

EPA PREPARED THESE FREQUENTLY ASKED QUESTIONS AND ANSWERS TO ASSIST POTENTIAL APPLICANTS FOR BROWNFIELDS GRANTS. PLEASE REVIEW THE FISCAL YEAR 2011 GRANT PROPOSAL GUIDELINES PUBLISHED IN **AUGUST 2010 WHEN PREPARING YOUR PROPOSAL. IF THERE IS A CONFLICT BETWEEN THE ANSWER TO A QUESTION AND THE STATUTE, REGULATION, OR THE GUIDELINES, THE STATUTE, REGULATION OR THE GUIDELINES TAKE PRECEDENCE. CLICK ON THE BOLDED SECTION TITLE BELOW TO JUMP TO THAT SECTION'S QUESTIONS.**

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Brownfield Grant Guidelines Frequently Asked Questions (FAQs)

I. DEFINITIONS

Q1. What is a Brownfields Site?

A1. For the purposes of EPA's Brownfields grant program, a "Brownfields Site" is: "...real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." In order to be eligible for Brownfields grant funding, the site(s) covered by your application must meet the definition of a Brownfield site.

Brownfield sites also include, but are not limited to, three specific types of properties eligible for funding:

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

Some sites are excluded from the definition of a Brownfield site, though many of these may be eligible if EPA makes a "property- specific funding determination" that allows grant funds to be used at that site. This process is explained in Appendix 1, section 1.5 of the Brownfields grant proposal guidelines.

For a more detailed discussion of Brownfields sites eligible for funding, please refer to the Appendices of the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants on the EPA website at: www.epa.gov/brownfields.

Q2. How does EPA interpret "non-profit organization" and how can such organizations participate in brownfields revitalization under the new amendments?

A2. For the purposes of the brownfields grant program, EPA will use the definition of non-profit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107, 31§ USC 6101, Note.

This law defines non-profit organizations to mean any corporation, trust, association, cooperative, or other organization that:

- (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;*
- (2) is not organized primarily for profit; and*
- (3) uses net proceeds to maintain, improve, or expand the operations of the organization.*

EPA will accept documentation from the U.S. Internal Revenue Service (e.g. 501(c)(3) tax exempt

status) or from a State or tribal government that has authority under its laws to grant non-profit status to an organization.

Non-profit organizations, with the exception of organizations subject to section 501(c)(4) of the Internal Revenue Code that lobby, are eligible to receive cleanup grants and subgrants under Revolving Loan Fund (RLF) capitalization grants. Non-profit organizations are also eligible to receive job training grants. Private nonprofit educational institutions are eligible to compete for these grants.

See the Proposal Guidelines for Brownfields Job Training Grants for further information (www.epa.gov/brownfields).

Non-profit organizations are not eligible to receive brownfields assessment or RLF grants under 104(k)(2) and 104(k)(3), respectively.

Q3. How does EPA interpret “general purpose unit of local government” for the purposes of eligibility for brownfields grants?

A3. The Agency follows the definition of “Local Government” under 40 CFR 31.3 which provides the following: Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Q4. Does EPA require that all applicants notify the community about their intent to submit a brownfields grant application?

A4. No. Responses to the threshold Community Notification criterion are required only for cleanup grant proposals. This criterion is pass/fail. If the applicant fails to conduct the appropriate notification the proposal will not be evaluated by national panels for selection.

Q5. How do cleanup grant applicants comply with the Community Notification criterion?

A5. The applicant is responsible for providing community notification and opportunity for public comment about the applicant’s plans for cleaning up the site that is the subject of its grant proposal. Community notification may be conducted by or on behalf of the applicant. The applicant’s proposal must demonstrate how the applicant’s personnel were involved in the community notification (ie., attended a public meeting, responded to comments, etc), even if another party acts on behalf of the applicant.

The applicant must describe how the community was notified. The requirements for community notification are outlined in the guidelines. The applicant must publish an ad in the local newspaper or an equivalent means that the applicant uses to communicate to the community targeted by the proposal and conduct a public meeting regarding its grant proposal. The notice must be made at least two weeks prior to the proposal submission date. The notice must state the time and place of a public meeting and must indicate a draft of the grant proposal will be available for comment. Any comments received and responses to those comments must be attached as part of each cleanup

grant proposal.

Many communities use local newspapers to provide information to their residents. Some communities may have other customary means of communicating with their residents. Some examples of "equivalent" notice to an ad in the local newspaper include:

- website screen shot;*
- mass mailer;*
- placing an ad on a community bulletin board;*
- notifying affected residents door-to-door.*

Applicants may describe other methods that were used to notify the community.

Even if an applicant has notified the community regarding a proposal submitted under a previous EPA Brownfields grant competition, the applicant must notify the community of its FY11 cleanup grant proposal, hold a meeting and respond to public comments.

Q6. Are the costs of community notification allowable under cleanup grants?

A6. No. Costs for community notification are pre-award costs that will be incurred prior to selection under the competition and more than 90 days prior to award. Pre-award costs incurred more than 90 days prior to award require EPA approval to be allowable. Under 2 CFR Parts 225 and Parts 230, preaward costs must be incurred directly pursuant to negotiation and in anticipation of an award. Costs incurred prior to a competitive selection in the competition do not meet this standard. In addition, EPA will not, as a matter of policy, approve pre-award costs for community notification due to the limited amount of funding (\$200,000) the Agency can provide for actual site cleanup work. Also, because the Agency cannot reimburse unsuccessful applicants for community notification costs, as a matter of fairness, it will not reimburse successful applicants for such costs.

Q7: What are examples of organizations that meet the definition of "community-based organization" for the purposes of the brownfields grant guidelines?

A7: The EPA Brownfields Grant Proposal Guidelines require applicants to provide letters of commitment from community-based organizations involved in the applicant's project. Examples of community-based organizations include (but are not limited to): non-governmental civic and non-profit organizations such as service clubs, veterans organizations, local universities and community colleges or other education institutions, fraternal orders, youth organizations, watershed protection groups, and faith-based organizations.

Examples of organizations that do not qualify as community based organizations include the mayor's office or other elected officials or for-profit engineering, law or consulting firms that will compete for contracts to provide the applicant with professional services to carry out its grant.

Please keep in mind that EPA is most interested in the role each organization will play with regard to the proposed project and will not favorably evaluate proposals based on the sheer number of letters submitted. Also, please note that any financial transactions between the applicant and its supporting community based organizations must comply with EPA regulations governing procurement contracts and subgrants.

Q8: What types of “roles” might community-based organizations play with regard to brownfields projects?

A8: Community-based organizations can play a number of valuable supporting roles with regard to brownfields projects including (but not limited to):

- *financial (e.g. hosting fundraising events),*
- *educational (e.g. the creation, reproduction or distribution of project information to the community),*
- *direct on-the-ground assistance (e.g. assisting in the identification of sites for a community-wide assessment),*
- *in-kind contributions of facilities, equipment or materials (e.g. hosting public meetings).*

Please note that any financial transactions between the applicant and its supporting community based organizations must comply with EPA regulations governing procurement contracts and subgrants. For example, fundraising costs are not allowable costs under EPA Brownfields grants.

Q9. For the purposes of the community need criterion for brownfields grants, what are examples of demographic information I could provide about my community? Where do I find demographic information about my community?

A9. EPA does not require that applicants use specific types of demographic information. Applicants should select the type of demographic information to support their proposals based on their assessment of what information will make the best case that their community needs brownfields funding. The below are examples only. Applicants may choose to provide different or additional information. The applicant is responsible for assessing the importance of types of demographic information that will best describe the specific challenges of the community being served.

Health/ Welfare/Environment:

- *Asthma rates among children*
- *The incidence of illness amongst the population in contact with the site*
- *Cancer, diabetes, obesity rates in the community*
- *Health care access*
- *Teen pregnancy rate*
- *Number of vulnerable inhabitants (women of child-bearing age, children, the elderly)*
- *Information showing that the targeted community is disproportionately impacted by the environmental issues of the site (e.g. sizes and numbers of brownfields sites, suspected or known level of contamination, past uses of the site etc.)*
- *Crime rate*
- *Education levels and other education statistics (e.g. graduation rate, drop out rate)*

Socio-Economic:

- *Low property values*
- *Low tax base for the community*
- *Percentage of the community unemployed/underemployed*
- *Percentage of the community below the poverty line*
- *Factors that make leveraging funds for addressing the site difficult*

- *Percentage of community on welfare*

Tools for locating this information for your community:

- *Fedstats.gov*
 - *This website provides links to all relevant agencies based on your search criteria, such as income, health, labor, education, and crime levels and allows you to search by state as well.*
- *Census.gov*
 - *This website is the home page of the U.S. Census Bureau and provides statistics on economics, employment, health, housing, employment, and other categories. You can search by state, and find detailed reports on each state.*
- *Factfinder.census.gov*
 - *This webpage provides information on a more specific area than Census.gov. You can search by state, but also by zip code to find statistics on your specific community.*

Q10. What types of contamination are eligible for brownfields hazardous substances funding?

A10. Sites eligible for hazardous substance funding are those sites with presence or potential presence of hazardous substances, pollutants or contaminants, sites contaminated with controlled substances and/or mine-scarred lands. The following examples include, but are not limited to, the types of contaminants that can be addressed using brownfields hazardous substances funding:

- *heavy metals*
- *polynucleararomatic hydrocarbons (PAHs)*
- *volatile organic compounds (VOCs)*
- *brine*
- *asbestos*
- *a site contaminated with controlled substances (e.g. a methamphetamine laboratory)*

II. APPLICANT ELIGIBILITY

Q11. Who is eligible to apply for the grants?

A11. The Brownfields law defines entities eligible to receive grants, based on the type of grant requested:

- *assessment and revolving loan fund grants - state, local, and tribal governments, with the exception of Indian tribes in Alaska, as well as a range of government entities, including a general purpose unit of local government or land clearance authority or other quasi-governmental entity operating under the control, supervision, or as an agent of a local government, a governmental entity or redevelopment agency created or sanctioned by a State, or a regional council of governments, are eligible. An Alaska*

Native Regional Corporation and an Alaska Native Village Corporation, as those terms are defined in the Alaska Native Claims Settlement Act, and the Metlakatla Indian community are eligible.

- *cleanup grants - include those eligible governmental entities identified above as well as non-profit organizations and non-profit educational institutions. (Please see Q2 for EPA's definition of a non-profit organization that applies to this program.) All eligible entities, including non-profit organizations, must have sole ownership of the site **at time of proposal submission**.*
- *job training grants -include those eligible governmental entities identified above as well as non-profit organizations, including non-profit educational institutions.*
- *For-profit organizations are not eligible for Brownfields grant funding from EPA.*

Q12. Are tribes considered "potentially responsible parties" (PRPs) and therefore prohibited from using Brownfields grant funds to pay for response costs at a site for which the recipient is potentially liable under CERCLA §107?

A12. Generally, EPA has not considered tribes to be liable as PRPs under CERCLA and, therefore, they are not subject to the statutory prohibition (however, the other prohibitions on uses of Brownfields funds may still apply). Applicants should contact their Regional Brownfields Coordinator for additional information.

Q13. Are Alaskan Native Villages eligible for grant funding?

A13. No, only Indian Tribes other than those located in Alaska are eligible for grant funding. However, Alaska Native Regional Corporations, Alaska Native Village Corporations, and Metlakatla Indian Community are eligible for grant funding. 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). For a listing of these corporations, please see the following websites. Please note that the U.S. government does not maintain these websites and is not responsible for their content or accuracy.

Alaska Department of Natural Resources - Alaska Native Region - Village - Corporation Index
<http://dnr.alaska.gov/mlw/trails/17b/corpindex.cfm>

National Congress of American Indians - Alaska Native Regional Corps
<http://www.ncai.org/Alaska-Regional-Corporations.432.0.html>

University of Alaska Anchorage Justice Center - Alaska Native Regional Corps & Alaska Regional Non-Profits
http://justice.uaa.alaska.edu/rlinks/natives/ak_natives_organizations.html

Q14. Does EPA consider a Limited Liability Corporation (LLC) a non-profit organization that is eligible to receive grant funds for cleanup activities?

A14. *Maybe. Although most LLC's are structured to yield profits to their owners, in certain circumstances when an LLC has a sole owner and that sole owner is recognized by the IRS as tax exempt under 501(c)(3) or another provision that provides a tax exemption based on non-profit status, then the LLC itself will qualify as a non-profit for the purposes of eligibility to receive Brownfields grant funds upon submission of supporting documentation. Please refer to Q2 for definition of non-profit.*

III. ADMINISTRATIVE COST PROHIBITION

Q15. What grant activities cannot be paid for with Brownfields grant funds?

A15. *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.*

Q16. What is the Administrative Cost Prohibition?

A16. *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.*

- *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 include indirect costs the recipient incurs under the OMB Cost Principles found at 2 CFR Parts 220, 225, or 230 and Subpart 31.2 of the Federal Acquisition Regulation. Please note that prohibited administrative costs also include proposal preparation costs.***
- *Management Fees. Recipients must not include management fees or similar charges in excess of the direct costs in budgets for brownfields grants. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under Brownfields grants as administrative costs.*

Q17. When does the Administrative Cost Prohibition not apply?

A17. There are Statutory Exclusions to the Administrative Cost Prohibition. The Administrative Cost Prohibition does not apply to direct costs, including costs incurred under properly awarded contracts, 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.*

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 "Statutory Exclusions," or "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 Section VII of the Guidelines at www.epa.gov/brownfields.

Q18. If I am a successful applicant, will EPA reimburse me for the costs of paying a consultant to prepare my grant application?

A18. No. Proposal preparation costs are prohibited administrative costs. Additionally, post-selection grant application preparation is administrative and is an ineligible cost.

Q19. If I am a successful applicant and I properly contract with an environmental services contractor to perform services within the scope of the grant (such as investigation of the contamination, or performance of a response action), does the prohibition on administrative costs prevent the grantee from using the grant money to reimburse the indirect costs of the contractor?

A19. No. The administrative cost prohibition applies to the grant recipient's indirect costs and not to costs the grantee incurs under a contract for eligible programmatic costs.

Section 104(k)(4)(B)(ii) of CERCLA provides that the administrative cost prohibition does not apply to costs for investigation and identification of the extent of contamination and the design and performance of a response action. Appendix 1 of EPA's guidelines provides that eligible programmatic costs are expenditures for activities that are integral to achieving the purpose of the grant. It states that eligible programmatic costs include costs for ". . . 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" that are excluded by statute from the reach of the administrative cost prohibition. A contractor's indirect costs that are otherwise reasonable (e.g. are covered by an indirect cost rate agreement with its cognizant federal audit agency) and normally charged to cost reimbursement contracts are programmatic rather than administrative.

IV. USE OF GRANT FUNDS

Q20. What is the amount of funding available through individual grants?

A20. Under the Brownfields law, an eligible entity may apply for:

- **Assessment Grants.** *An eligible entity may apply for up to \$200,000 to assess a site contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to \$200,000 to address a site contaminated by petroleum. Applicants may either combine requests for hazardous substances funding and petroleum funding into one proposal if both types of funding will address the same target community, for a total not to exceed*

\$400,000; or applicants may submit separate proposals requesting up to \$200,000 each for hazardous substances and petroleum funding. Whether the applicant combines proposals or not, applicants may only apply for a maximum of two community-wide assessment grants.

An applicant may apply for one site-specific assessment grant not to exceed \$200,000. For site specific proposals, applicants may seek a waiver of the \$200,000 limit and request up to \$350,000. Such waivers must be based on the anticipated level of hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) or petroleum at a single site. Due to budget limitations, no one entity may apply for more than \$750,000 in assessment funding and can not submit more than 3 assessment grant proposals (2 community-wide and 1 site-specific).

A coalition comprised of three or more eligible entities may apply for one assessment grant up to \$1 million. All coalition assessment grant proposals must be community-wide. The lead coalition member and any other members can **not** apply for individual assessment grants in the year they apply as part of a coalition. The performance period for an Assessment Grant is 3 years.

- **Revolving Loan Fund Grants.** Grants may be awarded up to \$1 million for an initial revolving loan fund (RLF) grant. A coalition of eligible entities may apply together under one application for up to \$1 million per eligible entity. **In FY10, only those applicants who do not have an RLF cooperative agreement may apply for an RLF grant.** The performance period for a Revolving Loan Fund Grant is 5 years.
- **Cleanup Grants.** Grants may be awarded up to \$200,000 per site for cleanup. Due to budget limitations, no entity may apply for funding cleanup activities at more than three sites. Applicants must submit a separate proposal for each site. The performance period for a Cleanup Grant is 3 years.

EPA reserves the right to partially fund proposals, including the right to only fund the hazardous substance or the petroleum requests if applicants request both in their proposal.

Q21. If my application is successful, will EPA reimburse me for eligible programmatic costs I incurred prior to the award?

A21. It depends. EPA may reimburse successful applicants for pre-award costs incurred up to 90 days prior to award, even if the applicant did not request prior approval to incur pre-award costs provided the costs are eligible, allowable, and included in the approved budget and work plan for the grant. For example, costs for contracts are allowable only if the contract was entered into in a manner that complies with the competitive procurement provisions of EPA's grant regulations. Costs incurred more than 90 days prior to award require specific approval of an EPA award official.

Please note that applicants incur pre-award at their own risk and that EPA is not obligated to reimburse applicants for pre-award costs that are not included in the

work plan and budget the Agency approves. EPA has no obligation to reimburse unsuccessful applicants for pre-award costs.

Q22. If funds have been expended at a site under a cleanup grant, can additional brownfields funding be provided for additional cleanup work at the same site?

A22. Yes, a cleanup grant recipient may apply for additional funding through a brownfields revolving loan fund. A cleanup grant recipient may also request that a state or tribe conduct additional cleanup with CERCLA 128 State and Tribal Response Program funding. A city/town or other eligible entity may also apply for a cleanup grant for a site on which a state or tribe has already expended CERCLA 128 funds.

Q23. How does EPA enforce the requirement for cost sharing for the cleanup and revolving loan fund grants?

A23. The Agency requires recipients to report on their cost sharing in financial status reports. Recipients must have documentation to support cash and in-kind contributions of labor, material and services for cost sharing expenses to be eligible and allowable. If a recipient fails to provide its agreed upon cost share, EPA may take action to recover all or part of the grant as well as take other enforcement actions authorized by Agency grant regulations.

Q24. Can I use brownfields grant funds to purchase environmental insurance?

A24. Yes. Entities that receive grants or loans to perform characterization, assessment or cleanup of a brownfields site may use a portion of their brownfields grant or loan funds to purchase environmental insurance. This amount must be less than 100 percent of the total grant or loan funds awarded under the Brownfields law. 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.

Q25. What kind of environmental insurance can I purchase with a brownfields grant?

A25. Companies can offer many different kinds of environmental insurance policies for brownfields sites. Typically, these policies cover risks related to cleanup cost overruns, third-party liability, and lender liability. Insurance carriers do not use the same names for these policies, and coverage is generally negotiated to cover site-specific risks. Therefore, successful applicants are encouraged to work closely with EPA to ensure any policy to be purchased with EPA funds does not cover ineligible expenses, including but not limited to:

- paying for a penalty or fine;*
- paying a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;*
- paying for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA §107.*

Q26. As a local government applicant, what program activities can be funded under the 10% provision of the new amendments?

A26. Under section 104(k)(4)(C) of CERCLA, a local government may use not to exceed 10 percent of the grant funds in three ways to develop and implement a brownfields program. These activities may include use of 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. Local government applicants may not exceed 10% in total for all three types of activities planned and the budget submitted as part of the proposal should reflect the tasks to be conducted with the 10% of funds.

Q27. Can the Department of Housing and Urban Development’s (HUD) Community Development Block Grant (CDBG) funds be used as a cost share on a brownfields cleanup or RLF grant?

A27. In general, funds from one federal grant (from any agency) may not be used to meet a statutory cost share requirement on another federal grant (from any agency) unless there is specific statutory authority that provides otherwise. The CDBG statute is an example of statutory authority to use federal funds for a cost share on another grant.

V. PROPERTY-SPECIFIC FUNDING DETERMINATIONS

Q28. How do I know if a site identified in the proposal requires a Property-Specific Funding Determination?

A28. Grant applicants must determine if any of the properties, or facilities, included in their proposal require a property-specific determination. Although excluded from the definition of a brownfield site, the following types of properties are eligible for brownfields funding if a property-specific determination is made that funding for assessment or cleanup activities will meet the criteria set forth in the statute and meet the goals and criteria of the brownfields program. These types of properties are:

- 1) Properties subject to planned or ongoing removal action under CERCLA.*
- 2) Properties that include facilities subject to an administrative or judicial order or consent decree, or 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.*

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. In their grant proposal, applicants should identify which funding exclusion is applicable to their property and describe why each property falls within that exclusion. Please see Appendix 1.5 in the Proposal Guidelines for more information on each of these exclusions (www.epa.gov/brownfields).

Q29. Who makes the Property-Specific Funding Determination of whether of site is eligible for brownfields funding?

A29. A determination of eligibility for or exclusion from funding will be made by EPA at the time of proposal evaluation based upon information provided by the applicant. To aid EPA in making this determination, 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 in Q27, the grant proposal must specifically identify the properties, identify the applicable funding exclusion from the list above in Q27, and describe why each property falls within that exclusion (e.g., RCRA permit for hazardous waste storage, CERCLA removal action on-going, etc.)

Q30. What characteristics of a site does EPA look for in order to make a Property-Specific Funding Determination for brownfields funding eligibility?

*A30. The types of sites listed in Q27 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.*

Q31. Why do some sites require Property-Specific Funding Determinations to be eligible for funding?

A31. Congress specifically prohibited certain types of sites from the definition of “brownfield site” in CERCLA § 101(39)(B) and, therefore, from being eligible for brownfields funding. However, Congress listed certain sites that would normally be prohibited from funding, but could be allowed to be considered for funding if an eligibility determination was made specific to that site (See list in Q.1). In keeping with this prohibition, 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 in Q.3). 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.

Q32. What sites are not eligible for property-specific funding determinations for Brownfields grants?

A32. *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 **generally eligible** for brownfields funding.)*

Q33. What information must an applicant include if a site in the proposal requires a Property-Specific Funding Determination?

A33. *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 above in Q27).*
- 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. See below for description of the necessary criteria to address.*
- 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.

*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.*

Again, an applicant must show how financial assistance, if awarded, will protect the human health and the environment **and** either promote economic development **or** enable the creation of, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The three areas are discussed in more detail below.

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.

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.*

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.

VI. SITE ELIGIBILITY

Q34. Are properties on lands held in trust by the Federal government for Indian tribes eligible for brownfields grant funding?

A34. Generally, properties on lands held in trust by the Federal government for Indian tribes are eligible for brownfields grant funding. You should contact your Brownfields coordinator for further information.

Q35. What happens if I accidentally include an ineligible site in my proposal or I didn't realize I needed a property-specific funding determination?

A35. Applicants may not substitute sites if EPA determines a site is not eligible. EPA may provide applicants a limited opportunity to clarify site eligibility issues during the proposal application process. If EPA has reason to believe a site that falls in the "excluded" category is eligible for a property-specific funding determination, EPA may seek clarification from the applicant before

making that determination. EPA strongly encourages applicants to evaluate their site against the information provided in Appendix I of the guidelines. In addition, applicants should contact their Regional Brownfields Coordinators for pre-application assistance on site eligibility.

Applicants may not substitute sites if EPA determines a site is not eligible.

Q36. Are RCRA sites eligible for Brownfields grant funding?

A36. Some Resource Conservation and Recovery Act (RCRA) sites may be eligible. RCRA facilities that may be eligible for Brownfields funding, (subject to meeting all other Brownfields grant eligibility requirements), include:

- RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;
- RCRA interim status facilities that are subject to administrative or judicial orders or consent decrees 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
- Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order to conduct corrective action.

Facilities subject to an administrative or judicial order or consent decree, facilities with permits issued under the authorities of RCRA, Toxic Substances and Control Act (TSCA), and the Safe Drinking Water Act (SDWA), as well as facilities with permits issued under section 1321 of the Clean Water Act (the oil and hazardous substance liability provisions) are excluded from the definition of brownfield site but **may be eligible for funding if the EPA makes a property-specific funding determination**. Without a property-specific funding determination provided for in §101(39)(C), these specified RCRA facilities can not receive grant or loan funding.

When making this determination, EPA assesses whether Brownfields funding for assessment or cleanup activities will:

- ensure protection of human health and the environment; **and** either
- promote economic development, or
- promote the creation, preservation, or addition to parks, greenways, undeveloped facility, other recreational facility, or other property used for non-profit purposes.

Q37. Are former military installations that have been closed and subsequently turned over to local and/or state governments or non-profit organizations eligible for funding?

A37. Yes. Generally, former military installations that are no longer owned or under the custody or control of the U.S. government, including properties that have been closed and subsequently turned over to governments or non-profit organizations may be eligible for brownfields funding. **For example, the following types of facilities may be eligible for brownfields funding:**

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

Facilities owned by, or under the custody or control of the federal government **are not eligible** for brownfields funding with the exception of land held in trust for an Indian tribe. Applicants should contact their Regional Brownfields Coordinator for additional information.

VII. GENERAL GUIDELINES QUESTIONS

Q38. What were the results of the FY 2010 competition process?

A38. EPA was pleased to receive 697 proposals for 955 Brownfields grants in FY 2010. Continued national interest in the program resulted in a highly competitive selection process, with a total of 304 grants announced nationwide in FY 2010.

Q39. How do I submit my application and what is the deadline for submission in FY2011?

*A39. Proposals are due October 15, 2010. Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically to www.grants.gov. Only one method should be used for the submission of the original, complete proposal. **Facsimile or email delivery of proposals is not permitted and will not be considered.***

- Hard Copy Submissions

*Proposals sent through the U.S. Postal Service or a commercial delivery service must be postmarked by October 15, 2010. **Two copies of the complete proposal are required.** Mail one complete, original proposal to: Environmental Management Support, Inc., Attn: Mr. Don West, 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910. Phone 301-589-5318.*

*A second complete copy of the proposal must be mailed to the appropriate EPA Regional Brownfields Coordinator listed in Section VII. **Proposals postmarked by the USPS/commercial delivery service after October 15, 2010 will not be considered.***

- Electronic Submissions

*Proposals sent electronically to www.grants.gov must be received by 11:59 p.m. Eastern Time on October 15, 2010. **Proposals received after 11:59 p.m. Eastern Time on October 15, 2010 will not be considered.** Refer to Appendix 2 for specific instructions on the use of [grants.gov](http://www.grants.gov). In the event that an applicant experiences difficulties transmitting its proposal(s) through [grants.gov](http://www.grants.gov), please refer to the procedures in Appendix 3. **Note: There is a registration process to complete for electronic submission via [grants.gov](http://www.grants.gov), which may take a week or more to complete.***

In addition to electronic submission to [Grants.gov](http://www.grants.gov), a complete copy of the proposal must be mailed to the appropriate EPA Regional Brownfields Coordinator listed in Section VII of the guidelines.

Q40. How have the Brownfields Assessment, Revolving Loan Fund and Cleanup Grant proposal guidelines changed in FY 2011?

A40. EPA has made revisions to the guidelines in FY 2011. The most significant changes to the

guidelines are:

- (1) *Area-wide planning is an eligible activity in the Assessment guidelines. For more information regarding area-wide planning, please view Section I.B and Section I.B.2 of the FY11 Guidelines for Brownfields Assessment Grants (EPA-OSWER-OBLR-10-09).*
- (2) *RLF applicants must use at least 50 percent of the awarded funds to capitalize and implement a revolving loan fund and therefore, may use no more than 50 percent of the awarded funds for subgrants.*

EPA will not consider proposals that fail to comply with certain mandatory provisions of the guidelines. The Agency strongly urges applicants to carefully read the guidelines.

EPA estimates that \$92 million will be available to award approximately 343 grant awards, contingent upon the availability of funds in FY 2011.

Criteria and prohibitions, which are statutorily based, remain the same in FY 2011.

Q41. Can I submit my proposal electronically?

A41. *Applicants may submit proposals electronically to <http://www.grants.gov>. Proposals submitted to www.grants.gov must be received by October 15, 2010, 11:59pm Eastern Time to receive consideration.*

The electronic submission of your application 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>. Note that the registration process may take a week or longer.

EPA strongly encourages applicants to review Appendix 2 of the Brownfields Grant guidelines for specific instructions on submitting proposals electronically via www.grants.gov.

Q42. What is the grant application process in Fiscal Year 2011?

A42. *The process for applying for assessment, revolving loan fund and cleanup grants is a one step process as discussed in the guidelines: www.epa.gov/brownfields.*

*Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically to Grants.gov- only one method should be used for the submission of the original, complete proposal. The deadline for proposals is **October 15, 2010**.*

*Prior to **October 15, 2010** EPA Regions may conduct open meetings with potential applicants. Please check with your regional office for date and location information. EPA Regions will also respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to **ranking** criteria.*

Proposals initially will be reviewed by the appropriate EPA Regional Office to determine compliance with the applicable threshold criteria. The threshold criteria review is pass/fail.

Applicants deemed ineligible for funding consideration as a result of the threshold criteria review will be notified within 15 calendar days. All proposals that pass the threshold criteria review will then be evaluated by national evaluation panels chosen for their expertise in the range of activities associated with the National Brownfields Program. The national evaluation panels will be composed of EPA staff and other federal agency representatives. National evaluation panels will base their evaluations solely on the responses to the applicable ranking criteria and will assign a total point score to each proposal.

Completed evaluations will then be referred to the 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 of, if any, other factors. Those other factors include: Fair distribution of funds between urban and non-urban areas; Fair geographic distribution of funds between EPA's ten Regions; Fair distribution of funds between new applicants and previous brownfields grant recipients; 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 United States territory; Consideration of the type of contamination being addressed, such as whether a site is mine-scarred or contaminated with controlled substances; and Zones affected by natural disasters.

*Funding requests for each grant type will be **evaluated and ranked separately**.*

EPA will inform successful and unsuccessful proposal applicants in writing.

Funding will be awarded as a cooperative agreement. EPA anticipates substantial involvement with the cooperative agreement recipient. The applicants whose proposals are selected will be asked to submit a cooperative agreement application package to their EPA Regional office.

EPA reserves the right to reject any or all proposals and make no awards.

EPA anticipates that successful applicants will be notified in the Spring of 2011.

For additional information regarding the FY 2011 grant application process for brownfields assessment, revolving loan fund and cleanup grants, contact your EPA Regional Brownfields Coordinator listed in Section VII.

Q43. How do I get help in understanding and responding to the grant proposal guidelines?

***A43.** EPA urges applicants to review the grant proposal guidelines carefully and any supplemental information on the EPA brownfields website. If resources permit, EPA Regions may conduct open meetings with potential applicants. Please check with your regional office for date and location information.*

*EPA Regions will respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond*

to **ranking** criteria.

Applicants may contact their EPA Regional Brownfields Coordinator for general information or questions regarding the threshold criteria, including eligibility. Contact information for EPA Regional Brownfields Coordinators can be found in Section VII of the guidelines at: www.epa.gov/brownfields.

EPA has also awarded Technical Assistance to Brownfield Communities (TAB) cooperative agreements to four groups: New Jersey Institute of Technology (NJIT) serves communities in EPA Regions 1, 2, and 3; Enterprise Corporation of the Delta, Inc (ECD) serves communities in Regions 4 and 6; Kansas State University (KSU) serves communities in Regions 5 and 7; and Center for Creative Land Recycling (CCLR) serves communities in Regions 8, 9, and 10. The TAB grantees can provide technical assistance to communities including assistance to better understand the threshold eligibility requirements, reviewing a community's draft proposal, and facilitating discussions within the community related to the proposal. Please note, however, that while a TAB grantee is a source of technical assistance, they **will not** write a proposal for you. More information about the TAB grantees is available at <http://www.epa.gov/brownfields/tools/index.htm>

One of the TAB grantees, Kansas State University (KSU), has also developed a software tool called "TAB EZ" that can assist communities who are applying for assessment and cleanup grants under EPA's Fiscal Year 2011 Brownfields Assessment, Revolving Loan Fund and Cleanup (ARC) grant competition. TAB EZ was developed by KSU and CABEM Technologies, Inc. as a public service and is available free of cost to anyone nationwide. More information about TAB EZ is available at <http://www.tabez.org/>

All proposals will be reviewed and evaluated objectively against the criteria identified in the grant guidelines and ranked based upon their written response. **Applicants are responsible for making decisions on the content of their proposals.**

Q44. Do applicants for brownfields grants (assessment, revolving loan fund or cleanup grant) need to inform their State regarding the submission of a grant proposal to EPA?

A44. Yes. Applicants (other than a State or tribal environmental authority) must provide a letter from a State or Tribal environmental authority that acknowledges the applicant's planned activities in their grant proposal and if specific sites are identified, eligibility determination on those sites, where appropriate. Only one letter reflecting all proposed activities is needed if the applicant applies for multiple grant types or multiple grants.

Q45. If I name a consulting, law or engineering firm as a "partner" in the application is it proper to award that firm a sole source contract on that basis?

A45. No. All contracts for professional services must be awarded competitively to the maximum extent practicable and in compliance with requirements to consider small and disadvantaged businesses and cost or price analyses. The market for consulting, legal and engineering services is robust and it is unlikely that competition is impractical. Please refer to Section V of the Proposal Guidelines for detailed guidance.

VIII. ASSESSMENT GRANTS

Q46. If I am requesting a site-specific assessment grant waiver for \$350,000 what must I include in my proposal to the EPA? What criteria does EPA use to evaluate site-specific assessment waiver requests?

A46. The brownfields law allows for applicants who have identified an eligible site that will require more than \$200,000 to complete assessment activities to apply for a waiver of the funding limit and request up to \$350,000 to assess an eligible site. In order for the waiver request to be considered the applicant must include a one (1) page justification describing the site and the reason(s) for the additional funding request. An applicant must include the following in the written justification: a description of the site, why the assessment costs exceed the funding limit, and specific information regarding the circumstances which justify the extra costs (e.g. fiscal state of the community, size of the site, expected level of contamination etc.). Please see Section I.A.2. of the Guidelines for more information on the assessment waiver request.

EPA will base all decisions on site-specific assessment waiver requests on the information the applicant provides in the one (1) page attachment and will evaluate the information on the size of the site, the status of ownership of the site, and/or the anticipated level of contamination at the site. EPA will take into account only the information provided and will base all decisions on the justification of the need.

Q47. We have identified a specific site for assessment with our EPA grant. What sort of information should I have available when I ask EPA to determine its eligibility for funding?

A47. The Guidelines provide information on sites eligible for brownfields funding under CERCLA §104(k) in Appendix 1. Section III.C.3 of the Assessment grant guidelines outlines the types of information necessary to make an eligibility determination. Below are the types of information that will need to be considered.

Basic property and grant eligibility information, such as:

- *the property's name and address*
- *the grant recipient's name*
- *the type of assessment proposed (Phase I, Phase II, etc.)*
- *how the property has been used in the past (from today going back to its first known use)*
- *why the property is thought to be contaminated, especially if it's been vacant for many years*
- *whether the property is a "brownfield site," as defined by the statute (including whether the property is subject to any of the exclusions to the definition of "brownfield site" and if so, whether it is eligible for a property-specific determination)*
- *whether the CERCLA Section 107 prohibition applies (i.e., whether you are potentially liable as an owner/operator (current or at the time of disposal), arranger, or transporter).*

Information about the current owner that will be of interest:

- *the current property owner's name*
- *what your relationship is with the owner and what will be their role in the work that is to be performed*

- *whether you have access to the property, or if not, how you will obtain access to the property*

If you are the current owner, EPA will also want to know:

- *if and when you conducted All Appropriate Inquiry and whether you are affiliated with a liable party*
- *whether you can take advantage of a CERCLA liability protection (i.e., are a Bona Fide Prospective Purchaser, a Contiguous Property Owner, an Innocent Land Owner, or not)*
- *if you are a municipality, how you acquired the property (e.g., foreclosure, donation, eminent domain, purchased, etc.)*

For petroleum sites you will also need to:

- *Obtain a written determination of statutory eligibility by the state LUST contact. (Talk to your project officer for assistance)*
- *If the state is unable to make the determination, you will need to have available information regarding*
 - *whether the site is of "relatively low risk" compared to other petroleum-only sites in the state*
 - *whether there is a viable responsible party that can address the petroleum contamination at the site (whether a party is "responsible" and "viable" is defined in the Guidelines)*
 - *whether you, the applicant, are potentially liable for cleaning up the site, as defined in the Guidelines*
(be prepared to provide information regarding whether the party having such legal obligations has adequate financial resources to meet the obligation)
 - *whether the site is subject to an order issued under 9003(h) of the Solid Waste Disposal Act*

Please note that some sites may either require a property-specific determination or may not be eligible at all for funding (see Section V. Property Specific Determinations in these Frequently Asked Questions.)

Q48. Does assessment include production of reports including Phase I, Phase II, and the trenching, boring, and testing?

A48. *Yes -- assessment would include the above activities. In general, assessment is the process of evaluating alternatives -- activities that are part of that evaluative process are considered assessment; but once an alternative has been selected, ensuing activities no longer are considered assessment.*

Q49. Does redevelopment planning include obtaining a brownfields covenant not to sue, a feasibility study to use for community involvement, and the legal and project manager costs of rezoning if needed?

A49. *Assessment funding is appropriate for a study on community involvement.*

Assessment funding is NOT appropriate for costs associated with securing a covenant not to sue or for rezoning. One definition of planning for assessment purposes is considering end uses for the site, Institutional Controls, community involvement and organizing a design charette.

Q50. If I am applying for 2 community-wide assessment grants in one proposal, how should I demonstrate the project budgets for both the hazardous substances and petroleum requests?

*A50. It is the applicants' responsibility to clearly demonstrate the tasks associated with the petroleum and hazardous substances funding requests. Applicants may combine the budget in one table with clear lines demonstrating separate petroleum and hazardous substances funded activities, and the narrative and associated outputs clearly stated. Alternatively, applicants may submit two separate budget tables (one hazardous substances and one petroleum) with a clearly stated narrative and associated outputs. Reviewers will evaluate the **clarity** of the budget presented in applicants' proposals, not the number of tables submitted.*

A. AREA-WIDE PLANNING AS ELIGIBLE ASSESSMENT ACTIVITY

Q51. Why is EPA incorporating area-wide planning as an eligible activity under the Assessment Grants?

A51. Planning, including area-wide planning (AWP) is an eligible activity under the statutory authority for Assessment Grants. However, the current RFP provides applicants with more detail on eligible AWP activities. AWP enables applicants to create a plan for a single, large brownfield site or multiple brownfield sites within an area. The plan created can help inform what assessments might be needed, or how to prioritize the assessment of multiple sites. Also, the applicant can start implementing its area-wide plan by conducting assessment activities identified under the same grant.

Q52. How does EPA approach area-wide planning?

A52. Area-wide planning (AWP) may include various planning aspects that address a brownfields-impacted area. The plan that is created under this process should include a set of area-wide strategies for the brownfields-impacted area and identify next steps/ resources needed to implement the plan. Additionally, AWP could include identifying potential future uses for specific brownfields properties within a brownfields-impacted area and developing strategies for facilitating the reuse of existing infrastructure and potential infrastructure investments needed to accommodate alternative future uses of the brownfield(s).

EPA's AWP approach consists of four stages:

- 1. Planning to identify potential future uses for the specific brownfields properties identified within the brownfields-impacted area;*
- 2. Creating a set of area-wide strategies for the brownfields-impacted area;*
- 3. Developing strategies for facilitating the reuse of existing infrastructure and potential infrastructure investments needed to accommodate alternative future uses of brownfield(s) properties; and*
- 4. Identifying next steps/resources needed to implement the plan.*

This approach recognizes that revitalization of the area surrounding a brownfields site(s) is just as critical to the successful reuse of the property (or properties) as cleanup and redevelopment of an individual site. The approach also recognizes the importance of identifying and pursuing opportunities to leverage additional local, state and Federal funding to help communities revitalize contaminated sites.

Examples of eligible activities under AWP include but are not limited to: surveying, market research, and holding community design charettes.

Q53. What are the anticipated benefits, including outputs and outcomes, of area-wide planning?

A53. The goal of area-wide planning (AWP) is the development of an area-wide plan for a brownfields-impacted project area, and to identify next steps and resources needed to implement the plan. The area-wide plan may include site-reuse planning for brownfields property(ies) and identify associated infrastructure/economic investments and environmental improvements needed in the surrounding area to foster the redevelopment of the brownfields property(ies) and help revitalize the community.

Examples of anticipated outputs related to AWP are:

- *advancement of an ongoing planning process for assessment, cleanup and subsequent reuse of brownfields site(s),*
- *development of an area-wide plan,*
- *determining the next steps and identify resources needed to implement the area-wide plan, and*
- *increased community involvement opportunities leading to decisions about the clean up and future use of the site(s), such as a community visioning session and brownfields cleanup, site preparation and design charrettes.*

Examples of anticipated outcomes related to AWP are:

- *that the community will plan appropriately for the assessment, cleanup, and reuse of individual brownfields,*
- *connecting assessment, cleanup and decisions of subsequent reuse of these parcels to their neighborhood and city-wide contexts,*
- *enabling residents from the brownfields-impacted area to be involved in AWP activities and benefit from their results,*
- *bringing economic and/or other beneficial reuses to brownfields properties while improving local environmental conditions and human health, and*
- *form constructive, long term partnerships to facilitate environmentally sustainable and equitable brownfields redevelopment, such as;*
 - *green and healthy homes, buildings, and neighborhoods,*
 - *access to greenspace, affordable housing, transit, schools, other public uses (e.g. libraries, health clinics, youth centers, etc.), recreation, and healthy and affordable food,*
 - *employment for local residents,*

- to the extent permitted by law, programs for first-source hiring and resident shareholding,
- reducing toxicity, illegal dumping, and blighted vacant parcels, and
- retraining/not displacing residents living within the brownfields-impacted area.

Q54. How much EPA funding in an assessment grant can be budgeted towards area-wide planning?

A54. Subject to the \$200,000 maximum amount in the proposal guidelines for community wide assessment grants, there is no limit on the portion of the assessment grant funding that can be budgeted toward area-wide planning (AWP); however, proposals that propose to budget the majority of their funding to AWP are expected to complete at least one assessment activity and report that activity to EPA through a property profile form (PPF) or ACRES. Assessment activities reported to EPA may include a phase I environmental assessment, a phase II environmental assessment, supplemental environment assessment, or clean up plans for a particular property. More information can be found at <http://www.epa.gov/brownfields/pubs/index.html>.

Q55. Does the applicant have to own the brownfield site or sites for which they would like to conduct the planning activities?

A55. No, the applicant does not need to own the brownfield site or sites for the purposes of developing an area-wide plan. However, the site they plan on assessing must be an eligible brownfields site and meet other eligibility requirements set forth in EPA's proposal guidelines. The site does not have to be identified in the assessment proposal for a community wide assessment or assessment coalition grant.

Q56. If an applicant plans to conduct area-wide planning activities and identifies a brownfields-impacted area that contains an NPL, Federally-owned, or other site that does not meet the definition of a brownfields, will the proposal be disqualified?

A56. No, the proposal will not be automatically disqualified. As long as one or more brownfield sites, as defined in CERCLA § 101(39), are present, the area-wide planning (AWP) area may also contain a NPL, Federal facility, and/or other ineligible site(s) that do not meet the definition of "brownfield site." However, site specific reuse planning activities, such as site reuse visioning, programming, design charrettes, etc., can only be conducted at eligible brownfields sites. For more information on eligible brownfields sites, please see Appendix 1 of the Proposal Guidelines or "Site Eligibility" in these FAQs.

Q57. In areas with a long history of multiple land uses and multiple brownfield properties, should applicants use area-wide planning to focus on 1 or 2 particular sites, rather than a more general strategy of addressing multiple sites?

A57. It depends on the needs of the project. Area-wide planning for at least one brownfield site within the brownfields-impacted area is part of the EPA assistance available. It is up to each

applicant to decide how many sites to include in the development of an area-wide plan. The extent to which the applicant chooses to hone in on one site or several sites is up to the applicant and should be described in the project proposal.

Q58. Does the administrative costs prohibition apply to planning activities under AWP?

A58. Yes. The administrative cost prohibition applies to the Assessment Grant regardless of whether area-wide planning or assessment activities are being conducted.

B. ASSESSMENT COALITIONS

Note: for additional information on assessment coalitions please refer to the coalition fact sheet located on the EPA Brownfields website (http://www.epa.gov/brownfields/grant_info/assess/acfs_062408.pdf) or to section I.A.3 in the Brownfields Assessment Grant Guidelines.

Q59. What are Assessment Coalitions, who is eligible to apply for an assessment grant and what requirements must an Assessment Coalition meet?

*A59. An Assessment Coalition is comprised of three or more eligible entities described at CERCLA 104(k)(1). The lead coalition member submits a Community-wide Assessment grant proposal on behalf of itself and the other members for assessment work that will be performed within the boundaries of the coalition members. The coalition may request up to **\$1 million** to work on a **minimum** of **five** hazardous substance and/or petroleum sites.*

*Eligible entities, including those with existing brownfields grants, are: state, local and tribal governments, with the exception of certain Indian tribes in Alaska; general purpose units of local government, land clearance authorities, or other quasi-governmental entities; regional councils; redevelopment agencies; and states. Nonprofit organizations are **not** eligible to apply.*

*The grant recipient (lead coalition member) **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. A **Memorandum of Agreement (MOA)** documenting the coalition's site selection process must be in place prior to the expenditure of any funds that have been awarded to the lead coalition. It is up to the coalition to agree internally about the distribution of funds and the mechanisms for implementing the assessment work.*

Q60. What does the Assessment Coalition Memorandum of Agreement (MOA) contain? How do I obtain a copy of a sample MOA?

A60. The MOA is a simple, two page agreement that all coalition members must sign prior to the expenditure of any awarded assessment funds. The MOA provides all members' contact information, how often the members will meet, how many sites the coalition will assess, how many Phase I and IIs the members will perform and other specifics on the managing of contractors, community involvement plans and site prioritization.

The MOA is posted on the EPA Brownfields website at:
http://www.epa.gov/brownfields/grant_info/assess/fy2009moa.pdf

Q61. May non-profit organizations be members of an assessment coalition?

A61. No. Only “eligible entities” as described at CERCLA 104(k)(1) that are themselves eligible for assessment grants may be members of an assessment coalition. Non profit organizations (with the exception of councils of governments) are not eligible to receive assessment grants.

Q62. Are Assessment Coalition members also eligible to apply for individual Community-wide or Site-specific assessment grants?

*A62. Coalition members are **not** eligible to apply for individual Community-wide or Site-specific Assessment grants **in the year they apply as part of a coalition**. This restriction is only for **one year**. In future years, coalition members may apply for individual Assessment grants.*

Q63. Can a city and a redevelopment agency be coalition partners even though they are from the same city?

A63. Yes, provided the entities are separate legal entities under state and local law and meet the definition of eligible entity as described in the Assessment Grant Guidelines.

Q64. Can two separate state agencies be assessment coalition members?

A64. No. Two state agencies cannot be coalition members. They are not separate legal entities. Under the definition of “grantee” at 40 CFR 31.3, the recipient is the entire governmental unit even if only one component of the government is named in an application.

Q65. Can two separate parts of a city or county government be assessment coalition members? For example, can the City Parks and Recreation and the City Economic Development Agency come in with another eligible entity as a coalition for an assessment grant?

A65. No. Two city or county agencies cannot qualify as coalition members. They are not separate legal entities. Under the definition of grantee at 40 CFR 31.3, the recipient is the entire governmental unit even if only one component of the government is named in an application.

Q66. Can an Assessment Coalition member drop out or be added after selection and/or award of the grant?

A66. Yes, a member can drop out and another one can be added provided the EPA agrees to amend the cooperative agreement scope of work to change the geographic boundaries. Please note that such a change may require an exception to EPA’s competition policy and the coalition recipient will need a strong justification for amending the grant. The Agency may not necessarily agree to amend the scope of work and may reduce the amount of funding awarded to the coalition.

Q67. If several Councils of Government (COGs) are applying for an Assessment Coalition

grant, can three small towns who are part of the COGs apply separately for their own assessment coalition grant?

A67. Yes. The COGs and the towns are separate legal entities that are independently eligible for assessment grants. Therefore, the fact that the COGs include the towns and are part of one coalition proposal does not render the towns ineligible.

IX. REVOLVING LOAN FUND GRANTS

*Reminder: Only applicants who do **not** have an existing RLF cooperative agreement may apply for an RLF in FY10. If you are an existing RLF cooperative agreement recipient you may be eligible to apply for RLF supplemental funding in early 2011.*

Q68. What does an existing revolving loan fund (RLF) pilot do to “transition” under the new Law?

A68. A Brownfields Cleanup Revolving Loan Fund (BCRLF) pilot established prior to January 11, 2002 may “transition” under the new Brownfields Law. A BCRLF pilots “transition” when EPA changes to Terms & Conditions of their grant to those applicable under the new Brownfields Law. The EPA has published guidelines on how to transition that can be found on the EPA website.

(http://www.epa.gov/brownfields/proposal_guides/bcrlf_0.pdf)

These guidelines were sent directly to all the current BCRLF pilots in October 2002. The transition process will be managed through EPA Regional offices.

Q69. Who can apply for RLF non-competitive supplemental funds under the Brownfields Law, and how do they apply?

A69. Only RLF recipients awarded grants since passage of the 2002 Brownfields law, and existing BCRLF pilots who “transition” to the new program, that have made at least one loan or subgrant can apply for non-competitive supplemental funding. The EPA will consider supplemental funding based on the following statutory considerations:

- the number of sites and the number of communities addressed;*
- the demand for funding by eligible entities that have not previously received a grant under the new amendments;*
- the demonstrated ability of the eligible entity to use the revolving loan fund (RLF) to enhance remediation and provide funds on a continuing basis; and*
- such other factors as the Agency considers appropriate to carry out the RLF.*

The Federal Register Notice for supplemental funding for Brownfields Revolving Loan Fund Grants can be found at:

<http://www.epa.gov/fedrgstr/EPA-GENERAL/2005/December/Day-01/g6720.htm>

RLF recipients interested in non-competitive supplemental funding should contact

their Regional Brownfields Coordinator for details.

Q70. As an RLF grant recipient, will intra-governmental loans (i.e. loans between parts of the same governmental entity) be allowed under the Brownfields law?

A70. Yes. RLF recipients may make intra-governmental loans under the new Brownfields law.

Q71. As an RLF recipient, will intra-governmental cleanup subgrants be allowed under the Brownfields law?

*A71. No. Cleanup subgrants, unlike loans, may **not** be made by the RLF recipients within the same governmental entity that receives the RLF grant (e.g. one department of a city government cannot “subgrant” to another department of the same governmental entity). However, RLF recipients may choose to apply to **EPA** separately for a cleanup grant. RLF recipients may also make subgrants to different eligible governmental entities as well as non-profit organizations.*

Q72. If I am a member of an RLF Coalition, but not the recipient of the RLF cooperative agreement, am I eligible to apply for an RLF grant in FY2011?

A72. Yes. If an applicant is a member of a coalition, but is not the recipient of the RLF cooperative agreement, that applicant may apply for its own RLF grant in the FY2011 competition. However, if the applicant is the recipient of the RLF Coalition cooperative agreement, the applicant is ineligible for funding. For purposes of these grants, EPA defines “recipient” as the entity that administers the grant, is accountable to EPA for proper expenditure of funds, and is the point of contract for the coalition members.

X. CLEANUP GRANTS

Q73. What does EPA mean by an "equivalent" Phase II report in the cleanup grant proposal requirements? If my site is a mining site does the Phase II report requirement still apply?

A73. EPA has no requirement for what a Phase II report must conform to, however, EPA is looking to see that the applicant has a basic understanding of what contaminants need to be cleaned up on the site, even if further Phase II assessment work is required. Most Phase II assessment reports for brownfield sites will typically conform to the American Society for Testing and Materials (ASTM) standards. Other brownfield sites may choose to follow the standards required by their state voluntary cleanup programs or other state regulatory programs (for example, underground storage tank reports, asbestos surveys or lead paint surveys). For abandoned coal mine sites, Office of Surface Mining assessments of physical and safety hazards are considered Phase II equivalent reports. Applicants for cleanup grants should provide an explanation of the type of assessment completed and the date it was finalized and summarize the findings.

Q74. Must I own the site that is the subject of my Cleanup grant proposal at the time of proposal submission?

A74. *Yes. Applicants must have sole ownership of the site at time of proposal submission for the FY10 cleanup grant competition. This requirement reflects a change in Agency policy from previous competitions. For purposes of grant eligibility and the guidelines only, ownership is fee simple title as evidenced by a recorded deed. If an applicant does not own the site, EPA will deem that site ineligible for funding under the FY11 grant cycle, and the applicant may reapply in future years when it obtains ownership of the site.*

Q75. Do tribes “own” tribal trust lands for purposes of brownfields cleanup grants and RLF cleanup subgrants?

A75. *Generally, EPA believes tribes have a sufficient ownership interest in tribal trust lands to “own” such lands for purposes of brownfields cleanup grants and RLF cleanup subgrants. Applicants should contact their Regional Brownfields Coordinator for additional information.*

XI. ALL APPROPRIATE INQUIRIES

Q76. What is “All Appropriate Inquiries” and who conducts “All Appropriate Inquiries” under the Brownfields law?

A76. *The Brownfields Law establishes that site characterizations or assessments conducted with the use of brownfields grants awarded under CERCLA Section 104(k)(2)(B)(ii) must be conducted in accordance with the federal “all appropriate inquiries” standards established under CERCLA and addressed in EPA’s final rule setting standards and practices for all appropriate inquiries (70 FR 66070).*

All appropriate inquiries also refers to the requirements for assessing the environmental conditions of a property prior to its acquisition, for purposes of establishing certain landowner liability protection under subtitle B of Title II of the Brownfields Law. These landowner liability protections require that a person perform “all appropriate inquiries” into the previous ownership and uses of a property before acquiring title to the property. The landowner liability protections include the bona fide prospective purchaser, innocent landowner, and contiguous property owner provisions of CERCLA (see below).

- *To qualify as a bona fide prospective purchaser, a person must meet the criteria set forth in § 107(r) and 101(40) of CERCLA (both threshold criteria and continuing obligations after purchase), purchase the property after January 11, 2002, and must perform all appropriate inquiries prior to purchase. These parties may buy knowing, or having reason to know, of contamination on the property. Please note that brownfields grant applicants that otherwise would meet the requirements for a bona fide prospective purchaser, except for having purchased the property prior to January 11, 2002, are eligible for federal brownfields funding.*
- *To qualify as a contiguous property owner, a person who owns property that is contiguous or otherwise similarly situated to a facility that is the only source of contamination found on his/her property must meet the*

criteria set forth in CERCLA § 107 (q)(1)(A). Contiguous property owners must perform all appropriate inquiries prior to purchase and cannot know, or have reason to know, of contamination on the property.

To qualify as an innocent land owner, a person must meet the criteria set forth in CERCLA § 107(b)(3) and 101(35), perform all appropriate inquiries prior to purchase of a property and cannot know, or have reason to know, of contamination on the property. Applicants should note that there are continuing obligations after purchase that are relevant to these liability protections.

Q77. What are the federal standards for conducting “All Appropriate Inquiries?”

A77. As of November 1, 2006, parties must comply with either the standards and practices set forth in the final rule on all appropriate inquiries (40 CFR 312 B see <http://www.epa.gov/fedrgstr/EPA-WASTE/2005/November/Day-01/f21455.htm>) or use the process established in ASTM E1527-05 Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process (available at www.astm.org).

Q78. What are the statutory criteria for conducting “All Appropriate Inquiry”?

A78. Congress directed EPA to establish, by regulation, standards and practices for conducting all appropriate inquiries. In the Brownfields Law, Congress directed EPA to include, within the standards for all appropriate inquiries, the nine criteria shown below. Each of these criteria is addressed in the final rule establishing federal standards and practices for all appropriate inquiries (70 FR 66070):

- *The results of an inquiry by an environmental professional;*
- *Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility;*
- *Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land-use records, to determine previous uses and occupancies of the real property since the property was first developed;*
- *Searches for recorded environmental clean-up liens against the facility that are filed under Federal, State, or local law; Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records concerning contamination at or near the facility;*

- *Visual inspections of the facility and adjoining properties;*
- *Specialized knowledge or experience on the part of the defendant;*
- *The relationship of the purchase price to the value of the property if the property was not contaminated;*
- *Commonly known or reasonably ascertainable information about the property; and*
- *The degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate investigation.*

Q79. How does an applicant demonstrate they have conducted “All Appropriate Inquiries”?

A79. Brownfields funding cannot be used at sites for which the grantee is a potentially responsible party (PRP) under CERCLA. If an applicant is a PRP, the applicant must demonstrate that it qualifies for one of the CERCLA liability defenses or protections, for example by being a bona fide prospective purchaser, innocent landowner, or contiguous property owner (please see FAQ Q76 for more information). To qualify for these protections, the applicant must have conducted “All Appropriate Inquiries” (AAI) prior to acquiring the property. The particular standard that may have been used to meet the pre-acquisition AAI requirement depends when the property was acquired.

The 2002 Brownfields Amendments to CERCLA directed EPA to promulgate a regulatory standard for AAI, which EPA did in its final rule on AAI, published November 1, 2005. The AAI final rule took effect on November 1, 2006. Therefore, if the property was acquired after November 1, 2006, parties seeking a CERCLA liability protection must demonstrate compliance with either the standards and practices set forth in the AAI final rule (40 CFR 312) or use the process established in ASTM E1527-05 “Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process.” The AAI final rule recognizes the ASTM-E1527-05 standard as compliant with the requirements of the final rule. Please see FAQ Q76 for links to either standard.

For properties acquired between January 2002 and November 1, 2006, the purchaser must demonstrate that prior to acquiring the property, the purchaser conducted AAI or a Phase I Environmental Site Assessment using the ASTM E1527 standard for Phase I environmental site assessments available at the time of purchase (i.e. E1527-97, E1527-00 or E1527-05).

Prior to the enactment of the 2002 Brownfield Amendments, the standard for AAI contained in CERCLA was that a party must show they conducted AAI into the previous ownership and uses of the property consistent with good commercial or customary practice. This is generally evaluated by looking at commercial or customary practice at the time and place the property was acquired. Depending on the specific circumstances, this may be anything from a title search to a full environmental assessment. However, as of 1997, the ASTM E1527 standard for Phase I environmental site assessments was the generally accepted commercial standard for due diligence.

Therefore, if the property was acquired after 1997, compliance with the relevant version of the ASTM E1527 standard (i.e. the ASTM E1527-97, E1527-00 or E1527-05 Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process) is sufficient to demonstrate that the applicant has satisfied its AAI obligations.

The site eligibility determination is a site-specific process and each individual application is reviewed and verified based on the circumstances in which the party acquired the property. For more information on site eligibility, please contact your regional Brownfields Coordinator listed in Section VII of the guidelines.

XII. Petroleum Brownfields

Q80. Can a petroleum brownfields grant be used for the incidental assessment and/or cleanup of hazardous substances?

A80. Yes. As long as the principal purpose of the assessment or clean-up grant is to assess or clean up a site potentially or actually contaminated with petroleum, a petroleum brownfields grant may be used for the incidental assessment and/or cleanup of hazardous substances.

Q81. What statutory determinations must my state (or EPA) make to assure that petroleum-contaminated sites (or portions of properties contaminated with petroleum) are eligible for brownfields funding.

A81. The Brownfields Law outlines specific criteria by which petroleum sites may be eligible for brownfields grant funding if EPA or the state makes a petroleum eligibility determination. Non-tribal applicants must provide the information required for a petroleum site eligibility determination to the state, so that the state can make the necessary determination on petroleum site eligibility. Applicants must provide EPA with a copy of the state determination letter as an attachment to each proposal. EPA or the state must determine:

- 1. the site is of “relatively low risk” compared with other ‘petroleum-only’ sites in the state; and*
- 2. there is no viable responsible party; and*
- 3. funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.*

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

*With the exception of Tribes, applicants must first request that their state make these determinations. If the state is unable to make the determinations, the applicant may request that EPA make the determinations. **For further information see Guidelines Appendix I, section 2.3.2 Contamination by Petroleum or Petroleum Product.***

Q82. What information must I provide to a state or EPA so that my petroleum

contaminated site is eligible for grant funding?

A82. Generally, petroleum site eligibility will be determined by EPA or the state, as appropriate. Where the state is unable to make the eligibility determination, EPA will make the determination. EPA will make the determination for tribes. Additionally, applicants must provide EPA with a copy of the state determination letter as an attachment to each proposal.

The following information is required for EPA or the state to make the petroleum site eligibility determination:

- 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 October 15, 2010. 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 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.
- vii) Subject to RCRA. Identify whether the site is subject to any order under section 9003(h) of the Solid Waste Disposal Act.
- viii) 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 iii) or vi) 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. For more information, see Appendix 1, Section 2.3.2.

If you are not able to provide EPA or the state with all the above information, then your request to the state or EPA for the determination on site eligibility also must include a brief explanation as to why the information requested above is not available.

Q83. What happens if I do not receive a determination letter back from my state prior to the proposal deadline?

A83. Instances where the applicant has requested the state to make a petroleum determination, but does not receive a determination letter prior to proposal due date must attach a copy of the request submitted to the state and indicate the date you submitted your request to the state. EPA will then coordinate with the state and the Agency will make the petroleum determination if necessary.

Q84. If a site is contaminated with petroleum, diesel, and lead from gasoline, can a petroleum grant address all three contaminants?

A84. Yes. CERCLA § 101(39) (D) (ii)(II)(aa) provides that a brownfield site includes a site that is “contaminated by petroleum or a petroleum product excluded from the definition of ‘hazardous substance’ ...” “Diesel” and “lead from gasoline” would fall within the purview of “petroleum or a petroleum product” and thus a site contaminated by those substances would meet the definition of a brownfield site.

Q85. Can tanks be pulled under a petroleum brownfields assessment grant?

A85. Maybe. An underground storage tank may be pulled under an assessment grant only if the recipient determines that the tank must be pulled in order to conduct the assessment. The grant recipient is accountable for any decision made to pull a tank and will need to document the reasons for its decision for audit purposes.

Q86. What happens if I want to clean up my petroleum brownfields site to a higher cleanup standard than required under state law or regulation, but a responsible party exists that is required to clean up the site to meet the standard in the state law or regulation?

A86. You may still be eligible for the grant, even if another party is responsible for the initial cleanup to meet regulatory requirements as long as that party is not under a legal obligation to perform the same cleanup activities identified in your grant proposal. EPA or the state is required to determine that there is no viable responsible party that can address the petroleum contamination at the site. This 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 for the activities identified in the grant proposal. Applicants are responsible for providing information in their proposal that demonstrates that the activities for which they seek funding have no viable responsible party (See Q81). EPA will consider a party to be viable if the party is financially capable of conducting the activity (i.e., assessment, investigation, or cleanup) identified in the grant proposal. In this case, even though the responsible party is financially capable of conducting the cleanup, the party may not be responsible for cleaning up the petroleum site to the applicant’s desired level and the site may be eligible for brownfields funding consideration.

Q87. Can a state or tribe use LUST Trust Fund money from a cooperative agreement to pay for its preparation of its own Brownfields petroleum application under the CERCLA §104(k)?

A87. Not as a direct cost. Under CERCLA § 104(k)(4)(B)(i)(III) administrative costs may not be charged to brownfields grants. 2 CFR Part 225, Appendix B, Item 34 requires EPA approval for states to charge proposal preparation costs directly to grants. EPA considers the costs of preparing Brownfields grants proposals to be an administrative cost. In accordance with 2 CFR Part 225 Attachment A, Paragraphs C 3.c. and F. 3.b. administrative costs that are not recoverable under one Federal grant cannot be shifted to another Federal grant and EPA cannot grant approval for a state or tribe to charge the costs of a competitive brownfields grant proposal as a direct costs. Proposal preparation costs may be allowable as part of a state's indirect cost pool without EPA approval under 2 CFR Part 225. States would then need to follow their internal policies and procedures to determine whether proposal preparation costs may be included in their indirect cost calculations. However, keep in mind that states may not charge indirect costs to CERCLA 104(k) Brownfields grants.

Q88. Can a state or tribe use LUST Trust Fund money as a direct cost under its RCRA §9003(h) grant to pay for providing advice, technical assistance, or (in the case of states) making determinations related to another eligible entity or nonprofit organization's brownfields application?

A88. It depends. As a threshold matter, under the LUST Trust Fund, the Brownfields application must be for corrective action for releases of petroleum from federally regulated USTs. Activities a state carries out in connection with applications for non-petroleum, non-corrective action activities and/or for non-federally regulated USTs would not be an eligible cost under a LUST cooperative agreement and would not qualify for financial support from the LUST Trust Fund. For example, assisting an eligible entity or non-profit organization apply for a brownfields hazardous substance grant would not be an eligible use of the LUST Trust Fund under RCRA § 9003(h).

However, providing advice and assistance to applicants for Brownfields/petroleum grants, including a state making determinations under CERCLA § 101(39)(D)(ii)(II)(bb), is a legitimate use of the LUST Trust Fund because it is an eligible cost under RCRA § 9003(h) associated with corrective action for petroleum releases. The Region awarding the grant would have to examine whether EPA's LUST Trust Fund cooperative agreement with the state allows for this type of activity within its scope of work. If the activity is within the scope of work, it would be eligible as a direct cost.

Q89. Can a state or tribe use CERCLA § 128 grant funds for its petroleum response program?

A89. Yes. EPA December 12, 2006, Guidance for CERCLA § 128 funding provides that states and tribes may use CERCLA § 128 grant funds to establish and enhance their response programs even if those programs address petroleum contamination. States and Tribes may also use this grant funding to conduct site specific assessment and cleanup at petroleum sites that meet the definition of a brownfields site at CERCLA § 101(39)(D)(ii)(II), subject to certain conditions and restrictions in the Guidance. Please note that petroleum related activities must be in the EPA approved scope of

work for the CERCLA § 128 grant for the costs to be allowable. CERCLA 128 grants are not subject to the administrative cost prohibition.

XIII. BROWNFIELDS AND PUBLIC HEALTH

Q90. Our community is concerned about health problems that may be related to brownfield sites. How do we apply for funds to conduct health monitoring at our brownfield sites?

A90. Under the Brownfields law, only local governments are eligible to use up to 10% of brownfield grant funds to monitor the health of populations that may be exposed to hazardous materials or monitor institutional controls to ensure they continue to protect public health.

Interested applicants may wish to review the fact sheet on Brownfields, health monitoring and public health on the Brownfields website (<http://www.epa.gov/brownfields/tools/finalphandbffa.pdf>) to learn more about current examples of funded activities or other potential eligible activities. They should also contact and involve their local or state health department in preparing their grant proposal application and in determining what types of health monitoring may be appropriate given the brownfield sites in their community and the likely types of contaminants or exposures that may occur. The Agency for Toxic Substances and Disease Registry (ATSDR) and Centers for Disease Control and Prevention (CDC) also have valuable tools to provide communities with information and assistance on environmental health issues. Please see their websites at: <http://www.atsdr.cdc.gov/> and <http://www.cdc.gov/> for additional information that may relate to environmental contaminants that pose health risks or ways to create healthier communities. For additional information, applicants should contact their EPA Regional Brownfields Coordinator to learn more about the brownfields grant program or the application process.

Q91. Can brownfields grant funds be used to assess or clean up sites contaminated with PCBs?

A91. Yes. All portions of properties potentially contaminated with PCBs may be eligible for brownfields site assessment, cleanup and revolving loan fund grants (without a property-specific determination), except where EPA has initiated an involuntary action to address PCB contamination at the facility or a portion of a facility. In cases where EPA has initiated an action under the Toxic Substances and Control Act against a property owner to address the illegal disposal of PCBs, the property still may be eligible for brownfields funding if an applicant can demonstrate that the funding will ensure protection of human health and the environment and promote either economic development or the creation or preservation of greenspace.

XIV. BENEFITS of BROWNFIELDS PROJECTS

Q92. What are some of the benefits associated with assessing and cleaning up a Brownfield site?

A92. There are numerous economic, environmental and social benefits that a community can expect upon the assessment and cleanup of brownfields sites. Examples of benefits include (but are not limited to):

- *Economic benefits include an increase in local tax base and new job growth. There are numerous tax incentives from both state and local governments available for brownfields projects.*
- *Environmental/social benefits include: reuse of existing infrastructure, development pressure taken off undeveloped land, prevention of sprawl, cleaner air and reduced natural habitat destruction.*
- *Up to 33% of assessments conducted with Brownfield's grants reveal that no clean up is necessary and that the site is ready for development. This quick re-use is good for the developer, the local government who has been losing tax revenue, and the local community who has been living with a potentially toxic site blighting their neighborhood.*

Q93. - What are examples of activities and EPA Initiatives that support the sustainable reuse of brownfield sites?

A93. There are many different activities and EPA Initiatives that support the sustainable reuse of brownfield properties. Several activities and EPA Initiatives are listed below. Please note that while EPA encourages applicants to incorporate elements of sustainable reuse in their brownfields projects, not all of the activities in the initiatives identified below will be eligible costs under the brownfields grant. Please contact your Regional Brownfields Coordinator listed in Section VII of the guidelines if you intend to seek brownfields grant funding for any of these activities.

(1) Clean Energy/ Energy Efficiency at a brownfield site

- *Consider the use of renewable sources of energy such as solar, wind, geothermal or biomass for power on your brownfield site;*
- *Consider ways to reduce the use of conventional, hydrocarbon power on your brownfield site by using energy efficient appliances and fixtures*

For more information on Clean Energy and Energy Efficiency: epa.gov/cleanenergy or epa.gov/greenpower or energystar.gov

(2) Water Efficiency at a brownfield site

- *Consider ways to conserve water on your brownfield site by incorporating high efficiency water fixtures and toilets into any new or revitalized buildings.*
- *Consider ways to promote water conservation techniques and sustainable practices at the brownfield site through such techniques as Low Impact Development (LID) or Storm Water Retention.*
- *By promoting water efficiency at the brownfield site a storm water management plan can prevent untreated storm water from washing contaminants from the brownfield site into waterways.*

For more information on water efficiency:

http://www.epa.gov/watersense/water_efficiency/index.html

For more information on storm water retention:

*cfpub.epa.gov/npdes/home.cfm?program_id=6 or cfpub.epa.gov/npdes/stormwater/const.cfm
(specifically related to construction concerns)*

For more information on Low Impact Development: epa.gov/owow/nps/lid

(3) Green Remediation of a brownfield site

- Green Remediation is defined by the EPA as “the practice of considering all environmental effects of remedy implementation and incorporating options to maximize net environmental benefit of cleanup actions.”
- Consider ways to incorporate sustainable practices when cleaning up a brownfield site including: ways to reduce harmful air emissions, minimize water consumption, reduce land and ecosystem impacts during the cleanup and reduce material consumption and waste generation.

For more information on Green Remediation practices at brownfield sites:
<http://www.clu-in.org/download/remed/Green-Remediation-Primer.pdf>

(4) Construction and Demolition Recycling

- Consider ways of incorporating construction and demolition materials recycling into the assessment, cleanup, or redevelopment of your brownfield site.
- If your site has buildings that need to be demolished, plan to recover and sell, donate, or reuse the uncontaminated usable materials rather than disposing of them in a landfill. Materials such as clean untreated wood, gypsum wallboard, metal, asphalt paving, concrete, brick, roofing material, and architectural salvage materials are commonly recycled.
- If your project will include new construction, plan to use recycled materials such as those from deconstruction projects or from materials that have been made out of recycled goods.

For more information on Construction and Demolition Recycling at brownfields sites:
<http://www.epa.gov/brownfields/tools/cdbrochure.pdf>

(5) Diesel Emission Reduction at brownfields sites, especially during the cleanup of your brownfield site

- Consider ways to reduce harmful emissions released by the burning of diesel fuels by incorporating modifications to operations such as: reducing operating and idle times of machinery, keeping engines well tuned and maintained in accordance with engine manual (i.e., change air filters, check engine timing, fuel injectors and pumps) or replacing existing engines with cleaner diesel engines, hybrid or alternative fuels.

For more information on diesel emission reduction: <http://www.epa.gov/diesel/>