



# Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants



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## OVERVIEW

**AGENCY:** ENVIRONMENTAL PROTECTION AGENCY (EPA)

**TITLE:** Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants

**ACTION:** Request for Proposals

**RFP NO:** EPA-OSWER-OBCR-07-01

**CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NO.:** 66.818

**DATES:** Proposals may be sent through the U.S. Postal Service, commercial delivery service, or electronically through [www.grants.gov](http://www.grants.gov) – only one method should be used. Proposals sent through the U.S. Postal Service or sent via a commercial delivery service must be postmarked by December 8, 2006. All proposals must be sent to Environmental Management Support, Inc. (contractor to EPA), and applicants shall also submit one complete copy of their proposal, including attachments, to the appropriate EPA Regional Brownfields Contact listed in *Appendix 1*. In addition, applicants have the option of submitting their proposals electronically through [grants.gov](http://grants.gov); proposals submitted through [grants.gov](http://grants.gov) must be received by December 8, 2006. Please refer to *Appendix 5* for specific instructions for use of [grants.gov](http://grants.gov). *Note: There is a registration process to complete for electronic submission via grants.gov, which may take a week or more to complete.*

Additional proposal submission instructions are contained in Section IV of the announcement.

**SUMMARY:** The Small Business Liability Relief and Brownfields Revitalization Act (“Brownfields Law” or “the Law”, P.L. 107-118) requires the U.S. Environmental Protection Agency (EPA) to publish guidance to assist applicants in preparing proposals for grants to address brownfield sites. This Law defines a brownfield site as “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,” as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 §101(39), as amended (CERCLA). The Law further defines the term “brownfield site” to include a site that “is contaminated by a controlled substance...; is contaminated by petroleum or a petroleum product excluded from the definition of ‘hazardous substance’...; is mine-scarred land.”

**FUNDING/AWARDS:** The total estimated funding expected to be available under this competitive opportunity is approximately \$72 million. EPA anticipates awarding approximately 200 cooperative agreements.

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## **SECTION I - FUNDING OPPORTUNITY DESCRIPTION**

### **A. Background**

In the early 1990s, stakeholders expressed their concerns to EPA about the problems associated with brownfields across the country. More than 600,000 properties that were once used for industrial, manufacturing, or commercial uses were lying abandoned or underused due to the suspicion of contamination. Brownfield areas, particularly those in city centers, were contributing to blight and joblessness in surrounding communities. Unknown environmental liabilities were preventing communities, developers, and investors from restoring these properties to productive use and revitalizing impacted neighborhoods.

In 1994, EPA responded to the brownfield problem with an environmental protection approach that is locally based, encourages strong public-private partnerships, and promotes innovative and creative ways to assess, clean up, and redevelop brownfield sites. This approach empowers state, tribal, and local environmental and economic development officials to oversee brownfield activities, and encourages implementing local solutions to local problems. EPA also has provided funding to create local environmental job training programs to ensure that the economic benefits derived from brownfield revitalization efforts remain in local neighborhoods.

### The Brownfields Law

On January 11, 2002, the President signed into law the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law). The Brownfields Law expands potential federal financial assistance for brownfield revitalization, including grants for assessment, cleanup, and job training. The Law also limits the liability of certain contiguous property owners and prospective purchasers of brownfield properties, and clarifies the CERCLA innocent landowner defense to encourage revitalization and reuse of brownfield sites. The Brownfields Law also includes provisions to establish and enhance state and tribal response programs, which will continue to play a critical role in the successful cleanup and revitalization of brownfields.

The Brownfields Law contains provisions that are important for grant applicants to keep in mind when applying under these guidelines.<sup>1</sup> Some of those features and eligibility requirements are summarized in general below. Specific eligibility requirements are found in Section III and Section V of these guidelines.

#### *General Background and Applicant Eligibility Information*

- The Brownfields Law expands eligibility for brownfields funding by broadening the entities eligible for funding by permitting the award of cleanup grants to eligible entities, including nonprofit organizations that own the property they wish to clean up. EPA has adopted a definition of nonprofit organizations that includes universities and other nonprofit educational institutions. In addition, EPA will continue its policy of accepting proposals from “coalitions,” or groups of eligible entities, that wish to pool their revolving loan capitalization grant funds. A coalition is a group of two or more eligible entities that submits one revolving loan fund (RLF) grant proposal under the name of one of the coalition participants. The grant recipient must administer the RLF grant, is accountable to EPA for proper expenditure of the funds, and will be the point of contact for the other coalition members.

#### *Site Eligibility*

- The Brownfields Law defines a brownfield site broadly, but does exclude certain sites from funding eligibility unless EPA makes a property-specific determination for funding (see *Appendix 3* for additional information). This determination will be based on whether or not awarding a grant will protect human health and the environment and either promote economic development or enable the property to be used for parks, greenways, and similar recreational or nonprofit purposes. (See *Appendix 3* and *Appendix 4* for more information on “eligibility for funding” and “property-specific determinations.”)
- The Brownfields Law excludes the following three types of properties from funding eligibility and prohibits EPA from making property-specific determinations on these properties: 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; and 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 brownfields funding.)

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<sup>1</sup>The authority to provide grants in the Brownfields Law is codified at §104(k) of CERCLA.

### *Petroleum Eligibility*

- Generally, the Law allows EPA to award brownfields grant funds for the assessment and cleanup of petroleum-contaminated sites that meet the definition of “brownfield site” in CERCLA § 101(39)(A)-(C) and that: 1) EPA or the state determines are of “relatively low risk” compared with other petroleum-contaminated sites in the state; 2) EPA or the state determines have no viable responsible party and that will be assessed, investigated, or cleaned up by an entity that is not potentially liable for cleaning up the site; and 3) are not subject to a Resource Conservation and Recovery Act (RCRA) 9003(h) order. EPA must make available 25 percent of the total grant funds for the assessment and/or cleanup of petroleum-contaminated sites. EPA has designed these guidelines to allow applicants to specify the amount of funding that will be used at petroleum-contaminated sites. (See *Appendix 3* for additional information.)

### *Prohibitions on the Use of Grant Funds*

- **Grant funds cannot be used for administrative costs. Please note that proposal preparation costs, including associated consultant fees, are ineligible administrative costs.** (See *Appendix 2* for additional information.)
- No part of a grant or loan can be used to pay response costs at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA §107. This means that applicants are not eligible for grants or loans at sites for which they are liable parties under CERCLA. Under CERCLA § 107, current owners and operators of a facility, owners and operators of a facility at the time of disposal of a hazardous substance, parties that arranged for the treatment or disposal of hazardous substances, and parties that accepted hazardous substances for transport to disposal or treatment facilities are potentially liable for cleanup or paying the cost of cleaning up a site. **Thus, an owner of contaminated land may be liable under CERCLA § 107 even though he/she did not cause or contribute to the contamination at the site.** Note, however, that CERCLA § 107 does not apply to petroleum sites. In addition, CERCLA provides certain liability protections for owners and prospective purchasers of contaminated properties who are not responsible for the contamination (and not affiliated with a responsible party) and comply with certain specific conditions provided in the statute.

The Brownfields Law clarified the innocent landowner defense and established liability protections for contiguous property owners and bona fide prospective purchasers of contaminated land. Applicants that own or plan to purchase a contaminated site may qualify for one of these landowner liability protections and be eligible for funding. To qualify for the liability protections, landowners must comply with certain obligations to take “appropriate care” after purchasing a property, and prospective landowners must conduct “all appropriate inquiries” prior to purchasing a property. For more information on these liability protections, please refer to the Brownfields Law and the March 6, 2003, EPA guidance entitled “Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or

Innocent Landowner Limitations on CERCLA (“Common Elements”)  
(<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-element-guide.pdf>).

**NOTE: Recent legislation expands the availability of grant or loan funds for use at sites where applicants have met all of the elements of the bona fide prospective purchaser protection, except for the fact that the site was purchased prior to January 11, 2002. Up to 20 percent of the funds EPA has for Brownfields grants under this competition are available for these sites. Please contact your Regional Brownfields Contact (*Appendix 1*) for additional information on this important legislative change.**

**Also note that for the purposes of the all appropriate inquiries requirement, Phase I environmental site assessments must be conducted or updated within one year prior to the date of acquisition of the property. In addition, certain aspects of a Phase I assessment must be updated prior to the date of acquisition, if the Phase I assessment was conducted more than 180 days prior to the date of acquisition of the property. Phase I environmental site assessments must be conducted using the ASTM E1527-05 “Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process” or EPA’s All Appropriate Inquiries Final Rule (70 FR 66070) (<http://www.epa.gov/brownfields/regneg.htm>).**

- Grant funds cannot be used for the payment of a Federal cost-share requirement.
- Grant funds cannot be used to pay for costs to comply with any Federal law, excluding the costs to comply with laws applicable to the cleanup of the property.

#### *Additional Uses of Grant Funds*

- Under the Brownfields Law, a *local* government (as defined in 40 CFR Part 31.3, *Local Government*) may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. **The term local government does not include state or tribal governments but may include, among others, public housing authorities, school districts and councils of governments.** To effectively oversee assessments and cleanups, local governments may use grant funds (within the overall 10 percent limit) for other related program development and implementation activities (e.g., writing local brownfield-related ordinances) described in their EPA approved scope of work.
- Applicants that receive grants or loans to perform characterization, assessment, or cleanup of a brownfield site may use a portion of their brownfields grant or loan funds to purchase environmental insurance. Purchases must be consistent with the applicable OMB Cost Circulars – A-21 is applicable to universities and educational institutions, A-

87 is applicable to governmental units, and A-122 is applicable to non-profit organizations.

### *Other Requirements*

- Brownfields grantees must comply with all applicable Federal and State laws to ensure that the assessment and cleanup protect human health and the environment.
- Applicability of the National Historic Preservation Act (NHPA) may require a grantee to consult with EPA prior to conducting on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup) to ensure that, if applicable, EPA is assisted by the grantee in complying with Section 106 of NHPA and its implementing regulations (36 CFR Part 800). Assessment grantees anticipating future cleanup on eligible brownfields sites should consider NHPA requirements as part of planning for future cleanup of assessed sites.
- In accordance with Executive Order 12372, EPA encourages applicants to contact their State Intergovernmental Review Office early so that the required intergovernmental review process may begin immediately upon selection by EPA. If the state does not have an Intergovernmental Review Office, the successful applicant must provide notice of the proposed agreement directly to affected state, area-wide, regional, and local entities. Contact your Regional Brownfields Contact for assistance, if needed.

### **What are the Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants?**

**Three** competitive brownfields grant types are discussed in these guidelines: assessment grants, revolving loan fund (RLF) grants, and cleanup grants.

#### Assessment Grants

Assessment grants provide funding for a grant recipient to inventory, characterize, assess, and conduct cleanup and redevelopment planning and community involvement related to brownfield sites.

- Applicants may apply for both *Community-Wide* and *Site-Specific assessment grants*, as discussed below. However, an applicant is limited to submitting only ONE hazardous substance assessment grant proposal and ONE petroleum assessment proposal (refer to the chart on page 9). In the event that an applicant submits more proposals than allowed, EPA will contact the applicant and require that it withdraw the excess proposal(s) from the grants competition.
- An eligible entity may submit **no more than 2** assessment proposals.
- The performance period for assessment grants is up to three years.



- Refer to *Appendix 2, Prohibitions on Use of Funds*, for information on activities that may not be funded using brownfields grant funds.

#### *Community-Wide*

- An applicant **may** apply for a *community-wide* assessment grant if a specific site has *not* been identified or if the assessment will address more than one site within the community. An applicant may discuss potential assessment sites in a *community-wide* proposal; however, EPA's acceptance of the proposal does not constitute a determination by EPA that the sites identified in the proposal are eligible. EPA reserves the right to approve sites as part of the workplan negotiation and upon commencement of the work. *Community-wide* assessment grant applicants may focus their proposal on classes or categories of sites, (e.g. abandoned gas stations, sites with environmental justice concerns, sites in a designated redevelopment area) rather than identifying and discussing specific sites.
- Applicants electing to apply for up to \$200,000 for a *community-wide hazardous substance* assessment grant are not eligible for a *site-specific hazardous substance* assessment grant in the same grant competition. Similarly, applicants applying for up to \$200,000 for a *community-wide petroleum or petroleum product* assessment grant will *not* be eligible for a *site-specific petroleum* assessment grant in the same grant competition.

#### *Site-specific*

- Applicants planning to assess only one site, and have the site identified, must apply for a *site-specific* assessment grant. An applicant may seek a waiver of the \$200,000 limit for a site-specific assessment grant and request up to \$350,000 for a single site. In addition, the applicant must submit a *site-specific* assessment grant proposal if a waiver of the funding limitation is requested. Cooperative agreement recipients expending funding from a previously-awarded community-wide assessment grant or site-specific assessment grant for a particular site must include the previously-awarded funding amount in calculating the total funding expended on the site.
- **Applicants will not be allowed to substitute another site for a *site-specific* assessment grant even if the site identified in the proposal is later determined by EPA or the state to be ineligible.**

#### *Total Assessment Funding Limit per Applicant/Number of Proposals to be Submitted*

- Applicants are subject to community-wide and site-specific assessment grant funding limitations.
- An applicant may apply for up to \$200,000 for a community-wide assessment grant for hazardous substances, and up to \$200,000 for a community-wide assessment grant for petroleum; OR

- An applicant may apply for up to \$200,000 for a site-specific assessment grant for hazardous substances, and up to \$200,000 for a site-specific assessment grant for petroleum; OR
- An applicant may apply for up to \$200,000 for a community-wide assessment grant for hazardous substances, and up to \$200,000 for a site-specific assessment grant for petroleum; OR
- An applicant may apply for up to \$200,000 for a community-wide assessment grant for petroleum, and up to \$200,000 for a site-specific assessment grant for hazardous substances.
- **Proposals for assessment of hazardous substance contamination and hazardous substance contamination co-mingled with petroleum should be submitted for hazardous substance funding. Proposals for assessment of petroleum contamination only should be submitted for petroleum funding. DO NOT SUBMIT ASSESSMENT GRANT PROPOSALS THAT COMBINE REQUESTS FOR HAZARDOUS SUBSTANCES FUNDING WITH REQUESTS FOR PETROLEUM FUNDING.** In the event that an applicant submits more proposals than allowed, EPA will contact the applicant and require that it withdraw the excess proposal(s) from the grants competition.

#### *Site-specific Assessment Grant Waiver*

- An applicant may seek a waiver of the \$200,000 limit for a *site-specific* proposal and request up to \$350,000 for a single site. Such waivers must be based on the anticipated level of contamination, the size, or status of ownership of the site. Sites contaminated by hazardous substances, pollutants, or contaminants may include hazardous substances co-mingled with petroleum. Site-specific proposals for sites contaminated by petroleum or petroleum product require separate grant proposals and waiver requests from those for sites contaminated or co-mingled with hazardous substances. Details concerning the required justification of a waiver may be found in Section IV.
- *Community-wide* assessment grants are *not* eligible for site-specific assessment grant “waivers” of the \$200,000 limit.

#### *Proposals for Community-Wide and Site-Specific Assessment Grants*

The following examples may assist you in understanding the funding limitations applied to assessment grants:

Examples	Hazardous Substances	Petroleum	Total Funding	Number of Proposals Applicant May Submit
Applicant A. Community-Wide	\$200,000	\$200,000	\$400,000	2
Site-Specific	\$ -0-	\$ -0-		
Applicant B Community-Wide	\$200,000	\$ -0-	\$400,000*	2
Site-Specific	\$ -0-	\$200,000 *		
Applicant C Community-Wide	\$ -0-	\$200,000	\$400,000*	2
Site-Specific	\$200,000 *	-0-		
Applicant D Community-Wide	\$ -0-	-0-	\$400,000*	2
Site-Specific	\$200,000 *	\$200,000 *		

\* This dollar amount could increase if an assessment waiver is requested. See discussion above regarding assessment grant waivers for site-specific proposals which may increase funding to up to \$350,000 for a site.

### Revolving Loan Fund Grants

Revolving Loan Fund (RLF) grants provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites.

- An eligible entity may submit ONE proposal for up to \$1,000,000 for an RLF grant.
- These funds may be used to clean up sites contaminated by petroleum and/or hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). If the proposal is for both petroleum and hazardous substances, pollutants, or contaminants, the budget must reflect the distribution of funds (petroleum vs. hazardous substances).
- Proposals may be submitted by “coalitions,” or groups of eligible entities, to pool their revolving loan capitalization grant funds. A coalition is a group of two or more eligible entities that submits one grant proposal under the name of one of the coalition participants. The grant recipient must administer the grant, be accountable to EPA for proper expenditure of the funds, and be the point of contact for the other coalition

members. Members of the coalition other than the grant recipient must submit letters agreeing to be part of the coalition.

- Coalitions of eligible entities may apply together under one recipient for up to \$1,000,000 per eligible entity.
- An RLF grant recipient must use at least 60 percent of the awarded funds to capitalize and implement a revolving loan fund. Revolving loan funds generally are used to provide no-interest or low-interest loans for brownfields cleanups. RLF grantees may make intra-governmental loans and loans to nonprofit and for-profit organizations as long as the loan recipient is not potentially liable for the contamination at the brownfield site under CERCLA § 107.
- An RLF grant recipient also may use its funds to award cleanup subgrants to other eligible entities, including nonprofit organizations, for brownfields cleanups on sites owned by the subgrantee; however, an RLF grant recipient may use no more than 40 percent of the awarded funds for subgrants and may not *subgrant* to itself. As with loans, an applicant cannot make a subgrant to a potentially liable party at the site. An RLF grant recipient may not make a cleanup subgrant that exceeds \$200,000 per site. In the case of a coalition, the RLF grant recipient may subgrant to other coalition members. Unlike loans, cleanup subgrants do not require repayment. An RLF grant recipient may also use the funds to guarantee, in whole or part, loans made by third-party lenders for eligible cleanup costs.
- An RLF award requires a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services, and must be for eligible and allowable costs (the match must equal 20 percent of the amount of funding provided by EPA and **cannot** include administrative costs, as described in *Appendix 2*). An RLF grant applicant may request a waiver of the 20 percent cost share requirement based on hardship.
- The performance period for RLF grants is up to five years.
- Refer to *Appendix 2, Prohibitions on Use of Funds*, for information on activities that may not be funded using brownfields grant funds.

### Cleanup Grants

Cleanup grants provide funding for a grant recipient to carry out cleanup activities at brownfield sites.

- An eligible entity may apply for up to \$200,000 per site. Due to budget limitations, no entity may apply for funding for cleanup activities at more than three sites. These funds may be used to clean up sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).

- A separate proposal must be submitted for each site. If more than one cleanup proposal is submitted for the same site, EPA will contact the applicant and require that it withdraw the excess proposal(s) from the grants competition.
- If an applicant elects to apply for both hazardous substance and petroleum cleanup funding for the same site, the applicant must submit ONE proposal, which cannot exceed \$200,000 total. In addition, the budget must reflect the amount of hazardous substance funding and the amount of petroleum funding requested.
- A cleanup grant award requires a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services, and must be for eligible and allowable costs (the match must equal 20 percent of the amount of funding provided by EPA and **cannot** include administrative costs, as described in *Appendix 2*). A cleanup grant applicant may request a waiver of the 20 percent cost share requirement based on hardship.
- **To receive a cleanup grant, the applicant must be the sole owner of the property that is the subject of its cleanup grant proposal by June 30, 2007. An applicant who is not the sole owner of the subject property at time of proposal submission must achieve sole ownership by June 30, 2007, to be eligible for funding. (see Review and Selection Process on page 48).** For the purposes of eligibility determinations in these guidelines only, the term “own” means fee simple title. The grantee must maintain such sole ownership until all of the cleanup work funded by the grant is completed.
- A written ASTM E1527-05 Phase I report or a written report prepared in compliance with the All Appropriate Inquiries Final Rule (70 FR 66070) must be completed and a minimum of an ASTM E1903-97 or equivalent Phase II site assessment must be underway or completed prior to proposal submission. Note: cleanup funds may not be used to conduct site assessment activities.
- The performance period for cleanup grants is up to three years.
- Refer to *Appendix 2, Prohibitions on Use of Funds*, for information on activities that may not be funded using brownfields grant funds.

## **B. EPA Strategic Plan Linkage**

EPA’s Strategic Plan defines goals, objectives, and sub-objectives for protecting human health and the environment. All three grant types will support progress toward Goal 4 (Healthy Communities and Ecosystems), Objective 4.2 (Communities), and Sub-objective 4.2.3 (Assess and Cleanup Brownfields). Specifically, these grants will help sustain, clean up, and restore communities and the ecological systems that support them by providing funds to assess and clean up brownfields. EPA will negotiate work plans with recipients to collect information about the

hazardous substances, pollutants and petroleum contaminants addressed and the amount of land made safe for communities' economic and ecological use.

### **C. Measuring Environmental Results: Anticipated Outcomes/Outputs**

Pursuant to EPA Order 5700.7, "Environmental Results under EPA Assistance Agreements," EPA requires that all grant recipients adequately address environmental outputs and outcomes. Outputs and outcomes differ both in their nature and in how they are measured. Applicants must discuss environmental outputs and outcomes in their proposal and proposed work plan once their proposal is selected for award.

1. **Outcomes.** Outcomes refer to the result, effect, or consequence that will occur from carrying out the activities or outputs of the project. Outcomes may be environmental, behavioral, health-related or programmatic; must be quantitative; and may not necessarily be achievable during the project period. EPA will work with grantees to demonstrate the impact of assessing and cleaning up brownfields by measuring the amount of land on which environmental threats have been determined, risks have been addressed, and the number of acres made ready for reuse by the impacted communities. Expected outcomes of the grants to be awarded under these guidelines will include the number of jobs leveraged and other funding leveraged through the economic reuse of properties along with the acres of greenspace created for communities. Expected outcomes will be included in the grant agreement.
2. **Outputs.** Outputs refer to measurable quantitative or qualitative activities, efforts, deliverables, or work products that the applicant proposes to undertake during the project period. The expected output for the grants to be awarded under these guidelines is assessment and cleanup of brownfields sites. Through the assessment, revolving loan fund, and cleanup grants, EPA anticipates a minimum of at least 1000 properties assessed and 60 properties cleaned up by the end of Fiscal Year 2007. The requirement for reporting expected outputs will be included in the grant agreement.

(View EPA's Strategic Plan on the internet at <http://www.epa.gov/ocfopage/plan/2003sp.pdf> and view EPA's Order 5700.7 at <http://www.epa.gov/ogd/grants/award/5700.7.pdf> )

## **SECTION II - AWARD INFORMATION**

### **A. What is the amount of available funding?**

The total estimated funding available under this competitive opportunity is approximately \$72 million. EPA reserves the right to make additional awards under this competition, consistent with Agency policy and the terms of these guidelines, if additional funding becomes available. Any additional selections for awards will be made no later than four months from the date of the original selection decision.

### **B. How many agreements will EPA award in this competition?**

EPA anticipates the award of approximately 200 cooperative agreements. Cooperative agreements permit substantial involvement between the EPA Project Officer and the selected

applicants in the performance of the work supported. Although EPA will negotiate precise terms and conditions relating to substantial involvement as part of the award process, the anticipated substantial Federal involvement for this project may include:

1. close monitoring of the successful applicant's performance to verify the results proposed by the applicant;
2. collaboration during performance of the scope of work;
3. approving substantive terms of proposed contracts;
4. approving qualifications of key personnel (EPA will not select employees or contractors employed by the award recipient);
5. review and comment on reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient).

### **C. Will proposals be partially funded?**

EPA reserves the right to make an award of a grant that will fund only a portion of the activities described in the applicant's proposal. The grant award may fund discrete activities, portions, or phases of proposed projects. If EPA decides to partially fund a proposal, it will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal, or portion thereof, was evaluated and selected for award, and that maintains the integrity of the competition and selection process.

EPA reserves the right to reject all proposals and make no awards under this announcement or make fewer awards than anticipated.

### **D. What is the project period for awards resulting from this solicitation?**

The estimated project period for awards resulting from this solicitation varies by grant type. The project period for assessment and cleanup grants is up to three years, and the project period for RLF grants is up to five years.

## **SECTION III - ELIGIBILITY INFORMATION**

### **A. Who Can Apply?**

Eligible applicants, including those with existing brownfields grants, may apply for one, two, or all, of the grant programs described in Section I. The following table indicates, by grant program, what types of entities are eligible to receive EPA funds for brownfields assessment, RLF, and cleanup grants:

<b>Type of Applicant</b>	<b>Assessment</b>	<b>RLF<sup>1</sup></b>	<b>Cleanup<sup>2</sup></b>
General Purpose Unit of Local Government <sup>3</sup>	✓	✓	✓
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	✓	✓	✓
Government Entity Created by State Legislature	✓	✓	✓
Regional Council or group of General Purpose Units of Local Government	✓	✓	✓
Redevelopment Agency that is chartered or otherwise sanctioned by a state	✓	✓	✓
State	✓	✓	✓
Indian Tribe other than in Alaska <sup>4</sup>	✓	✓	✓
Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community <sup>5</sup>	✓	✓	✓
Nonprofit organizations <sup>6</sup>			✓



Type of Applicant	Assessment	RLF <sup>1</sup>	Cleanup <sup>2</sup>
<p><sup>1</sup> To be eligible for an RLF subgrant, the subgrantee must be sole owner of the site and provide documentation demonstrating ownership (e.g., copy of the fee simple title) prior to the award of the subgrant.</p> <p><sup>2</sup> To be eligible for a cleanup grant, the applicant must be the sole owner of the property that is the subject of its cleanup grant proposal by June 30, 2007. For the purposes of eligibility determinations in these guidelines only, the term “own” means fee simple title. EPA reserves the right to request documentation of ownership as part of its threshold review of the proposal.</p> <p><sup>3</sup> For purposes of the brownfields grant program, EPA defines general purpose unit of local government as a “local government” as that term is defined under 40 CFR Part 31.</p> <p><sup>4</sup> Intertribal Consortia are eligible for funding in accordance with EPA’s policy for funding intertribal consortia published in the Federal Register on November 4, 2002. This policy also may be obtained from your Regional Brownfields Contact.</p> <p><sup>5</sup> Alaska Native Regional Corporations and Alaska Native Village Corporations are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following).</p> <p><sup>6</sup> For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107, 31 USC 6101, Note. The term “nonprofit organization” means any corporation, trust, association, cooperative, or other organization that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.</p>			

**B. Cost Share**

The Brownfields Law requires applicants to provide a 20 percent cost share for revolving loan fund (RLF) and cleanup grants. There is no cost share requirement for assessment grants. For example, a \$200,000 cleanup grant will require a \$40,000 cost share; a \$1 million RLF grant will require a \$200,000 cost share. Applicants may seek a waiver of this cost share due to hardship. EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited basis. Refer to the *Cost Share* threshold criteria in the RLF and cleanup grant sections in Section V for additional information.

**C. Other Threshold Eligibility Criteria**

1. In addition to applicant eligibility under Section A above and any eligibility restrictions described in Section I of these guidelines, Section V of these proposal guidelines describes other statutory- and policy-based threshold criteria (e.g., State or Tribal Environmental Authority Letter, Site Eligibility and Property Ownership Eligibility, Cleanup Authority and Oversight Structure, Cost Share) that applicants must meet to be eligible to be considered for funding.

2. Proposal packages must substantially comply with the proposal submission instructions and requirements set forth in these guidelines for else they will be rejected. However, with respect to the page limit expressed in Sections IV for the narrative proposal, pages in excess of the page limitation will not be reviewed.

In addition, proposal packages must be postmarked or received through [www.grants.gov](http://www.grants.gov) on or before the closing date published in Section IV of this announcement. Proposal packages postmarked or received through [www.grants.gov](http://www.grants.gov) after the published closing date will be returned to the sender without further consideration.

**Note: Applicants deemed ineligible for funding consideration as a result of the threshold eligibility review will be notified within 15 calendar days of the ineligibility determination.**

## **SECTION IV - PROPOSAL AND SUBMISSION INFORMATION**

### **A. How to Obtain a Proposal Package**

Electronic copies of these guidelines can be obtained from the EPA brownfields web site (<http://www.epa.gov/brownfields/applicat.htm>), through grants.gov, or by contacting your Regional Brownfields Contact listed in *Appendix 1*.

### **B. Content and Form of Proposal Submission**

Applicants must submit a separate proposal for **each grant type** for which they are applying (i.e., assessment, revolving loan fund, and/or cleanup.) Additionally, a separate proposal must be submitted for each grant within a grant type (i.e., you must submit separate proposals if you are seeking more than one cleanup grant or more than one assessment grant.) Each proposal **must** address the applicable *threshold* and *ranking* criteria identified in Section V for each grant proposal that is submitted. Each proposal must stand on its own merits based on the responses given to the criteria relevant to the grant type for which the applicant is submitting a proposal and must not reference responses to criteria in another proposal. *Applicants who exceed the maximum number of proposals allowable for each grant type will be contacted promptly by EPA, prior to review of any of the proposals by EPA, to determine which proposals the applicant will withdraw from the competition.*

Proposals may be submitted through the U.S. Postal Service, commercial delivery service, or electronically through grants.gov – applicants should use only one method. **Please refer to Appendix 5 for specific instructions on the use of the grants.gov option.** *Note: There is a registration process to complete for grants.gov electronic submission that may take a week or more to complete.*

1. All proposals, regardless of the method of submission to EPA, must substantially conform to the following outline and content (b-h indicate attachments):
  - a. Narrative proposal – includes cover letter and project description (responses to threshold and ranking criteria);
  - b. Documentation of non-profit status, if applicable;

- c. Documentation of applicant eligibility if other than city, county, state, or tribe;
  - d. Letter from the state or tribal environmental authority;
  - e. For site-specific assessment waivers only – Justification for waiver;
  - f. For cleanup and RLF cost share waivers only – Justification for waiver;
  - g. For RLF applicants only – Legal opinion to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant;
  - h. For RLF applicants only – Legal opinion that demonstrates your legal authority to perform the actions necessary to manage a revolving loan fund.
2. Narrative Proposal: The narrative proposal must be typed, on 8 ½" x 11" paper, with a font size no smaller than 12 point. The narrative proposal, including the cover letter, shall not exceed 18 pages and must substantially conform to the following outline and content:
- a. Cover Letter: The cover letter shall identify the brownfields grant applicant and a contact for communication with EPA. The cover letter must include a brief summary of your project, be written on your organization's official letterhead, and signed by an official with the authority to commit your organization to the proposed project. *Reminder: Applicants are to submit SEPARATE cover letters with proposals for EACH type of grant (assessment, revolving loan fund, cleanup) for which you are applying.* Each cover letter must also include:
    - 1. Applicant Identification: Provide the name and full address of the entity applying for funds. This is the agency or organization that will be receiving the grant and will be accountable to EPA. *Note: For RLF coalitions, it is not necessary to list the coalition members. However, the entity named here will be considered to be the cooperative agreement recipient.*
    - 2. Funding Requested:
      - a. Grant type: Assessment, RLF, or Cleanup
      - b. Amount: \$\_\_\_\_\_ (please see funding limitations for each grant on pages 6 - 12)
      - c. Contamination: Hazardous Substances, Petroleum, or **for RLF and Cleanup Grants only**, both hazardous substances and petroleum
      - d. For assessment grants only: Community-wide or Site-specific
    - 3. Location: City, county, and state or reservation, tribally owned lands, tribal fee lands, etc., of the brownfields community(ies) that you propose to serve. Include the names, addresses, phone and fax numbers of the mayor, county executive, governor, tribal chair, etc., for the brownfields community that you propose to serve. *Note: For RLF coalition proposals, list the relevant information for each eligible entity in the coalition.*

4. **Contacts:** Please provide name, phone/fax numbers, email address, and mailing address of the project director and head of organization/executive director responsible for the project proposal. These individuals may be contacted if other information is needed.
  5. **Date Submitted:** Date proposal is submitted to EPA via U.S. Postal Service, commercial delivery service, or electronically through grants.gov.
  6. **Project Period:** Project period must not exceed three years for assessment grants, five years for revolving loan fund grants, and three years for cleanup grants.
  7. **Population:**
    - a. Provide the general population of your jurisdiction.
    - b. If you are not a municipal form of government, provide the population of the area addressed by this proposal. Tribes must provide the number of tribal/non-tribal members affected.
  8. **Other:** Indicate whether you are a federally recognized tribe; federally designated Empowerment Zone/Enterprise Community; federally designated Renewal Community; or a community with an Official Recognition (OR) from the Department of Justice for its Weed and Seed strategy.
  9. **Cooperative Partners:** Provide names and phone numbers of individuals and organizations that have agreed to participate in the implementation of the project.
- b. **Project Description:** Proposals must be clear, concise and specifically address each of the applicable threshold and ranking criteria identified in Section V of these guidelines for the type of grant being proposed for. Sufficient detail must be provided to allow for an evaluation of the merits of the proposal.

For purposes of evaluating applicants under the programmatic capability criterion in Section V, EPA will consider information provided by the applicant and may also consider information from other sources including Agency files and prior grantors.

Proposals must be concise and well organized. Proposals must provide the information requested in the guidelines and respond to each criterion. Factual information about your proposed project and community must be provided. Do not include discussions of broad principles that are not specific to the proposed work or project covered by your proposal. Responses to criteria must include the criteria number and title but need not restate the entire text of the criteria.

Applicants are strongly advised to avoid submission of non-essential materials unrelated to the proposal's requirements. Upon receipt, proposals will be reviewed for content and copied for distribution to evaluators. Pages exceeding the maximum page limitation expressed above will not be copied or evaluated. The maximum page limitation does not include required attachments identified in Section IV, B1. b-h, of these guidelines. All proposal materials must be completed in English. Do not include binders, spiral binding, or color printing. Photos and graphics will not be considered.

### C. Submission Dates and Times/Other Information

1. Applicants may submit their proposals through the U.S. Postal Service (USPS), commercial delivery service, or electronically through [www.grants.gov](http://www.grants.gov) – applicants should use only one method. Proposals sent through the U.S. Postal Service or sent via a commercial delivery service must be postmarked by December 8, 2006. All proposals must be sent to Environmental Management Support, Inc. (contractor to EPA), and applicants shall also submit one complete copy of their proposal, including attachments, to the appropriate EPA Regional Brownfields Contact listed in *Appendix 1*. In addition, applicants have the option of submitting their proposals electronically through [grants.gov](http://grants.gov); proposals submitted through [grants.gov](http://grants.gov) must be received by December 8, 2006. Please refer to *Appendix 5* for specific instructions for use of [grants.gov](http://grants.gov). *Note: There is a registration process to complete for electronic submission via grants.gov, which may take a week or more to complete.* **Proposals postmarked by the USPS/commercial delivery service or received through grants.gov after the respective dates specified above will not be considered. Facsimile delivery of proposals and e-mailed submissions are not permitted and will not be considered.**

2. The proposal(s) must be sent to the following address:

U.S. Postal Service or Commercial Delivery Service  
Environmental Management Support, Inc.  
Attn: Mr. Don West  
8601 Georgia Avenue, Suite 500  
Silver Spring, MD 20910  
Phone 301-589-5318

(Note: Overnight mail must include Mr. West's phone number in the address.)

3. In accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate confidentiality claims in accordance with 40 CFR Part 2. Applicants must clearly mark proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c)(2) prior to disclosure.

## SECTION V - PROPOSAL REVIEW INFORMATION

### A. Evaluation (Threshold and Ranking) Criteria

Below are the threshold and ranking criteria and the respective information that applicants must submit relating to these criteria for the three types of grants that may be awarded under this announcement.

### Assessment Grant Criteria

Proposals for assessment grant funding will be evaluated against the threshold and ranking criteria set forth below. Applicants must provide information in their proposal addressing these criteria. Threshold criteria are pass/fail – applicants must meet all of the threshold criteria. Only those proposals that meet all of the threshold criteria will be evaluated against the ranking criteria. Applicants deemed ineligible for funding consideration as a result of the threshold eligibility review will be notified within 15 calendar days of the ineligibility determination. An eligible entity may submit no more than two assessment proposals. Applicants cannot submit assessment grant proposals that combine requests for hazardous substances funding with requests for petroleum funding. (Refer to Assessment Grant section in Section I of these guidelines).

A request for a site-specific assessment waiver must be justified on the basis of one or more of the following: anticipated level of contamination, the size, or status of ownership of the site. The justification shall not exceed one (1) page in length; should a justification exceed this limit only the first page will be considered. Consideration of your request will be based solely on the information you provide in this written justification. Include a description of the site for which the waiver is requested, clearly identify the basis upon which the need is justified, and provide *specific information* regarding the circumstances which justify both the expenditure up to the \$200,000 limit as well as the need for the additional funding, over that limit, that is being requested. Merits of waiver requests will be considered both on the justification of the need as it relates to the bases enumerated above *and* demonstration of the need for the requested additional funding as a direct result of those bases. The request should be clearly labeled “Request for a Site-Specific Assessment Waiver” and include the site name and total requested amount immediately below the title. The stand-alone, one page request should be included as an attachment to your proposal. The request page **will not** be counted towards the 18 page narrative proposal maximum.

### Threshold Criteria for Assessment Grants

*Note: For purposes of the threshold eligibility review, EPA, if necessary, may seek clarification of applicant information and/or consider information from other sources, including EPA files.*

A. Applicant Eligibility

Describe how you are an eligible entity for the grant for which you are applying. Refer to the description of applicant eligibility in the section *Who Can Apply* in Section III of these guidelines. For entities other than cities, counties, tribes or states, please attach documentation of your eligibility (e.g., resolutions, statutes, etc.).

B. Letter from the State or Tribal Environmental Authority

For an applicant other than a state or tribal environmental authority, attach a current letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct assessment activities and is planning to apply for Federal grant funds. Failure to submit this letter will result in the rejection of the proposal for further consideration. **Letters regarding proposals from prior years are not acceptable.** If you are applying for multiple types of grant program activities, you need to submit only one letter acknowledging the relevant grant activities. *However, you must provide the letter as an attachment to EACH proposal.* Please note that general correspondence and documents evidencing state involvement with the project (i.e., state enforcement orders or state notice letters) are NOT acceptable. Please provide advance notice to the appropriate state or tribal environmental authority to allow adequate time to receive the letter to accompany your proposal.

C. Site Eligibility and Property Ownership Eligibility (Site- Specific Proposals Only)

1. **Basic Site Information.** Identify (a) the name of the site; (b) the address of the site; and (c) the current owner of the site.
2. **Status and History of Contamination at the Site.** Identify (a) whether this site is contaminated by petroleum or hazardous substances; (b) the operational history and current uses(s) of the site; (c) environmental concerns, if known, at the site; and (d) how the site became contaminated and, to the extent possible, describe the nature and extent of the contamination.
3. **Sites Ineligible for Funding.** Affirm that the site is (a) not listed or proposed for listing on the National Priorities List; (b) not 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 (c) not 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.) Please refer to CERCLA §§ 101(39)(B)(ii), (iii), and (vii), and *Appendix 3* of these Guidelines.
4. **Sites Requiring a Property-Specific Determination.** Certain types of sites require a property-specific determination in order to be eligible for funding. Please refer to *Appendix 3, Section 3.4*, to determine whether your site requires a property-specific determination. If your site requires a property-specific determination, then you must attach the information requested in *Appendix 4, Section 4.1*.

**Property Ownership Eligibility (CERCLA Section 107 Prohibition/Petroleum Site Eligibility)**

EPA grant funding may not be used to pay for response costs at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA § 107. The following questions are intended to help EPA ensure that you are not liable under CERCLA for response costs at the site designated in your proposal, or determine, if necessary, that your site is eligible for funding as a petroleum site. Please answer the following questions fully and in the order that they appear (note that based on your responses, EPA may need to obtain additional information to make this determination).

Affirm that you are not potentially liable for contamination at the site under CERCLA § 107 (e.g., as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) **and explain why.**

**If the site is a petroleum site, please proceed to question #8. If the site is a hazardous substance site, please continue responding to the questions in order.**

5. **Enforcement Actions.** Identify known ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the applicant is aware of regarding the responsibility of any party (including the applicant) for the contamination or hazardous waste at the site. The information provided in this section may be verified, and EPA may conduct an independent review of information related to the applicant's responsibility for the contamination or hazardous waste at the site.
6. **Information on Liability and Defenses/Protections Where Applicant Does NOT Own the Site.** If you, the applicant, do not own the site to be assessed, please
  - a. Affirm that you did not arrange for the disposal of hazardous substances at the site or transport hazardous substances to the site, and that you did not cause or contribute to any releases of hazardous substances at the site.
  - b. Describe your relationship with the owner and the owner's role in the work to be performed. Indicate how you will gain access to the site.
7. **Information on Liability and Defenses/Protections Where Applicant Owns the Site or Will Own the Site During the Performance of the Grant.** If you, the applicant, own the site to be assessed or will own the site at some point during the performance of the grant, please respond to the following:



- a. Information on the Property Acquisition. To save space, you may combine subsections i-iv below into one response, though please be sure to fully answer each question. Describe
- i. How you acquired or will acquire ownership (*e.g.*, by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
  - ii. The date you acquired or will acquire the property;
  - iii. The name and identity of the party from whom you acquired ownership (*i.e.*, the transferor);
  - iv. All familial, contractual, corporate or financial relationships or affiliations you have or had with all prior owners or operators (or other potentially responsible parties) of the property (including the person or entity from which you acquired the property).
- b. Timing of Hazardous Substance Disposal. Identify whether all disposal of hazardous substances at the site occurred before you acquired (or will acquire) the property and whether you caused or contributed to any release of hazardous substances at the site. Affirm that you have not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site.
- c. Pre-Purchase Inquiry. Describe any inquiry by you or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership. Please include in your description
- the types of site assessments performed (*e.g.*, ASTM E1527-05 Phase I or equivalent), the dates of each assessment,<sup>1</sup> and the entity for which they were performed (state whether the assessment was performed specifically for you, or if not, the name of the party that had the assessment performed and that party's relationship to you); and
  - who performed the assessments and identify his/her qualifications to perform such work;
- d. Post-Acquisition Uses. Describe all uses to which the property has been put since you acquired ownership (or the uses that you anticipate once you acquire the property) through the present, including any uses by persons or entities other than you. Please provide a timeline with the names of all current and prior users during the time of your ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or

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<sup>1</sup> Please note that if your Phase I assessment was conducted more than 180 days prior to the date you plan to purchase the property, you will need to update certain aspects of the Phase I in order to take advantage of the bona fide prospective purchaser provision. If this is the case, please affirm that you will conduct the appropriate updates within 180 days of purchase.

taken (*e.g.*, lease, license, trespass); and your relationship to the current and prior users.

- e. Continuing Obligations.<sup>2</sup> Describe *in detail* the specific appropriate care that you exercised (or if you've yet to acquire the property, that you will exercise upon acquiring the property) with respect to hazardous substances found at the facility by taking **reasonable steps**<sup>3</sup> to:
- stop any continuing releases;
  - prevent any threatened future release;
  - prevent or limit exposure to any previously released hazardous substance.

Please confirm your commitment to:

- comply with all land use restrictions and institutional controls;
- assist and cooperate with those performing the cleanup and to provide access to the property;
- comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
- provide all legally required notices.

8. **Petroleum Sites.** (Disregard this question if you do not have a petroleum site.)

The Brownfields Law allows certain sites contaminated with petroleum or petroleum product to be eligible for brownfields grant funding. Eligibility will be determined by EPA or the state, as appropriate (See *Appendix 3, part 3.3.2 Contamination by Petroleum or Petroleum Product* for a description of the eligibility requirements).

Non-Tribal applicants must provide the information requested below to your state, so that the state can make the necessary determinations on petroleum site eligibility in *Appendix 3, part 3.3.2*. Include any response to your request received from your state regarding site eligibility with this proposal. If you do not receive a written response from your state by the deadline for filing proposals, please indicate this in your proposal cover letter. (**Note:** You must provide EPA with the date you requested your state to make the petroleum site determinations. EPA will

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<sup>2</sup> Applicants that own contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, grantees must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices. For more information on the obligations of owners of contaminated property, see EPA's *Common Elements Reference Sheet* at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>.

<sup>3</sup> Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously-released hazardous substance may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site.

make the petroleum site eligibility determination if a state is unable to do so following a request from an applicant.) Also in your letter to the State, please request that the State provide information regarding whether it applied EPA's guidelines in making the petroleum determination or, if not, what standard it applied.

Tribal applicants must submit the following information with their proposal to EPA. EPA will make the petroleum site eligibility determinations for Tribes.

Provide the following information to your state and to EPA:

- a) Current and Immediate Past Owners. Identify the current and immediate past owner of the site. For purposes of petroleum eligibility determinations in these Guidelines only, the current owner is the entity that will own the site on June 30, 2007.
- b) Acquisition of Site. Identify when and by what method the current owner acquired the property (e.g., purchase, tax foreclosure, donation, eminent domain).
- c) No Responsible Party for the Site. Identify whether the current and immediate past owner (which includes, if applicable, the applicant) (1) dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site, and (2) took reasonable steps with regard to the contamination at the site.
- d) Cleaned Up by a Person Not Potentially Liable. Identify whether you (the applicant) dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site, and whether you took reasonable steps with regard to the contamination at the site.
- e) Relatively Low Risk. Identify whether the site is of "relatively low risk" compared to other petroleum or petroleum product-only contaminated sites in the state in which the site is located, including whether the site is receiving or using Leaking Underground Storage Tank (LUST) Trust Fund monies.
- f) Judgments, Orders, or Third Party Suits. Provide information that no responsible party (including the applicant) is identified for the site through, either:
  - A judgment rendered in a court of law or an administrative order that would require any person to assess, investigate, or clean up the site; or
  - An enforcement action by federal or state authorities against any party that would require any person to assess, investigate, or clean up the site; or
  - A citizen suit, contribution action or other third party claim brought against the current or immediate past owner, that would, if successful, require the assessment, investigation, or cleanup of the site.
- g) Subject to RCRA. Identify whether the site is subject to any order under section 9003(h) of the Solid Waste Disposal Act.
- h) Financial Viability of Responsible Parties. For any current or immediate past owners identified as responsible for the contamination at the site, provide information regarding whether they have the financial capability to satisfy their obligations under federal or state law to assess, investigate or clean up the site. **Note:** *If no responsible party is identified in (c) or (f) above, then the petroleum-contaminated site may be eligible for funding. If a responsible party is identified above, EPA or the state must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site may not be eligible for funding.*

**If you are unable to obtain information on any of the above questions, you must include a brief explanation of why the information requested above is not available.**

## **Ranking Criteria for Assessment Grants**

*Unless noted otherwise, sub-questions/sub-items under each criterion will have equal weight. For example, for a 10-point criterion with 5 sub-questions, each sub-question will be worth 2 points. Proposals will be evaluated based on the extent and quality to which the criteria are addressed.*

***Note that responses for community-wide assessment proposals should address the entire target community. If this is a community-wide proposal, please do not address specific sites.***

- A. Assessment Grant Proposal Budget (a maximum of 10 points may be received for this criterion)

Provide the proposed budget for your proposal, including a detailed description and narrative of each task. Typical tasks might include “Phase I/II Assessments,” “Community Outreach,” “Health Monitoring,” and “Cleanup Planning.” Budgets that include some site assessment or cleanup planning activities will be ranked more favorably than those that focus only on inventory or planning activities. The narrative must provide a basis for the tasks. The budget must show the distribution of funds, including cost estimates for each of the proposed activities. Budgeted amounts should be linked as much as possible to specific activities, e.g., we anticipate conducting 20 Phase Is at an average of \$X dollars per Phase I. **NOTE: If you are applying for an assessment waiver up to \$350,000, your budget and tasks must reflect this.**

If you plan not to expend federal funds on necessary and otherwise eligible activities (e.g., community involvement, programmatic expenses associated with reporting), please describe these activities (i.e., in-kind) in the budget narrative and indicate the source(s) of funding.

A **local government** (does not include state or tribal governments) may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities (e.g., writing local brownfield-related ordinances). Activities planned for the 10 percent category must be included in a separate budget task.

### Sample Format for Budget

Budget Categories	Project Tasks				
(programmatic costs only)	[Task 1]	[Task 2]	[Task 3]	[Task 4]	Total
Personnel					
Fringe Benefits					
Travel <sup>1</sup>					
Equipment <sup>2</sup>					
Supplies					
Contractual <sup>3</sup>					
Other (specify) _____					
<b>Total</b>					

<sup>1</sup> Travel to brownfield-related training conferences is an acceptable use of these grant funds.  
<sup>2</sup> EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies. Generally, equipment is not required for assessment grants.  
<sup>3</sup> Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for non-profits, with 40 CFR 30.40 through 30.48.

**B. Community Need (a maximum of 15 points may be received for this criterion)**

1. Provide a detailed description of the target community that the project(s) will benefit. Include demographic information for the target community and indicators, such as the poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this project (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors). Identify the source for this information.
2. Explain how the targeted community will benefit from this grant. If the current proposal targets a community previously targeted by an EPA Brownfields cooperative agreement, please justify the need for additional funding.
3. Characterize the impact of brownfields on your target community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.

- C. Site Selection Process (a maximum of 6 points may be received for this criterion)
1. Describe how sites were selected/will be selected and what site selection criteria were/will be developed. Describe how you will determine that sites selected are eligible for funding under the statute.
  2. Describe possible or previous inventory activities, prioritization efforts, or other activities.
  3. If you anticipate conducting assessment activities on privately owned sites, discuss possible access issues and how you would resolve the issues.
- D. Sustainable Reuse of Brownfields (a maximum of 12 points may be received for this criterion)

To what extent will this grant support the goals listed below:

1. prevent pollution and reduce resource consumption through, e.g., brownfields prevention, infrastructure reuse, native landscaping, innovative stormwater management/reuse, construction debris/fill reuse, local government commitment to achieving green building and/or energy efficiency building standards, and/or others.
  2. promote economic benefits, e.g., an expanded tax base, increased investment, job creation, enhanced property values through adjacent greenspace creation, and/or others.
  3. promote a vibrant, equitable, and healthy community, through, e.g., smart growth, linked recreational and park areas, affordable housing, and/or others.
- E. Creation and/or Preservation of Greenspace/Open Space or Nonprofit Purpose (a maximum of 5 points may be received for this criterion)

Describe the extent to which the grant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes. If this grant will result in such creation or addition (e.g., a new or expanded community park), what specific regulations, policies, or programs, are (or will be) in place to provide for long-term management and care? If this grant will result in such preservation (e.g. preserving outlying greenfields by focusing development on brownfields) what specific regulations, policies, or programs, are (or will be) in place to assure long-term management, care and preservation?

F. Pre-Award Community Notification (a maximum of 12 points may be received for this criterion)

*Note: Responses to this section are required as part of your proposal and will be ranked accordingly. Actual notification need not take place prior to selection, but applicants should be prepared to implement their plan as soon as selections are announced. EPA will require the execution of Community Notification plans prior to grant award and no later than September 14, 2007.*

*If selected, as part of their work plan, applicants will be required to summarize the major comments received and their responses to those comments.*

Please note that the notification is to citizens or members of the public, not exclusively to government officials.

1. Describe how the targeted community(ies) was or will be notified of your proposed plans should your proposal be selected for funding. If conducted by another entity on behalf of you, the applicant, please demonstrate how you were or will be involved in the community notification (i.e., you attended or will attend the public meeting, you responded or will respond to comments, etc). Describe the means by which you notified or will notify the community of your plans and by what means they provided or may provide comment.
2. Explain why the notification method proposed above was/is the most appropriate way to reach your target community. Provide any details that justify your notification plans (languages used, type of media used, medium used, etc.).
3. How long of a comment period did/do you propose (if less than two business weeks please explain why)? What forms of outreach did/will you employ to encourage community comment over this period?
4. What were/are your plans for addressing comments received?

G. Ongoing Community Involvement (a maximum of 16 points may be received for this criterion)

EPA requires community notification and encourages continuing community involvement.

1. Discuss your plan for involving the affected community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in cleanup decisions or reuse planning. Describe what community involvement activities, if any, have already occurred.

2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields in your targeted community.
3. Describe your specific plans for communicating the progress of your project(s) to citizens, including plans for communicating in languages indigenous to the community or other efforts to reach the targeted community as well as the broader community.
4. Provide a list of the community-based organizations involved in this project and a contact person, phone number, and a brief description of the organization's activities and representation (these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, educational institutions, and local labor organizations). Community-based organizations do not include the local planning department, the local fire department, or the mayor's office.

*Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project.*

H. Reduction of Threats to Human Health and the Environment (a maximum of 26 points may be received for this criterion)

1. How and to what extent will funds be used to identify and/or reduce threats to human health and the environment within the target area that may be associated with exposure to brownfield site contaminants? If known, describe the proposed end use of the brownfields site and to what extent this proposed end use will factor into cleanup activities, monitoring, and maintenance of engineering controls or institutional controls as part of redevelopment.
2. To what extent are you working with your local, state, or tribal health agency to ensure protection of public health and the environment during the assessment, cleanup, and redevelopment process? Include a brief discussion of relevant state/tribal response program (or "Voluntary Cleanup Program") processes, where applicable. Note: Local governments seeking funds to support health monitoring must provide additional detail on proposed monitoring activities as part of this question.

I. Leveraging of Additional Resources (a maximum of 10 points may be received for this criterion)

1. Identify the funds (e.g., general revenues, Tax Increment Financing (TIF), staff time/in-kind) that your agency/organization has committed or will commit to meet the assessment needs not met through this grant, e.g., additional stages of assessment, etc.



2. Demonstrate your ability to leverage funds. Describe all other funding sources (e.g., federal, state, nonprofit, or private) that will be committed or that you are pursuing to fill in any remaining funding gaps to ensure the success of this project.
- J. Programmatic Capability (a maximum of 20 points may be received for this criterion)
1. Demonstrate your ability to manage this grant and successfully perform all phases of work under this grant, and, if applicable, describe the system(s) you have in place to acquire the requisite expertise and resources necessary to successfully perform the grant. If you are, or have been, a recipient of an EPA Brownfields cooperative agreement(s), highlight significant accomplishments generated AND monies leveraged through the use of the funds.
  2. Describe your history of managing federal funds. If applicable, you must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. Government Accountability Office. If applicable, you also must note whether you are, or have previously been, required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102. Note: If you have not previously managed federal funds, respond with NA and you will receive a neutral score. Blank responses will receive a zero score for this factor.
  3. If you are, or have been, a recipient of an EPA Brownfields cooperative agreement(s) or other EPA or Federal assistance agreements, provide information regarding your compliance with quarterly progress reports, brownfields reporting measures, annual financial status reporting, and any other reporting requirements under those agreements. In addition, provide information on your past performance in reporting on whether you were achieving the results under these agreements. Describe how this information demonstrates that you are making satisfactory progress. Note: If you have not previously received any EPA or Federal assistance agreements, respond with NA and you will receive a neutral score for this factor. Blank responses will receive a zero score for this factor.
  4. Describe your plans for tracking and measuring progress towards achieving the expected outputs and outcomes, including those identified in Section I.

## **Revolving Loan Fund Criteria**

Proposals for revolving loan fund grant funding will be evaluated against the threshold and ranking criteria set forth below. Applicants must provide information in their proposal addressing these criteria. Threshold criteria are pass/fail – applicants must meet all of the threshold criteria. Only those proposals that meet all of the threshold criteria will be evaluated against the ranking criteria. Applicants deemed ineligible for funding consideration as a result of

the threshold eligibility review will be notified within 15 calendar days of the ineligibility determination. An eligible entity (or coalition of eligible entities) may submit only ONE revolving loan fund proposal. The proposal can be for hazardous substance funding; petroleum funding; or a combination of both (but it cannot exceed the funding limitations for RLF grants).

*Note: For FY 2007, EPA has made a policy decision to not award RLF grants on a site-specific basis. Applicants may provide (an) example(s) of sites that may be targeted through their proposed RLF program; however site eligibility issues will be dealt with as a matter of grants administration.*

## **Threshold Criteria for RLF Grants**

*Note: For purposes of the threshold eligibility review, EPA, if necessary, may seek clarification of applicant information and/or consider information from other sources, including EPA files.*

### **A. Applicant Eligibility**

Describe how you are an eligible entity for the grant for which you are applying. Refer to the description of applicant eligibility in the section *Who Can Apply* in Section III of these guidelines. For entities other than cities, counties, tribes or states, please attach documentation of your eligibility (e.g., resolutions, statutes, etc.).

*Note: Coalition applicants for RLF grants must document how all coalition members are eligible entities. All coalition members must submit a letter to the potential grant recipient in which they agree to be part of the coalition.*

### **B. Description of Jurisdiction**

For 2007, EPA will only award RLF grants on a community-wide and jurisdiction-wide basis. This allows for the use of grant funds throughout the jurisdiction, as defined by the applicant in its proposal. This does not preclude applicants from targeting specific communities or areas within the jurisdiction in their marketing, outreach, and cleanup activities. Applicants must provide a description of the boundaries of their jurisdiction, e.g., “the city limits of The City of ABC.”

### **C. Letter from the State or Tribal Environmental Authority**

For an applicant other than a state or tribal environmental authority, attach a current letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to establish a revolving loan fund and conduct cleanup activities and is planning to apply for Federal grant funds. **Letters regarding proposals from prior years are not acceptable.** If you are applying for multiple types of grant program activities, you need to submit only one letter acknowledging the relevant grant activities. *However, you must provide the letter as an attachment to EACH proposal.* Please note that general correspondence and documents

evidencing state involvement with the project (i.e., state enforcement orders or state notice letters) are NOT acceptable. Please provide advance notice to the appropriate state or tribal environmental authority to allow adequate time to receive the letter to accompany your proposal.

D. Cleanup Authority and Oversight Structure

***Please note that you will be required to comply with all applicable Federal and State laws; and ensure that the cleanup protects human health and the environment.***

1. Describe how you will oversee cleanup at sites. Indicate whether you plan to require loan or subgrant recipients to enroll in a state or tribal response program. If you do not plan to require loan or subgrant recipients to enroll in a state or tribal response program, or an appropriate state or tribal response program is not available, you will be required to consult with U.S. EPA to ensure cleanups are protective of human health and the environment. Therefore, if you do not plan to require loan or subgrant recipients to enroll in a state or tribal response program, provide a description of the technical expertise you have to conduct, manage, and oversee the cleanup and/or whether you plan to acquire additional technical expertise. If you do plan to acquire additional technical expertise, discuss how, consistent with the competitive procurement provisions of 40 CFR 31.36, you will ensure that this technical expertise is in place prior to beginning cleanup activities.
2. Provide a legal opinion from your counsel that demonstrates that you have legal authority to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant. *Attach your counsel's legal opinion.*

*Note: For coalitions, the applicant must have the broader jurisdiction, authority and program capacity to ensure adequate program performance of coalition members, borrowers, and/or subgrantees, if warranted.*

E. Cost Share

RLF grant recipients are required by the Brownfields Law to provide a 20 percent cost share.<sup>2</sup> This cost share is calculated as 20 percent of the total federal RLF funds awarded. For example, if you are applying for \$1 million of federal RLF funds, you must provide a cost share of an additional \$200,000. The cost share may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of a contribution

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<sup>2</sup>Applicants for an RLF grant may use fees from borrowers, interest on loans, and other “program income” to meet the cost share requirement. However, if an RLF grant applicant plans to use anticipated program income for cost share, the applicant also must demonstrate how alternative sources for obtaining money, labor, material, or services can be used to meet its cost share requirement if program income is less than anticipated during the performance period for the grant. Recipients of RLF grants may not use repayments of loan principal to meet the cost share requirement.

of labor, material, or other services, it must be incurred for an *eligible and allowable expense* under the grant and not for ineligible expenses, such as administrative costs (see *Appendix 2* for a discussion of prohibited costs).

Describe your plans for providing the cost share, including the sources of the funding or services, as required for this RLF grant. RLF grant applicants may petition EPA to waive the cost-share requirement if it would place an undue hardship on the applicant. EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited basis. In considering such requests, EPA will look for indicators such as low per-capita income, unemployment rate significantly above national average, or unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions.

If you are requesting a hardship waiver of the cost share, provide an explanation for the basis of your request as part of your proposal. This explanation must be submitted on a separate page, titled “Hardship Waiver Request,” and will not count against the proposal page limit. Your explanation should include the following information: the unemployment rate; per capita income; data demonstrating substantial out-migration or population loss, if relevant; data demonstrating underemployment, that is, employment of workers at less than full-time or at less skilled tasks than their training or abilities permit, if relevant; information regarding military base closures or realignments, defense contractor reductions-in-force, or U.S. Department of Energy defense-related funding reductions, if relevant; local natural or other major disasters or emergencies, if relevant; information regarding extraordinary depletion of natural resources, if relevant; closure or restructuring of industrial firms and negative effects of changing trade patterns, if relevant; whether you are located in a President-Declared Disaster area (declared within 18 months of the submission date for your application); whether you have exhausted effective taxing (for governmental entities only) and borrowing capacity.

Where available, applicants must supply data derived from the most recent American Community Survey (“ACS”) published by the U.S. Census Bureau. In cases where such data is not available or to supplement their responses, applicants may provide data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs or other federal source). In cases where no federal data is available to supplement their responses, applicants may submit the most recent data available through your State, Tribal or local government.

F. Legal Authority to Manage a Revolving Loan Fund

Provide an opinion from your legal counsel that demonstrates your legal authority to perform the actions necessary to manage a revolving loan fund. At a minimum, legal authority must include the ability to hold funds, make loans, enter into loan agreements, and collect repayments. This authority may be based on statute, regulation, or other authority. *Applicant must attach a legal opinion.*

## Ranking Criteria for RLF Grants

*Unless noted otherwise, sub-questions/sub-items under each criterion will have equal weight. For example, for a 10-point criterion with 5 sub-questions, each sub-question will be worth 2 points. Proposals will be evaluated based on the extent and quality to which the criteria are addressed.*

### A. RLF Grant Proposal Budget (a maximum of 10 points may be received for this criterion)

Provide the proposed budget for your proposal, including a detailed description and narrative of each task. Typical tasks might include “Community Involvement,” “Establishing the Revolving Fund,” “Marketing the Revolving Fund,” “Operating the Revolving Fund,” “Cleanup Planning,” “Health Monitoring,” and “Overseeing Site Cleanup.” The narrative must provide a basis for the tasks. The budget also must reflect your cost share. The budget must show the distribution of funds, including cost estimates for each of the proposed activities. Please note that the sample budget below provides for separate budgets for loans and subgrants. An RLF grant recipient may not make a cleanup subgrant that exceeds \$200,000 per site.

As mentioned previously on page 10, an RLF grant recipient must use at least 60 percent of the awarded funds to capitalize and implement a revolving loan fund. An RLF grant recipient also may use its funds to award subgrants to other eligible entities, including nonprofit organizations, for brownfields cleanups on sites owned by the subgrantee; however, an RLF grant recipient may use no more than 40 percent of the awarded funds for cleanup subgrants and may not *subgrant* to itself. An RLF grant recipient may not make a cleanup subgrant that exceeds \$200,000 per site. In the case of a coalition, the RLF grant recipient may subgrant to other coalition members. Unlike loans, cleanup subgrants do not require repayment. An RLF grant recipient also may use the funds to guarantee, in whole or part, loans made by third-party lenders for eligible cleanup.

If your proposal is requesting both hazardous substance and petroleum funding, please provide two separate budgets to reflect the amount of hazardous substance and petroleum funding and the tasks associated with the funding.

A **local government** may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities (e.g., writing local brownfield-related ordinances). Activities planned for the 10 percent category must be included in a separate budget task.

### Sample Format for Budget

Budget Categories	Project Tasks for Loans (at least 60 percent of amount requested)				
(programmatic costs only)	[Task 1]	[Task 2]	[Task 3]	[Task 4]	Total
Personnel					
Fringe Benefits					
Travel <sup>1</sup>					
Equipment <sup>2</sup>					
Supplies					
Contractual <sup>3</sup>					
Loans					
Other (specify) _____					
<b>Subtotal:</b>					
<b>Cost Share</b>					
Budget Categories	Project Tasks for Subgrants (no more than 40 percent of amount requested)				
(programmatic costs only)	[Task 1]	[Task 2]	[Task 3]	[Task 4]	Total
Personnel					
Fringe Benefits					
Travel <sup>1</sup>					
Equipment <sup>2</sup>					
Supplies					
Contractual <sup>3</sup>					
Subgrants					
Other (specify) _____					
<b>Subtotal:</b>					
<b>Cost Share</b>					

<b>Total</b>					
<b>Total Cost Share</b>					
<p><sup>1</sup> Travel to brownfield-related training conferences is an acceptable use of these grant funds.</p> <p><sup>2</sup> EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies. Generally, equipment is not required for RLF grants.</p> <p><sup>3</sup> Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for non-profits, with 40 CFR 30.40 through 30.48.</p>					

B. Community Need (a maximum of 15 points may be received for this criterion)

1. Provide a detailed description of the target community (or communities) that the RLF program will benefit. Include demographic information for the target community and indicators, such as the poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this RLF program (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors). Identify the source for this information.

*Note: Applicants may target a specific community (or communities) within their jurisdiction. However, EPA will award RLF grants on a jurisdiction-wide basis.*

2. Explain how the targeted community will benefit from this grant. If the current proposal targets a community previously targeted by an EPA Brownfields cooperative agreement, please justify the need for additional funding.
3. Characterize the impact of brownfields on your targeted community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.

C. Business Plan for RLF Program (a maximum of 24 points may be received for this criterion)

1. Describe your business concept and the main loan/subgrant product(s) you will offer borrowers/subgrantees. Include loan structure; interest and repayment rates; a 5-year timeline for loans and subgrants and a plan for long-term revolving of the fund; complimentary products/services you or a partner will offer; program incentives, e.g., EZ, EC, or RC benefits, tax credits, Tax Increment Financing (TIF); and how the balance of projected loans and subgrants will promote the long-term availability (including the ability to revolve) of the RLF.

2. Present your market analysis, including your target market. Detail the types of borrowers and subgrantees (e.g., small businesses, developers, nonprofits, local governments), and the territory (e.g. particular distressed neighborhoods, industrial corridors) and/or types of sites (e.g. abandoned gas stations, industrial properties, sites enrolled in an existing local land recycling program) you plan to reach.

*Note: Applicants may target a specific market. However, EPA will award RLF grants on a jurisdiction-wide basis.*

3. Describe your process for selecting projects, including sites, and borrowers and/or subgrantees. Include how you will develop criteria for project selection, and how you will ensure that site, subgrantee and borrower eligibility determinations are made in accordance with the Brownfields Law. If you plan to award subgrants under the RLF, describe how you will take the following into consideration<sup>3 4</sup>:
    - a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
    - b. The extent to which the subgrant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
    - c. The extent to which a subgrant will facilitate the use or reuse of existing infrastructure; and
    - d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.
  4. Present both the management and operational teams that will oversee and implement all phases of work under this grant, including fund management and environmental cleanup responsibilities. Include information on the qualifications of staff and institutions the applicant may use for environmental, financial, analytical, legal, and record keeping activities to ensure both the safety of cleanups and the use of prudent lending practices. Successful management of an RLF program requires a dedicated project manager and staff; in many cases, at least 50 percent of a single staff person's time is required for the first several years. Demonstrate how you will meet this need.
- D. Sustainable Reuse of Brownfields (a maximum of 12 points may be received for this criterion)

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<sup>3</sup>RLF cooperative agreement recipients must take these into consideration when awarding a subgrant.

<sup>4</sup>Applicants should not address these considerations if they do not plan to award subgrants; this will not affect an applicant's score under this section.



To what extent will this grant support the goals listed below:

1. prevent pollution and reduce resource consumption through, e.g., brownfields prevention, infrastructure reuse, native landscaping, innovative stormwater management/reuse, construction debris/fill reuse, local government commitment to achieving green building and/or energy efficiency building standards, and/or others.
  2. promote economic benefits, e.g., an expanded tax base, increased investment, job creation, enhanced property values through adjacent greenspace creation, and/or others.
  3. promote a vibrant, equitable, and healthy community, through, e.g., smart growth, linked recreational and park areas, affordable housing, and/or others.
- E. Creation and/or Preservation of Greenspace/Open Space or Nonprofit Purpose (a maximum of 5 points may be received for this criterion)

Describe the extent to which the grant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes. If this grant will result in such creation or addition (e.g., a new or expanded community park), what specific regulations, policies, or programs, are (or will be) in place to provide for long-term management and care? If this grant will result in such preservation (e.g. preserving outlying greenfields by focusing development on brownfields) what specific regulations, policies, or programs, are (or will be) in place to assure long-term management, care and preservation?

- F. Pre-Award Community Notification (a maximum of 12 points may be received for this criterion)

*Note: Responses to this section are required as part of your proposal and will be ranked accordingly. Actual notification need not take place prior to selection, but applicants should be prepared to implement their plan as soon as selections are announced. EPA will require the execution of Community Notification plans prior to grant award and no later than September 14, 2007.*

*If selected, as part of their work plan, applicants will be required to summarize the major comments received and their responses to those comments.*

Please note that the notification is to citizens or members of the public, not exclusively to government officials.

1. Describe how the targeted community(ies) was or will be notified of your proposed plans should your proposal be selected for funding. If conducted by another entity on behalf of you, the applicant, please demonstrate how you were or will be involved in the community notification (i.e., you attended or will attend the public meeting, you responded or will respond to comments, etc). Describe the means by which you notified

or will notify the community of your plans and by what means they provided or may provide comment.

2. Explain why the notification method proposed above was/is the most appropriate way to reach your target community. Provide any details that justify your notification plans (languages used, type of media used, medium used, etc.).
  3. How long of a comment period did/do you propose (if less than two business weeks please explain why)? What forms of outreach did/will you employ to encourage community comment over this period?
  4. What were/are your plans for addressing comments received?
- G. Ongoing Community Involvement (a maximum of 16 points may be received for this criterion)

EPA requires early community notification and encourages continuing community involvement.

1. Discuss your plan for involving affected communities (e.g., neighborhood organizations, citizens' groups, borrowers, nonprofits, developers, and other stakeholders) in cleanup decisions or reuse planning. Describe what community involvement activities, if any, have already occurred.
2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields in your targeted community.
3. Describe your specific plans for communicating the progress of your project(s) to citizens, including plans for communicating in languages indigenous to the community or other efforts to reach the targeted community as well as the broader community.
4. Provide a list of the community-based organizations involved in this project and a contact person, phone number, and a brief description of the organization's activities and representation (these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, educational institutions, and local labor organizations). Community-based organizations do not include the local planning department, the local fire department, or the mayor's office.

*Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project.*

- H. Reduction of Threats to Human Health and the Environment (a maximum of 26 points may be received for this criterion)

1. How and to what extent will funds be used to identify and/or reduce threats to human health and the environment within the target area that may be associated with exposure to brownfield site contaminants? If known, describe the proposed end use of the brownfields site and how this proposed end use will factor into cleanup activities, monitoring and maintenance of engineering controls or institutional controls as part of redevelopment.
  2. Describe how you are working with your local, state or tribal health agency to ensure protection of public health and the environment during the cleanup and redevelopment process. Include a brief discussion of relevant state/tribal response program (or "Voluntary Cleanup Program") processes, where applicable. Note: Local governments seeking funds to support health monitoring must provide additional detail on proposed monitoring activities as part of this question.
- I. Leveraging of Additional Resources (a maximum of 10 points may be received for this criterion)
1. Identify the funds (e.g., general revenues, Tax Increment Financing (TIF), staff time/in-kind) that your agency/organization has committed or will commit to meet cleanup/redevelopment needs not met through this grant, e.g., additional stages of cleanup, infrastructure upgrades, etc. If you are applying as a coalition, describe the resources (i.e., funding, services, and expertise) that the coalition members are contributing as part of the coalition.
  2. Demonstrate your ability to leverage funds. Describe all other funding sources (e.g., federal, state, nonprofit, or private) that will be committed or that you are pursuing to fill in any remaining funding gaps to ensure the success of cleanup projects under your RLF program.
- J. Programmatic Capability/Management Structure (a maximum of 20 points may be received for this criterion)
1. Demonstrate your ability to manage this grant and successfully perform all phases of work under this grant, and, if applicable, describe the system(s) you have in place to acquire the requisite expertise and resources necessary to successfully perform the grant. If you plan to acquire any fund management or environmental expertise, describe the relationship between the potential cooperative agreement recipient and the institution or individual and the type of agreement (e.g., contract<sup>5</sup> or subgrant<sup>6</sup>) that is planned. If you

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<sup>5</sup>Note, cooperative agreement recipients must comply with 40 CFR 31.36 when entering into procurement contracts with RLF grant funds and 40 CFR 31.37 when issuing subgrants with RLF grant funds. Nonprofit organizations receiving RLF loans/subgrants and cleanup grants must comply with 40 CFR Part 30 when entering into procurement contracts with RLF grant funds.

are, or have been, a recipient of an EPA Brownfields cooperative agreement(s), highlight significant accomplishments generated AND monies leveraged through the use of the funds.

2. Describe your history of managing federal funds. If applicable, you must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. Government Accountability Office. If applicable, you also must note whether you are, or have previously been, required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102. Note: If you have not previously managed federal funds, respond with NA and you will receive a neutral score. Blank responses will receive a zero score for this factor.
3. If you are, or have been, a recipient of an EPA Brownfields cooperative agreement(s) or other EPA or Federal assistance agreements, provide information regarding your compliance with quarterly progress reports, brownfields reporting measures, annual financial status reporting, and any other reporting requirements under those agreements. In addition, provide information on your past performance in reporting on whether you were achieving the results under these agreements. Describe how this information demonstrates that you are making satisfactory progress. Note: If you have not previously received any EPA or Federal assistance agreements, respond with NA and you will receive a neutral score for this factor. Blank responses will receive a zero score for this factor.
4. Describe your plans for tracking and measuring progress towards achieving the expected outputs and outcomes, including those identified in Section I.

## **Cleanup Grant Criteria**

Proposals for cleanup grant funding will be evaluated against the threshold and ranking criteria set forth below. Applicants must provide information in their proposal addressing these criteria. Threshold criteria are pass/fail – applicants must meet all of the threshold criteria. Only those proposals that meet all of the threshold criteria will be evaluated against the ranking criteria. Applicants deemed ineligible for funding consideration as a result of the threshold eligibility review will be notified within 15 calendar days of the ineligibility determination.

*Note: An eligible entity may apply for up to \$200,000 per site. Due to budget limitations, no entity may apply for cleanup funding at more than three (3) sites. In the event that an applicant submits more proposals than allowed, EPA will clarify with the applicant which proposal(s) must be withdrawn from the grant competition. Applicants must submit a separate proposal for*

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<sup>6</sup>Note, cooperative agreement recipients cannot award subgrants to for-profit organizations.

*each site. Each proposal will be evaluated separately and funding decisions will be independent for each site. If EPA determines that the threshold criteria for the site are not met, the applicant cannot substitute other sites. If an applicant elects to submit a proposal for both hazardous substance and petroleum funding for the same site, the funding amount cannot exceed the \$200,000 site limit. An applicant may not receive multiple cleanup grants for the same site.*

## **Threshold Criteria for Cleanup Grants**

*Note: For purposes of the threshold eligibility review, EPA, if necessary, may seek clarification of applicant information and/or consider information from other sources, including EPA files.*

### **A. Applicant Eligibility**

Describe how you are an eligible entity for the grant for which you are applying. Refer to the description of applicant eligibility in the section *Who Can Apply* in Section III of these guidelines. For entities other than cities, counties, tribes or states, please attach documentation of your eligibility (e.g., resolutions, statutes, etc.). **If you are a non-profit organization, you must provide documentation, as an attachment to this proposal, indicating non-profit status.**

*Note: To receive a cleanup grant, the applicant **must be the sole owner** of the property that is the subject of its cleanup grant proposal by June 30, 2007. An applicant who is not the sole owner of the subject property at time of proposal submission must achieve sole ownership by June 30, 2007, to be eligible for funding. For the purposes of eligibility determinations in these guidelines only, the term “own” means fee simple title. The grantee must maintain such sole ownership until all of the cleanup work funded by the grant has been completed. EPA reserves the right to request documentation of ownership as part of its threshold review of the proposal.*

### **B. Letter from the State or Tribal Environmental Authority**

For an applicant other than a state or tribal environmental authority, attach a current letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct cleanup activities and is planning to apply for Federal grant funds. **Letters regarding proposals from prior years are not acceptable.** If you are applying for multiple types of grant program activities, you need to submit only one letter acknowledging the relevant grant activities. *However, you must provide the letter as an attachment to EACH proposal.* Please note that general correspondence and documents evidencing state involvement with the project (i.e., state enforcement orders or state notice letters) are NOT acceptable. Please provide advance notice to the appropriate state or tribal environmental authority to allow adequate time to receive the letter to accompany your proposal.

C. Site Eligibility and Property Ownership Eligibility

1. **Basic Site Information.** Identify (a) the name of the site; (b) the address of the site; (c) the current owner of the site; and (d) if you are not the current owner, the date you plan to acquire ownership of the site (required for cleanup grants).
2. **Status and History of Contamination at the Site.** Identify (a) whether this site is contaminated by petroleum or hazardous substances; (b) the operational history and current uses(s) of the site; (c) environmental concerns, if known, at the site; and (d) how the site became contaminated and, to the extent possible, describe the nature and extent of the contamination.
3. **Sites Ineligible for Funding.** Affirm that the site is (a) not listed or proposed for listing on the National Priorities List; (b) not 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 (c) not 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.) Please refer to CERCLA §§ 101(39)(B)(ii), (iii), and (vii), and *Appendix 3* of these Guidelines.
4. **Sites Requiring a Property-Specific Determination.** Certain types of sites require a property-specific determination in order to be eligible for funding. Please refer to Appendix 3, Section 3.4, to determine whether your site requires a property-specific determination. If your site requires a property-specific determination, then you must attach the information requested in Appendix 4, Section 4.1.
5. **Environmental Assessment Required for Cleanup Proposals.** A written ASTM E1527-05 Phase I report or a written report prepared in compliance with the All Appropriate Inquiries Final Rule (70FR66070) must be completed and a minimum of an ASTM E1903-97 or equivalent Phase II site assessment must be completed or underway prior to proposal submission.<sup>4</sup> Explain the phase of assessment that has been completed to date and identify the date(s) of the assessment(s), including the date the Phase I report was completed and the status of the Phase II or equivalent investigation.

**Property Ownership Eligibility (CERCLA Section 107 Prohibition/Petroleum Site Eligibility)**

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<sup>4</sup> Applicants should note that in order to take advantage of certain liability exclusions, applicants may be required to have completed a Phase I assessment prior to purchasing the property as part of all appropriate inquiry (see additional questions relating to all appropriate inquiry below in Section 8(c)).

EPA grant funding may not be used to pay for response costs at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA § 107. The following questions are intended to help EPA ensure that you are not liable under CERCLA for response costs at the site designated in your proposal, or determine, if necessary, that your site is eligible for funding as a petroleum site. Please answer the following questions fully and in the order that they appear (note that based on your responses, EPA may need to obtain additional information to make this determination).

6. Affirm that you are not potentially liable for contamination at the site under CERCLA § 107 (e.g., as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) **and explain why.**<sup>5</sup>

**If the site is a petroleum site, please proceed to question #9. If the site is a hazardous substance site, please continue responding to the questions in order.**

7. **Enforcement Actions.** Identify known ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the applicant is aware of regarding the responsibility of any party (including the applicant) for the contamination or hazardous waste at the site. The information provided in this section may be verified, and EPA may conduct an independent review of information related to the applicant's responsibility for the contamination or hazardous waste at the site.
8. **Information on Liability and Defenses/Protections.**
  - a. **Information on the Property Acquisition.** To save space, you may combine subsections i-v below into one response, though please be sure to fully answer each question. Describe
    - i) How you acquired or will acquire ownership (e.g., by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
    - ii) The date you acquired or will acquire the property;
    - iii) The nature of your ownership (fee simple or other) (note that you must have sole ownership of the site to be eligible for funding);
    - iv) The name and identity of the party from whom you acquired ownership (i.e., the transferor);

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<sup>5</sup> Because current owners of sites are potentially liable under CERCLA, cleanup grant applicants who own the site (or plan to acquire the site) must be able to meet the requirements of one of the CERCLA landowner liability protections, such as the bona fide prospective purchaser provision (CERCLA § 107(r)), the innocent landowner defense (CERCLA § 107(b)(3) and 101(35)(A)), or the exclusion for state or local governments that involuntarily acquire property (CERCLA § 101(20)(D)).

- v) All familial, contractual, corporate or financial relationships or affiliations you have or had with all prior owners or operators (or other potentially responsible parties) of the property (including the person or entity from which you acquired the property).
- b. Timing of Hazardous Substance Disposal. Identify whether all disposal of hazardous substances at the site occurred before you acquired (or will acquire) the property and whether you caused or contributed to any release of hazardous substances at the site. Affirm that you have not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site.
- c. Pre-Purchase Inquiry. Describe any inquiry by you or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership. Please include in your description
- the types of site assessments performed (*e.g.*, ASTM Phase I or equivalent), the dates of each assessment,<sup>6</sup> and the entity for which they were performed (state whether the assessment was performed specifically for you, or if not, the name of the party that had the assessment performed and that party's relationship to you); and
  - who performed the assessments and identify his/her qualifications to perform such work;
- d. Post-Acquisition Uses. Describe all uses to which the property has been put since you acquired ownership (or the uses that you anticipate once you acquire the property) through the present, including any uses by persons or entities other than you. Please provide a timeline with the names of all current and prior users during the time of your ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or taken (*e.g.*, lease, license, trespass); and your relationship to the current and prior users.
- e. Continuing Obligations.<sup>7</sup> Describe *in detail* the specific appropriate care that you exercised (or if you've yet to acquire the property, that you will exercise

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**<sup>6</sup> Please note that if your Phase I assessment was conducted more than 180 days prior to the date you plan to purchase the property, you will need to update certain aspects of the Phase I in order to take advantage of the bona fide prospective purchaser provision. If this is the case, please affirm that you have or will conduct the appropriate updates within 180 days of purchase.**

<sup>7</sup> Applicants that own contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, grantees must comply with land use restrictions and institutional controls; take reasonable steps



upon acquiring the property) with respect to hazardous substances found at the facility by taking **reasonable steps**<sup>8</sup> to:

- stop any continuing releases;
- prevent any threatened future release;
- prevent or limit exposure to any previously released hazardous substance.

Please confirm your commitment to:

- comply with all land use restrictions and institutional controls;
- assist and cooperate with those performing the cleanup and to provide access to the property;
- comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
- provide all legally required notices.

9. **Petroleum Sites**. (Disregard this question, if you do not have a petroleum site.)

The Brownfields Law allows certain sites contaminated with petroleum or petroleum product to be eligible for brownfields grant funding. Eligibility will be determined by EPA or the state, as appropriate (See *Appendix 3, part 3.3.2 Contamination by Petroleum or Petroleum Product* for a description of the eligibility requirements).

Non-Tribal applicants must provide the information requested below to your state, so that the state can make the necessary determinations on petroleum site eligibility in *Appendix 3, part 3.3.2*. Include any response to your request received from your state regarding site eligibility with this proposal. If you do not receive a written response from your state by the deadline for filing proposals, please indicate this in your proposal cover letter. (**Note:** You must provide EPA with the date you requested your state to make the petroleum site determinations. EPA will make the petroleum site eligibility determination if a state is unable to do so following a request from an applicant.) Also in your letter to the State, please request that the State provide information regarding whether it applied EPA's guidelines in making the petroleum determination or, if not, what standard it applied.

Tribal applicants must submit the following information with their proposal to EPA. EPA will make the petroleum site eligibility determinations for Tribes.

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with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices. For more information on the obligations of owners of contaminated property, see EPA's *Common Elements Reference Sheet* at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf>.

<sup>8</sup> Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously-released hazardous substance may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site.

Provide the following information to your state and to EPA:

- i. Current and Immediate Past Owners. Identify the current and immediate past owner of the site. For purposes of petroleum eligibility determinations in these Guidelines only, the current owner is the entity that will own the site on June 30, 2007. For cleanup grants, this must be the applicant.
- ii. Acquisition of Site. Identify when and by what method the current owner acquired the property (*e.g.*, purchase, tax foreclosure, donation, eminent domain).
- iii. No Responsible Party for the Site. Identify whether the current and immediate past owner (which includes, if applicable, the applicant) (1) dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site, and (2) took reasonable steps with regard to the contamination at the site.
- iv. Cleaned Up by a Person Not Potentially Liable. Identify whether you (the applicant) dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site, and whether you took reasonable steps with regard to the contamination at the site.
- v. Relatively Low Risk. Identify whether the site is of “relatively low risk” compared to other petroleum or petroleum product-only contaminated sites in the state in which the site is located, including whether the site is receiving or using Leaking Underground Storage Tank (LUST) Trust Fund monies.
- vi. Judgments, Orders, or Third Party Suits. Provide information that no responsible party (including the applicant) is identified for the site through, either:
  - a. A judgment rendered in a court of law or an administrative order that would require any person to assess, investigate, or clean up the site; or
  - b. An enforcement action by federal or state authorities against any party that would require any person to assess, investigate, or clean up the site; or
  - c. A citizen suit, contribution action or other third party claim brought against the current or immediate past owner, that would, if successful, require the assessment, investigation, or cleanup of the site.
  - d. Subject to RCRA. Identify whether the site is subject to any order under section 9003(h) of the Solid Waste Disposal Act.
  - e. Financial Viability of Responsible Parties. For any current or immediate past owners identified as responsible for the contamination at the site, provide information regarding whether they have the financial capability to satisfy their obligations under federal or state law to assess, investigate or clean up the site.

**Note:** *If no responsible party is identified in (c) or (f) above, then the petroleum-contaminated site may be eligible for funding. If a*

*responsible party is identified above, EPA or the state must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site may not be eligible for funding.*

**If you are unable to obtain information on any of the above questions, you must include a brief explanation of why the information requested above is not available.**

D. Cleanup Authority and Oversight Structure

***Please note that you will be required to comply with all applicable Federal and State laws; and ensure that the cleanup protects human health and the environment.***

1. Describe how you will oversee the cleanup at the site. Indicate whether you plan to enroll in a state or tribal response program. If you do not plan to enroll in a state or tribal response program, or an appropriate state or tribal response program is not available, you will be required to consult with U.S. EPA to ensure cleanups are protective of human health and the environment. Therefore, if you do not plan to enroll in a state or tribal response program, provide a description of the technical expertise you have to conduct, manage, and oversee the cleanup and/or whether you plan to acquire additional technical expertise. If you do plan to acquire additional technical expertise, discuss how, consistent with the competitive procurement provisions of 40 CFR 31.36 (for eligible government entities) or 40 CFR Part 30 (for nonprofit organizations), you will ensure that this technical expertise is in place prior to beginning cleanup activities.
2. Cleanup response activities often impact adjacent or neighboring properties. For example, access to neighboring properties may be necessary to conduct the cleanup, perform confirmation sampling, or monitor offsite migration of contamination. If this type of access is needed, provide your plan to acquire access to the relevant property.

E. Cost Share

Cleanup grant recipients are required by the Brownfields Law to provide a 20 percent cost share. This cost share is calculated as 20 percent of the total federal cleanup funds awarded. For example, if you are applying for \$200,000 of federal cleanup funds, you must provide a cost share of an additional \$40,000. The cost share may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of a contribution of labor, material, or other services, it must be incurred for an ***eligible and allowable expense*** under the grant and not for ineligible expenses, such as administrative costs (see *Appendix 2* for a discussion of prohibited costs).

Describe your plans for providing the cost share, including the sources of the funding or services, as required for this cleanup grant. Cleanup grant applicants may petition EPA to waive the cost-share requirement if it would place an undue hardship on the applicant. EPA will consider hardship waiver requests on a case-by-case basis and will approve such requests on a limited

basis. In considering such requests, EPA will look for indicators such as low per-capita income, unemployment rate significantly above national average, or unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions.

If you are requesting a hardship waiver of the cost share, provide an explanation for the basis of your request as part of your proposal. This explanation must be submitted on a separate page, titled “Hardship Waiver Request,” and will not count against the proposal page limit. Your explanation should include the following information: the unemployment rate; per capita income; data demonstrating substantial out-migration or population loss, if relevant; data demonstrating underemployment, that is, employment of workers at less than full-time or at less skilled tasks than their training or abilities permit, if relevant; information regarding military base closures or realignments, defense contractor reductions-in-force, or U.S. Department of Energy defense-related funding reductions, if relevant; local natural or other major disasters or emergencies, if relevant; information regarding extraordinary depletion of natural resources, if relevant; closure or restructuring of industrial firms and negative effects of changing trade patterns, if relevant; whether you are located in a President-Declared Disaster area (declared within 18 months of the submission date for your application); whether you have exhausted effective taxing (for governmental entities only) and borrowing capacity.

Where available, applicants must supply data derived from the most recent American Community Survey (“ACS”) published by the U.S. Census Bureau. In cases where such data is not available or to supplement their responses, applicants may provide data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs or other federal source). In cases where no federal data is available to supplement their responses, applicants may submit the most recent data available through your State, Tribal or local government.

## **Ranking Criteria for Cleanup Grants**

*Unless noted otherwise, sub-questions/sub-items under each criterion will have equal weight. For example, for a 10-point criterion with 5 sub-questions, each sub-question will be worth 2 points. Proposals will be evaluated based on the extent and quality to which the criteria are addressed.*

### **A. Cleanup Grant Budget (a maximum of 10 points may be received for this criterion)**

Provide the proposed budget(s) for your proposal, including a detailed description and narrative of each task. Typical tasks might include “Community Involvement,” “Site Cleanup,” and “Cleanup Planning.” The narrative must provide a basis for the tasks. The budget also must reflect your cost share. The budget(s) must show the distribution of funds, including cost estimates for each of the proposed activities.

If your proposal is requesting both hazardous substance and petroleum funding, please provide two separate budgets to reflect the amount of hazardous substance and petroleum funding and the tasks associated with the funding.

A **local government** may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities (e.g., writing local brownfield-related ordinances). Activities planned for the 10 percent category must be included in a separate budget task.

### Sample Format for Budget

Budget Categories	Project Tasks				
(programmatic costs only)	[Task 1]	[Task 2]	[Task 3]	[Task 4]	Total
Personnel					
Fringe Benefits					
Travel <sup>1</sup>					
Equipment <sup>2</sup>					
Supplies					
Contractual <sup>3</sup>					
Other (specify)_____					
<b>Total</b>					
<b>Cost Share</b>					

<sup>1</sup> Travel to brownfield-related training conferences is an acceptable use of these grant funds.  
<sup>2</sup> EPA defines equipment as items that cost \$5,000 or more with a useful life of more than one year. Items costing less than \$5,000 are considered supplies.  
<sup>3</sup> Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for non-profits, with 40 CFR 30.40 through 30.48.

- B. Community Need (a maximum of 15 points may be received for this criterion)
1. Provide a detailed description of the target community that the project(s) will benefit. Include demographic information for the target community and indicators, such as the

poverty rate, unemployment rate, special community situations (e.g., population size), or other environmental justice factors that support community need relating directly to this project (e.g., low-income and/or minority communities; sensitive populations, such as children and pregnant women; or communities disproportionately impacted by environmental factors). Identify the source for this information.

2. Explain how the targeted community will benefit from this grant. If the current proposal targets a community previously targeted by an EPA Brownfields cooperative agreement, please justify the need for additional funding.
  3. Characterize the impact of brownfields on your targeted community (or communities) by describing the extent of brownfields (e.g., size, number, location) and the economic, health, and/or environmental impacts of the brownfields.
- C. Sustainable Reuse of Brownfields (a maximum of 12 points may be received for this criterion)

To what extent will this grant support the goals listed below:

1. prevent pollution and reduce resource consumption through, e.g., brownfields prevention, infrastructure reuse, native landscaping, innovative stormwater management/reuse, construction debris/fill reuse, local government commitment to achieving green building and/or energy efficiency building standards, and/or others.
  2. promote economic benefits, e.g., an expanded tax base, increased investment, job creation, enhanced property values through adjacent greenspace creation, and/or others.
  3. promote a vibrant, equitable, and healthy community, through, e.g., smart growth, linked recreational and park areas, affordable housing, and/or others.
- D. Creation and/or Preservation of Greenspace/Open Space or Nonprofit Purpose (a maximum of 5 points may be received for this criterion)

Describe the extent to which the grant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes. If this grant will result in such creation or addition (e.g., a new or expanded community park), what specific regulations, policies, or programs, are (or will be) in place to provide for long-term management and care? If this grant will result in such preservation (e.g. preserving outlying greenfields by focusing development on brownfields) what specific regulations, policies, or programs, are (or will be) in place to assure long-term management, care and preservation?

- E. Pre-Award Community Notification (a maximum of 12 points may be received for this criterion)

*Note: Responses to this section are required as part of your proposal and will be ranked accordingly. Actual notification need not take place prior to selection, but applicants should be prepared to implement their plan as soon as selections are announced. EPA will require the execution of Community Notification plans prior to grant award and no later than September 14, 2007.*

*If selected, as part of their work plan, applicants will be required to summarize the major comments received and their responses to those comments.*

Please note that the notification is to citizens or members of the public, not exclusively to government officials.

1. Describe how the targeted community(ies) was or will be notified of your proposed plans should your proposal be selected for funding. If conducted by another entity on behalf of you, the applicant, please demonstrate how you were or will be involved in the community notification (i.e., you attended or will attend the public meeting, you responded or will respond to comments, etc). Describe the means by which you notified or will notify the community of your plans and by what means they provided or may provide comment.
2. Explain why the notification method proposed above was/is the most appropriate way to reach your target community. Provide any details that justify your notification plans (languages used, type of media used, medium used, etc.).
3. How long of a comment period did/do you propose (if less than two business weeks please explain why)? What forms of outreach did/will you employ to encourage community comment over this period?
4. What were/are your plans for addressing comments received?
- F. Ongoing Community Involvement (a maximum of 16 points may be received for this criterion)

EPA requires early community notification and encourages continuing community involvement.

1. Discuss your plan for involving the affected community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in cleanup decisions and reuse planning for the site, including making cleanup-related documents available to the public and soliciting public comment on the analysis of cleanup alternatives. Describe what community involvement activities, if any, have already occurred.
2. Describe your efforts and/or plans to develop partnerships at the local, state, and/or tribal level with other stakeholders to ensure appropriate and sustainable cleanup and redevelopment of brownfields in your targeted community.

3. Describe your specific plans for communicating the progress of your project to citizens, including plans for communicating in languages indigenous to the community or other efforts to reach the targeted community as well as the broader community.
4. Provide a list of the community-based organizations involved in this project and a contact person, phone number, and a brief description of the organization's activities and representation (these organizations may include, but are not limited to, local citizen groups, environmental organizations, civic organizations, local business groups and institutions, educational institutions, and local labor organizations). Community-based organizations do not include the local planning department, the local fire department, or the mayor's office.

*Note: EPA may conduct reference checks to ensure that organizations identified are supportive and involved with the brownfields project.*

G. Reduction of Threats to Human Health and the Environment (a maximum of 27 points may be received for this criterion)

1. How and to what extent will funds be used to identify and/or reduce threats to human health and the environment within the target area that may be associated with exposure to brownfield site contaminants? If known, describe the proposed end use of the brownfields site and to what extent this proposed end use will factor into cleanup activities, monitoring, and maintenance of engineering controls or institutional controls as part of redevelopment.
2. To what extent are you working with your local, state, or tribal health agency to ensure protection of public health and the environment during the cleanup and redevelopment process? Include a brief discussion of relevant state/tribal response program (or "Voluntary Cleanup Program") processes, where applicable. Note: Local governments seeking funds to support health monitoring must provide additional detail on proposed monitoring activities as part of this question.
3. Describe the proposed cleanup plan for the site and the estimated costs to complete the cleanup.

H. Leveraging of Additional Resources (a maximum of 10 points may be received for this criterion)

1. Identify the funds (e.g., general revenues, tax increment financing (TIF), staff time/in-kind) that your agency/organization has committed or will commit to meet cleanup/redevelopment needs not met through this grant, e.g., additional stages of cleanup, infrastructure upgrades, etc.



2. Demonstrate your ability to leverage funds. Describe all other funding sources (e.g., federal, state, nonprofit, or private) that will be committed or that you are pursuing to fill in any remaining funding gaps to ensure the success of this project.
- I. Programmatic Capability (a maximum of 20 points may be received for this criterion)
1. Demonstrate your ability to manage this grant and successfully perform all phases of work under this grant, and, if applicable, describe the system(s) you have in place to acquire the requisite expertise and resources necessary to successfully perform the grant. If you are, or have been, a recipient of an EPA Brownfields cooperative agreement(s), highlight significant accomplishments generated AND monies leveraged through the use of the funds.
  2. Describe your history of managing federal funds. If applicable, you must identify and provide information regarding the status of any adverse audit findings from an OMB Circular A-133 audit, an audit conducted by a federal, state, tribal, or local government inspector general or similar organization, or audits conducted by the U.S. Government Accountability Office. If applicable, you also must note whether you are, or have previously been, required to comply with special “high risk” terms and conditions under agency regulations implementing OMB Circular A-102. Note: If you have not previously managed federal funds, respond with NA and you will receive a neutral score. Blank responses will receive a zero score for this factor.
  3. If you are, or have been, a recipient of an EPA Brownfields cooperative agreement(s) or other EPA or Federal assistance agreements, provide information regarding your compliance with quarterly progress reports, brownfields reporting measures, annual financial status reporting, and any other reporting requirements under those agreements. In addition, provide information on your past performance in reporting on whether you were achieving the results under these agreements. Describe how this information demonstrates that you are making satisfactory progress. Note: If you have not previously received any EPA or Federal assistance agreements, respond with NA and you will receive a neutral score for this factor. Blank responses will receive a zero score for this factor.
  4. Describe your plans for tracking and measuring progress towards achieving the expected outputs and outcomes, including those identified in Section I.

## **B. Other Factors**

In addition to considering the evaluation of proposals based on the factors identified above for the type of grant being proposed for, EPA’s Selection Official, in making selection recommendations, may consider the following other factors: fair distribution of funds between urban and non-urban areas and among EPA’s ten Regions; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; whether the proposed project will assist in addressing environmental justice concerns (such as the disproportionate

impact on or presence of brownfields sites near low-income and/or minority citizens, i.e., whether the proposed project will assist in addressing disproportionately high and adverse human health or environmental effects on minority populations and low-income populations); compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; whether the applicant is a federally recognized Indian tribe; or whether the applicant is a community with an Official Recognition (OR) from the Department of Justice for its Weed and Seed strategy.

### **C. Review and Selection Process**

Proposals received in response to these guidelines will initially be reviewed by the appropriate regional office to determine compliance with the Threshold Eligibility Criteria described in Sections III and V that apply to the grant type being proposed for. Applicants deemed ineligible for funding consideration as a result of the threshold eligibility review will be notified within 15 calendar days of the ineligibility determination. Each proposal by grant type (assessment, RLF, and cleanup), which successfully meets all of the applicable threshold criteria for that grant type, will then be evaluated by national panels chosen to address the range of activities associated with the National Brownfields Program. The evaluation panels, composed of EPA Headquarters and Regional staff and other federal agency representatives, will base their evaluations solely on the applicable ranking criteria described in Section V that apply to the different grants types and will assign an evaluated point score.

EPA Regions will provide information to the evaluation panels on an applicant's response to the "Programmatic Capability" ranking criterion. This information may take into account the Regional EPA Office's experience, if any, with the applicant's performance on grants managed by the Region. In addition, in evaluating applicants under the programmatic capability criterion, EPA will consider information supplied by the applicant and may consider information from other sources including agency files and prior grantors (e.g., to verify and/or supplement the information provided by the applicant).

Completed evaluations will then be referred to a Selection Official, who is responsible for further consideration of the proposals and final selection of grant recipients. Proposals will be selected for award by this Official based on their evaluated point scores, the availability of funds, and consideration, if any, of the Section V(B), Other Factors. Applicants selected to receive a cleanup grant, which do not have sole ownership of the property at the time of proposal submission, must obtain sole ownership of the property by June 30, 2007. **EPA will find proposals from applicants who have not obtained sole ownership of the site that was selected for cleanup grant funding by that date to be ineligible for award.** After June 30, 2007, subject to the availability of funds, EPA may select other applicants from a ranked list of non-selected applicants who have ownership of the property by June 30, 2007.

## **SECTION VI - AWARD ADMINISTRATION INFORMATION**

### **A. Award Notices**

As noted above, EPA Regions will notify applicants who fail threshold eligibility requirements within 15 calendar days of the Agency's determination of ineligibility. The Agency will notify applicants who have not been selected for award based on the ranking criteria and other factors within 15 calendar days of EPA's final decision on selections for this competition.

EPA anticipates notification to successful applicants will be made via telephone, electronic or postal mail by May 2007. This notification, which advises that the applicant's proposal has been selected and is being recommended for award, is not an authorization to begin performance. The award notice signed by the EPA grants officer is the authorizing document and will be provided through postal mail. At a minimum, this process can take up to 90 days from the date of selection.

The notification will be sent to the original signer of the proposal or the project contact listed in your proposal.

### **B. Administrative and National Policy Requirements**

1. Funding will be awarded as a cooperative agreement. The applicants whose proposals are selected will be asked to submit a cooperative agreement application package to their EPA Regional office. This package will include the application (Standard Form 424), a proposed work plan, a proposed budget, and other required forms. An EPA Project Officer will work with you to finalize the budget and work plan.
2. Cooperative agreements approved under this final selection step will include terms and conditions. These terms and conditions will be binding on the grant recipient and cover areas such as complying with all applicable federal and state laws and ensuring that cleanups protect human health and the environment. Applicants also will be required to submit progress reports in accordance with grant regulations found in 40 CFR 30.51 or 40 CFR 31.40. A listing and description of general EPA regulations applicable to the award of assistance agreements may be viewed at [http://www.epa.gov/ogd/AppKit/applicable\\_epa\\_regulations\\_and\\_description.htm](http://www.epa.gov/ogd/AppKit/applicable_epa_regulations_and_description.htm).
3. All applicants are required to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for a federal grant or cooperative agreement. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS number request line at 1-866-705-5711 or visiting the D&B website at <http://www.dnb.com>.

### **C. Reporting Requirement**

As set forth in the terms and conditions referenced above, the recipient agrees to submit quarterly progress reports to the EPA Project Office within thirty days after each reporting period. These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period. A discussion of expenditures along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

Additionally, the recipient agrees to submit to the EPA Project Officer a final report at the close of the grant. The final report will address goals and objectives, performance measurements, lessons learned, any other resources leveraged during the project and how they were used.

### **D. Disputes**

Assistance agreement competition-related disputes will be resolved in accordance with the dispute resolution procedures published in 70 FR (Federal Register) 3629, 3630 (January 26, 2005), which can be found at <http://www.epa.gov/ogd/competition/resolution.htm>. Copies of these procedures may also be requested by contacting the Agency contact identified in Section VII of this announcement.

### **E. Pre-Award Administrative Capability Review**

Non-profit applicants that are recommended for funding under this announcement are subject to pre-award administrative capability reviews consistent with Section 8b, 8c, and 9d of EPA Order 5700.8 – Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards, [http://www.epa.gov/ogd/grants/award/5700\\_8.pdf](http://www.epa.gov/ogd/grants/award/5700_8.pdf). In addition, non-profit applicants that qualify for funding may, depending on the size of the award, be required to fill out and submit to the Grants Management Office the Administrative Capabilities Form with supporting documents contained in Appendix A of EPA Order 5700.8.

## **SECTION VII - AGENCY CONTACT(S)**

Please refer to *Appendix 1* of the proposal guidelines for your EPA Regional Brownfields Contact.

## Appendix 1. Regional Brownfields Contacts

<i>REGION &amp; STATES</i>		<i>ADDRESS, PHONE NUMBER, FAX, E-MAIL</i>
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## Appendix 2. Prohibitions on Use of Funds

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.

For further information on these prohibitions, contact your Regional Brownfields Contact listed in *Appendix 1*.



# Appendix 3. Information on Sites Eligible for Brownfields Funding Under CERCLA §104(k)

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### 3.1 Introduction

The information provided in this appendix will be used by EPA in determining the eligibility of any property for brownfields grant funding. The Agency is providing this information to assist you in developing your proposals for funding under CERCLA §104(k) and to apprise you of information that EPA will use in determining the eligibility of any property for brownfields grant funding. Please note that States may, but are not required, to use the information in Section 3.3.2 to determine whether sites contaminated by petroleum or petroleum products are eligible for brownfields grant funding. States may apply their own laws and regulations, if applicable, to eligibility determinations under Section 3.3.2.

**This information is used by EPA solely to make applicant and site eligibility determinations for Brownfields grants and is not legally binding for other purposes including Federal, state or tribal enforcement actions.**

### 3.2 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.

### 3.3 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.

### 3.3.1 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).

### 3.3.2 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*<sup>1</sup>. (EPA will make the statutory determinations for tribes). Petroleum-contaminated sites (or portions of properties contaminated with petroleum or petroleum product ) 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.”

**Please note that States may, but are not required, to use this guidance to determine whether sites contaminated by petroleum or petroleum products are eligible for brownfields grant funding. States may apply their own laws and regulations if applicable to eligibility determinations under Section 3.3.2.**

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. the site will not be assessed, investigated or cleaned up by a person that is potentially liable for cleaning up the site.

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<sup>1</sup> Appendix 4: Guidance for Requests for Property-Specific Determinations for Funding

In addition, petroleum-contaminated sites must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

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 EPA or a state under CERCLA section 101(39)(D) for the purpose of brownfields funding does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit EPA or state enforcement authorities against any party.**

“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 view is that the following types of petroleum-contaminated sites are high risk sites, or are not of “relatively low risk.”

1. “High risk” sites currently being cleaned up using LUST trust fund monies.
2. 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. If EPA, or the state, identifies a party that is responsible for the site, and that party is financially viable, then the site is not eligible for funding and EPA cannot award the grant. This analysis is twofold -- EPA or the state must first determine whether a responsible party exists and, if a responsible party is identified, then determine whether that party is viable. Applicants must provide information in their proposal to demonstrate that the property or portion of property contaminated with petroleum or petroleum product for which they seek funding has no viable responsible party.

A petroleum-contaminated site may be determined to have no responsible party if the site was last acquired (regardless of whether the site is owned by the applicant) through tax foreclosure, abandonment, or equivalent government proceedings, and that site meets the criteria in (1) below. Any petroleum-contaminated site not acquired by a method listed above may be determined to have no responsible party if the site meets the criteria in both (1) and (2) below.

(1) No responsible party has been identified for the site through:

(a) a judgment rendered in a court of law or an administrative order that would require any party (including the applicant) to assess, investigate, or clean up the site,

(b) an enforcement action by federal or state authorities that would require any party (including the applicant) to assess, investigate, or clean up the site, or

(c) a citizen suit, contribution action or other third party claim brought against the current or immediate past owner for the site that would, if successful, require the assessment, investigation, or clean up the site, and

(2) The current and immediate past owner did not dispense or dispose of, or own the subject property during the dispensing or disposal of, any contamination at the site, did not exacerbate the contamination at the site, and took reasonable steps with regard to the contamination at the site.<sup>2</sup>

\*For purposes of the grant program and these guidelines only, the current owner is the entity that will own the property on June 30, 2007. For cleanup grants, the current owner must be the applicant.

If no responsible party is identified above, then the petroleum-contaminated site may be eligible for funding. If a responsible party is identified above, EPA or the state must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site may not be eligible for funding. A party will be considered viable if:

(3) the party is financially capable of satisfying obligations under federal or state law to assess, investigate or clean up the site. For example, a corporation that may be responsible for the cleanup of the site that is insolvent or defunct will generally not have the financial capacity to satisfy its obligations. Resources available to assist in

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<sup>2</sup> For purposes of determining petroleum brownfield grant eligibility “reasonable steps with regard to contamination at the site” includes, as appropriate: stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. Reasonable steps are discussed in more detail on pages 9-12 of EPA’s March 6, 2003, “*Common Elements*” guidance.

determination of financial viability include Chapter 3 (Business Status and Financial Research) of the EPA PRP Search Manual at <http://www.epa.gov/Compliance/resources/publications/cleanup/superfund/prpmanual/> and the EPA economic models for analyzing financial ability to pay at <http://www.epa.gov/compliance/civil/programs/econmodels/>.

“Cleaned Up by a Person Not Potentially Liable”:

Brownfields funding may be awarded for the assessment and cleanup of petroleum-contaminated sites provided:

- 1) the applicant has not dispensed or disposed of petroleum or petroleum-product at the site, and
- 2) the applicant did not exacerbate the contamination at the site and took reasonable steps with regard to the contamination at the site.

“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.

### **3.3.3 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 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.

### **3.4 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.)

### **3.4.1 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 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, or EPA takes other actions that are consistent with a removal.

Our 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*).

### **3.4.2 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**

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.

### **3.4.3 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.

### **3.4.4 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 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*.

### 3.4.5 RCRA Sites

#### Excluded RCRA Facilities

EPA's 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 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*).

#### **3.4.6 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*).

### **3.4.7 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 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.

### **3.4.8 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 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 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 an 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:

- Section 761.50(b)(3), the directed characterization, remediation, or disposal action.
- Section 761.61(a), the self-implementing provision.
- An approval issued under §761.61(c), the risk-based provision.
- Section 761.61(b) to the level of PCB quantification (i.e., 1 ppm in soil).
- An approval issued under §761.77, the coordinated approval provision.
- Section 761.79, the decontamination provision.
- An existing EPA PCB Spill Cleanup Policy.
- 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*).

### **3.4.9 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 view is that this provision may exclude:

- 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.



# Appendix 4. Guidance for Requests for Property-Specific Determinations for Funding

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## 4.1 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. An 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.

## 4.2 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>1</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

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<sup>1</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)).

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.
- 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.

### **4.3 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.

#### **4.3.1 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:

- 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.
- 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.

#### **4.3.2 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.

#### **4.3.3 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.

#### 4.3.4 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.

#### 4.4 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.

#### **4.5 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.

#### **4.6 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.

#### **4.7 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.

# Appendix 5. Grants.gov Application Instructions for Brownfields

## General Application Instructions

The electronic submission of your proposal package must be made by an official representative of your institution who is registered with Grants.gov. For more information, go to <http://www.grants.gov> and click on “Get Registered” on the left side of the page. *Note that the registration process may take a week or longer to complete.* If your organization is not currently registered with Grants.gov, please encourage your office to designate an Authorized Organization Representative (AOR) and ask that individual to begin the registration process as soon as possible.

To begin the application process for this grant program, go to <http://www.grants.gov> and click on “Apply for Grants.” Then click on “Apply Step 1: Download a Grant Application Package and Instructions” to download the PureEdge viewer and obtain the application package ([https://apply.grants.gov/forms\\_apps\\_idx.html](https://apply.grants.gov/forms_apps_idx.html)). You may retrieve the application package by entering the Funding Opportunity Number, EPA-OSWER-OBCR-07-01, in the space provided. You may also be able to access the application package by clicking on the button “How to Apply” at the top right of the synopsis page for this announcement on <http://www.grants.gov> (to find the synopsis page, go to <http://www.grants.gov> and click on the “Find Grant Opportunities” button on the left side of the page and then go to Search Opportunities/Browse by Agency and then go to EPA opportunities).

**Application Submission Deadline:** Your organization’s AOR must submit your complete proposal package electronically to EPA through Grants.gov (<http://www.grants.gov>) no later than **December 8, 2006**.

Please submit *all* of the materials described below.

## Proposal Materials

**The following forms and documents are required under this announcement:**

1. Application for Federal Assistance (SF-424)
2. Narrative Proposal – prepared as described in Sections IV and V of the guidelines.

The proposal package *must* include all of the following materials:

1. **Standard Form (SF) 424, Application for Federal Assistance**  
Complete the form. There are no attachments. Please note that the organizational Dun and Bradstreet (D&B) Data Universal Number System (DUNS) number must

be included on the SF-424. Organizations may obtain a DUNS number at no cost by calling the toll-free DUNS number request line at 1-866-705-5711.

- 2. Narrative Proposal -- Applicants must attach their narrative proposal which includes their cover letter and project description (see Sections IV and V of the proposal guidelines for the content of the proposal narrative). In addition, see Section IV, B1. b-h, for attachments to be submitted with the proposal.**

## **Application Preparation and Submission Instructions**

**Documents 1 and 2** listed under Proposal Materials above should appear in the “Mandatory Documents” box on the Grants.gov Grant Application Package page.

For document 1 click on the appropriate form and then click “Open Form” below the box. The fields that must be completed will be highlighted in yellow. Optional fields and completed fields will be displayed in white. If you enter an invalid response or incomplete information in a field, you will receive an error message. When you have finished filling out each form, click “Save.” When you return to the electronic Grant Application Package page, click on the form you just completed, and then click on the box that says, “Move Form to Submission List.” This action will move the document over to the box that says, “Mandatory Completed Documents for Submission.”

For document 2 you will need to attach electronic files. Prepare your narrative proposal as required in Sections IV and V of the guidelines and save the document to your computer as an MS Word file or pdf. When you are ready to attach your proposal to the application package, click on “Project Narrative Attachment Form,” and open the form. Click “Add Mandatory Project Narrative File,” and then attach your proposal (previously saved to your computer) using the browse window that appears. You may then click “View Mandatory Project Narrative File” to view it. Enter a brief descriptive title of your project in the space beside “Mandatory Project Narrative File Filename;” the filename should be no more than 40 characters long. If there are other attachments that you would like to submit to accompany your proposal (see Section IV, B1. b-h of the proposal guidelines), you may click “Add Optional Project Narrative File” and proceed as before. When you have finished attaching the necessary documents, click “Close Form.” When you return to the “Grant Application Package” page, select the “Project Narrative Attachment Form” and click “Move Form to Submission List.” The form should now appear in the box that says, “Mandatory Completed Documents for Submission.”

Once you have finished filling out all of the forms/attachments and they appear in one of the “Completed Documents for Submission” boxes, click the “Save” button that appears at the top of the Web page. It is suggested that you save the document a second time, using a different name, since this will make it easier to submit an amended package later if necessary.

Once your application package has been completed and saved, send it to your AOR for submission to U.S. EPA through Grants.gov. Please advise your AOR to close all other

software programs before attempting to submit the application package through Grants.gov.

In the “Application Filing Name” box, your AOR should enter your organization’s name. The filing name should not exceed 40 characters. From the “Grant Application Package” page, your AOR may submit the application package by clicking the “Submit” button that appears at the top of the page. The AOR will then be asked to verify the agency and funding opportunity number for which the application package is being submitted. If problems are encountered during the submission process, the AOR should reboot his/her computer before trying to submit the application package again. [It may be necessary to turn off the computer (not just restart it) before attempting to submit the package again.] If the AOR continues to experience submission problems, he/she may contact Grants.gov for assistance by phone at 1-800-518-4726 or email at <http://www.grants.gov/help/help.jsp> or contact an EPA Regional Brownfields Contact in Appendix I of the proposal guidelines.

Applications submitted through grants.gov will be time and date stamped electronically.