

**U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 9
BROWNFIELDS PETROLEUM SITE ELIGIBILITY DETERMINATION CHECKLIST**

☐ PETROLEUM SITE: a site primarily contaminated with petroleum and/or petroleum product.

CO-MINGLED SITE QUESTIONS

Are hazardous substances and petroleum co-mingled at the site?

☐ YES ☐ NO

Are the hazardous substances and petroleum-contaminated areas easily distinguishable from each other?

☐ YES ☐ NO ☐ N/A

If the areas are easily distinguishable from each other: fill out both site eligibility checklists (i.e., both the petroleum site eligibility checklist and the hazardous substances site eligibility checklist). If the areas are not easily distinguishable from each other, fill out only the checklist for the predominant substance/contaminant.

NON-TRIBAL GRANTEES/APPLICANTS: State Determination of Petroleum Site Eligibility

Non-tribal grantees/applicants must provide the information required for a petroleum site eligibility determination (listed below) to the state where the site is located so that the state can make the necessary determination. (Note: the applicant's letter requesting the state determination should request the state to indicate whether it applied EPA's guidelines in making the petroleum determination, and if no, what standard it applied.)

Did the State make a petroleum site eligibility determination?

☐ YES ☐ NO

If yes, include a copy of the state determination as an attachment to the Narrative, and Stop here.

If the State did not make the petroleum site eligibility determination before the application due date or was unable to make that determination, attach a copy of the request sent to the state and provide EPA with the date of the request sent to the state.

TRIBAL GRANTEES/APPLICANTS (and Non-Tribal Grantees/Applicants *Without* a State Determination): EPA Will Determine Petroleum Site Eligibility

Brownfields Site Eligibility Evaluation: *This document is based on EPA guidance and applicable law, and is meant as a tool to help EPA staff. Nothing in this document is intended to supplement or supersede EPA guidance or applicable law. A determination of eligibility for purposes of the Brownfields program does not guarantee the non-liability of the grantee under applicable law.*

The grantee/applicant should provide answers to the following questions to the best of their knowledge.

A. GENERAL INFORMATION

1. Grantee Name: [Click or tap here to enter text.](#)
2. Grant/Applicant Type:
 - ☐ Phase I Assessment ☐ Phase II Assessment ☐ Revolving Loan Fund (RLF)
 - ☐ Multipurpose
 - If a Grant, provide the Grant Number: [Click or tap here to enter text.](#)
3. Name and title of person completing this form: [Click or tap here to enter text.](#)
4. Date Submitted to EPA: [Click or tap here to enter text.](#)

B. BASIC SITE INFORMATION

1. Site Name: [Click or tap here to enter text.](#)
2. Site Address (including County): [Click or tap here to enter text.](#)
3. Name of the current owner of the site: [Click or tap here to enter text.](#)

If the grantee/applicant does not own the site, describe their relationship with the owner:
[Click or tap here to enter text.](#)

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 grantee/applicant think that it is contaminated? [Click or tap here to enter text.](#)
5. Identify the current use(s) of the site. [Click or tap here to enter text.](#)
6. Does the site meet the definition of a “brownfield site,” as defined under CERCLA at 42 U.S.C. § 9601(39)?
 - ☐ YES ☐ NO

7. Does grantee/applicant have access to (or an access agreement for) this property?
☐ YES ☐ NO

C. SITES NOT ELIGIBLE FOR FUNDING BY STATUTE

1. Is the facility listed (or proposed for listing) on the National Priorities List?
☐ YES ☐ NO
2. Is the facility 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 facility subject to the jurisdiction, custody, or control of the U.S. government?
☐ YES ☐ NO ☐ N/A **(This question is not applicable for land held in trust by the U.S. government for an Indian tribe.)**

*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 CERCLA removal action?
☐ YES ☐ NO
2. Has the site/facility been the subject of a federal 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 Clean Water Act, the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act?
☐ 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. Does the site/facility include a land disposal unit for which a closure notification under subtitle C of RCRA has been submitted and closure requirements have been 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 obtained assistance / funding for response activity (e.g., remediation) from the Leaking Underground Storage Tank (LUST) 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.

E. PETROLEUM-SPECIFIC QUESTIONS

(Note: for purposes of this checklist, current owner means the entity that will own the site at the time of application submission.)

1. Identify the current and immediate past owner(s) of the site:
Current owner
Immediate Past Owner(s):
2. Identify when and by what method the current owner acquired the property (e.g., purchase, tax foreclosure, donation, eminent domain).
3. Did either the current or immediate past owner:
 - (i) dispense or dispose of petroleum or petroleum product contamination?
☐ YES ☐ NO
 - (ii) exacerbate the existing petroleum contamination at the site?
☐ YES ☐ NO
 - (iii) own the site when any dispensing or disposal of petroleum (by others) took place?
☐ YES ☐ NO

If the answer to any of these questions is YES, Consult with your Project Officer (see Question About Financial Viability of Responsible Parties)

4. Did the both the current and immediate past owner(s) take reasonable steps¹ with regards to the contamination at the site?

☐ YES ☐ NO If YES, describe the steps taken by the current owner and by the immediate past owner(s).

If the answer is NO, Consult with your Project Officer (see Question About Financial Viability of Responsible Parties)

¹ "Reasonable steps" generally means exercising appropriate care with respect to hazardous substances found at the property by taking reasonable steps to: stop any continuing release; prevent any threatened future release; and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance. *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")* (EPA July 29, 2019), Attachment B: Reasonable Steps and Categories. <https://www.epa.gov/sites/default/files/2019-08/documents/common-elements-guide-mem-2019.pdf>

5. Did the grantee/applicant

- (i) dispense or dispose of petroleum or petroleum product? ☐ YES ☐ NO
(ii) exacerbate the existing petroleum contamination at the site? ☐ YES ☐ NO

If the answer to either of these questions is YES, the site is not eligible, stop here.

6. Did the grantee/applicant take reasonable steps² with regards to the contamination.

☐ YES ☐ NO ☐ N/A If YES, describe the steps taken by the grantee/applicant; if N/A, explain why not applicable.) [Click or tap here to enter text.](#) (If the answer is the same as above concerning reasonable steps, you may refer to that previous answer.)

If the answer is NO, the site is not eligible, stop here.

7. Has there been any of the following:

- (a) a judgment rendered in a court of law or an administrative order that would require any person to assess, investigate, or clean up the site?; or
(b) an enforcement action by federal or state authorities against any party that would require any person to assess, investigate, or clean up the site?; or
(c) a citizen suit, contribution action, or other third-party claim brought against the current or immediate past owner, that would, if successful, require the assessment, investigation, or cleanup of the site?
☐ YES ☐ NO

List the name(s) of any parties identified therein: [Click or tap here to enter text.](#)

If the answer to any of these questions is YES, Consult with your Project Officer (see Question About Financial Viability of Responsible Parties)

8. Is the site subject to any order under § 9003(h) of the Solid Waste Disposal Act as (as amended by RCRA)? (42 U.S.C. § 6991b(h))

☐ YES ☐ NO List the name(s) of any parties identified in the order: [Click or tap here to enter text.](#)

If the answer is YES, the site is not eligible, stop here.

² See previous footnote.

9. **Financial Viability of Responsible Parties**

For any current or immediate past owners identified as responsible for the contamination at the site above, , provide information about whether they have the financial capability to satisfy their obligations under federal or state law to assess, investigate, or clean up the site.³

[Click or tap here to enter text.](#)

If EPA (or the state, for state determinations) determines that any responsible party is viable, then the petroleum-contaminated site is not eligible.⁴

F. SITE ELIGIBILITY DETERMINATION BY EPA PROJECT MANAGER

The EPA Project Manager should consult with the regional Site Eligibility lead before finalizing. For complex eligibility determinations and other appropriate situations, EPA brownfields staff should consult with EPA legal counsel.

☐ SITE IS / ☐ SITE IS NOT eligible for EPA Brownfields Funds

EPA Project Manager

Date:

³ EPA will generally deem defunct or insolvent companies, as well as individual parties, to be not financially viable

⁴ **Exception:** even if there is a financially viable responsible party, the grantee/applicant may consult with the Project Officer if the grantee/applicant wants to clean up the petroleum brownfield site to a higher standard than required under state law/regulation.