not underground storage tank (UST) sites as described below. 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.”

For a petroleum contaminated site(s) that otherwise meets the definition of a brownfields site to be eligible for funding, 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 in time to meet the application deadline, the applicant may request that EPA make the determinations. The applicant must make this request to EPA no later than 2 weeks prior to the application deadline.

In the case of proposals that include requests for an assessment or direct cleanup grant to address petroleum-contaminated sites, applicants must provide information in their proposal indicating whether the site meets each of the criteria listed above. If EPA awards an applicant a revolving loan fund grant, the state or EPA must make the same determinations for site(s) that will be cleaned up under a loan or subgrant. These criteria are explained below.

**Note: A determination by the Administrator or a state under CERCLA section 101(39)(D) for the purpose of brownfields funding does not release any party from obligations under the Resource Conservation and Recovery Act, the Clean Water Act, the Oil Pollution Act, the Safe Drinking Water Act, the Clean Air Act, or any other federal or state statute or regulation, or under the common law.**

“Relatively Low Risk”:

Applicants whose brownfield site(s) include properties or portions of properties contaminated with petroleum or petroleum products must provide information in their proposal indicating that the property represents a relatively low risk (compared to other petroleum-only sites). Our preliminary view is that the following types of petroleum-contaminated sites are high risk sites, or are not of “relatively low risk.”

Our preliminary view is that petroleum-contaminated sites that do not fall within the scope of high risk sites will be considered to be “relatively low-risk” sites.

- “High risk” sites currently being cleaned up using LUST trust fund monies.
- Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

Note: Any site that does not fall under any of the provisions listed above would be considered to be of relatively low risk for purposes of determining eligibility for a brownfields grant.

#### “A Site for Which There is No Viable Responsible Party”

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 determination is based on both viability and responsibility. If EPA or the state identifies a viable responsible party, then EPA cannot make the grant.

Solely for the purpose of EPA’s awarding of a Brownfields petroleum grant, a viable party exists if, at the time EPA awards the grant, ALL of the following factors are present:

- (1) a party is subject to either:
  - (a) a judgment rendered in a court of law or an administrative order issued by an administrative body that would require that party to assess, investigate, or clean up the site; or
  - (b) a filed enforcement action brought by federal or state authorities, or is party to a citizen suit, that would, if successful, require that party to assess, investigate, or clean up the site;

and
- (2) that party is financially capable of satisfying obligations under federal or state law to assess, investigate or clean up the site. For example, an insolvent or defunct corporation will generally not have the financial capacity to satisfy its obligations. See existing EPA policies on the financial ability to pay at: [www.epa.gov/compliance/civil/programs/econmodels](http://www.epa.gov/compliance/civil/programs/econmodels).

#### “Cleaned Up by a Person Not Potentially Liable”:

Brownfields funding may be awarded to eligible entities for the assessment and clean up of petroleum-contaminated sites in those instances where the eligible entity has not caused or contributed to the petroleum contamination. When responding to the threshold criteria in their funding proposals, applicants are asked to indicate whether or not the applicant owns the site or sites for which funding is requested and describe whether the applicant caused or contributed to the petroleum contamination or other environmental concerns at the site(s).

#### “Is not subject to any order issued under §9003(h) of the Solid Waste Disposal Act”:

Proposals that include requests for an assessment or direct cleanup grant to address petroleum-contaminated sites must not be subject to a corrective action order under a Resource Conservation and Recovery Act (RCRA) §9003(h). If EPA awards an applicant a revolving loan fund grant, the state or EPA must make the same determination for site(s) that will be cleaned up under a loan or subgrant.

## Mine-scarred Lands

Under the new Brownfields Law, mine-scarred lands are eligible for brownfields funding. Applicants for brownfields funding that include properties within their proposal that they believe fall within the following

definition of mine-scarred lands are encouraged to provide in the site description section of their proposals information identifying and describing such properties.

EPA's preliminary view is that "mine-scarred lands" are those lands, associated waters, and surrounding watersheds where extraction, beneficiation, or processing of ores and minerals (including coal) has occurred. For the purposes of this section, the definition of extraction, beneficiation, and processing is the definition found at 40 CFR 261.4(b)(7).

Mine-scarred lands include abandoned coal mines and lands scarred by strip mining.

Examples of coal mine-scarred lands may include, but are not limited to:

- abandoned surface coal mine areas,
- abandoned deep coal mines,
- abandoned coal processing areas,
- abandoned coal refuse areas,
- acid or alkaline mine drainage, and
- associated waters affected by abandoned coal mine (or acid mine) drainage or runoff, including stream beds and adjacent watersheds.

Examples of non-coal hard rock mine-scarred lands may include, but are not limited to:

- abandoned surface and deep mines,
- abandoned waste rock or spent ore piles,
- abandoned roads constructed wholly or partially of waste rock or spent ore,
- abandoned tailings, disposal ponds, or piles,
- abandoned ore concentration mills,
- abandoned smelters,
- abandoned cyanide heap leach piles,
- abandoned dams constructed wholly or partially of waste rock, tailings, or spent ore,
- abandoned dumps or dump areas used for the disposal of waste rock or spent ore,
- acid or alkaline rock drainage, and
- waters affected by abandoned metal mine drainage or runoff, including stream beds and adjacent watersheds.

## **Particular Classes of Sites Not Eligible for Funding or Eligible Only Under Property-Specific Determinations**

EPA excludes the following types of facilities from funding eligibility unless the applicant fulfills the requirements for demonstrating that the site meets the criteria for a property-specific determination for funding (see *Appendix 4 Guidance for Requests for Property-Specific Determinations for Funding*). Applicants are encouraged to indicate within the site description section of their proposal if any site or property included within the scope of their funding proposal falls within the scope of any of the categories of



sites listed below. When requesting a property-specific determination for funding, applicants should follow the instructions provided in *Appendix 4* for indicating that brownfields funding at such sites will ensure protection of human health and the environment and promote economic development or the creation or preservation of greenspace or recreational areas. (Note: The following discusses limitations on funding particular classes of sites. Many of these limitations reflect policy decisions. Where the limitations are based on statutory provisions, we have noted that.)

Also, please note that in providing funding for brownfield sites, and given that a limited amount of funding is available for brownfields grants, EPA's goal is to not provide brownfields funding to sites where EPA has a planned or ongoing enforcement action. While EPA does not intend that the existence of a planned or ongoing enforcement action will necessarily disqualify a site from receipt of brownfields funding, EPA does believe it is necessary that EPA be aware of the existence of any such action in making funding decisions. As a result, EPA will conduct an investigation to evaluate whether a site is, or will be, subject to an enforcement action under CERCLA or other federal environmental statutes. EPA is requesting that applicants identify ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought.

The Brownfields Law also excludes three types of properties from funding eligibility and does not allow EPA the opportunity to provide funding for these properties after making a property-specific determination. These three types of properties include: 1) sites listed on the 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.

#### **Sites Not Eligible for Funding Without a Property-Specific Determination**

1. Facilities subject to planned or ongoing CERCLA removal actions.
2. Facilities that are subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decrees or to which a permit has been issued by the United States 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).
3. Facilities subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
4. Facilities that are land disposal units that have filed a closure notification under subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.
5. Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA.
6. Portions of facilities for which funding for remediation has been obtained from the Leaking Underground Storage Tank (LUST) Trust Fund.

Guidance regarding the scope of each of the funding restrictions listed above is provided below.

**Sites Not Eligible for Brownfields Funding and Not Eligible for a Property-Specific Determination**

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.
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 eligible for brownfield funding.)

## Facilities Subject to CERCLA Removal Actions

Properties (including parcels of properties) where there are removal actions may not receive funding, unless EPA makes a property-specific determination of funding eligibility.

EPA's preliminary view is that a removal may be identified by the occurrence of one of the following events, whichever occurs first in time: EPA issues an action memo; EPA issues an EE/CA approval memo; EPA mobilizes onsite; or EPA issues a notice of federal interest to one or more potentially responsible parties (PRP(s)), which in emergencies may be made verbally.

Our preliminary view is that, for the purposes of eligibility to receive brownfields funding, and for no other reason, a removal is complete when the actions specified in the action memorandum are met, or when the contractor has demobilized and left the site (as documented in the "pollution report" or POLREP). Once a removal action is complete, a property is eligible for brownfields funding without having to obtain a property-specific funding determination. Applicants applying for brownfields funding for sites at which removal actions are complete must include documentation of the action being complete with their funding proposal.

Parcels of facilities not affected by removal action at the same property may apply for brownfields funding and may be eligible for brownfields funding on a property-specific basis. Property-specific funding decisions will be made in coordination with the on-scene coordinator (OSC) to ensure that all removals and cleanup activities at the property are conducted in safe and protective manners and to ensure that the OSC retains the ability to address all risks and contamination.

Please note that if a federal brownfields-funded site assessment results in identifying the need for a new removal action, the grantee may continue to expend assessment grant funds on additional assessment activities. However, any additional expenditure of federal brownfield funds and any additional site assessment activities should be conducted in coordination with the OSC for the site.

Any property or site where there are removal actions may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development, or the preservation of green space. EPA will consider providing funding to an eligible entity for assessment or cleanup activities at the site, on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

## **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**

Sites subject to administrative orders, court orders, and consent or judicial consent decrees issued or entered into by parties under the provisions of CERCLA are not eligible for funding, even on a property-specific basis. Therefore, applicants should not include such sites within the scope of their brownfields funding proposals.

## **Facilities Listed (or Proposed for Listing) on the National Priorities List**

CERCLA sites listed on the NPL and sites proposed to be listed on the NPL are not eligible for brownfields funding. In addition, these sites are not eligible for funding on a property-specific basis. Therefore, applicants should not include proposed or listed NPL sites within the scope of brownfields funding proposals.

## **Facilities to which a permit has been issued by the United States or an authorized state under the Solid Waste Disposal Act (RCRA), the Federal Water Pollution Control Act, the Toxic Substances Control Act, or the Safe Drinking Water Act**

Generally, in cases where a property or a portion of a property is permitted under the Resource Conservation and Recovery Act, Section §1321 of the Clean Water Act, the Safe Drinking Water Act, and/or the Toxic Substances and Control Act, the property, or portion of the property, may not receive funding, without a property-specific determination. Therefore, applicants should review the following guidance regarding which types of permitted facilities may not receive funding unless EPA makes a property-specific determination to provide funding. Applicants should note that the exclusion for permitted facilities does not extend to facilities with National Pollutant Discharge Elimination System (NPDES) permits issued under the authorities of the Federal Water Pollution Control Act, but is limited to facilities issued permits under the authorities of the Oil Pollution Act (*i.e.*, §1321 of FWPCA).

In cases where one or more portions of a property are not eligible for funding, the applicant should identify the specific permit and situation that causes the property to be excluded. In addition, the applicant must include, within the proposal, documentation that federal brownfields funding for the assessment or clean up of the property will further the goals established for property-specific funding determinations (see attached guidance on property-specific funding determinations).

Any property or site that has been issued a permit under the federal environmental statutes listed above (and in accordance with any additional guidelines provided in *Appendix 4*) may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development or the preservation of greenspace. EPA

will consider providing funding to an eligible entity for assessment or cleanup activities at the site, on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

In some cases, a facility may not have a permit or order because they are not in compliance with federal or state environmental laws requiring that they obtain a permit or the facility has failed to notify EPA of their regulatory status. Such facilities are not eligible for brownfields funding. For example, a RCRA treatment unit operator is required to obtain a permit and/or notify EPA of its operation. An operator that fails to fulfill those obligations will likely not have a permit or order as EPA will be unaware of their existence. Therefore, it is EPA's preliminary view that such facilities are ineligible to receive brownfields funds as a result of their failure to comply with a basic regulatory requirement. Additional guidance on the eligibility of RCRA-permitted facilities, including facilities under administrative or court orders, including corrective action orders, is provided in *Appendix 4*.

## RCRA Sites

### Excluded RCRA Facilities

EPA's preliminary view is that the following types of RCRA facilities **may not receive funding without a property-specific determination**:

- a. *RCRA-permitted facilities.*
- b. RCRA interim status facilities with administrative orders requiring the facility to conduct corrective action or otherwise address contamination, including facilities with orders issued under the authorities of RCRA §3008(a), §3008(h), §3013, and §7003.
- c. Facilities under court order or under an administrative order on consent or judicial consent decree under RCRA or CERCLA that require the facility to conduct corrective action or otherwise address contamination at the facility.
- d. Land disposal units that have notified EPA or an authorized state of their intent to close and have closure requirements specified in closure plans or permits.

However, if a grant or loan applicant is requesting a grant for property that is excluded, the applicant may still be eligible for a brownfields grant if the applicant can demonstrate that funding will ensure protection of human health and the environment and promote economic development or the preservation of greenspace. EPA will consider providing funding to an applicant for assessment or cleanup activities at such a site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations in *Appendix 4*).

### RCRA Facilities that are Eligible for Funding

EPA's preliminary view is that the following types of RCRA facilities would not fall within the scope of the exclusion and would be eligible for funding:

- a. RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;
- b. RCRA interim status facilities that are subject to administrative or judicial orders 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

- c. Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order.

In addition, any property or site that has been issued a permit under RCRA may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development or the preservation of green space. EPA will consider providing funding to an eligible entity for assessment or cleanup activities at the site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

### **Land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.**

RCRA hazardous waste landfills that have submitted closure notifications, as required under 40 CFR 264.112(d) or 265.112(d), generally will not be funded. This may include permitted facilities that have filed notification of closure and for which EPA and/or an authorized state is proceeding with final closure requirements for the facility. For interim status facilities, this is done through approval of a closure plan submitted with closure notification; for permitted facilities, this is routinely done as a modification to the permit, requested by the facility at the time of closure notification.

Please note that RCRA hazardous waste landfills that have submitted closure notifications may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development or the preservation of green space. EPA will consider providing funding to an eligible entity for assessment or cleanup activities at the site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

### **Facilities that are subject to the jurisdiction, custody, or control of the United States government.**

Facilities owned by, or under the custody or control of the federal government are not eligible for brownfields funding, even on a property-specific basis. EPA's preliminary view is that this exclusion may not extend to:

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

Also note that land held in trust by the United States government for an Indian tribe is not excluded from funding eligibility.

Also note that eligibility for brownfields funding does not alter a private owner's ability to cost recover from the federal government in cases where the previous federal government owner remains liable for environmental damages.

## Sites Contaminated with PCBs

The Brownfields Law excludes from funding eligibility portions of facilities where there has been a release of PCBs that are subject to remediation under TSCA.

EPA's preliminary view is that all portions of properties *are eligible* for brownfields site assessment grants, except where EPA has initiated an involuntary action with any person to address PCB contamination. Also, it is our preliminary view that all portions of properties *are eligible* for cleanup and RLF grants, except where EPA has an ongoing action against a disposer to address PCB contamination.

Therefore, portions of properties that are excluded from funding eligibility include those portions of properties where:

- There is a release (or disposal) of any waste meeting the definition of "PCB remediation waste" at 40 CFR 761.3; *and*
- At which EPA has initiated an involuntary action with any person to address the PCB contamination. Such involuntary actions could include:
  - Enforcement action for illegal disposal;
  - Regional Administrator's order to characterize or remediate a spill or old disposal (40 CFR 761.50(b)(3));
  - Penalty for violation of TSCA remediation requirements;
  - Superfund removal action; or
  - Remediation required under RCRA §3004(u) or §3004(v).

PCBs may be remediated under any one of the following provisions under TSCA:

- a. Section 761.50(b)(3), the directed characterization, remediation, or disposal action.
- b. Section 761.61(a), the self-implementing provision.
- c. An approval issued under §761.61(c), the risk-based provision.
- d. Section 761.61(b) to the level of PCB quantification (i.e., 1 ppm in soil).
- e. An approval issued under §761.77, the coordinated approval provision.
- f. Section 761.79, the decontamination provision.
- g. An existing EPA PCB Spill Cleanup Policy.
- h. Any future policy or guidance addressing PCB spill clean up or remediation specifically addressing the remediation of PCBs at brownfield sites.

Note that any portion of a property where EPA has initiated an involuntary action with any person to address PCB contamination and portions of properties where EPA has an ongoing action against a disposer to address PCB contamination may be eligible for brownfields funding if a grant or loan applicant can demonstrate that brownfields funding will ensure protection of human health and the environment and promote economic development or the preservation of green space. EPA will consider providing funding to an eligible entity for assessment or cleanup activities at the site on a property-specific basis (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

## Exclusion of LUST Trust Fund Sites

The Brownfields Law excludes from eligibility for funding (unless EPA makes a property-specific determination for funding) those sites (or portions of properties) for which assistance for response activity has been obtained under Subtitle I of RCRA from the LUST trust fund. EPA's preliminary view is that this provision may exclude:

- a. UST sites where money is being spent on actual assessment and/or clean up of UST/petroleum contamination.

However, in cases where an UST site is located in a state where the state agency has used LUST trust fund money for state program oversight activities but has not expended LUST trust funds for specific assessment and/or cleanup activities at the site, the site would not necessarily be excluded from eligibility for brownfields funding.

Such sites may receive brownfields funding on a property-specific basis, if it is determined that brownfields funding will protect human health and the environment and the funding will promote economic development or enable the creation of, preservation of, or addition to greenspace (see guidance on documenting eligibility for property-specific funding determinations provided in *Appendix 4*).

***Examples of "excluded" sites (i.e., sites receiving LUST trust fund monies) we would consider to be good candidates to receive brownfields grants or loans:***

- a. All USTfields pilots (50 pilots).
- b. Sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has determined that the site is a low-priority UST site and therefore additional LUST trust fund money cannot be provided for the clean up of petroleum contamination, but the site still needs some clean up and otherwise is a good candidate for economic revitalization.
- c. Sites (or portions of properties) where LUST trust fund money was spent for emergency activities, but then the site was determined to be ineligible for further expenditures of LUST trust funds, yet the site needs additional funding for continued assessment and/or clean up that will contribute to economic revitalization of the site.

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## Appendix F. • *Guidance for Requests for Property-Specific Determinations for Funding*

The most current version of this Appendix can be found in the *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants*, available on the Internet at <http://www.epa.gov/swerosps/bf/applicat.htm>

### Overview

Grant applicants must determine if any of the properties, or facilities, included in their proposal require a property-specific determination. A list of the categories of facilities that are only eligible for funding via a property-specific determination is provided below.

If an applicant includes within the scope of a grant proposal a facility that requires a property-specific funding determination, the proposal must include, on a separate page, the following information (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 in Section 3.4 of Appendix 3).
3. A short explanation of why the site falls within the identified circumstance requiring the property-specific funding determination.
4. An explanation of how providing brownfields funding for the site will meet the criteria necessary for making a property-specific funding determination Section 4.3.
5. The degree to which other funding is or is not available for the assessment or clean up of the site.
6. A 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.

### Funding Limitations

Although the statutory definition of “brownfield site” is broad, Congress limited the extent to which brownfields funding may be provided to eligible entities to assess and clean up sites that are being addressed under other federal programs. In addition, the Brownfields Law prohibits the use of grant and loan funds for the payment of response costs at sites for which the funding recipient of the grant or loan is potentially liable under §107 of CERCLA<sup>6</sup>. (See *Appendix 2* for additional prohibitions on the use of brownfields funding.)

The types of properties that Congress *excluded from* the definition of a brownfield site are listed below. However, certain types of properties listed below as excluded from the definition of a brownfield site, may still qualify for brownfields funding. The types of properties marked with an *asterisk* (\*) below 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.

- Properties subject to planned or ongoing removal actions under CERCLA.\*
- Properties currently listed, or proposed to be listed, on the NPL.

<sup>6</sup>Applicants also should note that the Brownfields Law contains other prohibitions on the use of grant and loan monies, including the use of grant and loan monies for paying penalties, administrative costs, federal cost-share requirements, and the cost of complying with any federal law (see §101(k)(4)(B)).

- Properties that include facilities subject to a unilateral administrative order, a court order, an administrative order on consent, or a judicial consent decree under CERCLA.
- Properties with facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to which a permit has been issued by the U.S. or an authorized state under RCRA, FWPCA, TSCA, or SDWA.\*
- Properties with facilities subject to RCRA corrective action (§3004(u) or §3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.\*
- 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.\*
- Properties that are subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the U.S., except for land held in trust for an Indian tribe.
- Properties where there has been a release of PCBs and all or part of the property is subject to TSCA remediation.\*
- Properties that include facilities receiving monies for clean up from the LUST trust fund.\*

\* *Sites eligible for property-specific funding determinations.*

The types of facilities marked with an asterisk above 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. A determination of eligibility for funding will be made by EPA at the time of proposal evaluation based upon information provided by the applicant.

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. Actual determinations of eligibility or exclusion will be made by EPA. However, 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, the grant proposal should specifically identify the properties, identify the applicable funding exclusion from the list above, and describe why each property falls within the exclusion (e.g., RCRA permit for hazardous waste storage, CERCLA removal action on-going.) Descriptions summarizing the scope of each of the exclusions listed above are provided in *Appendix 3* of these guidelines.

## Criteria for Determining Eligibility for Funding on a Property-Specific Basis

Certain properties that are excluded from funding eligibility because the properties fall within the scope of the statutory exclusions from the definition of “brownfield site” may qualify for brownfields funding if a property-specific determination is made that the sites meet the goals and criteria of the brownfields program and the criteria set forth in the statute. The following types of properties, although excluded from the definition of brownfield site above, are *eligible for property-specific determinations for brownfields funding*:

1. Properties subject to planned or ongoing removal action under CERCLA.

2. Properties that include facilities 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 clean up from the LUST trust fund.

In the case of each type of property listed above, the new legislation allows EPA to award financial assistance to an eligible entity for assessment or cleanup activities at the property, if it is found that financial assistance will:

1. Protect human health and the environment, *and*
2. 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.

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.

## 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, including a recipient of a revolving loan fund grant seeking EPA approval of loans, 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 following:

1. Specific examples of human health risks that will be mitigated by activities funded under a brownfields grant.
2. Specific environmental improvements that can reasonably be expected to result from activities funded under a brownfields grant.
3. 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.

4. 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.

## **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 following:

- 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.

## **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:

- 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.

## Other Documentation

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 offers opportunities to protect human health and the environment and enhance economic development or create or preserve greenspace (as the criteria is described above). However, at the same time, Congress explicitly prohibited the use of federal brownfields funding to reimburse liable parties for response costs. The statute prohibits grant and loan monies from being used for the payment of response costs at brownfields for which the recipient of a grant or loan is potentially liable (§101(k)(4)(B)(i)(IV)). Applicants are encouraged to address, in the body of the proposal, why federal funding is appropriate for brownfields assessment and/or clean up at the property, given that brownfields funding cannot be used to reimburse liable property owners for response activity costs.

## Properties Not Eligible for Brownfields Funding

Grant applicants must keep in mind that the legislation *excludes certain types of properties from qualifying for the property-specific* funding determinations and therefore from federal brownfields financial assistance. Properties that *may not* be included within the scope of a grant proposal and for which brownfields grants and loans cannot be made available *regardless of property-specific circumstances* include properties containing the following types of sites or facilities:

- Facilities listed or proposed for listing on the NPL.
- Facilities subject to a unilateral administrative order, an administrative order, a court order, an administrative order on consent, or a judicial consent decree issued or entered into by parties under CERCLA.
- Facilities that are subject to the jurisdiction, custody, or control of the United States government, except for land held in trust by the U.S. for an Indian Tribe.

Applicants should note that the discussion of property-specific determinations for funding properties that are otherwise excluded from funding eligibility that is provided here only applies to funding determinations. This discussion does not apply to, or have bearing on, any other property-specific determinations or other aspects of the brownfields program. For example, a property-specific determination for funding purposes in no way affects a facility's or an entity's status with regard to EPA's enforcement and cost recovery authorities.

## Additional Information on Potential for Continual Funding at Sites Subject to Removal Actions

Some brownfield sites that receive federal brownfields assessment grants may, as a result of the federally funded site assessment require a CERCLA removal action. Under the Brownfields Law (§101(39)(B)(i)), properties that are subject to planned or on-going removal actions under CERCLA are excluded from funding eligibility. However, such properties may receive federal brownfields funding if a property-specific determination is made that such funding will meet the property-specific determination criteria. Applicants should follow the procedures listed in the previous section to request a property-specific determination. (Note: If a removal action is required at a property where an assessment grant exists, the grantee does not

need to obtain the property-specific determination noted above. However, grant recipients must obtain approval from the EPA removal OSC prior to any onsite work commencing.)

Grant applicants requesting federal brownfields funding and recipients of revolving loan fund grants seeking EPA approval of loans for properties at which a CERCLA removal action is planned or on-going must document in their proposals (or loan approval requests) that the requested funding will be used in accordance with legislative intent. Therefore, proposals must include a discussion of how brownfields grant or loan funds will ensure protection of human health and the environment and provide detail on how financial assistance will promote economic development or the creation of, preservation or, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. Requests for property-specific determinations for funding for the assessment or clean up of properties where there is a planned or ongoing removal action will be considered in the following circumstances: 1) when it is clear a follow-on response action will be required to address long-term threats at a property; and 2) in cases where portions of a property are not under the current scope of a planned or ongoing removal action.

In addition to the specific criteria listed above, applicants also should explain in their proposal the extent to which other funding sources are not available for the assessment and/or clean up of the site or property. Federal brownfields funding cannot be used to reimburse liable parties for response costs. In addition, federal brownfields funding may not be used for an ensuing removal action. Applicants should specifically address, in the body of the proposal, why federal funding is appropriate for brownfields assessment and/or clean up at the property, given the Congressional intent not to reimburse liable property owners for response activity costs.

## **Additional Information on Potential Funding for Petroleum-Contaminated Sites**

As noted above, portions of properties receiving assistance for response activities from the LUST trust fund are excluded from eligibility for brownfields funding. However, these facilities are eligible for funding on a property-specific basis. To assist applicants in determining whether their properties are good candidates for property-specific funding determinations, below are examples of properties that are excluded from the definition of a brownfield site (i.e., sites receiving LUST trust fund monies) that EPA considers to be potentially good candidates to receive brownfields grants or loans under the property-specific determination provisions (i.e., CERCLA §101(39)(C)).

- All USTfields pilots.
- Sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has determined that the site is a low-priority UST site and therefore additional LUST trust fund money cannot be provided for the clean up of petroleum contamination, but the site still needs some clean up and otherwise is a good candidate for economic revitalization.
- Sites (or portions of properties) where LUST trust fund money was spent for emergency activities, and are otherwise determined to be ineligible for further LUST trust funds, yet the site needs additional funding for continued assessment and/or clean up that will contribute to economic revitalization of the site.

## Eligible Response Sites/Enforcement Limits

The Brownfields Law limits EPA's enforcement and cost recovery authorities at "eligible response sites" where a response action is conducted in compliance with a state response program. Section 101(40) of CERCLA defines an "eligible response site" by referencing the general definition of a "brownfield site" in §101(39)(A) and incorporating the exclusions at §101(39)(B). The law places further limitations on the types of properties included within the definition of an eligible response site, but grants EPA the authority to include within the definition of eligible response site, and on a property-specific basis, some properties that are otherwise excluded from the definition. Such property-specific determinations must be based upon a finding that limits on enforcement will be appropriate, after consultation with state authorities, and will protect human health and the environment and promote economic development or facilitate the creation of, preservation, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes. While the criteria appear similar to those for determining eligibility for funding on a property-specific basis, the determinations are distinct, will be made through a separate process, and may not be based on the same information requested in this document for property-specific funding determinations.


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## Appendix G. • Checklist for Fund Managers & Qualified Environmental Professionals

EPA Regions must ensure that the cooperative agreement recipient recognizes its responsibility to understand and assign key roles under the RLF program. This checklist lists fund manager and qualified environmental professional responsibilities to show their parallel but interconnected roles in running a successful RLF program. In scanning these two lists, you will see that the fund manager and the qualified environmental professional have some identical responsibilities, and some responsibilities that support two aspects of the recipient's requirements. Although the fund manager and the qualified environmental professional support financial and environmental aspects of the program, respectively, they must work together and communicate frequently with each other and with the cooperative agreement recipient to ensure a smooth running program.

Fund Manager Responsibilities	Qualified Environmental Professional Responsibilities
<p><b>EPA Regions should ensure the RLF fund manager:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Revolves funds as much as possible to maximize the ability of the RLF to support redevelopment efforts.</li> <li><input type="checkbox"/> Manages funds to reduce the amount of time between EPA's payment of funds to the recipient and their distribution to the borrower.</li> <li><input type="checkbox"/> Maximizes the amount of money loaned out for cleanup purposes at all times once the money is awarded.</li> <li><input type="checkbox"/> Ensures that the RLF is managed to conform with: the cooperative agreement, applicable laws and regulations, and prudent lending practices.</li> </ul> <p><b>Develop Prudent Lending Practices</b></p> <p>EPA Regions should ensure the RLF fund manager:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Sets interest rates at less than or equal to the market interest rate, but not less than zero.</li> <li><input type="checkbox"/> Develops a plan for determining repayment terms on individual loans.</li> <li><input type="checkbox"/> Obtains adequate and appropriate financial security from borrowers and act diligently to protect the interests of the revolving loan fund through collection, foreclosure, or other recovery actions on defaulted loans.</li> </ul> <p><b>Identify Sources of Capital</b></p> <p>EPA Regions should ensure the RLF fund manager:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Supplements their initial RLF capitalization funds with leveraged capital from other federal agencies; states; political subdivisions; Indian Tribes; and private parties.</li> <li><input type="checkbox"/> Understands that recapitalization of their loan fund will come from loan payments, interest payments, and other loan-related charges.</li> </ul> <p><b>Establish Types of Financial Assistance</b></p> <p>Through their RLF program, the RLF fund manager will offer the following types of financial assistance:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Direct loans (both standard and intragovernmental)</li> <li><input type="checkbox"/> Loan guarantees</li> <li><input type="checkbox"/> Cleanup subgrants</li> </ul>	<p><b>EPA Regions should ensure the RLF qualified environmental professional:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Coordinates and directs cleanup at RLF sites.</li> <li><input type="checkbox"/> Assists and works on behalf of the recipient by carrying out site management responsibilities on a site-specific basis.</li> <li><input type="checkbox"/> Understands that the recipient is legally responsible to EPA. The RLF qualified environmental professional will ensure that site cleanups are conducted in accordance with applicable laws and regulations.</li> </ul> <p><b>Understand Site Eligibility Requirements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> RLF loan funds are being used at sites that are either: <ul style="list-style-type: none"> <li><input type="checkbox"/> Contaminated by a hazardous substance or pollutant;</li> <li><input type="checkbox"/> Contaminated by petroleum or a petroleum product;</li> <li><input type="checkbox"/> Contaminated by controlled substances; or</li> <li><input type="checkbox"/> Mine-scarred lands.</li> </ul> </li> <li><input type="checkbox"/> RLF funds are NOT being used at any sites: <ul style="list-style-type: none"> <li><input type="checkbox"/> Listed, or proposed for listing, on the National Priorities List;</li> <li><input type="checkbox"/> Subject to a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree issued or entered into by parties under CERCLA; and</li> <li><input type="checkbox"/> Subject to the jurisdiction, custody, or control of the U.S. government, except for land held in trust by the U.S. for an Indian tribe.</li> </ul> </li> </ul>

Fund Manager Responsibilities	Qualified Environmental Professional Responsibilities 
<p><b>Meet the Cost-Share Requirement</b></p> <p>EPA Regions should ensure the RLF fund manager:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Contributes a 20% cost-share of the total cooperative agreement award in the form of cash, labor, materials, or services from non-federal sources.</li> <li><input type="checkbox"/> Explores other public financing options such as: loans from EDA, HUD, CDBG, SBA, and others; loan guarantees; grants from HUD BEDI, HUD CDBG, DOT, TCSP, USACE and others; equity capital; tax incentive and tax-exempt financing; and tax-advantage zones.</li> <li><input type="checkbox"/> Submits a letter to their EPA Brownfields Project Officer requesting a cost-share waiver if they feel the cost-share requirement would create undue hardship. The letter includes information supporting any/all of the following circumstances: <ul style="list-style-type: none"> <li><input type="checkbox"/> bankruptcy, receivership, or other financial distress,</li> <li><input type="checkbox"/> evidence that they cannot commit funding due to a loss or diminution of sources of revenue, low per capita income, an unemployment rate above the national average, unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, or a reduced tax base due to unforeseen economic conditions; and/or</li> <li><input type="checkbox"/> evidence of the presence of factors that they believe are relevant to a decision by EPA to waive the cost-share requirement.</li> </ul> </li> </ul> <p><b>Purchase Insurance</b></p> <p>EPA Regions should ensure the RLF fund manager:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Understands that insurance is an optional expense, but that they may use RLF funds to purchase environmental insurance if it is used to carry out cleanup activities.</li> </ul> <p><b>Understand Site Eligibility Requirements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> RLF loan funds are being used at sites that are either: <ul style="list-style-type: none"> <li><input type="checkbox"/> Contaminated by a hazardous substance or pollutant;</li> <li><input type="checkbox"/> Contaminated by petroleum or a petroleum product;</li> <li><input type="checkbox"/> Contaminated by controlled substances; or</li> <li><input type="checkbox"/> Mine-scarred lands.</li> </ul> </li> <li><input type="checkbox"/> RLF funds are NOT being used at any sites: <ul style="list-style-type: none"> <li><input type="checkbox"/> Listed, or proposed for listing, on the National Priorities List;</li> <li><input type="checkbox"/> Subject to a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree issued or entered into by parties under CERCLA; and</li> </ul> </li> </ul>	<p><b>Understand that RLF funds must be used for eligible activities</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> RLF funds are being spent on cleanup activities only. These actions include: <ul style="list-style-type: none"> <li><input type="checkbox"/> Actions associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant, contaminant, petroleum product, or controlled substance;</li> <li><input type="checkbox"/> Site monitoring activities, including sampling and analysis, that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;</li> <li><input type="checkbox"/> Site assessment activities that are reasonable, necessary, and incidental to the cleanup process; or</li> <li><input type="checkbox"/> Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.</li> </ul> </li> <li><input type="checkbox"/> RLF funds are NOT being used for the following activities: <ul style="list-style-type: none"> <li><input type="checkbox"/> Pre-cleanup environmental cleanup activities, such as site assessment, identification, and characterization;</li> <li><input type="checkbox"/> Public or private drinking water supplies that have deteriorated through ordinary use;</li> <li><input type="checkbox"/> A cleanup cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107;</li> <li><input type="checkbox"/> Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws;</li> <li><input type="checkbox"/> Development activities that are not removal actions;</li> <li><input type="checkbox"/> Cost-sharing or matching requirement for another federal grant (absent statutory authorization);</li> <li><input type="checkbox"/> Job training support;</li> <li><input type="checkbox"/> Support of lobbying efforts of the cooperative agreement recipient; or</li> <li><input type="checkbox"/> Administrative costs.</li> </ul> </li> <li><input type="checkbox"/> RLF funds are being spent on eligible programmatic activities such as: <ul style="list-style-type: none"> <li><input type="checkbox"/> Making and managing loans and/or subgrants, operating the RLF, and financial management expenses;</li> <li><input type="checkbox"/> Site cleanup activities;</li> <li><input type="checkbox"/> VCP or State response program fees associated with the cleanup;</li> <li><input type="checkbox"/> Costs required to purchase insurance;</li> <li><input type="checkbox"/> Monitoring the health of populations exposed to hazardous substances from a brownfields site;</li> <li><input type="checkbox"/> Site remediation activities, as in the case of grants for direct use by eligible entities and non-profit organizations;</li> </ul> </li> </ul>



## Fund Manager Responsibilities

- Subject to the jurisdiction, custody, or control of the U.S. government, except for land held in trust by the U.S. for an Indian tribe.

### Understand that RLF funds must be used for eligible activities

- RLF funds are being spent on cleanup activities only.
- RLF funds are NOT being used for the following activities:
  - Pre-cleanup environmental cleanup activities, such as site assessment, identification, and characterization;
  - Public or private drinking water supplies that have deteriorated through ordinary use;
  - A cleanup cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107;
  - Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws;
  - Development activities that are not removal actions;
  - Cost-sharing or matching requirement for another federal grant (absent statutory authorization);
  - Job training support;
  - Support of lobbying efforts of the cooperative agreement recipient; or
  - Administrative costs.
- RLF funds ARE being spent on eligible programmatic activities such as:
  - Making and managing loans and/or subgrants, operating the RLF, and financial management expenses;
  - Site cleanup activities;
  - VCP or State response program fees associated with the cleanup;
  - Costs required to purchase insurance;
  - Monitoring the health of populations exposed to hazardous substances from a brownfields site;
  - Site remediation activities, as in the case of grants for direct use by eligible entities and non-profit organizations;
  - Performance and financial reporting required under 40 C.F.R. § 30.51 and § 30.52, and 40 C.F.R. § 31.40 and § 31.41; or
  - Travel, training, equipment, supplies, reference materials, and contractual support if those costs are reasonable and allocable to tasks specified in an approved scope of work.
- RLF funds are NOT being spent on direct administrative costs such as salaries; benefits; contractual costs; supplies; or data processing charges incurred to comply with most provisions of the Uniform Administrative Requirements for Grants contained in 40 C.F.R. Part 30 or 40 C.F.R. Part 31.

## Qualified Environmental Professional Responsibilities


- Performance and financial reporting required under 40 C.F.R. § 30.51 and § 30.52, and 40 C.F.R. § 31.40 and § 31.41; or
- Travel, training, equipment, supplies, reference materials, and contractual support if those costs are reasonable and allocable to tasks specified in an approved scope of work.

### Establish Community Involvement

- All cleanup activities require a site-specific community relations plan or its equivalent that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.
  - Submit the completed CRP to EPA for review.
- Upon completing the ABCA:
- Publish a notice of availability of the ABCA or its equivalent to inform the general community.
  - Provide opportunity for written and oral comments.
  - Prepare a written response to significant and appropriate comments, and document any changes made to the cleanup plan.

### Establish an Administrative Record

- Include in the Administrative Record:
  - An analysis of reasonable alternatives (as appropriate for hazardous substances or petroleum sites).
  - Site investigation reports.
  - The clean up plan.
  - Cleanup standards used.
  - Response to public comments.
  - Verification that shows that cleanups are complete.

Fund Manager Responsibilities	Qualified Environmental Professional Responsibilities 
<p><b>Market Research: Understanding the Marketplace</b> EPA Regions should ensure the RLF fund manager:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Identifies potential borrowers in their community.</li> <li><input type="checkbox"/> Identifies potential sites (properties needing redevelopment in their community).</li> <li><input type="checkbox"/> Identifies the kind of loan that will best meet their community's needs by mixing loan terms, interest rates, and repayment structures.</li> <li><input type="checkbox"/> Identifies ways to position their RLF program within a redevelopment financing package. RLF fund managers should consider other public financing programs that could work in conjunction with an RLF loan and the possible issues and requirements that are associated with combining financing sources.</li> </ul> <p><b>Product and Program Development: Creating an RLF That Meets Borrowers' Needs</b> EPA Regions should ensure the RLF fund manager:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Identifies how an RLF loan can help potential borrowers and how to develop loan products to address these needs. RLF fund managers should consider reduced interest rates, flexible repayment terms, loan amounts that meet potential borrower needs, and broadly defined eligible uses.</li> <li><input type="checkbox"/> Balances subgrants with loans.</li> <li><input type="checkbox"/> Integrates the loan program with other services.</li> <li><input type="checkbox"/> Considers ways to make the loan program simple and appealing by making the application user friendly, creating a quick loan application review process, defining requirements clearly, and allowing flexibility wherever possible.</li> <li><input type="checkbox"/> Retains staff that is trained to assist the borrower, or has made arrangements for access to hands-on assistance, and has access to useful information sources such as the EPA Regional environmental clearinghouses.</li> </ul> <p><b>Marketing the RLF</b> EPA Regions should ensure the RLF fund manager:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Identifies a target audience of not only potential borrowers, but also of other stakeholders involved in the brownfields redevelopment process in their community.</li> <li><input type="checkbox"/> Identifies interested potential borrowers and makes contact with them, establishes one-on-one meetings, and begins building a relationship with potential borrowers.</li> <li><input type="checkbox"/> Considers types of assistance that interested borrowers could benefit from and offers this technical assistance to them.</li> <li><input type="checkbox"/> Creates outreach materials (e.g., print-based and/or people-based outreach approaches) that can effectively and efficiently communicate with potential borrowers.</li> <li><input type="checkbox"/> Reviews these materials for consistency, accuracy, clarity, brevity, and attractiveness.</li> </ul>	<p><b>Conduct an Analysis of Brownfields Cleanup Alternatives (ABCA)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The recipient must conduct an analysis of brownfields cleanup alternatives, considering the site characteristics, surrounding environment, land-use restrictions, potential future uses, and cleanup goals. The ABCA must include: <ul style="list-style-type: none"> <li><input type="checkbox"/> Information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup.</li> <li><input type="checkbox"/> Effectiveness, implementability, and the cost of the cleanup proposed.</li> <li><input type="checkbox"/> An analysis of reasonable alternatives including no action. For cleanup of brownfields petroleum-only sites, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The cleanup method chosen must be based on this analysis.</li> <li><input type="checkbox"/> An explanation of why the environmental cleanup is authorized.</li> </ul> </li> <li><input type="checkbox"/> An authorized representative of the recipient must sign the ABCA.</li> </ul> <p><b>Meet all Other Applicable Federal or State Laws</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Ensure compliance with the Davis-Bacon Act of 1931.</li> <li><input type="checkbox"/> Coordinate with appropriate state or tribal and local agencies and organizations.</li> <li><input type="checkbox"/> Ensure compliance with other applicable federal and state laws.</li> <li><input type="checkbox"/> Contact Natural Resource Trustees.</li> </ul> <p><b>Complete and Document the Environmental Cleanup</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assess whether land-use controls will be necessary.</li> <li><input type="checkbox"/> Prepare a Final Report on the cleanup operation and actions taken, documenting: <ul style="list-style-type: none"> <li><input type="checkbox"/> That the situation was addressed.</li> <li><input type="checkbox"/> The actions that were taken.</li> <li><input type="checkbox"/> Sampling shows cleanup levels were met.</li> <li><input type="checkbox"/> The resources committed.</li> <li><input type="checkbox"/> Any problems encountered.</li> </ul> </li> </ul> <p><b>Crosscutters</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Ensure that a term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements.</li> </ul>



## Fund Manager Responsibilities

- Established a system for tracking communications and successes of each approach.

### Develop an Approach for Selecting Borrowers and Subgrantees

- Develop an approach for selecting standard loan borrowers and ensure that they do not fall under any of the following restrictions:
  - Entities that are potentially liable under CERCLA §107.
  - Entities that are liable for cleaning up petroleum-only brownfields sites.
  - Entities that are currently suspended, debarred, or otherwise declared ineligible.

If a borrower asserts BFPP, CPO, or ILO limitations on liability, require the following:

- The borrower has performed “all appropriate inquiry” on or before acquiring the property.
- For BFPP or CPO, the borrower is not potentially liable or affiliated with anyone potentially liable for cleanup costs; was not potentially liable, or otherwise liable under CERCLA § 107.
- The borrower will meet continuing obligations.

Develop an approach for selecting intra-governmental loan borrowers. In addition to the borrower restrictions listed under a standard loan, the fund manager must also demonstrate the following:

- Establish that the borrowing entity has the legal authority to enter into a legally binding obligation to repay.
- Ensure that there is an identifiable source of income/repayment. For example, pilot (payment in lieu of taxes) funds, proceeds from tax increment financing (TIF), or funding from the sale of the property.
- Identify an enforcement entity who can ensure that the loan does not turn into a grant. For example, the comptroller’s office of the cooperative agreement recipient can help avoid potential conflicts of interest.

Develop an approach for selecting cleanup subgrantees.

- Offer cleanup subgrants to non-profit organizations or other eligible entities.
- Offer cleanup subgrants for the purpose of funding cleanup activities at eligible RLF sites owned by the eligible entity or the non-profit organization that receives the grant.
- Understand that unlike loans, cleanup subgrants may NOT be made within the same governmental entity that receives the RLF grant (i.e., intra-governmental subgrants are not allowed under the RLF program).

## Qualified Environmental Professional Responsibilities

**Default Loan Provisions** (This is only applicable if a borrower defaults on a loan)


If the cleanup is not complete at the time of default, the qualified environmental professional is responsible for:

- Documenting the cleanup that took place prior to the default; and
- Securing the site (e.g., ensuring public safety) and informing EPA and the state.

### Reporting and Record Keeping Responsibilities

The recipient must:

- Report quarterly to keep EPA apprised of the RLF performance.
- Submit quarterly reports within 30 days of the end of each federal fiscal quarter. Items included in 40 C.F.R. § 31.40 must be included in quarterly reports. Examples include:
  - Documentation of progress at meeting the performance objectives, project narrative and project time line;
  - An update on project milestones;
  - A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds; and
  - If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.
- Clearly identify, in quarterly reports, which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where cleanup (either through loans or subgrants) activities were completed.

Fund Manager Responsibilities	Qualified Environmental Professional Responsibilities 
<p><input type="checkbox"/> If a subgrantee asserts BFPP, CPO, or ILO limitations on liability, require the following:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The subgrantee has performed “all appropriate inquiry” on or before acquiring the property.</li> <li><input type="checkbox"/> For BFPP or CPO, the subgrantee is not potentially liable or affiliated with anyone potentially liable for cleanup costs; was not potentially liable, or otherwise liable under CERCLA § 107.</li> <li><input type="checkbox"/> The subgrantee will meet continuing obligations.</li> </ul> <p><b>Develop an Approach for Selecting Projects</b> Develop a formal protocol for borrowers to demonstrate their projects’ eligibility. This protocol includes:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Descriptions of projects that will be financed, how loan monies will be used, and the qualifications of the borrower to make legitimate use of the funds.</li> <li><input type="checkbox"/> Explanation of how a project would be consistent with the RLF program objectives and terms and conditions.</li> <li><input type="checkbox"/> Ensure project selection criteria is consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.</li> </ul> <p><b>Loan Closing and Support: Signing and Servicing Loans/Subgrants</b> (These points are applicable once a loan or subgrant has been made)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Negotiate terms and conditions with the borrower or subgrantee. Clearly communicate the loan agreement terms and cleanup goals and requirements.</li> <li><input type="checkbox"/> The terms and conditions contain loan or subgrant-specific financial requirements.</li> <li><input type="checkbox"/> Communicate with the borrower and/or subgrantee to ensure the success of this redevelopment project.</li> <li><input type="checkbox"/> Be aware of potential factors outside the control of the RLF program that could affect the project’s success.</li> <li><input type="checkbox"/> Take measures to service the loan and ensure its success.</li> </ul> <p><b>Default Loan Provisions</b> (This is only applicable if a borrower defaults on a loan)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> In an effort to preclude loan defaults, place special terms and conditions in the loan agreements of borrowers deemed “high risk.”</li> <li><input type="checkbox"/> If a loan default occurs, take measures to minimize unrecoverable losses to the RLF.</li> <li><input type="checkbox"/> If the cleanup is not complete at the time of default, the RLF fund manager is responsible for: <ul style="list-style-type: none"> <li><input type="checkbox"/> Documenting the connection between the amount loaned to the borrower (or, in the case of guaranteed loans, the amount paid to the bank or other financial institution) and the cleanup that took place prior to the default; and</li> <li><input type="checkbox"/> Securing the site (e.g., ensuring public safety) and informing EPA and the state.</li> </ul> </li> </ul>	<p><b>Closeout Responsibilities</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> All cleanups funded by and specified in the award were completed.</li> <li><input type="checkbox"/> Deliver all performance and other reports to the cooperative agreement recipient to meet closeout reporting requirements (reports must be delivered to EPA within 90 days of completion of all required work), including, but not limited to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Cleanup reports (with information on cleanup dates);</li> <li><input type="checkbox"/> Invention disclosure;</li> <li><input type="checkbox"/> Property inventory report including a request for instructions regarding disposition of any property purchased with cooperative agreement funds; and</li> <li><input type="checkbox"/> A federally-owned property inventory report.</li> </ul> </li> </ul> <p style="text-align: center;"><b>End QEP Responsibilities</b></p>



## Fund Manager Responsibilities

### Methods of Payment and Disbursement

Prior to receiving any cooperative award funds from EPA, the RLF fund manager must ensure:

- They have an accounting system adequate to identify, safeguard, and account for both RLF funds and program income;
- Lending documents are prepared; and
- Loan documents have been reviewed by legal counsel for compliance with applicable state and local laws, and with the terms and conditions of the award.

The RLF fund manager should work with their regional EPA project officer to ensure they are enrolled to receive electronic payments via either:

- the EPA-EFT payment system; or
- the Automated Standard Application for Payments (ASAP).

*If the recipient chooses to receive payments via the EPA-EFT payment system, they must:*

- enroll by completing the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881), and
- once enrollment has been established, the recipient must request funds using the U.S. EPA Payment Request Form.

*If the recipient chooses to receive payments via the Automated Standard Application for Payments (ASAP), they must:*

- enroll to use ASAP by contacting their EPA Servicing Finance Office (SFO) for enrollment instructions (effective January 2004). If the recipient is currently enrolled to use ASAP with another agency, the recipient should contact their SFO to request funds be authorized on ASAP.

Choose one of two methods to disburse funds to borrowers:

- Actual Expense
  - Require borrowers to submit documentation of expenditures.
- Schedule
  - Agree upon a disbursement schedule with the borrower.

### Using Funding and Program Income for Eligible Costs

EPA Regions should ensure the RLF fund manager:

- Replaces all program income from active RLF loans into the RLF for relending.
- Uses proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal into their RLF for relending.
- Uses at least 60 percent of RLF funds to capitalize the loan pool and associated eligible programmatic costs, and no more than 40 percent of the funds for cleanup subgrants and eligible associated programmatic costs.

### Reporting and Record Keeping Responsibilities

EPA Regions should ensure the RLF fund manager:

- Reports quarterly to keep EPA apprised of the RLF performance.
- Submits quarterly reports within 30 days of the end of each federal fiscal quarter. Items included in 40 C.F.R. § 31.42 must be included in quarterly reports. Examples include:
  - Documentation of progress at meeting the performance objectives, project narrative and project time line;
  - An update on project milestones;
  - A property profile;
  - A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds; and
  - If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.
- Clearly identifies in recipient quarterly reports which activities performed during the reporting period were undertaken with EPA funds, and relate EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where cleanup (either through loans or subgrants) activities were completed.

EPA Regions should ensure the RLF fund manager:

- Complies with applicable Office of Management and Budget cost principles when charging against program income.

## Fund Manager Responsibilities



- Ensures that periodic audits of their programs are conducted by an outside auditor in accordance with General Accounting Office (GAO) accounting standards or generally accepted government auditing standards.
- Ensures that their borrowers and subgrantees comply with federal and state regulations, as well as the requirements of the RLF program.

### Closeout Responsibilities

- All administrative actions and work required under the cooperative agreement has been completed.
- EPA deobligates all funds unused by the cooperative agreement recipient.
- The final payment of funds from EPA to the cooperative agreement recipient was received.
- All cleanups funded by and specified in the award were completed.

### Obligation Schedule

EPA Regions should ensure the RLF fund manager:

- Through quarterly reports, provides evidence that they made significant progress towards loaning the amount available under the cooperative agreement.
- Requests final payment and disbursement of fund awards from EPA within 5 years of the agreement start date.
- Disburses any accrued program income before requesting final payment from EPA.

### Reporting

EPA Regions should ensure the RLF fund manager:

- Delivers all financial, performance, and other reports to the cooperative agreement recipient to meet closeout reporting requirements (reports must be delivered to EPA within 90 days of completion of all required work), including, but not limited to:
  - Financial performance or progress reports;
  - Financial status report Standard Form (SF) 269;
  - Final request for payment (SF 270);
  - Invention disclosure;
  - Property inventory report including a request for instructions regarding disposition of any property purchased with cooperative agreement funds; and
  - A federally-owned property inventory report.

### Unused Funds

EPA Regions should ensure the RLF fund manager:

- Returns all unused principal funds to EPA, unless those funds were pre-authorized by EPA for use in other programs.
- Returns remaining funds not obligated by the cooperative agreement recipient via a loan agreement to the EPA (this is only applicable if the cooperative agreement recipient chooses not to continue the RLF).

### Making Loans Beyond the RLF Project Period (If applicable)

If the cooperative agreement recipient has chosen to continue to make RLF loans beyond the RLF program period; EPA Regions should ensure the RLF fund manager:

- Addresses eligible uses of program income, and environmental cleanup requirements in the closeout agreement; and
- Maintains records relating to the use of post-award program income.

### Non-Compliance, Suspension, and Termination

EPA Regions should ensure:

- In the case of non-compliance, the cooperative agreement recipient was given a reasonable period of time in which to take the necessary corrective action to comply with the terms of the cooperative agreement.
- In the case of a temporary hold or suspension, recipients refer to 40 C.F.R. § 31.43 and speak to their RLF Coordinator.
- In the case of termination, recipients deobligate any unused cooperative agreement funds.

## End Fund Manager Responsibilities



U.S. Environmental Protection Agency  
**“COMMON ELEMENTS” GUIDANCE**  
**REFERENCE SHEET**

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## INTRODUCTION

This reference sheet highlights the main points made in EPA’s March 6, 2003 guidance entitled *“Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for the Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability “Common Elements”*), available at:

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf>

**The "Common Elements" are the statutory threshold criteria and ongoing obligations landowners must meet to qualify as a:**

- ▶ bona fide prospective purchaser,
- ▶ contiguous property owner, or
- ▶ innocent landowner.

The 2002 Brownfields Amendments to the Superfund law provide conditional CERCLA liability protection to landowners who qualify as bona fide prospective purchasers, contiguous property owners or innocent landowners. For purposes of EPA’s “Common Elements” Guidance and this reference sheet, “innocent landowner” refers only to unknowing purchasers as defined in CERCLA § 101(35)(A)(i).

### ***Who are Bona Fide Prospective Purchasers (BFPPs)?***

- ▶ Persons who meet the CERCLA § 101(40) criteria and the CERCLA § 107(r) criteria.
- ▶ Purchasers who buy property after January 11, 2002.
- ▶ BFPPs must perform all appropriate inquiry prior to purchase and may buy *knowing, or having reason to know*, of contamination on the property.

### ***Who are Contiguous Property Owners (CPOs)?***

- ▶ Persons who meet the CERCLA § 107(q)(1)(A) criteria.
- ▶ Owners of property that is *not* the source of the contamination. Such property is “contiguous” to, or otherwise similarly situated to, a facility that is the source of contamination found on their property.
- ▶ CPOs must perform all appropriate inquiry prior to purchase and buy *without*

*knowing, or having reason to know*, of contamination on the property.

### ***Who are Innocent Landowners (ILOs)?***

- ▶ Persons who meet the CERCLA § 107(b)(3) criteria (including due care) and the CERCLA § 101(35) criteria.
- ▶ ILO's must perform all appropriate inquiry prior to purchase and must buy *without knowing, or having reason to know*, of contamination on the property.

## **THE COMMON ELEMENTS**

A person asserting BFPP, CPO or ILO status has to prove that it meets the applicable criteria.

### **THRESHOLD CRITERIA**

To qualify as a BFPP, CPO, or ILO, a person must perform “all appropriate inquiry” before buying the property.

BFPPs and CPOs must *also* demonstrate that they are not potentially liable nor “affiliated” with any other person who is potentially liable for response costs at the property.

#### **All Appropriate Inquiry**

BFPPs, CPOs, and ILOs must perform “all appropriate inquiry” into the previous ownership and uses of property before buying the property.

BFPPs may buy property with knowledge of contamination and maintain their protection from liability. The CPO and ILO liability protections, in contrast, do *not* apply if the purchaser knew, or had reason to know, of contamination prior to purchase.

EPA will publish regulations and guidance on the all appropriate inquiry standard in the future. For property purchased before May 1997, statutory factors are to be applied. CERCLA § 101(35)(B)(iv)(I). For property purchased after May 1997 and until EPA promulgates a regulation establishing the all appropriate inquiry standard, an ASTM Phase I report may satisfy the standard. CERCLA § 101(35)(B)(iv)(II). EPA is to promulgate a regulation establishing the all appropriate inquiry standard by 2004. CERCLA § 101(35)(B)(ii), (iii).

#### ***Common Elements of the Brownfields Amendments Landowner Provisions***

##### *Threshold Criteria:*

- all appropriate inquiry
- no affiliation with a liable party

##### *Continuing Obligations:*

- compliance with land use restrictions and institutional controls
- taking reasonable steps with respect to hazardous substances on property
- cooperation, assistance and access
- compliance with information requests and administrative subpoenas
- providing legally required notices

**Affiliation**

BFPPs or CPOs must not be potentially liable or affiliated with any other person who is potentially liable for the site response costs. “Affiliated with” includes direct and indirect familial relationships and many contractual, corporate, and financial relationships.

ILOs cannot have a contractual relationship with a liable party.

**CONTINUING OBLIGATIONS CRITERIA**

To maintain liability protection, landowners must meet the following continuing obligations during their property ownership.

**Compliance with Land Use Restrictions and Institutional Controls**

BFPPs, CPOs and ILO’s must:

- ▶ be in compliance with any land use restrictions established or relied on in connection with the response action;
- ▶ not impede the effectiveness or integrity of any institutional control employed in connection with a response action.

EPA believes the Brownfields Amendments require BFPPs, CPOs and ILOs to:

- ▶ comply with land use restrictions and implement institutional controls even if the restrictions/controls were not in place at the time of purchase; and
- ▶ comply with land use restrictions relied on in connection with the response action even if restrictions haven’t been implemented through an enforceable institutional control.

**Reasonable Steps**

BFPPs, CPOs and ILO’s are required to take reasonable steps to:

- ▶ Stop continuing releases;
- ▶ Prevent threatened future releases; and
- ▶ Prevent or limit human, environmental, or natural resource exposure to earlier hazardous substance releases.

The reasonable steps requirement balances Congress’ objectives of protecting certain landowners from CERCLA liability, and protecting human health and the environment.

As a general matter, EPA does not believe Congress intended BFPPs, CPOs and ILOs to have the same types of response obligations that CERCLA liable parties have (e.g., removal of contaminated soil, extraction and treatment of contaminated groundwater). The required reasonable steps relate only to responding to contamination for which the BFPP, CPO, or ILO is

*not responsible*. Activities on the property after purchase resulting in *new contamination* can give rise to full CERCLA liability. See Attachment B to EPA's guidance for more on reasonable steps in a "question and answer" format.

EPA may provide a comfort/status letter suggesting reasonable steps at a specific site. EPA intends to limit these letters to sites where EPA has sufficient information to form a basis for suggesting reasonable steps (e.g., the site is on the National Priorities List or EPA has conducted or is conducting a removal action on the site). Providing such a letter is a matter of Regional discretion. See Attachment C to EPA's guidance for a sample "reasonable steps" comfort/status letter.

**Cooperation, Assistance, and Access**

BFPPs, CPOs and ILOs must provide full cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration.

**Compliance with Information Requests and Administrative Subpoenas**

BFPPs and CPOs must comply with CERCLA information requests and administrative subpoenas.

**Provision of Legally Required Notices**

BFPPs and CPOs must provide legally required notices related to the discovery or release of hazardous substances at the facility.

"Legally required notices" may include those required under federal, state, and local laws. Examples of federal notice requirements include: CERCLA § 103 (notification requirements regarding released substances); EPCRA § 304 ("emergency notification"); and RCRA § 9002 (underground storage tanks notification provisions).

<i>Summary: Common Element among the Brownfields Amendments Landowner Provisions</i>	<b>Bona Fide Prospective Purchaser</b>	<b>Contiguous Property Owner</b>	<b>Section 101 (35)(A)(i) Innocent Landowner</b>
All appropriate inquiry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No affiliation demonstration	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Compliance with land use restrictions and institutional controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Taking reasonable steps	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cooperation, assistance, access	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Compliance with information requests and administrative subpoenas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
Providing legally required notices	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>

Although the innocent landowner provision does not contain this “affiliation” language, in order to meet the statutory criteria of the innocent landowner liability protection, a person must establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and the resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship. CERCLA § 107(b)(3). Contractual relationship is defined in section 101(35)(A).

Compliance with information requests and administrative subpoenas is not specified as a statutory criterion for achieving and maintaining the section 101(35)(A)(i) innocent landowner liability protection. However, CERCLA requires compliance with administrative subpoenas from all persons, and timely, accurate, and complete responses from all recipients of EPA information requests.

Provision of legally required notices is not specified as a statutory criterion for achieving and maintaining the section 101(35)(A)(i) innocent landowner liability protection. These landowners may, however, have independent notice obligations under federal, state and local laws.

## QUESTIONS

Questions regarding this reference sheet or EPA’s Common Elements Guidance should be directed to Cate Tierney in OSRE’s Regional Support Division (202-564-4254, [Tierney.Cate@EPA.gov](mailto:Tierney.Cate@EPA.gov)), Greg Madden in OSRE’s Policy & Program Evaluation Division (202-564-4229, [Madden.Gregory@EPA.gov](mailto:Madden.Gregory@EPA.gov)) or to the Landowner Liability Protection Subgroup contacts listed by Region below.

### Landowner Liability Protection Subgroup Regional Contacts

Region 1:	Joanna Jerison	617-918-1781
Region 2:	Michael Mintzer Paul Simon	212-637-3168 212-637-3152
Region 3:	Joe Donovan Leo Mullin Heather Gray Torres	215-814-2483 215-814-3172 215-814-2696
Region 4:	Kathleen Wright	404-562-9574
Region 5:	Peter Felitti Thomas Krueger Larry Kyte	312-886-5114 312-886-0562 312-886-4245
Region 6:	Mark Peycke	214-665-2135
Region 7:	Denise Roberts	913-551-7559
Region 8:	Suzanne Bohan Matthew Cohn Nancy Mangone	303-312-6925 303-312-6853 303-312-6903
Region 9:	Bill Keener	415-972-3940
Region 10:	Cyndy Mackey	206-553-2569

*This reference sheet is intended for employees of EPA and the Department of Justice and it creates no substantive rights for any persons. It is not a regulation and does not impose legal obligations. This reference sheet provides some highlights of EPA’s “Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for the Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability” (“Common Elements”). It is not intended as a substitute for reading the statute or the guidance itself.*

## Appendix H. • *Prohibitions on Use of Funds*

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(Appendix 2 of Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants, (September 2004))

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.
- Unallowable costs (e.g., lobbying and fund raising) under OMB Circulars A-21, A-87, or A-122, as applicable.

### **Administrative Cost Prohibition**

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.

- A. **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 also are all indirect costs under OMB Circulars A-21, A-87, and A-122, and Subpart 31.2 of the *Federal Acquisition Regulation*.**
- B. **Statutory Exclusions.** The administrative cost prohibition does not apply to direct costs 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.
- C. **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. For example, the prohibition does not apply, under a revolving loan fund grant, to costs incurred in making loans (such as the costs of loan processing, legal fees, and professional services) or overseeing the borrower’s activities to ensure compliance with relevant and appropriate requirements of the *National Contingency Plan* (see 40 CFR §300.700 *et seq.*). 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 capitalization of revolving loan funds:
  - (a) expenses for making and managing loans;
  - (b) expenses, including financial management expenses, for operating the revolving fund; and
  - (c) expenses for making and managing subgrants under CERCLA §104(k)(3)(B)(ii).
3. 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.
4. In the case of grants for implementation of brownfields programs under CERCLA §104(k)(6), expenses for providing training, research, and technical assistance.
5. 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.”
6. 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 Section B, “Statutory Exclusions,” or Section C, “Programmatic Costs.”

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