



## CHAPTER THREE: *Eligible Fund Uses*

### ***Chapter Summary:***

Recipients can provide loans and subgrants with RLF funds to eligible borrowers and subgrantees at eligible sites for eligible and allowable cleanup activities.

For the purposes of EPA's Brownfields grant program, a "brownfields site" is:

"...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."

In order to be eligible for brownfields grant funding, the site(s) identified in the workplan or selected for cleanup by a borrower or subgrantee must meet the definition of a brownfields site. Brownfields sites can also include, but are not limited to, three specific types of properties eligible for funding in addition to sites contaminated by hazardous substances, pollutants, or contaminants:

- sites contaminated by controlled substances;
- sites contaminated by petroleum or a petroleum product; and
- mine-scarred lands.

Some sites are excluded from the definition of a brownfields site unless EPA makes a "property specific funding determination" that allows grant funds to be used at that site.

**Eligible activities** for site cleanup may include:

- Removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant, contaminant, petroleum product, or controlled substance into the environment;
- Site assessment or site monitoring activities that are reasonable, necessary, and incidental to the cleanup process;
- Costs associated with meeting public participation, worker health and safety, and program management requirements related to managing the RLF; and
- Compliance with state and federal laws applicable to the cleanup.

Direct programmatic costs *may* be eligible and allowable. However, the Brownfields Law makes administrative costs ineligible. Please see Appendix 2, *Prohibitions on Use of Funds*, of the current *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants* for discussion of the administrative cost prohibition.

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**3.1 Eligibility for Borrowers and Subgrantees.** Eligible borrowers can be any public or private entity with control over or access to a brownfields site. Eligible subgrantees are limited to states, political subdivisions, U.S. territories, Indian tribes, and non-profit organizations that own the site they intend to clean up.

Entities ineligible for RLF funds (whether for loans or subgrants) include borrowers or subgrantees potentially liable under CERCLA § 107 for cleanup costs at the site.

Recipients must maintain sufficient documentation, under the terms and conditions of the RLF grant agreement, supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients. Additionally, borrowers and subgrant recipients must submit information regarding their overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. This information will be used to assist EPA in advising the recipient on the borrower's or subgrantee's eligibility and capacity for effective site cleanup.

### **Borrower Eligibility**

Eligibility restrictions include the following:

- Borrowers and subgrantees may not use EPA funding to pay for cleanup costs at a Brownfields site where a borrower or subgrantee is potentially liable under CERCLA § 107.
- An entity that is currently suspended, debarred from receiving federal funding, or otherwise declared ineligible cannot be a borrower.

In the Brownfields Law, there are exceptions to potential liability under CERCLA § 107 that are important in determining whether a potential borrower or subgrantee may use brownfields grant funds to clean up a site. The Brownfields Law specifies the following three categories of liability protection:

- Bona fide prospective purchaser (BFPP),
- Contiguous property owner (CPO), or
- Innocent landowner (ILO).

Borrowers and subgrantees who are eligible, or seek to become eligible, to receive a loan or subgrant based on liability protection from CERCLA in one of these three categories must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible borrower or subgrantee. These include, but are not limited to the following:

- All borrowers and subgrantees asserting a BFPP, CPO, or ILO limitation on liability must perform (or have already performed) “all appropriate inquiry” as provided for in CERCLA § 101(35)(B), on or before acquiring the property. (See the EPA Proposed Rule on “Standards and Practices for All Appropriate Inquiries” at [www.epa.gov/brownfields](http://www.epa.gov/brownfields) for more information.)
- Borrowers and subgrantees seeking to qualify as BFPP or CPO must not be:
  - Potentially liable, or affiliated with any other person that is potentially liable, for cleanup costs through: (a) any direct or indirect familial relationship, or (b) any contractual, corporate, or financial relationships;
  - A recognized business entity that was potentially liable; or
  - Otherwise liable under CERCLA § 107(a) as a prior owner/operator or generator or transporter of hazardous substances to the facility.

See the EPA guidance on BFPP at [www.epa.gov/compliance](http://www.epa.gov/compliance) for more information.

- Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
  - Complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls;
  - Taking reasonable steps with respect to hazardous substances releases;
  - Providing full cooperation, assistance, and access to persons that are authorized to conduct cleanup actions or natural resource restoration;
  - Complying with information requests and administrative subpoenas (applies to BFPPs and CPOs); and
  - Complying with legally required notices (again, this applies to BFPPs and CPOs).

See CERCLA § 101(40)(b)-(h), 107(q)(1)(A), 101(35)(A)-(B) for further information.

CERCLA requires additional obligations to maintain liability protection. These obligations are found at CERCLA § 101(35), 101(40), 107(b), and 107(q).

## Subgrantee Eligibility Restrictions

Cleanup subgrants may be provided to an eligible entity or non-profit organization to clean up sites **owned by** the eligible entity or non-profit organization **at the time** the subgrant is awarded.

In addition to the restrictions identified above, the recipient must take into consideration and document the extent to which a subgrant will:

- Facilitate the creation or preservation of greenspace (e.g., a park, recreational area);
- Benefit the needs of low income communities who have limited sources of funding for environmental remediation and redevelopment;
- Facilitate the use of existing infrastructure; and
- Promote the long-term use of RLF funds.

Additional eligible subgrant recipients include non-profit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Non-profit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

The subgrant recipient **must retain ownership\*** of the site throughout the period of performance of the subgrant. The recipient may not provide a subgrant to itself or another component of its own unit of government or organization. **For-profit organizations are not eligible for subgrants.**

**3.2 Eligible Sites.** RLF cooperative agreement funds can be used to clean up eligible Brownfields sites. They are defined by the Brownfields law as sites where the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The Brownfields Law also specifies that RLF funds can be used at sites that are contaminated by petroleum or a petroleum product, controlled substances, or mine-scarred lands.

Recipients can only provide loans and subgrants to eligible borrowers and subgrantees for sites with eligible and allowable cleanup activities.

For the purposes of EPA's brownfields grant program, a "brownfields site" is:

"...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."

\* For the purposes of this agreement, the term "owned" means fee simple title unless EPA approves a different arrangement.

To be eligible for brownfields grant funding, the site(s) identified in the workplan or selected for cleanup by a borrower or subgrantee must meet the definition of a brownfields site. Brownfields sites can also include, but are not limited to, three specific types of properties eligible for funding:

- sites contaminated by petroleum or petroleum products;
- sites contaminated by controlled substances; and
- mine-scarred lands.

Some sites are excluded from the definition of a brownfields site unless EPA makes a “property specific funding determination” that allows grant funds to be used at that site.

### Sites Contaminated by Petroleum or Petroleum Products

The Brownfields Law allows certain sites contaminated with petroleum or petroleum product to receive brownfields grant funding. 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 that:**

- the site is of ‘relatively low risk’ compared with other ‘petroleum-only’ sites in the state; and
- there is no viable responsible party; and
- 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 makes these determinations. If the state is unable to make the determinations, an applicant may request that EPA make the determinations.

### Sites Contaminated by Controlled Substances

RLF funds can be used to clean up sites contaminated by controlled substances.

- 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 U.S.C. Section 802).”



*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.”*

- Controlled substances include drugs or other substances (see section 102 of the Controlled Substances Act, 21 U.S.C. Section 802, for a list of controlled substances), but do not include distilled spirits, wine, malt beverages, or tobacco.

For example, these sites may include private residences formerly used for the manufacture 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 phosphorus, kerosene, acids).

### Sites that are Mine-scarred Lands

RLF funds can be used to clean up mine-scarred lands. Mine-scarred lands include the land, associated waters, and surrounding watersheds where extraction, beneficiation, or processing of ores and minerals (including coal) has occurred. (See 40 C.F.R. 261.4(b)(7) for the definition of extraction, beneficiation, and processing.) 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:

- Acid or alkaline rock drainage;
- Waters affected by abandoned metal mine drainage or runoff, including stream beds and adjacent watersheds;
- 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; and
- Abandoned dumps or dump areas used for the disposal of waste rock or spent ore.

## FAQs:

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### Q: What is a “relatively low risk” petroleum-contaminated site?

A: EPA’s view is that “relatively low risk” petroleum-contaminated sites are not high risk sites. “High risk” sites have a significantly higher level of petroleum contamination and are currently being cleaned up using EPA’s Leaking Underground Storage Tank (LUST) trust fund monies, or any petroleum-contaminated site that currently is regulated under the Oil Pollution Act (OPA). The Brownfields Law also provides that states may make this determination.

### Q: Are eligible entities limited to sites assessed under other EPA Brownfields Programs?

A: No. Sites cleaned up under the RLF program may be drawn from any area within the eligible entities’ control or legal authority. Sites are NOT limited to those identified, characterized, or assessed under a previously awarded assessment pilot or targeted brownfields assessment.

**3.3 Ineligible Sites.** The Brownfields Law prohibits the use of RLF cooperative agreement funds at sites described below.

RLF cooperative agreement funds may not be used at any site:

- Listed, or proposed for listing, on the National Priorities List (NPL);
- 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
- Subject to the jurisdiction, custody, or control of the United States government, *except* for land held in trust by the United States for an Indian tribe.

The following petroleum-contaminated sites are **not eligible** for RLF funding:

- Sites subject to a corrective action order under RCRA § 9003(h); or
- Sites that have received specific cleanup assistance under the Subtitle I of RCRA from the Leaking Underground Storage Tank (LUST) trust fund are excluded from receiving financial assistance, **unless** a property-specific funding determination from EPA is obtained (See Section 3.4, *Sites that may be Eligible for a Property-Specific Funding Determination*, for more information on property-specific determinations).



None of these sites are eligible for RLF funds *or* property-specific determinations. **Certain sites that are excluded from funding eligibility could still qualify for funds if the recipient can provide documentation for EPA to make a property-specific determination** that the site meets the goals and criteria of the brownfields program and the criteria set forth in the Brownfields Law.

**3.4 Sites that May Be Eligible for a Property-Specific Funding Determination.** Ineligible sites can receive RLF funding if the recipient can demonstrate that cleanup at these sites will meet the statutory requirements to protect human health and the environment, *and* either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property, used for non-profit purposes.

**Sites that require a property-specific determination to qualify for RLF funding are:**

- Facilities subject to planned or ongoing CERCLA cleanup actions;
- 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 U.S. government or an authorized state under the Solid Waste Disposal Act (as amended by RCRA), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA);
- Facilities subject to corrective action orders under RCRA (§ 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;
- 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;
- Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA;
- Portions of facilities for which funding for remediation has been obtained from the LUST Trust Fund; and
- Sites that have received specific cleanup assistance under Subtitle I from the RCRA LUST trust fund.

**Approval from EPA must be received prior to conducting work at these sites.**

### **Making Property-Specific Funding Determinations**

The recipient may request technical assistance from EPA in developing the documentation necessary for EPA to determine whether sites qualify for RLF funds and when a property-specific funding determination can be made. Property-specific determinations for RLF funds require the following information to be submitted to EPA for their approval:

- Basic site identification information and eligible entity identification information;
- The specific circumstance that requires this request for a property-specific determination (i.e., what type of facility is in question);
- A short explanation of why the site requires a property-specific funding determination;
- An explanation of how providing RLF funding for the site will meet the criteria necessary (described in the next paragraph below\*) for making a property-specific funding determination; and
- The degree to which other funding is or is not available for the assessment or cleanup of the site.

In each property-specific funding determination, eligible entities may receive RLF funds for site cleanup if EPA determines that this financial assistance will:

- \* Protect human health and the environment; and
- \* Either promote economic development, or enable the creation of, preservation of, or addition to property used for non-profit purposes, such as parks or greenways.

### **Protection of Human Health and the Environment**

Documentation supporting a determination that brownfields funding will ensure protection of human health and the environment may include one or more of the following:

- Specific examples of human health risks that will be mitigated by activities funded under a brownfields grant;
- Specific environmental improvements that can reasonably be expected to result from activities funded under a brownfields grant;
- 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; or
- Description of how the proposed cleanup and redevelopment of the property will ensure that the property will be protective of

human health and the environment during cleanup and reuse, and that the remedy will be both protective and consistent with the planned reuse of the property.

### **Promotion of Economic Development**

Documentation of economic development activities may include the following information:

- 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 profits/sales tax base to the 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; and
- A description of new businesses or business expansions that are planned for the brownfields property.

### **Creation of, Preservation of, or Addition to Property Used for Non-profit Purposes**

Property used for non-profit purposes include parks, greenways, undeveloped property, and recreational properties, among others. Documentation of these properties may include the following information;

- A description of the proposed park, recreational property, greenspace, undeveloped space, or other type of property to be used for non-profit purposes, including size, use, and surrounding environment that will be preserved or created as a result of brownfields funding;
- An assessment of how the property will be used and by whom;
- A description of how the property will be integrated with surrounding properties or environments; and
- A description of how the property will be maintained or preserved for its continued use as a greenspace, or recreational area.

See Appendix E, *Guidance on sites Eligible for Brownfields Funding Under CERCLA § 104(k)* and Appendix F, *Guidance for Requests for Property-Specific Determinations for Funding* for more information on eligibility of brownfields sites and property-specific determinations.

## FAQs:

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**Q: If my site does not fall within the new definition of a “brownfields site,” am I still eligible for funding?**

**A:** Maybe. Certain sites that are excluded from funding eligibility because they fall within the scope of the statutory exclusions from the definition of a brownfields site may qualify for brownfields funding **if EPA makes a property-specific funding determination that the site meets the goals and criteria of the Brownfields program** and the criteria set forth in the statute. The recipient must demonstrate to EPA’s satisfaction that financial assistance for cleanup activities at an excluded site **will** protect human health and the environment **and** either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, or other property used for non-profit purposes.

**3.5 Eligible Activities.** RLF funds are designated for cleanup activities at eligible brownfields sites.

Actions associated with cleanup include, but are not limited to:

- Documentation of the Analysis of Brownfields Cleanup Alternatives (ABCA);
- Development and implementation of RLF marketing strategy;
- Oversight of cleanup activities;
- Installation of fences, warning signs, or other security or site control precautions;
- Installation of drainage controls;
- Stabilization of berms, dikes, or impoundments; or drainage or closing of lagoons;
- Capping of contaminated soils;
- Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- Excavation, consolidation, or removal of contaminated soils;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants, including petroleum;
- Removal of source materials, including free product recovery; and
- Containment, treatment, or disposal of hazardous materials and petroleum contamination.

The Brownfields Law also provides that RLF funds can be used for:

- Site monitoring activities, including sampling and analysis, that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- Site assessment activities that are reasonable, necessary, and incidental to the cleanup process, such as confirmation sampling; and

- Costs associated with meeting public participation, worker health and safety, and programmatic management requirements.

**3.6 Ineligible Activities.** RLF funds may not be used for pre-cleanup environmental assessment, cleanup of naturally occurring substances, monitoring and data collection for the purpose of permit compliance required under other federal and state laws, or development activities that are not part of the cleanup.

RLF funds **cannot** be used for the following activities:

- Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities as described above;
- 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, unless such a permit is required as a component of the cleanup action;
- Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility);
- Cost sharing or matching requirement for another federal grant (absent statutory authorization);
- Support of job training;
- Support of lobbying efforts of the recipient; and
- In addition, the Brownfields Law includes the administrative cost prohibition which prohibits the use of any “part of a grant or loan” for the payment of an administrative cost. See Section 3.7, *Eligible Fund Uses* and Section 3.8, *Ineligible Fund Uses*.

## FAQs:

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**Q: Can RLF funds be used for further investigation or assessment activities required by the cleanup process?**

**A:** Yes. Investigation and assessment activities can be conducted as part of the RLF cleanup (and funded by RLF funds) for purposes of cleanup verification (i.e., to confirm the cleanup is adequate to address the scope of the release) and post-cleanup confirmation (i.e., to confirm the cleanup has adequately addressed the release). Such activities could include monitoring activities that are necessary to the cleanup process. For example, monitoring wells used during or following the cleanup to determine the effectiveness of the cleanup would be allowable costs. RLF funds cannot be used for pure assessment.

**3.7 Eligible Fund Uses.** RLF funds can be used for eligible “programmatic” costs, but are not allowed for administrative costs. (Please see Appendix 2, *Prohibitions on Use of Funds*, of the current *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants* for discussion of the administrative cost prohibition.)

### Statutory Exceptions to the Administrative Cost Prohibition

The following administrative costs **are** eligible for RLF funds. The Brownfields Law provides that the administrative cost prohibition does not apply to:

- Investigation and identification of the extent of the contamination;
- Design and performance of a cleanup action; or
- Monitoring of a natural resource (e.g., soil, groundwater) for contamination.

Although the Brownfields Law prohibits the use of RLF funds for administrative costs, EPA has determined that this cost prohibition does not apply to “programmatic” costs. **Eligible programmatic costs are expenses incurred for activities that are integral to achieving the purpose of the program.** For example, programmatic costs could include 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 NCP (see 40 C.F.R. § 300.700 et seq.). The following costs are considered **programmatic**:

- Expenses for making and managing loans and/or subgrants, operating the revolving fund, and financial management expenses;
- Expenses for site cleanup activities, as in the case of subgrants to eligible entities and nonprofit organizations in remediation of brownfield sites under CERCLA § 104(k)(3)(A)(ii);
- VCP or State cleanup program fees associated with the cleanup;
- Costs required to purchase insurance (refer to Exhibit 5A: Environmental Insurance, on page 5-12);
- Costs incurred for complying with procurement provisions of 40 C.F.R. Part 30 (Institutions of Higher Education, Hospitals and other Non-Profit Organizations) and 40 C.F.R. Part 31 (State, local and Indian tribal governments) otherwise referred to as the Uniform Administrative Rules for Federal grant and cooperative agreement and subawards. These costs are considered eligible programmatic costs only if the procurement contract is for

services or products that are direct costs of activities specified in statutory exceptions to the administrative cost prohibition (i.e., design and performance of a cleanup action; or monitoring a natural resource for contamination) or eligible programmatic costs described in this section;

- Costs for performance and programmatic financial reporting required under 40 C.F.R. 30.51 and 30.52, and 40 C.F.R. 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;
- Costs associated with monitoring the health of populations exposed to hazardous substances from a brownfields site. In addition, costs associated with monitoring and enforcing institutional controls used to prevent human exposure to hazardous substances at a brownfields site are considered eligible administrative costs. These costs cannot exceed 10% of the grant funds, and are only eligible to local government recipients; and
- Expenses for travel, training, equipment, supplies, reference materials, and contractual support, if those costs are reasonable and can be allocated to tasks specified in an approved scope of work for carrying out the activities specified in statutory exceptions to the administrative cost prohibition (e.g., investigation and identification of the extent of the contamination; design and performance of a cleanup action; or monitoring a natural resource for contamination) or other eligible programmatic costs described in this section. For example, costs for training recipient personnel are eligible and allowable if the costs are for training employees who perform work under the RLF grant.

**3.8 Ineligible Fund Uses.** Direct administrative costs are prohibited costs, as are indirect costs. The Brownfields Law prohibits the use of any “part of a grant or loan” for the payment of an administrative cost.

Prohibited direct administrative costs include 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 C.F.R. Part 30 or 40 C.F.R. Part 31. Such direct costs for grant administration are ineligible even if they are required under the cooperative 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.**

In addition to direct administrative costs, RLF funds may not be used for the payment of:

- A penalty or fine;
- A federal cost-share requirement (i.e., a cost-share required by other federal funds);
- A cleanup cost at a brownfields 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; and
- Unallowable costs (e.g., lobbying and fund raising) under OMB Circulars A-21 (universities), A-87 (state, tribal, and local governments), or A-122 (non-profit organizations), and Subpart 31.2 of the Federal Acquisition Regulation (commercial organizations), as applicable.





## Chapter 3 Check List: *Eligible Fund Uses*

EPA Regions must ensure that the recipient recognizes its responsibility to comply with eligible fund uses. This checklist may be used by EPA Regions to assist recipients. It is recommended that recipients use this checklist to ensure that they have met all the requirements and taken all steps necessary toward determining whether a site or an activity is eligible for the use of RLF funds.

### I. Eligibility for Loans and Subgrants

EPA Regions must ensure that all borrowers and subgrantees assert/

- bona fide prospective purchasers (BFPP),/
- contiguous property owners (CPO), or/
- innocent landowners (ILO) have performed "all appropriate inquiry" as found in CERCLA § 101(35)(B), on or before acquiring the property and are not liable for cleanup costs.

### II. Eligible and Ineligible Sites

EPA Regions must ensure that RLF loan funds are being used at sites that are either:

- Contaminated by a hazardous substance or pollutant;
- Contaminated by petroleum or a petroleum product;
- Contaminated by controlled substances; or
- Mine-scarred lands.

RLF funds are NOT being used at any sites:

- Listed, or proposed for listing, on the National Priorities List;
- 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
- 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.

### III. Sites Requiring Property-Specific Funding Determination

EPA Regions must ensure that the following property-specific funding information has been submitted to EPA:

- Basic site information and eligible entity identification information;
- The specific circumstance that requires this request for a property-specific determination;
- A short explanation of why the site falls within the identified circumstances requiring the property-specific determination;
- An explanation of how providing RLF funding will meet the criteria for making a property-specific funding determination; and
- The degree to which other funding is not available.

RLF funds are being used at sites that:

- Have documented that funding will protect human health and the environment;
- Have documented that funding will promote economic development; and
- Have documented that funding will promote creation of, preservation of, or addition to property to promote greenways.

### IV. Eligible and Ineligible Activities

EPA Regions must ensure that RLF cooperative agreement funds are being spent on cleanup activities only. These actions include:

- 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;
- Site monitoring activities, including sampling and analysis, that are reasonable, necessary, and incidental during the cleanup process, including determination of the effectiveness of a cleanup;
- Site assessment activities that are reasonable, necessary, and incidental to the cleanup process; or
- Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

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### Chapter 3 Check List *(Continued from previous page)*

EPA Regions must ensure that RLF cooperative agreement 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 response 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 cleanup actions;
- Cost sharing or matching requirement for another federal grant (absent statutory authorization);
- Job training support;
- Support of lobbying efforts of the recipient; or
- Administrative costs.

#### **V. Eligible and Ineligible Fund Uses .**

- EPA Regions must ensure that 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; /
  - Site remediation activities, as in the case of grants for direct use by eligible entities and nonprofit organizations;
  - VCP or State response program fees associated with the cleanup (see page 39 of the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (September 2004));
  - Costs required to purchase insurance;
  - 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;
  - Monitoring the health of populations exposed to hazardous substances from a brownfields site; or
  - Travel, training, equipment, supplies, reference materials, and contractual support if those costs are reasonable and can be allocated to tasks specified in an approved scope of work.

EPA Regions must ensure that RLF funds are NOT being spent on prohibited administrative costs or direct charges 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.