

## U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 4 BROWNFIELDS SITE ELIGIBILITY DETERMINATION CHECKLIST

*To be used to determine eligibility for site-specific work such as Phase II Environmental Site Assessments and Cleanups. If additional space is needed for any response, you may use page 7.*

Cooperative Agreement Recipients (CARs) no longer have separate funding for hazardous substances and petroleum; however, each Brownfield site must still be evaluated for its overall eligibility to receive Brownfields funds. There are different statutory requirements for determining eligibility for hazardous sites versus petroleum sites.

This checklist provides the information necessary to determine eligibility for both hazardous and petroleum sites. The table below will help clarify the four primary categories of sites and guide users to the correct sections in which to determine eligibility.

<input type="checkbox"/> <b>HAZARDOUS SUBSTANCE SITES:</b> a site primarily contaminated with hazardous substances. This also includes mine-scarred lands or sites contaminated with controlled substances. Minimal petroleum contamination (hydraulic lifts, oil-filled equipment, etc.) may be present.  <i>COMPLETE SECTIONS A through E</i>	<input type="checkbox"/> <b>PETROLEUM SITE:</b> a site with petroleum product remaining in underground or aboveground storage tanks or in associated piping or dispensing equipment, and/or where petroleum product has been dispensed, disposed or discharged from tanks, drums, piping, etc. Minimal hazardous substance contamination may be present.  <i>COMPLETE SECTIONS A through D, F</i>
<input type="checkbox"/> <b>COMMINGLED SITE:</b> a site containing both hazardous substances and petroleum contamination, where they are indivisible (or nearly so) for purposes of assessment and/or cleanup. The contaminants are commingled and not readily separated.  <i>COMPLETE SECTIONS A through E</i>	<input type="checkbox"/> <b>COMBINED SITE:</b> a site where there are both hazardous substances and petroleum contamination but where the location and distribution of sources and/or contamination generally are distinct and lend themselves to separate assessment and/or cleanup.  <i>COMPLETE SECTIONS A through F</i>

## A. GENERAL INFORMATION

1. Cooperative Agreement Recipient (CAR)/Targeted Brownfields Assessment (TBA) Applicant Name:
2. Grant Type:  
☐Assessment      ☐Cleanup      ☐Revolving Loan Fund (RLF)      ☐Multipurpose, or  
☐TBA (Targeted Brownfields Assessment)  
If a Grant, provide the Grant Number:
3. Work to be conducted:  
☐Assessment      ☐Cleanup      ☐Planning      ☐Other  
If "Planning" or "Other", please explain:
4. Provide the amount of funding estimated to be spent on the site:  
*(Assessments are limited to \$200,000 per site unless<sup>1</sup> a waiver is approved up to \$350,000. RLF subgrant cleanups are limited to \$500,000 per site. Multipurpose grant cleanups are limited to the amount in the EPA-approved budget. Projects funded by the Bipartisan Infrastructure Law (BIL) do not have funding limits on sites.)*
5. Date of proposed work:
6. Name and title of person completing this form:
7. Date Submitted to EPA:

## B. BASIC SITE INFORMATION

1. Site Name and ACRES ID (if available):
2. Site Address (including County and parcel ID):
3. Name of the current owner of the site:  
  
If the CAR/TBA applicant does not own the site, describe their relationship with the owner, and the owner's role in the work to be performed:
4. Identify the operational history and how the site became contaminated and, to the extent possible, describe the nature and extent of contamination. If the land has been vacant for many years, why does the CAR/TBA applicant think that it is contaminated?
5. Identify the current use(s) of the site.
6. Describe the proposed expansion, redevelopment, or reuse of the property and how it aligns with the community's reuse plans:

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<sup>1</sup> Per the Cooperative Agreement Terms and Conditions, the Cooperative Agreement Recipient is responsible for ensuring that EPA's Brownfields assessment funding received under this cooperative agreement, or in combination with any other previously awarded Brownfields Assessment cooperative agreements does not exceed the \$200,000 funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfield site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.

7. Does the site meet the definition of a Brownfield (*a real property, the expansion, redevelopment or reuse of which is complicated by the presence or potential presence of hazardous substances, pollutants or contaminants*)?  
☐ YES ☐ NO
8. Does CAR/TBA applicant have access (or an access agreement) to this property?  
☐ YES ☐ NO
9. National Historic Preservation Act (NHPA) Compliance:  
***Note: If you answer yes to any of the following questions you should contact your project officer to determine if any additional information is required.***
- a. Is your selected property (site) currently listed in the National Register of Historic Places and/or is it a designated National Landmark?  
☐ YES ☐ NO
- b. Is your selected property (site) eligible to be listed in the National Register of Historic Places?  
☐ YES ☐ NO
- c. Is your selected property (site) part of a designated Historic District?  
☐ YES ☐ NO
- d. Will your project impact the viewshed of any adjacent or surrounding designated Historic Districts or registered historic structures? ☐ YES ☐ NO
- e. Does your project have the potential to impact archaeological resources?  
☐ YES ☐ NO
- f. Are any on-site structures greater than 50 years old?  
☐ YES ☐ NO

#### **C. SITES NOT ELIGIBLE FOR FUNDING BY STATUTE**

1. Is the property within the bounds of a Superfund site listed (or proposed for listing) on the National Priorities List?  
☐ YES ☐ NO
2. Is the property subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to, or entered into by parties under CERCLA?  
☐ YES ☐ NO
3. Is the property subject to the jurisdiction, custody, or control of the US government? (Land held in trust by the US government for an Indian tribe is eligible.)  
☐ YES ☐ NO

***If the answer is YES to any of the above (C.1-3) the property is not eligible. Stop here.***

#### D. SITES ONLY ELIGIBLE WITH A PROPERTY SPECIFIC DETERMINATION BY EPA:

1. Is the site/facility subject to a planned or ongoing Comprehensive Emergency Response, Compensation and Liability Act (CERCLA) removal action under the CERCLA (or Superfund)?  
☐ YES ☐ NO
2. Has the site/facility been the subject of a unilateral administrative order, court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or been issued a permit by the U.S. or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SWDA)?  
☐ YES ☐ NO
3. Is the site/facility subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)), and has there been a corrective action permit or order issued or modified to require corrective measures?  
☐ YES ☐ NO
4. Is the site/facility a land disposal unit that has submitted a RCRA closure notification under subtitle C of RCRA and is subject to closure requirements specified in a closure plan or permit?  
☐ YES ☐ NO
5. Has the site/facility had a release of polychlorinated biphenyls (PCBs) that is subject to remediation under TSCA?  
☐ YES ☐ NO
6. Has the site/facility received funding for remediation from any Leaking Underground Storage Tank (LUST)<sup>2</sup> Trust Fund?  
☐ YES ☐ NO

***If the answer is YES to any of the above (D. 1-6), a property specific determination is required. Consult with your Project Officer. Refer to Section 1.5 of the [Information on Sites Eligible for Brownfields Funding Under CERCLA 104\(k\)](#).***

#### E. HAZARDOUS SUBSTANCE SITES *(for Petroleum-only sites, skip to F)*

Answer E.1-8 if the CAR/TBA applicant is the site owner. If the CAR/TBA applicant does not own the site, skip to E.9

1. How was the property acquired? ☐ Negotiated purchase ☐ Foreclosure ☐ Donation  
☐ Eminent Domain ☐ Other (Explain):
2. What is the date that the CAR/TBA applicant acquired the property?
3. Provide the name/identity of the party from whom the CAR/TBA applicant acquired ownership:
4. Provide information about any familial, contractual, corporate, or financial relationships or affiliations the CAR/TBA applicant has or had with all prior owners or operators (or other potentially responsible parties) of the property:

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<sup>2</sup> 1.5.6. LUST Trust Fund Sites: CERCLA requires a Property-Specific Determination for funding at those sites (or portions of properties) for which assistance for response activity has been obtained under Subtitle I of RCRA from the LUST Trust Fund. EPA's view is that this provision may exclude UST sites where money is being spent on actual assessment and/or cleanup of UST/petroleum contamination.

5. Did the assessment grant recipient uphold their continuing obligations (See Section III.B of the Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements")) after ownership, including exercising appropriate care and complying with any land use restrictions?

☐ YES ☐ NO

6. Did the CAR/TBA applicant cause or contribute to any release of hazardous substances at the site? Did the CAR/applicant arrange for the disposal of hazardous substances or transport of hazardous substances to the site?

☐ YES ☐ NO

***If the answer is YES, the property is not eligible, stop here.***

7. Did the CAR/TBA applicant take reasonable steps<sup>3</sup> with regards to the contamination at the site?

☐ YES ☐ NO

***If the answer is NO, the property is not eligible, stop here.***

8. Defense to Liability - The site must meet one of the following conditions:

☐ Acquisition by Function as Sovereign: The CAR/TBA applicant is a unit of state or local government who acquired the site through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances by virtue of its function as sovereign.

☐ Bona Fide Prospective Purchaser: The CAR/TBA applicant conducted a Phase I Environmental Site Assessment or other All Appropriate Inquiry investigation in compliance with ASTM standards prior to acquiring property.

☐ Third Party and Innocent Landowner Defenses § 107(b)(3) & 101(35)(A): The CAR/TBA applicant can prove, by the preponderance of the evidence, the contamination was caused solely by the act or omission of a third party whose act or omission did not occur "in connection with a contractual relationship".

☐ The grantee is a federally recognized tribal government entity and is not a "person" under the definition of CERCLA.

☐ Publicly Owned Brownfields: The CAR/TBA applicant is a public entity who acquired the property prior to January 11, 2002, and did not cause or contribute to the contamination.

Explain how the CAR qualifies for the defense selected above:

***If the site does not meet any of the scenarios in question 8, the property is not eligible, stop here.***

Answer the following if the CAR/TBA applicant is not the site owner:

9. Is the CAR/TBA applicant potentially liable at the site as an: ☐ Operator, ☐ Arranger ☐ Transporter?

☐ YES ☐ NO

***If the answer is YES, the property is not eligible, stop here.***

10. Is the CAR/TBA applicant affiliated with the site owner (familial, contractual, financial)?

☐ YES ☐ NO

***If the answer is YES, this site requires discussion with your EPA Project Officer.***

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<sup>3</sup> Reasonable steps for owners of brownfields are to stop continuing releases; prevent threatened future releases; and prevent or limit human, environmental, or natural resource exposure to earlier hazardous substance releases.

## F. PETROLEUM CONTAMINATION SITES

If the State has made the petroleum eligibility determination, the CAR/TBA applicant must provide EPA with the determination letter or email from the State. See Section 1.3.2 of the [Information on Sites Eligible for Brownfields Funding Under CERCLA 104\(k\)](#). States may apply their own laws and regulations to petroleum eligibility determinations.

If the State has not made a determination, EPA will make the determination, based on the information below:

1. Identify the current and immediate past owner of the site:  
Current Owner  
Immediate Past Owner:
2. Identify the current and immediate past owner of the site's Underground Storage Tank (UST), if applicable:  
Current UST Owner/Operator:  
Immediate Past UST Owner/Operator:
3. Identify when and by what method the current site owner acquired the property (e.g., purchase, tax foreclosure, inheritance, etc.)
4. Responsible Party: did either the current or immediate past site owner:
  - (i) dispense or dispose of petroleum or petroleum product contamination,  
☐ YES ☐ NO
  - (ii) own the site when any dispensing or disposal of petroleum (by others) took place,  
☐ YES ☐ NO
  - (iii) exacerbate contamination at the site,  
☐ YES ☐ NO
  - (iv) fail to take reasonable steps with regards to contamination.  
☐ YES ☐ NO(If yes, explain):
5. *(If CAR/TBA applicant is not listed in Question 1)* Identify whether the CAR/TBA applicant dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site, and failed to take reasonable steps with regards to the contamination.  
☐ YES ☐ NO ☐ N/A
6. Has a responsible party been identified through either:
  - (a) a judgment rendered in a court of law or an administrative order that would require any person to assess, investigate, or clean up the site; or
  - (b) an enforcement action by federal or state authorities against any party that would require any person to assess, investigate, or clean up the site; or 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.☐ YES ☐ NO
7. Is the site subject to any order under § 9003(h) of the Solid Waste Disposal Act (*subject to RCRA*)  
☐ YES ☐ NO

**Section F continued on next page**

8. Financial Viability of Responsible Parties:

If a responsible party has been identified in Question 3, 4, or 5 above, please provide information about whether they have the financial capability (ex. a financial responsibility mechanism) to satisfy their obligations under federal or state law to assess, investigate, or clean up the site<sup>4</sup>.

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**G. SITE ELIGIBILITY DETERMINATION BY EPA PROJECT OFFICER**

If there are any questions regarding site eligibility, the EPA Project Officer should consult with the Regional Brownfields Supervisor/ Section Chief, and/or EPA legal counsel.

- ☐ SITE IS eligible for EPA Brownfields Funds
- ☐ SITE IS NOT eligible for EPA Brownfields Funds
- ☐ SITE IS eligible for EPA Brownfields Funds but requires a Property-Specific Determination (attach)

\_\_\_\_\_  
EPA Project Officer

\_\_\_\_\_  
Date:

**EPA Project Officer Notes:**

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<sup>4</sup> EPA will generally deem defunct or insolvent companies, as well as individual parties, to be not financially viable.

## Supplemental Information

This sheet is provided in case the applicant has more details to share than what is allowed in the PDF fillable boxes. This sheet can be duplicated as many times as needed for the applicant.

Select Section:

☐ A   ☐ B   ☐ C   ☐ D   ☐ E   ☐ F

Number: