



Region 3 Property Approval Questionnaire for Assessment Grants

Assessment funds may be used to assess, identify, characterize, and plan cleanup activities at contaminated properties targeted for redevelopment. The *Property Approval Questionnaire* will assist you in selecting those properties your community is targeting for environmental assessment and redevelopment using EPA brownfields funds. In order to ensure that EPA's brownfields funds are directed toward properties that are both eligible for funding and have the strongest potential for redevelopment, a *Property Approval Questionnaire* should be completed prior to conducting any environmental assessment work, including ASTM Phase I and II assessments. Please provide as much information as possible and forward the completed questionnaire to your EPA project officer prior to initiating any assessment. The questionnaire will be the starting point for discussing your proposed property.

Why must EPA approve all sites?

EPA must ensure that the properties you are selecting are eligible for funding according to the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (the Brownfields Law). First and foremost, EPA must make certain that your organization (as the grant recipient) is not responsible for contamination on the property and that grant funds are not going to any liable parties. EPA will conduct a screening to identify enforcement related issues for every site.

The site eligibility analysis can be very complicated, and we encourage you to consult with your attorney as you provide responses to the questions. Your EPA project officer will review all the information provided and either approve or disapprove of the use of EPA grant funding for that property.

Additionally, the information provided will assist us in determining whether the property you have selected meets the goals and objectives of the Brownfields program. The items that are of particular interest to us are the planned reuse of the property as evidenced by developer interest and the leveraging of resources to fund the cleanup.

Who's responsible for the contamination?

If you are using EPA funding on a property that your organization owns, you must first prove that your organization is not responsible for the contamination. If you are liable for the contamination, then you cannot use EPA funds. For example, if you are a municipality, you would not be allowed to use EPA funds to assess the municipal landfill because the municipality is directly responsible for contamination at the landfill.

In most cases, your assessment work will be done on privately-owned properties. EPA allows the use of assessment grant funds on privately-owned properties even when the polluter or responsible party has been identified. However, EPA encourages some level of participation from the responsible party to assist in funding the assessment or cleanup. But the public benefit derived from developing a privately-owned property will ultimately determine whether the project should go forward.

The liability issues are different depending on whether the property is contaminated with hazardous substances or petroleum. Therefore, there are two different questionnaires – one for hazardous substance sites and one for petroleum sites. If you have a hazardous substance assessment grant, then you will use the *Property Approval Questionnaire for Hazardous Substance Sites*. If you have a petroleum assessment grant, then you will use the *Property Approval Questionnaire for Petroleum Sites*.

What are the issues for hazardous substance sites?

For hazardous substance sites, no part of a grant can be used at properties where the grant recipient (your organization) is potentially liable for cleanup under CERCLA. This includes properties where you may be affiliated with a liable party.

Sites You Own

If you own (or owned) the property, you may be liable for the cleanup even if you did not directly cause or contribute to the contamination. If you are a municipality and acquired the property through involuntary acquisition (eminent domain or tax foreclosure), then you are not considered liable as long as you did not cause or contribute to the contamination in any manner. However, if you acquired the property voluntarily (purchase or donation), then you will have to prove that you meet the requirements for being a Bona Fide Prospective Purchaser, an Innocent Landowner, or a Contiguous Property Owner.¹ If you do not meet one of these categories as a property owner, then you are considered liable for the contamination.

Additionally, you must prove that you are not affiliated with any responsible party. You must consider all familial, corporate, contractual, political and financial relationships. For example, the City gives the City landfill to the local redevelopment authority for development purposes. If the redevelopment authority is either supported or controlled in some way by the City, EPA could determine that the City and the City's redevelopment authority are affiliated, and therefore, grant funds could not be used on that property.

¹ Please refer to EPA's Common Elements Reference Sheet at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf> for the requirements for Bona Fide Prospective Purchasers, Innocents Landowners and Contiguous Property Owners.

You must also demonstrate that you are taking reasonable steps with respect to hazardous substance releases and contamination at the property, and comply with all local, state and federal controls that may be required on the property. For example, if the contamination on the property is dangerous, what are you doing to prevent or limit exposure or to stop the spread of the contaminants.

Privately-Owned Sites

Grant funds can be used to assess privately-owned property even when a responsible party has been identified. However, please tell us if the responsible party will contribute to the cost of assessing or cleaning up the property.

What are the issues for petroleum sites?

There are separate requirements for properties contaminated solely with petroleum or petroleum product. The requirements are the same whether you own the property or the property is privately-owned. Once again, you as the grant recipient cannot be liable for cleaning up the contamination on the property. And it must be demonstrated that the property:

- is of “relatively low risk” compared to other petroleum-only sites in the state,
- has no viable responsible party capable of cleaning it up, and
- has not been subject to a corrective action order for cleanup under RCRA §9003(h).

Your state environmental authority should be able to tell you if the property you wish to assess is low risk and if a viable responsible party has been identified. Please contact your state agency and provide them all the necessary information on the *Property Approval Questionnaire*. If a responsible party has been identified by the state through enforcement orders or some other action and that party is financially capable of assessing and cleaning up the property, then EPA’s brownfields assessment funds cannot be used at this property. After you receive a decision from the state, please send a copy of the state’s written decision along with the *Property Approval Questionnaire* to your EPA project officer. If the state is unable to make the determination, then EPA will make the determination.

Some brownfield sites also require special approval from EPA.

The following types of properties require special approval before assessment grant funds can be used.

- RCRA sites where a permit or order has been issued,
- Sites subject to permits or enforcement orders under federal or state environmental laws,
- Planned or ongoing CERCLA (Superfund) removal action sites,

- Sites being cleaned up with funds from the Leaking Underground Storage Tank (LUST) trust fund,
- Sites contaminated with PCBs, and
- RCRA hazardous waste landfills that have submitted closure notification.

If you wish to use assessment grant funds on any of these properties, you must request EPA to make a “property-specific determination.” In order for EPA to make this determination, you will need to provide information in addition to the information requested on the *Property Approval Questionnaire*. To request a property-specific determination, you must tell us why the property should be eligible for federal funding by describing how funding used on this property will protect human health and the environment, and either promote economic development or enable the creation or preservation of greenspace or other property used for nonprofit purposes. You should also tell us why no other sources of funding are available to assess and clean up the property. Your EPA project officer can give you additional information on how to request a property-specific determination.