Administrative Conditions

1. FY 10 ACORN FUNDING RESTRICTIONS

Congress has prohibited EPA from using its FY 2010 appropriations to provide funds to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. None of the funds provided under this agreement may be used for subawards/subgrants or contracts to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to their EPA Grants Management Office.

2. CONSULTANT CAP

Payment to consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2010, the limit is $596.00 per day and $74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

3. COPYRIGHTED MATERIAL

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

a. the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
b. termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

4. DBE PART 31 - ACCEPTING GOALS - PROJECT GRANTS

UTILIZATION OF SMALL, MINORITY AND WOMEN 'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, air share

objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives /Goals of Another Recipient
The dollar amount of this assistance agreement is $250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is $250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Illinois Environmental Protection Agency** as follows:

MBE: 5%
WBE: 12%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **Illinois Environmental Protection Agency** .

Negotiating Fair Share Objectives /Goals, 40 CFR, Section 33.404
The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

SIX GOOD FAITH EFFORTS , 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE /WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and

All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to

Adrianne M. Callahan, Region 5 MBE/WBE Coordinator
USEPA, Acquisition and Assistance Branch
77 West Jackson Boulevard (MC-10J)
Chicago, IL 60604

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE /WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp .

CONTRACT ADMINISTRATION PROVISIONS , 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

5. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html.

6. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at

http://www.usfa.dhs.gov/applications/hotel/ to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

7. LOBBYING AND LITIGATION - ALL RECIPIENTS

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

8. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. 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 which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

9. RECYCLED PAPER - PART 31 RECIPIENTS - STATE, TRIBES & LOCAL GOVERNMENTS

In accordance with the polices set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

10. RECYCLED PRODUCTS - STATE AGENCIES AND POLITICAL SUBDIVISIONS

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

11. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

12. SINGLE AUDIT ANNUAL REPORTING REQUIREMENT

In accordance with OMB Circular A-133, which implements the single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. **For fiscal periods 2002 to 2007 recipients are to submit hardcopy to the following address:**

Federal Audit Clearinghouse
1201 East 10th Street
Jeffersonville, IN 47132

For fiscal periods 2008 and beyond the recipient MUST submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions you will need to visit the Federal Audit Clearinghouse Web site: http://harvester.census.gov/fac/

13. SUBAWARDS

a. The recipient agrees to:
   (1) Establish all subaward agreements in writing;
   (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
   (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
   (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
   (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
   (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
   (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
   (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf and http://www.whitehouse.gov/omb/circulars/a133/a133.html.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

14. SUSPENSION & DEBARMENT: 2 CFR PART 1532

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

15. TRAFFICKING VICTIMS OF 2000 - PART 31 RECIPIENTS

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a

private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

16. UNLIQUIDATED OBLIGATIONS - INTERIM FFR - PART 31 RECIPIENTS

Submission of interim Federal Financial Reports

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the end of the reporting quarter.

The following reporting period end dates shall be used for interim reports: 9/30.

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at http://www.epa.gov/ocfo/finservices/forms.htm . All FFRs must be submitted to the Las Vegas Finance Center: US EPA, LVFC, PO Box 98515, Las Vegas, NV 89193, or by Fax to: 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

Programmatic Conditions

1. **Assessment Terms and Conditions**

FY2010 Terms and Conditions (T&Cs) apply to Brownfields Assessment Grants awarded under CERCLA 104(k).

I. GENERAL FEDERAL REQUIREMENTS

NOTE: For the purposes of these Terms and Conditions the term "assessment" includes , eligible activities under the Comprehensive Environmental Response , Compensation, and Liability Act (CERCLA) 104(k)(2)(A)(i) such as activities involving the inventory , characterization, assessment, and planning relating to brownfield sites as described in the EPA approved work plan .

A. **Federal Policy and Guidance**

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2010 competition for Brownfields assessment cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.

b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.

c. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as

implemented by Executive Orders 11914 and 11250.

d. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration and repair contracts and subcontracts awarded with funds provided under this agreement. Activities conducted under assessment grants generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon Act. The recipient must contact EPA's Project Officer if there are unique circumstances (e.g. removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. The Agency will provide guidance on Davis-Bacon Act compliance if necessary.

B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.

b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment Grants* dated August 2009 for discussion of this element) documenting that:

(1) a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
(2) the State determines there is "no viable responsible party" for the site;
(3) the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
(4) the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

b. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

d. EPA must also make all determinations on the eligibility of petroleum contaminated brownfield sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA Project Officer and provide

the information necessary for EPA to make the determinations described in 2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.

2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, EPA may terminate this agreement. For purposes of assessment grants, the recipient demonstrates "sufficient progress" when 35% of funds have been drawn down and obligated to eligible activities. Examples of "sufficient progress" include procuring an environmental consultant and having contracted for at least one Phase I report; having EPA approval of a QAPP if environmental sample collection is part of the scope of the approved CA work plan. For assessment coalition grants "sufficient progress" is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement is in place within eighteen months.

3. Assessment funding for any eligible brownfield site may not exceed $200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed $350,000 at the site.

B. Substantial Involvement

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

   a. Substantial involvement by EPA generally includes administrative activities such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.

   b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under §107 of CERCLA. (See Section II.C.3 for more information on subgrants.)

   c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.

   d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

   a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.

   b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.

c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.

2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors comply with the terms and conditions of this agreement.

3. Subgrants are defined at 40 CFR 31.3. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the $200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields 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.

5. CARs expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.

D. Quarterly Progress Reports

1. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:
   a. Summary of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of problems encountered during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.
   b. An update on project schedules and milestones.
   c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.
   d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.
   e. If applicable, a separate budget recap summary table as described in D.1.c must be submitted for brownfields petroleum projects.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
3. If applicable, the CAR must maintain records that will enable it to report to EPA on the amount of funds expended on petroleum properties addressed under this cooperative agreement.
4. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.
5. **Absent a Property Profile Form** and consistent with the EPA approved work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance and financial reporting may include:

   a. Acres per property
   b. Assessments started/completed
   c. No cleanup required
   d. Types of contaminants found
   e. Acres of greenspace created
   f. Engineering/institutional controls required, what type and whether they are in place
   g. Cleanup plans
   h. Redevelopment underway

i. Funds leveraged
j. Jobs leveraged
k. Health monitoring studies, insurance, institutional controls funded

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, cleanup required, contaminants, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:

a. Determining whether assessment activities at a particular site are authorized by CERCLA 104(k);

b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);

c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section III.B.

d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

2. **Local Governments only**. No more than 10% of the funds awarded by this agreement may be used for brownfield program development and implementation (including monitoring of health and institutional controls) as described in the EPA approved work plan. The CAR must maintain records on funds that will be used to carry out all program development and/or health monitoring and institutional control activities to ensure compliance with spending limits.

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall <u>not</u> be used by the CAR for any of the following activities:

a. Cleanup activities;

b. Development activities that are not brownfields assessment activities (e.g., construction of a

new facility);

c. Job training unrelated to performing a specific assessment at a site covered by the grant;

d. To pay for a penalty or fine;

e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;

f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA §107;

g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and

h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.

a. Ineligible administrative costs include costs incurred 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 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.

b. Ineligible grant administration costs include direct costs for:

(1) Preparation of applications for brownfields grants;

(2) Record retention required under 40 CFR 31.42;

(3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;

(4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;

(5) Maintaining and operating financial management systems required under 40 CFR 31;

(6) Preparing payment requests and handling payments under 40 CFR 31.21;

(7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and

(8) Close out under 40 CFR 31.50.

3. Cooperative agreement funds may not be used for any of the following properties:

a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or

d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

4. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. 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 EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

C. Interest -Bearing Accounts and Program Income (Note: This term is typically not applicable to Assessment Grants .)

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.

2. The CAR must deposit advances of grant funds and program income (i.e. fees) in an interest bearing account.

a. For interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
b. Interest earned on program income is considered additional program income.

IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

D. All Appropriate Inquiry

1. As required by CERCLA §104(k)(2)(B)(ii) and CERCLA §101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-05 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule "All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content", (Publication Number: EPA 560-F-06-244). This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.

V. Conflict of interest : Appearance of lack of Impartiality

A. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

(i) The affected party,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VI. PAYMENT AND CLOSEOUT

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c).

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.

2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in II.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

U.S. EPA Las Vegas Finance Center
P.O. Box 98515
Las Vegas, NV 89193-8515
Fax: (702) 798-2423
http://www.epa.gov/ocfo/finservices/payinfo.html

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.

c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

2. NATIONAL HISTORIC PRESERVATION ACT

Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable shall assist EPA in complying with any requirements of the Act and implementing regulations.

3. ENVIRONMENTAL RESULTS - RECIPIENT PERFORMANCE REPORTING

Recipients subject to 40 C.F.R. Part 31 (other than recipients of State or Tribal Program grants under 40 C.F.R. Parts 35 Subparts A or B)

Performance Reports:

In accordance with 40 C.F.R. §31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.