

Brownfields Law Implementation
(as of 4/23/08)

Title	Section	Overview	Implementation Activities (FY02-FY07)
Title I- Small Business Liability Protection			
De Micromis Exemption	107(o)	Provides CERCLA liability exemption for response costs for de micromis parties where: 1) the total amount of material containing hazardous substances contributed by the party to a site was less than 110 gallons of liquid materials or less than 200 pounds of solid materials; 2) the site is listed on the National Priorities List; and 3) all or part of the party's disposal, treatment, or transport occurred before April 1, 2001.	Issued guidance on November 6, 2002 titled "Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties." Available at http://www.epa.gov/compliance/resources/policies/cleanup/superfund/wv-exmpt-dmicro-mem.pdf
Municipal Solid Waste Exemption	107(p)	Provides CERCLA liability exemption for response costs for municipal solid waste for: (1) owners, operators or lessees of residential property; (2) certain small businesses; and (3) certain non-profit organizations.	Issued guidance on August 20, 2003 titled "Interim Guidance on the Municipal Solid Waste Exemption under CERCLA Section 107(p)." Available at http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-msw-exempt.pdf
Expedited Settlement	122(g)(7)	Authorizes EPA to reduce settlement costs for potentially responsible parties who demonstrate an inability or limited ability to pay response costs.	Provision not used to date
Title II - Brownfields Revitalization and Environmental Restoration			
Subtitle A – Revitalization Funding			
Brownfields Definition	101(39)(A-D)	Defines "Brownfield Site" generally and includes specific inclusions and exclusions.	Issued guidance annually in the Brownfields Grant Proposal Guidelines (App.3). Available at http://www.epa.gov/brownfields/applicat.htm#fy08
Controlled Substances	101(39)(D)(ii)	Specifies that brownfields include properties contaminated by controlled substances.	Issued brochure on meth lab cleanup resources. Available at http://www.epa.gov/brownfields/policy/initiatives_co.htm#meth

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Petroleum	101(39)(D)(ii)(II)	Specifies that brownfields include properties contaminated by petroleum or petroleum products under certain circumstances.	Issued guidance annually in the Brownfields Grant Proposal Guidelines (App.3). Information available at http://www.epa.gov/brownfields/policy/initiatives_sb.htm#ustf
Mine-Scarred Lands	101(39)(D)(ii)(III)	Specifies that brownfields include mine-scarred lands.	Coordinated multiagency Mine-Scarred Lands Initiative including six pilot communities. Information available at http://www.epa.gov/brownfields/policy/initiatives_sb.htm#msl
Eligible Entity	104(k)(1)	Defines which entities are eligible to apply for brownfields assessment, cleanup, and revolving loan fund grants.	Issued guidance annually in the Brownfields Grant Proposal Guidelines. Available at http://www.epa.gov/brownfields/applicat.htm#fy08
Assessments	104(k)(2)(A)(i)	Authorizes EPA to issue grants to inventory, characterize, assess, and conduct planning at brownfields. Grants can be awarded on a community-wide or site-specific basis and can be used on both petroleum and hazardous substance sites.	Conducted annual grant competitions and awarded 1255 Assessment Grants totaling \$298.6 million. Issued guidance and fact sheets. Available at http://www.epa.gov/brownfields/assessment_grants.htm
Targeted Brownfields Assessments	104(k)(2)(A)(ii)	Authorizes EPA to perform Targeted Brownfields Assessments.	Conducted Targeted Brownfields Assessments at 1,529 properties. Issued fact sheet on Targeted Brownfields Assessments. Available at http://www.epa.gov/brownfields/tba.htm .
Revolving Loan Funds	104(k)(3)(A)(i)	Authorizes EPA to issue grants to capitalize revolving loan funds for brownfields cleanup.	Conducted annual grant competitions and awarded 230 Revolving Loan Fund Grants totaling \$217.7 million. Issued guidance and fact sheets. Available at http://www.epa.gov/brownfields/rflst.htm .
Cleanup Grants	104(k)(3)(A)(ii)	Authorizes EPA to issue grants for brownfields cleanup.	Conducted annual grant competitions and awarded 426 Cleanup Grants totaling \$78.7 million. Issued guidance and fact sheets. Available at http://www.epa.gov/brownfields/cleanup_grants.htm

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RLF Transition	104(k)(3)(D)	Allows revolving loan fund grants issued prior to the Brownfields Law to be used under its provisions.	More than 30 pre-law RLF grants have transitioned or are in the process. Issued Transition Guidelines for pre-Brownfields Law RLF grants. Available at http://www.epa.gov/brownfields/rflfst.htm#trans
Assessment Grant Limit Waiver	104(k)(4)(A)(i)(II)	Authorizes EPA to waive the \$200,000 maximum grant limitation based on anticipated level of contamination, size, or site ownership.	Approved 15 Assessment Waivers. Issued guidance annually in the Brownfields Grant Proposal Guidelines. Available at http://www.epa.gov/brownfields/applicat.htm#fy08
RLF Supplemental Grants	104(k)(4)(A)(ii)	Authorizes EPA to make additional grants to previous RLF grant recipients.	Awarded 36 supplemental funding awards totaling \$13.4 million. Provided information on requesting RLF supplemental funding. Available at http://www.epa.gov/brownfields/rflfst.htm#suppfund
Funding Prohibitions	104(k)(4)(B)	Establishes prohibitions on certain uses of brownfields funds.	Issued guidance annually in the Brownfields Grant Proposal Guidelines (App.2). Available at http://www.epa.gov/swerosps/bf/html-doc/10902a2.htm
Local Government Health Programs	104(k)(4)(C)	Allows recipients of brownfields grants to use up to 10 percent for health monitoring and monitoring and enforcing institutional controls.	Issued fact sheet on public health and health monitoring at brownfields. Available at http://www.epa.gov/brownfields/tools/finalphandbfbfact.pdf
Insurance	104(k)(4)(D)	Allows recipients of brownfields grants to use grant funds to purchase insurance.	Issued fact sheet and other tools, available at http://www.epa.gov/brownfields/insurebf.htm
Grant Applications	104(k)(5)(A)(i)(I)	Authorizes EPA to conduct annual grant competitions and provides ranking criteria.	Issued guidance annually in the Brownfields Grant Proposal Guidelines, available at http://www.epa.gov/brownfields/applicat.htm#fy08
Federal Agency Coordination	104(k)(5)(A)(ii)	Authorizes EPA to coordinate with other Federal agencies in making eligible entities aware of other available Federal Resources.	Coordinated Brownfields Federal Partnership and issued Brownfields Federal Program Guide, available at http://www.epa.gov/brownfields/partners/bf_fed_pr_gd.htm Coordinated multiagency Portfields and Mine Scarred Lands Initiatives, information available at http://www.epa.gov/brownfields/policy/initiatives_sb.htm#pi

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Training, Research, and Technical Assistance	104(k)(6)	Authorizes EPA to provide or fund brownfields training, research, and technical assistance.	<p>Conducted annual Job Training Grant competitions and awarded 61 grants totaling \$11 million. Issued guidance and fact sheets available at http://www.epa.gov/swerosps/bf/job.htm</p> <p>Conducted Research, Training, and Technical Assistance Grant Competitions in FY 03, 05, and 07 and awarded more than 25 grants. Information and fact sheets available at http://www.epa.gov/brownfields/trta.htm</p> <p>Cosponsored National Brownfields Conferences with more than 20,800 participants. Information on Brownfields 2008 available at http://www.brownfields2008.org/en/index.aspx</p>
IG Audit	104(k)(7)	Establishes that the EPA IG shall submit to Congress a report on the management of the program.	Comprehensive IG audit of EPA Brownfields Program issued. Report No. 2004-P-0020: "Substantial Progress Made, But Further Actions Needed in Implementing Brownfields Program." Available at http://www.epa.gov/oig/reports/2004/20040621-2004-P-0020.pdf
Cleanup Grant Matching Share Waiver	104(k)(9)(B)	Authorizes EPA to waive the 20% matching share for cleanup grants	Issued guidance annually in the Brownfields Grant Proposal Guidelines. 17 Cost Share Waivers were awarded between FY02 and FY06.
Subtitle B- Liability Clarifications			
Contiguous Properties	107(q)	Provides CERCLA liability protection for property owners whose property is contaminated as a result of pollution migration from another's property.	<p>Issued guidance on January 13, 2004: "Interim Enforcement Discretion Guidance Regarding Contiguous Property Owners." Available at http://www.epa.gov/brownfields/liab.htm</p> <p>Issued guidance on March 6, 2003: Interim Guidance on Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Landowner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements"), available at http://www.epa.gov/brownfields/liab.htm</p>
Bona Fide Prospective Purchaser	101(40), 107(r)(1)	Provides CERCLA liability protection for future property owners who is not responsible for the property's contamination.	Issued guidance on March 6, 2003: Interim Guidance on Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Landowner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements"), available at http://www.epa.gov/brownfields/liab.htm

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Windfall Lien	107(r)(2)	Authorizes EPA to place a lien on properties for unrecovered EPA response costs at a property for which the owner is a bona fide prospective purchaser.	<p>Issued guidance on July 16, 2003: Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA.</p> <p>Issued "Windfall Lien Guidance – Frequently Asked Questions" on July 16, 2003. Both available at http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/</p>
Innocent Landowners	101(35)(A)	Clarifies CERCLA liability protection for property owners that can demonstrate that they "did not know and had no reason to know" of contamination at the property when they acquired the property.	<p>Issued guidance on March 6, 2003: Interim Guidance on Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Landowner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements"). Available at http://www.epa.gov/brownfields/liab.htm</p>
All Appropriate Inquiries	101(35)(B)	<p>Establishes criteria for conducting pre-acquisition environmental due diligence in order to qualify for certain CERCLA liability protections.</p> <p>Mandates that EPA promulgate regulations establish standards and practices for conducting all appropriate inquiries.</p>	<p>Published a final rule, November 1, 2005 (70 FR 55070) effective on Nov. 1, 2006.</p> <p>Issued fact sheets and materials. Available at www.epa.gov/brownfields/regneg.htm</p>
Subtitle C- State Response Programs			
Assistance to States	128(a)	Authorizes EPA to issue grants to states and tribes to establish or enhance response programs.	<p>Awarded grants to all 50 states, the District of Columbia, more than 40 tribes and several territories totaling more than \$247.7 million.</p> <p>Issued annual guidance for State and Tribal Response Programs. Available at http://www.epa.gov/brownfields/state_tribal.htm#grant</p>
Enforcement Bar	128(b)(1)	Bars certain CERCLA enforcement actions at Brownfield sites that meet the definition of an "eligible response site" and that are being addressed in compliance with a state response program.	<p>Issued guidance on March 6, 2003, "Regional Determinations Regarding Which Sites are not "Eligible Response Sites" under CERCLA Section 101(41)(c)(i)." Available at http://www.epa.gov/brownfields/liab.htm#liabiss</p>

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Public Record	128(b)(1)(C)	Establishes that states and tribes receiving assistance under Section 128(a) must maintain and update at least annually a list of sites enrolled in state response programs. The enforcement bar in Section 128(b) only applies in states that satisfy the public record requirement.	Issued guidance annually for State and Tribal Response Programs. Available at http://www.epa.gov/brownfields/state_tribal.htm#grant
EPA Notification	128(b)(1)(D)	Establishes notification procedures for EPA enforcement action at sites that may fall under the enforcement bar.	Provision not used to date
Report to Congress	128(b)(1)(E)	Establishes that EPA must submit a report to Congress describing the basis for any enforcement actions taken at eligible response sites under the exceptions to the enforcement bar.	Provision not used to date
Agreements Between States and the EPA	128(b)(2)(B)	Authorizes agreements between EPA and states and recognizes prior agreements.	EPA has signed Voluntary Cleanup Program Memoranda of Agreements with 23 States. Information available at http://www.epa.gov/swerosps/bf/state_tribal.htm#moa
NPL Deferral	105(h)	Provides that EPA should defer the listing on the NPL of a brownfields site that meets the definition of an "eligible response site" at the request of a state government if the brownfield site is enrolled in a state response program.	Provision not used to date