FY10 Guidelines for Brownfields Assessment Grants

OVERVIEW

AGENCY: ENVIRONMENTAL PROTECTION AGENCY (EPA)

TITLE: Proposal Guidelines for Brownfields Assessment Grants

ACTION: Request for Proposals

RFP NO: EPA-OSWER-OBLR-09-04

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NO.: 66.818

DATES: Proposals are due October 16, 2009. Proposals may be sent through the U.S. Postal Service, commercial delivery service, or electronically to bfcompetition@epa.gov. Only one method should be used for the submission of the original, complete proposal package. Proposals sent through the U.S. Postal Service or via a commercial delivery service must be postmarked by October 16, 2009. Proposals sent electronically must be received by bfcompetition@epa.gov by 11:59 p.m. Eastern Time on October 16, 2009. Please refer to Section IV.B, *Due Date and Mailing Instructions*, for further instructions.

SUMMARY: The Small Business Liability Relief and Brownfields Revitalization Act ("Brownfields Law", P.L. 107-118) requires the U.S. Environmental Protection Agency (EPA) to publish guidance to assist applicants in preparing proposals for grants to assess and clean up brownfield sites. EPA's Brownfields Program provides funds to empower states, communities, tribes, and nonprofits to prevent, inventory, assess, clean up, and reuse brownfield sites. EPA provides brownfields funding for three types of grants:

1. Brownfields Assessment Grants – provides funds to inventory, characterize, assess, and conduct planning (including cleanup planning) and community involvement related to brownfield sites.

2. Brownfields Revolving Loan Fund (RLF) Grants – provides funds for a grant recipient to capitalize a revolving fund and to make loans and provide subgrants to carry out cleanup activities at brownfield sites.

3. Brownfields Cleanup Grants – provides funds to carry out cleanup activities at a specific brownfield site owned by the applicant.

Under these guidelines, EPA is seeking proposals for **Assessment Grants only**. If you are interested in requesting funding for RLF and/or Cleanup Grants, please refer to announcement EPA-OSWER-OBLR-09-06 (RLF Grant guidelines) and

EPA-OSWER-OBLR-09-05 (Cleanup Grant guidelines) posted separately on www.grants.gov and www.epa.gov/brownfields.

For the purposes of these guidelines, the term "grant" refers to the cooperative agreement that EPA will award to a successful applicant. Please refer to Section II.C for a description of EPA's anticipated substantial involvement in the financial assistance agreements awarded under these guidelines.

EPA urges applicants to review the Frequently Asked Questions which can be found at http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf.

FUNDING/AWARDS: The total funding available under the national competition for assessment, cleanup, and RLF grants is estimated at **$79.4 million**. EPA must expend 25 percent of the amount appropriated for brownfields grants on sites contaminated with petroleum. EPA anticipates awarding an estimated **341** grants among all three grant types**. Under this announcement, EPA anticipates awarding an estimated 171 assessment grants for an estimated $37.3 million.**

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SECTION I - FUNDING OPPORTUNITY DESCRIPTION

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or the Superfund law) was amended by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law) to include section 104(k), which provides federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and RLF.

A **brownfield site is defined** as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substances, pollutants, contaminants, controlled substances, petroleum or petroleum products, or is mine-scarred land.

As described in Section V of this announcement, proposals will be evaluated based, among other factors, on the extent to which the applicant demonstrates: economic and environmental needs of the targeted communities; a vision for the reuse and redevelopment of brownfield sites and the capability to achieve that vision; reasonable and eligible tasks; partnerships and leveraged resources necessary to complete the project; and economic, environmental, health, and social benefits associated with the reuse and redevelopment of brownfield sites.

I.A. Description of Grant

Assessment grants provide funding for developing inventories of brownfields, prioritizing sites, conducting community involvement activities, and conducting site assessments and cleanup planning related to brownfield sites. Assessment grant funds may not be used to conduct cleanups. Assessment grants for individual applicants can be either community-wide or site-specific. Community-wide proposals are appropriate when a specific site is not identified and the applicant plans to spend grant funds on more than one brownfield in its community. Site-specific proposals are appropriate when a specific site has been identified and the applicant plans to

spend grant funds on this one site only. The performance period for assessment grants is three years. For a complete list of grant and programmatic requirements refer to Section VI.

1. Community-Wide Assessment Grants

   For community-wide proposals, applicants may request up to $200,000 for hazardous substances sites and up to $200,000 for petroleum sites. 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. An applicant that submits a combined community-wide assessment grant proposal or two separate community-wide assessment grant proposals may also apply for a site-specific assessment grant.

2. Site-Specific Assessment Grants

   For site-specific proposals, applicants may request up to $200,000 to address hazardous substances or petroleum contamination at a specified site. Applicants can apply for only one site-specific assessment grant. Site-specific assessment proposals must respond to the site eligibility threshold criteria in section III.C.3 appropriate to the contamination at the site. If the site has both hazardous substance and petroleum contamination and the hazardous substance and petroleum-contaminated areas of the site are distinguishable, the proposal must address both eligibility criteria and indicate the dollar amount of funding requested for each type of contamination. If the petroleum and hazardous substances are not easily distinguishable, the applicant must indicate which contaminant is predominant based on available information and respond to the appropriate site eligibility criteria. (Contact your Regional Coordinator listed in Section VII for more information). **Note that an applicant cannot propose an alternate site if the site identified in the proposal is determined by EPA to be ineligible for brownfields funding.** Applicants may request a waiver of the $200,000 limit and request up to $350,000 for a single site based on the anticipated level of contamination, size, or status of ownership of the site. Applicants requesting a waiver must attach a **one-page** justification for the waiver request. Further pages will not be considered. The justification should include a description of the extent of contamination at the site, the size of the site, and the reasons for requesting additional funding. For more information on the site-specific waiver justification, please refer to the Brownfields Frequently Asked Questions (FAQ) at: http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf.

3. Coalition Assessment Grants

   Additionally, assessment proposals may be submitted by coalitions of eligible entities to pool their grant funds (see section III.A. for a list of entities eligible to apply for an assessment grant; existing grantees are eligible entities). A coalition is a group of three or more eligible entities that submits one grant proposal under the name of one of the coalition participants who will be the grant recipient, if selected. Coalition members may not have the same jurisdiction (for example, different departments in the same county)

unless they are separate legal entities (for example, a city and a redevelopment agency). The grant recipient 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. Assessment coalitions may submit only one proposal up to $1,000,000. All coalition assessment grant proposals must be community-wide proposals; therefore, the applicant does not need to respond to the site eligibility threshold criteria in section III.C.3. Site eligibility will be determined after grant award and prior to expending grant funds at any site. Coalitions will be required to assess a minimum of five sites.

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 coalition. The purpose of the MOA is for coalition members to agree internally about the distribution of funds and the mechanisms for implementing the assessment work. MOAs do not need to be included as part of your proposal.

Coalition members are not eligible as applicants for additional community-wide or site-specific assessment grants. A coalition member wishing to apply as a separate applicant must withdraw from the coalition to be eligible for individual assessment funds.

4. Assessment Grant Option Summary

Community-Wide	**Site-Specific**	**Coalition**
Up to $200,000 for hazardous substances and $200,000 for petroleum	Up to $200,000 for petroleum or hazardous substances	Up to $1,000,000 for petroleum and/or hazardous substances
No waiver of funding limit	May request a waiver for up to $350,000	No waiver of funding limit
Maximum combined amount $400,000	Maximum amount $350,000	Maximum amount $1,000,000
May also apply for a site-specific grant; may not apply as a member of a coalition	May also apply for a community-wide grant; may not apply as a member of a coalition	May not apply for an individual community-wide or site-specific grant or as part of another coalition

Applicants that exceed the maximum number of proposals allowable for assessment grants will be contacted, prior to review of any of the proposals by EPA, to determine which proposals the applicant will withdraw from the competition.

For more information on a range of brownfields topics, please refer to the Brownfields FAQ at: http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf. If you do not have access to the internet, you can contact your Regional Coordinator listed in Section VII.

I.B. Uses of Grant Funds

In addition to direct costs associated with the inventory, assessment, and cleanup planning for brownfield sites, grant funds also may be used for the following activities:

1. Grant funds may be used for direct costs associated with programmatic management of the grant, such as required performance reporting and environmental oversight.

   All costs charged to assessment grants must be consistent with the applicable OMB Cost Circulars. The cost principles for universities and educational institutions are found at 2 CFR Part 220. The cost principles for governmental units are found at 2 CFR Part 225.

2. A **local government** (as defined in 40 CFR Part 31.3, *Local Government*) may use up to 10 percent of its grant funds for any of the following activities:
   a. Health monitoring of populations exposed to hazardous substances, pollutants, or contaminants from a brownfield site;
   b. Monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site; and
   c. Other related program development and implementation activities (e.g., writing local brownfields-related ordinances) to effectively oversee assessments and cleanups described in an EPA-approved work plan.

   The term local government **does not include state or tribal governments** but may include, among others, public housing authorities, school districts, and councils of governments.

3. A portion of any brownfields grant or loan may be used to purchase environmental insurance.

Grant funds cannot be used for the following activities:

1. Administrative costs, such as indirect costs, of grant administration with the exception of financial and performance reporting.

2. Proposal preparation costs.

See the Brownfields FAQ at:
http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf for additional information on ineligible grant activities.

I.C. EPA Strategic Plan Linkage

EPA's Strategic Plan defines goals, objectives, and sub-objectives for protecting human health and the environment. All three brownfields grant types will support progress toward Goal 4 (Healthy Communities and Ecosystems), Objective 4.2 (Communities), and Sub-objective 4.2.3 (Assess and Clean Up Brownfields). Specifically, these grants will help sustain, clean up, and

restore communities and the ecological systems that support them by providing funds to assess and clean up brownfield sites. EPA will negotiate work plans with recipients to collect information about the hazardous substances, pollutants, and petroleum contaminants addressed and the amount of land made safe for communities' economic and ecological use.

I.D. Measuring Environmental Results: Anticipated Outputs/Outcomes

Pursuant to EPA Order 5700.7, "Environmental Results under EPA Assistance Agreements," EPA requires that all grant applicants and recipients adequately address environmental outputs and outcomes.

EPA must report on the success of its Brownfields Program through measurable outputs and outcomes, such as the number of sites assessed, number of jobs created, and amount of funding leveraged. Applicants are required to describe how funding will help EPA achieve environmental outputs and outcomes in their responses to the ranking criteria (section V.B.2., *Project Description and Feasibility of Success*). **Outputs specific to each project will be identified as deliverables in the work plan negotiated after a grant is awarded.** Grantees will be expected to report progress toward the attainment of expected project outputs and outcomes during the project performance period.

Outputs and Outcomes are defined as follows:

1. Outputs: The term "outputs" refers to an environmental activity, effort, and/or associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during the project period. The expected outputs for the grants awarded under these guidelines may include but are not limited to the number of brownfield sites identified, number of Phase I and Phase II site assessments, and number of community meetings held.

2. Outcomes: The term "outcomes" refers to the result, effect, or consequence that will occur from carrying out the activities under the grant. Outcomes may be environmental, behavioral, health-related, or programmatic; must be quantitative; and may not necessarily be achievable during the project period. Expected outcomes of brownfields grants include the number of jobs leveraged and other funding leveraged through the economic reuse of sites; the number of acres made ready for reuse or acres of greenspace created for communities; and whether the project will minimize exposure to hazardous substances.

(View EPA's Strategic Plan on the internet at http://www.epa.gov/ocfo/plan/2006/entire_report.pdf and view EPA's Order 5700.7 at http://www.epa.gov/ogd/grants/award/5700.7.pdf)

SECTION II - AWARD INFORMATION

II.A. What is the amount of available funding?

The total estimated funding available under the national competition for assessment, cleanup, and RLF grants is estimated at **$79.4 million**. Separate announcements are posted for the RLF and cleanup competitions. EPA must expend 25 percent of the amount appropriated for brownfields grants on sites contaminated with petroleum. EPA anticipates awarding an estimated **341** grants among all three grant types**. Under this announcement, EPA anticipates awarding an estimated 171 assessment grants for approximately $37.3 million.** In addition, EPA reserves the right to award additional grants under this competition should additional funding become available. Any additional selections for awards will be made no later than six months from the date of the original selection decision. EPA reserves the right to reject all proposals and make no awards under this announcement or make fewer awards than anticipated.

In appropriate circumstances, EPA reserves the right to partially fund proposals by funding discrete portions or phases of proposed projects. To maintain the integrity of the competition and selection process, EPA, if it decides to partially fund a proposal, will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposal, or portion thereof, was evaluated and selected for award.

II.B. What is the project period for awards resulting from this solicitation?

The project period for assessment grants is up to three years.

II.C. Substantial Involvement

The brownfields grant will be awarded in the form of a cooperative agreement. Cooperative agreements permit the EPA Project Officer to be substantially involved in overseeing the work performed by the selected recipients. Although EPA will negotiate precise terms and conditions relating to substantial involvement as part of the award process, the anticipated substantial federal involvement for this project may include:

- Close monitoring of the recipient’s performance to verify the results.
- Collaborating during performance of the scope of work.
- Reviewing substantive terms of proposed contracts.
- Reviewing qualifications of key personnel (EPA will not select employees or contractors employed by the award recipient).
- Reviewing and commenting on reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient).
- Reviewing sites as meeting applicable site eligibility criteria.

SECTION III - APPLICANT AND SITE ELIGIBILITY INFORMATION

III.A. Who Can Apply?

The following information indicates which entities are eligible to apply for an assessment grant. Nonprofit organizations are not eligible to apply for an assessment grant.

- General Purpose Unit of Local Government. (For purposes of the brownfields grant program, EPA defines general purpose unit of local government as a "local government" as defined under 40 CFR Part 31.)
- Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government.
- Government Entity Created by State Legislature.
- Regional Council or group of General Purpose Units of Local Government.
- Redevelopment Agency that is chartered or otherwise sanctioned by a state.
- State.
- Indian Tribe other than in Alaska. (The exclusion of Alaskan tribes from brownfields grant eligibility is statutory at CERCLA §104(k)(1). Intertribal Consortia are eligible for funding in accordance with EPA's policy for funding intertribal consortia published in the *Federal Register* on November 4, 2002, at 67 Fed. Reg. 67181. This policy also may be obtained from your Regional Brownfields Coordinator listed in Section VII.)
- Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. (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.)

III.B. Site Eligibility (Site-Specific Proposals Only)

The following items provide important information related to determining if a brownfield site is eligible for funding. Refer to this section when responding to the Threshold Criteria in Section III.C.3.

1. <u>Basic Site Definition</u>

   To be eligible for a grant, sites must meet the definition of a brownfield as described in Appendix 1.

   The following types of properties are not eligible for brownfields funding:
   - Facilities listed (or proposed for listing) on the National Priorities List (NPL);
   - 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
   - Facilities that are subject to the jurisdiction, custody, or control of the U.S. government. (Note: Land held in trust by the U.S. government for an Indian tribe **is eligible** for brownfields funding.)

2. Property-Specific Determination for Eligibility

The following special classes of property require a "Property-Specific Determination" from EPA to be eligible for brownfields funding:

- Properties subject to planned or ongoing removal actions under CERCLA.
- Properties with facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to which a permit has been issued by the United States or an authorized state under 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 (SDWA).
- Properties with facilities subject to RCRA corrective action (§3004(u) or §3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- 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.
- Properties where there has been a release of PCBs and all or part of the property is subject to TSCA remediation.
- Properties that include facilities receiving monies for clean up from the Leaking Underground Storage Tank (LUST) trust fund (see Appendix 1, section 1.5.6 for a definition of LUST Trust Fund sites).

EPA's approval of Property-Specific Determinations will be based on whether or not awarding a grant will protect human health and the environment and either promote economic development or enable the property to be used for parks, greenways, and similar recreational or nonprofit purposes. Property-Specific Determination requests must be attached to your proposal and do not count in the 18-page limit for Narrative Proposals. (See Appendix 1, Section 1.5, for more information or contact your Regional Coordinator listed in Section VII if you think your site requires a Property-Specific Determination.)

Additionally, applicants eligible for brownfields grant funds cannot be liable for contamination on the site. Site eligibility related to liability is determined differently at sites contaminated with hazardous substances than for sites contaminated by petroleum or petroleum product.

3. Hazardous Substances, CERCLA Liability, and Demonstration of a Bona Fide Prospective Purchaser

Please see AAI fact sheet, "EPA Brownfields Grants, CERCLA Liability and All Appropriate Inquiries," for more information:
http://www.epa.gov/brownfields/aai/aaicerclafs.pdf

For sites contaminated by hazardous substances, persons, including government entities, who may be found liable for the contamination under CERCLA §107 (the Superfund

law) are not eligible for grants. Liable parties may include all current owners and operators, former owners and operators of the site at the time of disposal of hazardous substances, and parties that arranged for, or contributed to, the disposal or treatment of hazardous substances on the site. Therefore, even owners who did not cause or contribute to the contamination may be held liable. To be eligible for a site-specific brownfields grant to address contamination at a brownfields property, eligible entities who fall within one of the categories of potentially liable parties must demonstrate that they meet one of the liability protections or defenses set forth in CERCLA by establishing that they are: (1) an innocent landowner; (2) a bona fide prospective purchaser (BFPP), (3) a contiguous property owner; or (4) a local or state government entity that acquired the property involuntarily through bankruptcy, tax delinquency, or abandonment, or by exercising its power of eminent domain. To claim protection from liability as an innocent landowner, contiguous property owner, or bona fide prospective purchaser, property owners, including state and local governments, must conduct all appropriate inquiries prior to acquiring the property. (Please note that these requirements apply to all property acquisitions, including properties acquired by donation or title transfer at zero cost).

Because current owners of contaminated property are potentially liable under CERCLA, all site-specific assessment grant applicants must demonstrate in their proposals that they are not a liable party by establishing that they meet the requirements of one of the liability protections or defenses set forth in CERCLA. For more information on these liability protections, please refer to the Brownfields Law, the April 2009 Fact Sheet entitled: "EPA Brownfields Grants, CERCLA Liability and All Appropriate Inquiries," or EPA guidance entitled *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA* ("Common Elements") (http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf). Applicants may also call the Regional Brownfields Coordinator listed in Section VII with questions about eligibility.

The most common liability protection asserted by applicants is the bona fide prospective purchaser protection (BFPP). Although the statute limits eligibility for BFPP liability protection to entities that purchase property after January 11, 2002, a brownfields grant applicant can take advantage of this protection, for grant purposes only, even if it acquired a site prior to January 11, 2002. Applicants must demonstrate that they complied with all the other BFPP requirements, including:

- All disposal of hazardous substances at the site occurred before the person acquired the site.
- The owner must not be liable in any way for contamination at the site or affiliated with a responsible party. Affiliations include familial, contractual, financial, or corporate relationships that are the result of a reorganization of a business entity with potential liability.
- The owner must have conducted all appropriate inquiries (AAI) prior to acquiring the property. AAI, typically met by conducting a Phase 1 environmental site assessment using the ASTM E1527-05 standard practice, must be conducted or updated within one year prior to the date the property is acquired (i.e., the date on

which the entity takes title to the property). In addition, certain aspects of the AAI or Phase I site assessment must be updated, prior to property acquisition, if the activities were conducted more than six months prior to the date of acquisition. Please see the fact sheet "EPA Brownfields Grants, CERCLA Liability and All Appropriate Inquiries," or EPA's AAI Final Rule (70 FR 66070) (http://www.epa.gov/brownfields/regneg.htm).

- The owner must take appropriate care regarding any hazardous substances found at the site, including preventing future releases and exposures to hazardous substances on the site.
- The owner must provide all legally required notices and cooperate with authorized response persons in the event of discovery or release of any hazardous substances at the site.
- The owner must comply with any land-use restrictions associated with response actions at the site.

4. Petroleum Site Eligibility

The Brownfields Law outlines specific criteria by which petroleum sites may be eligible for brownfields grant funding. In contrast to eligibility of hazardous substance sites, which is related to the applicant's potential liability under CERCLA, petroleum site eligibility is not related to potential liability under the Resource Conservation and Recovery Act (RCRA), which governs petroleum site liability. Instead, Congress set forth specific criteria briefly described as follows: the site must be of "relatively low risk," there can be no viable responsible party, the applicant cannot be potentially liable for cleaning up the site, and the site must not be subject to a RCRA corrective action order. If a party is identified as being responsible for the site and that party is financially viable, then the site is not eligible for brownfields grant funds (refer to Appendix 1, section 1.3.2 for more information). 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.

III.C. Threshold Criteria for Assessment Grants

This section contains the threshold eligibility criteria that ensure applicants are eligible to receive assessment grants. Threshold criteria are pass/fail. Only those proposals that pass all the threshold criteria will be evaluated against the ranking criteria in Section V of this announcement.

Applicants deemed ineligible for funding consideration as a result of the threshold eligibility review will be notified within 15 calendar days of the ineligibility determination. Applicants must respond to the following items in their narrative proposals and transmittal letter, as applicable, to ensure that they are eligible for funding.

For purposes of the threshold eligibility review, EPA, if necessary, may seek clarification of applicant information and/or consider information from other sources, including EPA files. Your

responses to these items must be included in the Narrative Proposal and transmittal letter you submit to EPA. See Section IV.C for a complete list of required proposal content.

Proposals must substantially comply with the proposal submission instructions and requirements set forth in Section IV of this announcement **or they will be rejected.** Pages in excess of the page limits described in Section IV for the narrative proposal and transmittal letter will not be reviewed.

Proposals must be postmarked (if sent by hard copy), or received electronically at bfcompetition@epa.gov, by 11:59 pm Eastern Time on **October 16, 2009**. Proposals postmarked or received at bfcompetition@epa.gov after the proposal deadline will be considered late and will not be reviewed unless the applicant can clearly demonstrate that it was late due to EPA mishandling. Applicants should confirm receipt of their proposal with the appropriate Regional Brownfields Coordinator listed in Section VII as soon as possible after the submission deadline. Failure to do so may result in your proposal not being reviewed. **Facsimile delivery of proposals is not permitted and will not be considered.**

1. Applicant Eligibility

   Applicants must demonstrate that they are an eligible entity for an assessment grant. Refer to the description of applicant eligibility in Section III.A., *Who Can Apply?* **For entities other than cities, counties, tribes, or states, please attach documentation of your eligibility (e.g., resolutions, statutes, etc.).**

   Coalitions applying for assessment grants must document how all coalition members are eligible entities. All coalition members must submit a letter to the grant applicant (lead coalition member) in which they agree to be part of the coalition. **Attach these letters to your proposal.**

2. Letter from the State or Tribal Environmental Authority

   For an applicant other than a state or tribal environmental authority, attach a **current** letter from the appropriate state or tribal environmental authority acknowledging that the applicant plans to conduct assessment activities and is planning to apply for federal grant funds. Failure to submit this letter will result in the rejection of the proposal for further consideration. **Letters regarding proposals from prior years are not acceptable.** If you are applying for multiple types of grant program activities, you need to receive only one letter acknowledging the relevant grant activities. However, you must **provide a copy of this letter as an attachment to each proposal.** Please note that general correspondence and documents evidencing state involvement with the project (i.e., state enforcement orders or state notice letters) are not acceptable. It is the applicant's responsibility to provide advance notice to the appropriate state or tribal environmental authority to allow adequate time for you to obtain the acknowledgement letter and attach it to your proposal.

3. Site Eligibility and Property Ownership Eligibility (Site-Specific Proposals Only)

All applicants must respond to items a-d. If the site is a hazardous substances site please also respond to items e-h. If the site is a petroleum site, please respond to item i. Petroleum Sites. If the site is commingled hazardous substance and petroleum, the applicant must respond to the items corresponding to the predominant contaminant (petroleum or hazardous substances). If applicants are applying for petroleum and hazardous substances funding at the same site, and the hazardous substance and petroleum contaminated areas of the site are distinguishable, the proposal must respond to items a – i, including the requirement to provide a petroleum determination letter. If the petroleum and hazardous substances are not easily distinguishable, the applicant must indicate which contaminant is predominant and respond to the appropriate site eligibility criteria.

Site Eligibility:

a. **Basic Site Information.** Identify (a) the name of the site; (b) the address of the site, including zip code; and (c) the current owner of the site.

b. **Status and History of Contamination at the Site.** Identify (a) whether this site is contaminated by petroleum or hazardous substances; (b) the operational history and current use(s) of the site; (c) environmental concerns, if known, at the site; and (d) how the site became contaminated, and to the extent possible, describe the nature and extent of the contamination.

c. **Sites Ineligible for Funding.** Affirm that the site is (a) not listed or proposed for listing on the National Priorities List; (b) not 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 (c) not subject to the jurisdiction, custody, or control of the U.S. government. (Note: Land held in trust by the U.S. government for an Indian tribe is eligible for brownfields funding.) Please refer to CERCLA §§ 101(39)(B)(ii), (iii), and (vii) and Appendix 1.

d. **Sites Requiring a Property-Specific Determination.** Certain types of sites require a property-specific determination in order to be eligible for funding. Please refer to Appendix 1, Section 1.5, to determine whether your site requires a property-specific determination. If your site requires a property-specific determination, then you must attach the information requested in the Brownfields FAQ at: http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf.

Property Ownership Eligibility:

EPA grant funding may not be used to pay for response costs at a brownfield site for which the recipient of the grant is potentially liable under CERCLA §107. The following items are intended to help EPA ensure that you are not liable under CERCLA for response costs at the site designated in your proposal, or determine, if necessary, that your site is eligible for funding as a petroleum site. **Please respond to the following items fully and in the order**

that they appear (note that based on your responses, EPA may need to obtain additional information to make this determination).

e. **CERCLA § 107 Liability.** Affirm that you are not potentially liable for contamination at the site under CERCLA §107 (e.g., as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) by establishing that you are eligible for one of the CERCLA liability protections or defenses (see Section III.B.3) **and explain why**.

f. **Enforcement Actions.** Identify known ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the applicant is aware of regarding the responsibility of any party (including the applicant) for the contamination or hazardous substances at the site. The information provided in this section may be verified, and EPA may conduct an independent review of information related to the applicant's responsibility for the contamination or hazardous substances at the site.

g. **Information on Liability and Defenses/Protections Where Applicant Does NOT Own the Site.** If you, the applicant, do not own the site to be assessed, please:

   i) Affirm that you did not arrange for the disposal of hazardous substances at the site or transport hazardous substances to the site, and that you did not cause or contribute to any releases of hazardous substances at the site.

   ii) Describe your relationship with the owner and the owner's role in the work to be performed.

   iii) Indicate how you will gain access to the site.

h. **Information on Liability and Defenses/Protections Where Applicant Owns the Site or Will Own the Site During the Performance of the Grant.** If you, the applicant, own the site to be assessed or will own the site at some point during the performance of the grant, please respond to the following:

   i) Information on the Property Acquisition. To save space, you may combine responses to the following into one response, though please be sure to answer each item fully. Describe:
      - How you acquired or will acquire ownership (e.g., by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
      - The date you acquired or will acquire the property;

- The name and identity of the party from whom you acquired or will acquire ownership (i.e., the transferor); and
- All familial, contractual, corporate, or financial relationships or affiliations you have or had with all prior owners or operators (or other potentially responsible parties) of the property (including the person or entity from which you acquired the property).

ii) Timing and/or Contribution Toward Hazardous Substances Disposal. Identify whether all disposal of hazardous substances at the site occurred before you acquired (or will acquire) the property and whether you caused or contributed to any release of hazardous substances at the site. Affirm that you have not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site.

iii) Pre-Purchase Inquiry. Describe any inquiry by you or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership. Please include in your description:
- The types of site assessments performed (e.g., ASTM E1527-05 Phase I or equivalent), the dates of each assessment, and the entity for which they were performed (state whether the assessment was performed specifically for you, or if not, the name of the party that had the assessment performed and that party's relationship to you). Please note that to be eligible for a brownfields grant, parties who may be potentially liable under CERCLA (which includes current owners of the property) must demonstrate they are not liable for contamination at the property. In most cases, this demonstration must include evidence that an AAI investigation or Phase I Environmental Site Assessment in compliance with ASTM E1527-05 (or ASTM E2247-08) was conducted prior to property acquisition.
- Who performed the AAI investigation or Phase I environmental site assessments and identify his/her qualifications to perform such work.
- If your original AAI investigation or Phase I environmental site assessment was conducted more than 180 days prior to the date you acquired the property, affirm that you conducted the appropriate updates of the original assessment within 180 days prior to your acquisition of the property in order to take advantage of the bona fide prospective purchaser, innocent landowner, or contiguous property owner provision.

iv) Post-Acquisition Uses. Describe all uses to which the property has been put since you acquired ownership (or the uses that you anticipate once you acquire the property) through the present, including any uses by persons or entities other than you. Please provide a timeline with the names of all current and prior users during the time of your ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or taken (e.g., lease, license, trespass); and your relationship to the current and prior users.

v) Continuing Obligations.[1] Describe **in detail** the specific appropriate care that you exercised (or if you have yet to acquire the property, that you will exercise upon acquiring the property) with respect to hazardous substances found at the site by taking **reasonable steps**[2] to:

- Stop any continuing releases;
- Prevent any threatened future release; and
- Prevent or limit exposure to any previously released hazardous substance.

Please confirm your commitment to:

- Comply with all land-use restrictions and institutional controls;
- Assist and cooperate with those performing the assessment and provide access to the property;
- Comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
- Provide all legally required notices.

i. **Petroleum Sites.** (Disregard this item if you do not have a petroleum site.)

Non-tribal applicants must provide the information required for a petroleum site eligibility determination (listed below) to your state, so that the state can make the necessary determination on petroleum site eligibility. You must provide EPA with a copy of the state determination letter as an attachment to your proposal. If the state does not make the determination before the proposal due date or is unable to make the determination, please attach a copy of the request you sent to the state. (**Note**: You must provide EPA with the date you requested your state to make the petroleum site determination. EPA will make the petroleum site eligibility determination if a state is unable to do so following a request from an applicant.) Also in your letter to the state, please request that the state provide information regarding whether it applied EPA's guidelines in making the petroleum determination, or if not, what standard it applied.

Tribal applicants must submit the information required for a petroleum site eligibility determination (listed below) as an attachment to your proposal. EPA will make the petroleum site eligibility determinations for tribes.

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[1] Applicants that own contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, grantees must comply with land-use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate with, assist, and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices. For more information on the obligations of owners of contaminated property, see EPA's *Common Elements Reference Sheet* at http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-ref.pdf.

[2] Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously released hazardous substances may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site.

Information required for a 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 at time of proposal submission.

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) Assessed 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 1.3.2.

SECTION IV - PROPOSAL SUBMISSION INFORMATION

IV.A. How to Obtain a Proposal Package

Electronic copies of these guidelines can be obtained from the EPA brownfields website (http://www.epa.gov/brownfields/applicat.htm), or through www.grants.gov. Hard copies may be requested by contacting your Regional Brownfields Coordinator listed in Section VII.

In order to maintain the integrity of the competition process, EPA staff cannot 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. EPA's limitations on staff involvement with grant applicants are described in EPA's Assistance Agreement Competition Policy (EPA Order 5700.5A1). However, EPA staff will respond to questions regarding threshold eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification about the announcement.

IV.B. Due Date and Mailing Instructions

Proposals are due October 16, 2009. Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically to bfcompetition@epa.gov. Only one method should be used for the submission of the original, complete proposal package as described in IV.C. below.

1. Hard Copy Submissions
   Proposals sent through the U.S. Postal Service or a commercial delivery service must be postmarked by October 16, 2009. **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

   (Note: Overnight mail must include Mr. West's phone number in the address.)

   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 16, 2009 will not be considered.

2. Electronic Submissions
   Proposals submitted via e-mail must be submitted to bfcompetition@epa.gov and be received by 11:59 p.m. Eastern Time on October 16, 2009. **Proposals received after 11:59 p.m. Eastern Time on October 16, 2009 will not be considered.** All required documents listed in Section IV.C of this announcement must be attached to the e-mail as

a scanned PDF file. In the subject line please include the applicant's name, grant type and site name, if applicable. Please submit only one email per proposal.

Please note that if you choose to submit your materials via e-mail, you are accepting all risks attendant to e-mail submission including server delays and transmission difficulties. E-mail submissions exceeding 15MB will experience transmission delays, which will affect when they are received by the Agency. For these large-sized submissions, applicants should submit their application materials via hardcopy because if they are sent via e-mail they may be received late and not considered for funding.

In addition to electronic submission through bfcompetition@epa.gov, a complete copy of the proposal should be mailed to the appropriate EPA Regional Brownfields Coordinator listed in Section VII.

If you have not received a confirmation of receipt from EPA within 30 days of the proposal deadline, please contact **Megan Quinn at 202-566-2773 or quinn.megan@epa.gov.** Failure to do so may result in your proposal not being reviewed.

IV.C. Content and Form of Proposal Submission

Refer to section I.A. for information on the number of assessment grants and amount of funding that may be requested. Applicants must submit separate proposals for community-wide and site-specific assessment grants. Each proposal must stand on its own merits based on the responses given to the relevant criteria for that grant type and must not reference responses to criteria in another proposal.

Pages exceeding stated page limits will not be copied or evaluated. The page limits indicated for the Transmittal Letter and Narrative Proposal do not include required attachments described in items c-i in the Proposal Content section below. Only required attachments are allowed; **no other attachments will be considered**.

Upon receipt, proposals will be reviewed for content and threshold eligibility issues and copied for distribution to evaluators. Do not include binders, spiral binding, or color printing. All proposal materials must be in English. Photos and graphics will not be considered. The narrative proposal and transmittal letter must be typed, on letter-sized (8.5 x 11-inch) paper, with standard 12-point font and 1-inch margins. While these guidelines establish the minimum type size requirements, applicants are advised that readability is of paramount importance. Applicants are responsible for submitting a complete proposal, as described below, by the due date.

1. Proposal Content: Refer to the sections indicated for detailed instructions on what to include in your proposal.

    a. Transmittal Letter (2-page limit)- See No. 2 below
    b. The Narrative Proposal, which includes the responses to applicable threshold and all ranking criteria (18-page limit)- See No. 3 below
    c. Letter from the state or tribal environmental authority (see section III.C.2)

d. Documentation of applicant eligibility if other than city, county, state, or tribe (see section III.C.1.)
e. Letters of support from all community-based organizations identified in the community engagement and partnerships ranking criteria (see section V.B.3)
f. Justification for requested waiver of the $200,000 limit for a site-specific assessment, if applicable (see section I.A.2).
g. Property-specific determination request, if applicable (see section III.C.3.d)
h. Letters of commitment from assessment coalition members, if applicable (see section III.C.1)
i. Petroleum eligibility determination information, if applicable (see section III.C.3.i)

2. Transmittal Letter: The transmittal letter shall identify the applicant and a contact for communication with EPA. **The transmittal letter, including the applicant identification information, shall not exceed two pages.** Any pages submitted over the page limit will not be considered. The transmittal letter must be written on your organization's official letterhead, and signed by an official with the authority to commit your organization to the proposed project. Applicants are to **submit separate transmittal letters for each proposal** they submit. Each transmittal letter must also include:

   a. Applicant Identification: Provide the name and full address of the entity applying for funds. This is the agency or organization that will be receiving the grant and will be accountable to EPA for the proper expenditure of funds.

   b. Funding Requested:
      i) Grant type: Indicate Assessment
      ii) Federal Funds Requested: $_____ and whether you are requesting a waiver for a site-specific proposal (please refer to funding limitations for each grant type)
      iii) Contamination: Hazardous Substances, Petroleum, or both
      Note: if both, provide a breakdown of the amount of funding you are requesting by contaminant type (e.g., $200,000 hazardous substances and $200,000 petroleum)
      iv) Community-wide, Site-specific, or Coalition

   c. Location: City, county, and state or reservation, tribally owned lands, tribal fee lands, etc., of the brownfields community(ies) that you propose to serve. For assessment grant coalitions, list all jurisdictions covered under the proposal.

   d. For site-specific proposals, please provide the property name and complete site address, including zip code.

   e. Contacts:
      i) Project Director: Provide name, phone/fax numbers, email address, and mailing address of the Project Director assigned to this proposed project. This person should be the main point of contact for the project, and should be the person responsible for the project's day-to-day operations. The Project Director may be contacted if other information is needed.

ii) Chief Executive/Highest Ranking Elected Official: Provide the name, phone/fax numbers, email address, and mailing address of the applicant's Chief Executive or highest ranking elected official. For example, if your organization is a municipal form of government, provide this information for the Mayor or County Commissioner. Otherwise, provide this information for your organization's Executive Director or President. These individuals may be contacted if other information is needed.

f. Date Submitted: The date your proposal is submitted to EPA via U.S. Postal Service, commercial delivery service, or electronically through bfcompetition@epa.gov.

g. Project Period: The project period must not exceed three years for assessment grants.

h. Population:
   i) Provide the general population of your jurisdiction and the jurisdictions of any coalition partners.
   ii) If you are not a municipal form of government, provide the population of the target area addressed by this proposal. Tribes must provide the number of tribal/non-tribal members affected. Your jurisdiction's population can be found at: http://www.census.gov

3. Narrative Proposal: The narrative proposal includes all applicable responses to threshold criteria (see section III.B and C) and responses to all ranking criteria (see section V.B). **The narrative proposal shall not exceed 18 pages.** Any pages submitted over the page limit will not be evaluated. The narrative proposal must be clear, concise, and specifically address all of the applicable threshold and ranking criteria. Responses to the criteria must include the criteria number and title but need not restate the entire text of the criteria. Proposals must provide sufficient detail to allow for an evaluation of the merits of the proposal. Factual information about your proposed project and community must be provided. Do not include discussions of broad principles that are not specific to the proposed work or project covered by your proposal.

IV.D. Intergovernmental Review

As appropriate for your state, applicants are encouraged to contact their State Intergovernmental Review Office early to start the required intergovernmental review process. The review process will be needed if you are selected to receive a grant. This effort is separate from the threshold criteria related to a state environmental letter attachment (see section III.C.2). Contact your Regional Brownfields Coordinator listed in Section VII for assistance.

IV.E. Use of Funds to Make Subawards, Contract Services, or Fund Partnerships

EPA awards funds to one eligible applicant as the recipient even if other eligible applicants are named as partners or co-applicants or members of a coalition or consortium. The recipient is accountable to EPA for the proper expenditure of funds.

Funding may be used to provide subgrants or subawards of financial assistance, which includes using subawards or subgrants to fund partnerships, provided the recipient complies with applicable requirements for subawards or subgrants including those contained in 40 CFR Parts 30 or 31, as appropriate. Applicants must compete contracts for services and products, including consultant contracts, and conduct cost and price analyses to the extent required by the procurement provisions of the regulations at 40 CFR Parts 30 or 31, as appropriate. The regulations also contain limitations on consultant compensation. Applicants are not required to identify subawardees/subgrantees and/or contractors (including consultants) in their proposal/application. However, if they do, the fact that an applicant selected for award has named a specific subawardee/subgrantee, contractor, or consultant in the proposal/application EPA selects for funding does not relieve the applicant of its obligations to comply with subaward/subgrant and/or competitive procurement requirements as appropriate. Please note that applicants may not award sole source contracts to consulting, engineering, or other firms assisting applicants with the proposal solely based on the firm's role in preparing the proposal/application.

Successful applicants cannot use subgrants or subawards to avoid requirements in EPA grant regulations for competitive procurement by using these instruments to acquire commercial services or products from for-profit organizations to carry out its assistance agreement. The nature of the transaction between the recipient and the subawardee or subgrantee must be consistent with the standards for distinguishing between vendor transactions and subrecipient assistance under Subpart B Section .210 of OMB Circular A-133, and the definitions of subaward at 40 CFR 30.2(ff) or subgrant at 40 CFR 31.3, as applicable. EPA will not be a party to these transactions. Applicants acquiring commercial goods or services must comply with the competitive procurement standards in 40 CFR Part 30 or 40 CFR Part 31.36 and cannot use a subaward/subgrant as the funding mechanism.

IV.F. Evaluation of Subawardees and Contractors

Section V of the announcement describes the evaluation criteria and evaluation process that will be used by EPA to make selections under this announcement. During this evaluation, except for those criteria that relate to the applicant's own qualifications, past performance, and reporting history, the review panel will consider, if appropriate and relevant, the qualifications, expertise, and experience of the following:

(i) an applicant's named subawardees/subgrantees identified in the proposal if the applicant demonstrates in the proposal that if it receives an award that the subaward/subgrant will be properly awarded consistent with the applicable regulations in 40 CFR Parts 30 or 31. For example, applicants must not use subawards/subgrants to obtain commercial services or products from for-profit firms or individual consultants.

(ii) an applicant's named contractor(s), including consultants, identified in the proposal if the applicant demonstrates in its proposal that the contractor(s) was selected in compliance with the competitive Procurement Standards in 40 CFR Part 30 or 40 CFR 31.36 as appropriate. For example, an applicant must demonstrate that it selected the contractor(s) competitively or that a proper non-competitive sole-source award consistent with the regulations will be made to the contractor(s), that efforts were made to provide small and disadvantaged businesses

with opportunities to compete, and that some form of cost or price analysis was conducted. EPA may not accept sole source justifications for contracts for services or products that are otherwise readily available in the commercial marketplace.

EPA will not consider the qualifications, experience, and expertise of named subawardees/subgrantees and/or named contractor(s) during the proposal evaluation process unless the applicant complies with these requirements.

IV.G. Confidential Information

In accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate confidentiality claims in accordance with 40 CFR Part 2. Applicants must clearly mark applications/proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c)(2) prior to disclosure. However, competitive proposals/applications are considered confidential and protected from disclosure prior to the completion of the competitive selection process.

IV.H. Management Fees

When formulating budgets for proposals/applications, applicants 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.

SECTION V - PROPOSAL REVIEW INFORMATION

V.A. Review and Selection Process

Timely submitted proposals initially will be reviewed by the appropriate EPA Regional Office to determine compliance with the applicable threshold criteria for assessment grants (section III.C). 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 of the ineligibility determination. 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. Regional Office staff will not participate on national evaluation panels that consider applicants originating from within their Region, with the exception of providing input for the “Programmatic Capability” criterion. 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.

EPA Regions will provide a score and information to the national evaluation panels on an applicant's (originating from their region) response to the "Programmatic Capability" ranking criterion. This information may take into account the Regional Office's experience, if any, with the applicant's performance on grants managed by the Region. When evaluating applicants under the programmatic capability criterion, EPA will consider information supplied by the applicant and may consider information from other sources, including agency files and prior grantors (e.g., to verify and/or supplement the information provided by the applicant).

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, if and as appropriate, consideration of the other factors described in Section V.C.

V.B. Ranking Criteria for Assessment Grants

Respond to the ranking criteria below. If your proposal passes the threshold eligibility review (see section III.C), your responses to the ranking criteria below will be evaluated and scored by national evaluation panels.

1. Community Need
   Under this criterion, proposals will be evaluated based on the quality and extent of the applicant's description of the health, welfare, environmental, and financial needs of the targeted community as it is affected by the presence of brownfields. Responses should clearly identify the sources of information used in this section. [20 Points]

   a. Health, Welfare, and Environment [10 Points]
      i) Describe the effect brownfields currently have on your targeted community by providing information on the number and size of the brownfields and the health, welfare, and environmental impacts of these sites. Provide information describing the health and welfare of sensitive populations such as minorities, children, and women of child-bearing age in the targeted community. Provide any information or data showing that residents of the targeted community are disproportionately impacted by environmental problems.

   b. Financial Need [10 Points]
      i) Describe the economic impact of brownfields on the targeted community. Provide information about that community such as rates of poverty, household income, unemployment rates, or other widely available demographic information that demonstrates the economic needs of the targeted community's residents. Describe factors such as fiscal condition or population size that limit your ability to draw on other sources of funding for assessment of brownfield sites. If you already have a brownfields grant(s) from EPA, describe why you need additional funding.

2. Project Description and Feasibility of Success
   Under this criterion, proposals will be evaluated based on the feasibility of the project to be funded under this grant. Specifically, proposals will be evaluated on the extent and quality to which the applicant demonstrates a reasonable approach to the project,

sufficient resources to complete the project, and a capability to complete the project in a timely manner. Proposals that budget the majority of grant funds for conducting site assessments will be viewed more favorably than those that focus on inventory or planning activities. For coalitions, you must assess a minimum of five sites under the grant. Refer to Section VI.E, *Brownfields Programmatic Requirements*, to read EPA expectations of projects funded with brownfields assessment grants. [35 Points]

a. Project Description [5 Points]
   i) Describe the project you are proposing to be funded under this grant.

b. Budget for EPA Funding and Leveraging Other Resources [10 Points]
   i) Use the table format below to identify specific tasks for which EPA funding will be used. Applicants requesting hazardous substance and petroleum funding in the same proposal must provide either two separate budget tables, or two separate line items within one budget table, that shows the planned petroleum and hazardous substance funded activities. Show the costs (by budget category) associated with each task. In addition to the budget table, describe each task in detail, including the basis for the estimated cost as well as the projected outputs where possible (e.g., conduct Phase 1 assessments on five sites at a cost of $2,500 each for a total of $12,500). (Refer to section I.D for a definition and examples of "outputs.")

      Do not include tasks for activities or costs that are ineligible uses of funds under EPA's assessment grant (e.g., land acquisition, building demolition that is not necessary to assess contamination at the site, building or site preparation, or administrative costs, such as indirect costs). Please refer to the Brownfields FAQ at: http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf for additional examples of ineligible uses of funds. For questions not covered by the FAQ, contact your Regional Coordinator.

      Reminder on additional use of grant funds (refer to section I.B.): A local government (does not include state or tribal governments) may use up to 10 percent of its grant funds for health monitoring of populations, monitoring and enforcement of institutional control(s), or other related program development and implementation activities. [5 Points]

Sample Format for Budget.

Budget Categories	**Project Tasks**				
(programmatic costs only)	[Task 1]	[Task 2]	[Task 3]	[Task 4]	Total
Personnel					
Fringe Benefits					
Travel[1]					
Equipment[2]					
Supplies					
Contractual[3]					
Other (specify) _____					
Total					

[1] Travel to brownfields-related training conferences is an acceptable use of these grant funds.
[2] EPA defines equipment as items that cost $5,000 or more with a useful life of more than one year. Items costing less than $5,000 are considered supplies. Generally, equipment is not required for assessment grants.
[3] Applicants must comply with the procurement procedures contained in 40 CFR 31.36, or for non-profits, with 40 CFR 30.40 through 30.48.

ii) **Leveraging.** If assessments determine that additional work (e.g., assessment or cleanup) may be required, describe the funding or resources (public and private) you have or will seek to complete the additional work. Describe other sources of funding or resources that you have or are seeking to ensure the successful revitalization of brownfield sites **assessed** with this grant. [5 Points]

c. Programmatic Capability [20 Points]
If you have ever received an EPA brownfields grant, please respond to item **i.** If you have never received an EPA brownfields grant, but have received other federal or non-federal assistance agreements (an assistance agreement is a grant or cooperative agreement and not a contract) please respond to item **ii.** If you have never received any type of federal or non-federal assistance agreements please indicate this in your proposal and you will receive a neutral score [10 Points] for this factor. [Failure to indicate anything in response may result in zero points for this factor.] In evaluating an applicant's response to this factor, in addition to the information provided by the applicant, EPA may consider relevant information from EPA files or from other federal or non-federal grantors to verify or supplement information provided by the applicant.

i) Currently or Has Ever Received an EPA Brownfields Grant
- Identify the EPA Brownfields grant(s) you currently have or have received in the past. Please provide information on no more than five of your most recent grants. Demonstrate how you successfully managed the grant(s), and

successfully performed all phases of work under the previous or existing grant(s) by providing information on [8 points]:

- Funds Expenditure: the balance of grant funds not drawn down (funds remaining).
- Compliance with grant requirements: information regarding your compliance with the work plan, schedule, terms and conditions, timely reporting (e.g., quarterly reports, financial status reports, ACRES, and any other required submittals), and reporting on whether you were making progress towards achieving the expected results under the grants and if not whether you explained why not.
- Accomplishments: Describe your success using EPA grant funds to assess, clean up, and redevelop brownfield sites.

- Describe the management system you will have in place to direct activities under the grant. Include a description of your project manager and staff and a discussion of their expertise, qualifications, and experience. Discuss the means you will use to retain project leadership or recruit qualified staff should employee turnover occur. Describe the system(s) you have in place to acquire additional expertise and resources required to perform the proposed project. If you intend to contract for the necessary expertise, describe the system you have in place to acquire that expertise. Please note you must comply with Section IV.F. [8 points]

- Describe any adverse audit findings. If you have had problems with the management of your brownfields grants or any other grant (e.g., compliance reporting, expenditure of funds, etc.), please describe how you corrected, or are correcting, the problems. [4 points]

ii) Has Not Received an EPA Brownfields Grant but has received other federal or non-federal assistance agreements

- Identify current and/or prior federally and non-federally funded assistance agreements received. Please provide information on no more than five of your most recent assistance agreements. Describe your history of successfully managing these agreements and performing the agreements including meeting and complying with reporting requirements, submitting final acceptable technical reports, and reporting on whether you were making progress towards achieving the results under those agreements and, if not, whether you explained why not. [8 points]

- Describe the management system you will have in place to direct activities under the grant. Include a description of your project manager and staff and a discussion of their expertise, qualifications, and experience. Discuss the means you will use to retain project leadership or recruit qualified staff should employee turnover occur. Describe the system(s) you have in place to acquire additional expertise and resources required to perform the proposed project. If you intend to contract for the necessary expertise, describe the system you

- Describe any adverse audit findings. If you have had problems with the administration of any grants (e.g., compliance reporting, expenditure of funds, etc.), please describe how you have corrected, or are correcting, the problems. [4 points]

3. Community Engagement and Partnerships
   Under this criterion, proposals will be evaluated based on: 1) the applicant's plan for engaging the targeted community in the project to be funded under this grant; 2) the extent to which the applicant has identified and established relationships with the partners necessary to achieve the project's goals; and 3) the extent to which the support letters provided by community-based organizations involved with the project demonstrate specific and valuable commitments to the project. [Refer to Section IV.E and IV.F for requirements related to financial transactions with community-based organizations.] [20 Points]

   a. Discuss your plan for involving the affected community (e.g., neighborhood organizations, citizens' groups, borrowers, redevelopers, and other stakeholders) in site selection for assessments, cleanup decisions, or reuse planning, including activities that have already occurred. Describe your plan for communicating the progress of your project to citizens, including plans for communicating in languages commonly used in the community. [5 Points]

   b. Describe your efforts and/or plans to develop partnerships with your local/state/tribal environmental and health agencies and other relevant governmental agencies to ensure your brownfields project is successful. [5 Points]

   c. Provide a **description of, and role of, the key** community-based organizations involved in your project. These organizations may include, but are not limited to, local citizen or business groups, environmental or civic organizations, educational institutions, and local labor organizations. [Note: Community-based organizations do **not** include local government departments, the local planning department/district/office, local contractors, the mayor's office, or other elected officials.] Attach letters from all community-based organizations mentioned that describe their roles and affirm any referenced commitments. [10 Points]

4. Project Benefits
   Under this criterion, proposals will be evaluated on the extent to which the project's anticipated outcomes promote general welfare through the improvement of the public health and safety, economy, and environment of the targeted community and how these outcomes will contribute to your overall community "vision" for the revitalization of brownfield sites. Consideration will be given to how public health issues are addressed during the project, the anticipated benefits of redevelopment, and the incorporation of sustainable practices. [Refer to section I.D for an explanation of outcomes.] [25 Points]

a. Welfare and/or Public Health [10 Points]
Describe the environmental, social, and/or public health benefits anticipated from the redevelopment of sites assessed under this grant. Describe how nearby and sensitive populations in your targeted community will be protected from contaminants during assessment work conducted on brownfield sites under this grant.

b. Economic Benefits and/or Greenspace [5 Points]
Explain how the grant will produce:
   i) Economic benefits, such as increased employment and expanded tax base, through the redevelopment of sites assessed under this grant. Provide quantitative estimates where feasible; **and/or**
   ii) **Othe**r **non-economic benefits associated with sites to be reused for** greenspace or other not-for-profit activities. Greenspace includes areas redeveloped for uses such as parks, recreation areas, greenways, or environmental buffers. Other not-for-profit activities include the work of governmental or charitable organizations.

c. Environmental Benefits from Infrastructure Reuse/Sustainable Reuse [5 Points]
Describe any anticipated environmental benefits, beyond the assessment and remediation of contaminants, associated with the **sustainable redevelopment** of sites assessed under this grant, including the use of existing infrastructure, such as utilities and public transit, green buildings, energy efficiency, water management, green remediation, construction and demolition materials recycling, diesel emissions reductions, and renewable energy on brownfields. [Refer to the Brownfields FAQ at http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf for a description of these and other EPA initiatives.]

d. Describe your plan for tracking and measuring your progress towards achieving the expected short term and long term project outcomes and outputs, including those identified in Section I.D. [5 Points]

V.C. Other Factors

In making final selection recommendations, EPA's Selection Official may consider the following factors if, and as, appropriate:

- Fair distribution of funds between urban and non-urban areas;
- A balanced distribution of funds among EPA's ten Regions;
- Fair distribution of funds between new applicants and previous brownfields grant recipients;
- Compliance with the 25 percent 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;
- The need to provide funding to address specific types of contamination identified in the Brownfields law such as whether a site is mine-scarred or contaminated with controlled substances; and
- The needs of communities adversely affected by natural disasters.

V.D. Proposal Checklist for Assessment Grants

Before you submit your proposal(s) for assessment grants, please ensure the following documents are included in your package submitted to EPA and EPA's contractor.

☑ Transmittal Letter (2-page limit)	
☑ The Narrative Proposal, which includes the responses to applicable threshold and all ranking criteria (18-page limit)	
☑ Letter from the state or tribal environmental authority (see section III.C.2)	
☑ Documentation of applicant eligibility if other than city, county, state, or tribe (see section III.C.1)	
☑ Letters of Support from all community-based organizations identified in the community engagement and partnerships ranking criteria (see section V.B.3)	
☑ Justification for requested waiver of the $200,000 limit for a site-specific assessment, if applicable (see section I.A.2)	
☑ Property-specific determination request, if applicable (see section III.C.3.d)	
☑ Letters of commitment from assessment coalition members, if applicable (see section III.C.1)	
☑ Petroleum eligibility determination information, if applicable (see section III.C.3.i)	

SECTION VI - AWARD ADMINISTRATION INFORMATION

VI.A. Award Notices

EPA Regions will notify applicants who fail threshold eligibility requirements within 15 calendar days of the Agency's determination of ineligibility. EPA will notify applicants who have not been selected for award based on the ranking criteria and other factors within 15 calendar days of EPA's final decision on selections for this competition.

EPA anticipates notification to successful applicants will be made via telephone or electronic or postal mail by Spring 2010. The notification will be sent to the original signer of the proposal or the project contact listed in the proposal. This notification, which informs the applicant that its proposal has been selected and is being recommended for award, is not an authorization to begin work. The successful applicant must prepare a work plan and submit application forms, which must be approved by EPA, before the grant can officially be awarded. The award notice, signed

by an EPA grants officer, is the authorizing document and will be provided through postal mail. The time between notification of selection and award of a grant can take up to 90 days or longer.

VI.B. Administrative and National Policy Requirements

1. Funding will be awarded as a cooperative agreement. The applicants whose proposals are selected will be asked to submit a cooperative agreement application package to their EPA Regional Office. This package will include the application (Standard Form 424), a proposed work plan, a proposed budget, and other required forms. An EPA Project Officer will work with you to finalize the budget and work plan.

2. Approved cooperative agreements will include terms and conditions that will be binding on the grant recipient. Terms and conditions specify what grantees must do to ensure that grant-related and Brownfields Program-related requirements are met. Applicants also will be required to submit progress reports in accordance with grant regulations found in 40 CFR 30.51 or 40 CFR 31.40. A listing and description of general EPA regulations applicable to the award of assistance agreements may be viewed at http://www.epa.gov/ogd/AppKit/applicable_epa_regulations_and_description.htm.

3. All applicants are required to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for a federal grant or cooperative agreement. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS number request line at 1-866-705-5711 or visiting the D&B website at http://www.dnb.com.

VI.C. Reporting Requirements

During the life of the cooperative agreement, recipients are required to submit progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting period (i.e., quarterly, annually) is set forth in the terms and conditions of the cooperative agreement. These reports shall cover work status, work progress, difficulties encountered, an accounting of financial expenditures, preliminary data results, anticipated activities, and any changes of key personnel involved with the project. Additionally, recipients will be required to report site-specific accomplishments on Property Profile Forms and preferably submit them electronically to EPA's ACRES reporting system.

At the end of the cooperative agreement, a final project report also is required. The final report will summarize accomplishments, expenditures, outcomes, outputs, lessons learned, and any other resources leveraged during the project and how they were used.

VI.D. Disputes

Disputes related to this competition will be resolved in accordance with the dispute resolution procedures published in 70 FR (*Federal Register*) 3629, 3630 (January 26, 2005), which can be found at http://www.epa.gov/ogd/competition/resolution.htm. Copies of these procedures also may be requested by contacting the Brownfields Coordinator identified in Section VII of this announcement.

VI.E. Brownfields Programmatic Requirements

Brownfields grantees must comply with all applicable federal and state laws to ensure that the assessment and cleanup protects human health and the environment. Brownfields grantees also must comply with the program's technical requirements, which may include, but are not limited to, the following:

1. Quality Assurance (QA) Requirements

   When environmental samples are collected as part of any brownfields cooperative agreement (e.g., assessment and site characterization, cleanup verification sampling, post-cleanup confirmation sampling), recipients shall submit to EPA for approval a **Quality Assurance Project Plan** (QAPP) prior to the collection of environmental samples. The QAPP must document quality assurance practices sufficient to produce data adequate to meet project objectives and minimize data loss. Compliance with the Quality Assurance requirements is an eligible use of grant funds for all three grant types.

2. Historic Properties or Threatened and Endangered Species

   If historic properties or threatened or endangered (T&E) species may be impacted by the assessment or cleanup of a site, the requirements of the National Historic Preservation Act (NHPA) or the Endangered Species Act (ESA) may apply, respectively. Grantees are required to consult with EPA prior to conducting any on-site activity (such as invasive sampling or cleanup) that may affect historic properties or T&E species to ensure that the requirements of Section 106 of NHPA and Section 7(a)(2) of the ESA are met. Assessment grantees should plan for these consultation requirements.

3. Collection of Post-Grant Information

   Under the Government Performance and Results Act, EPA reports on the many benefits of brownfields funding. One such measure provides information on additional resources leveraged as a result of using brownfields grant funds. These leveraged, non-EPA funds may include additional cleanup funds or redevelopment funding from other federal agencies, state, tribal, and local governments, or private organizations. As many of these activities occur beyond the grant period, please note that EPA may contact you well after the grant period of performance to collect this information.

SECTION VII – AGENCY CONTACTS

Regional Brownfields Coordinators

REGION & STATES		ADDRESS/PHONE NUMBER/EMAIL
EPA Region 1 **Diane Kelley** Kelley.Diane@epa.gov	**CT, ME, MA, NH, RI, VT**	One Congress Street Suite 1100 Boston, MA 02114-2023 **Phone** (617) 918-1424 **Fax** (617) 918-1291
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EPA Region 3 **Tom Stolle** Stolle.Tom@epa.gov	**DE, DC, MD, PA, VA, WV**	1650 Arch Street Mail Code 3HS51 Philadelphia, PA 19103 **Phone** (215) 814-3129 **Fax** (215) 814-5518
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EPA Region 8 **Dan Heffernan** Heffernan.Daniel@epa.gov	**CO, MT, ND, SD, UT, WY**	1595 Wynkoop Street (EPR-B) Denver, CO 80202-1129 **Phone** (303) 312-7074 **Fax** (303) 312-6065
EPA Region 9 **Debbie Schechter** Schechter.Debbie@epa.gov	**AZ, CA, HI, NV, AS, GU**	75 Hawthorne Street, SFD 9-1 San Francisco, CA 94105 **Phone** (415) 972-3093 **Fax** (415) 947-3520
EPA Region 10 **Susan Morales** Morales.Susan@epa.gov	**AK, ID, OR, WA**	1200 Sixth Avenue, Suite 900 Mailstop: ECL-112 Seattle, WA 98101 **Phone** (206) 553-7299 **Fax** (206) 553-0124

Appendix 1
Information on Sites Eligible for Brownfields Funding Under CERCLA §104(k)

1.1 Introduction

The information provided in this Appendix will be used by EPA in determining the eligibility of any property for brownfields grant funding. The Agency is providing this information to assist you in developing your proposals for funding under CERCLA §104(k) and to apprise you of information that EPA will use in determining the eligibility of any property for brownfields grant funding.

This information is used by EPA solely to make applicant and site eligibility determinations for Brownfields grants and is not legally binding for other purposes including federal, state, or tribal enforcement actions.

1.2 General Definition of Brownfield Site

The Brownfields Law defines a "Brownfield Site" as:
"...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."
Brownfield sites include all "real property," including residential, as well as commercial and industrial properties.

1.3 Additional Areas Specifically Eligible for Funding

The Brownfields Law also identifies three additional types of properties that are specifically eligible for funding:

1. Sites contaminated by **controlled substances**.
2. Sites contaminated by **petroleum or a petroleum product**.
3. **Mine-scarred lands**.

See below for guidance on determining the scope of each of these three types of sites. Applicants should identify properties included within their funding proposals that fall within the scope of any of the following three areas.

1.3.1 Contamination by Controlled Substance

Sites eligible for funding include real property, including residential property, that is contaminated by a controlled substance. A "controlled substance" is defined under the Controlled Substances Act as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title (21 USC Section 812). The term does not include distilled spirits, wine, malt beverages, or tobacco..." For example, sites eligible for brownfields funding may include private residences formerly used for the manufacture and/or

distribution of methamphetamines or other illegal drugs where there is a presence or potential presence of controlled substances or pollutants, contaminants, or hazardous substances (e.g., red phosphorous, kerosene, acids).

1.3.2 Contamination by Petroleum or Petroleum Product

Petroleum-contaminated sites must meet certain requirements to be eligible for brownfields funding. Petroleum is defined under CERCLA as "crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under that section."

For a petroleum-contaminated site(s) that otherwise meets the definition of a brownfield site to be eligible for funding, 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.
3. The site will not be assessed, investigated, or cleaned up by a person that is potentially liable for cleaning up the site.
4. The site must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

Site-specific assessment or cleanup grant proposals for petroleum-contaminated sites must provide information in their proposal indicating whether the site meets each of the criteria listed above. If EPA awards an applicant a revolving loan fund grant, the state or EPA must make the same determinations for site(s) that will be cleaned up under a loan or subgrant. These criteria are explained below.

Please note that states may, but are not required to, use this guidance to determine whether sites contaminated by petroleum or petroleum products are eligible for brownfields grant funding. States may apply their own laws and regulations, if applicable, to eligibility determinations under this section.

Note: A petroleum eligibility determination by the EPA or a state under CERCLA section 101(39)(D) for the purpose of brownfields funding does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit EPA or state enforcement authorities against any party.

"Relatively Low Risk"
Applicants whose brownfield site(s) include properties or portions of properties contaminated with petroleum or petroleum products must provide information in their proposal indicating that the property represents a relatively low risk (compared to other petroleum-only sites). EPA's view is that the following types of petroleum-contaminated sites are high-risk sites, or are <u>not</u> of "relatively low risk:"

1. "High risk" sites currently being cleaned up using LUST trust fund monies.
2. Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

Note: Any site that does not fall under any of the provisions listed above would be considered to be of relatively low risk for purposes of determining eligibility for a brownfields grant.

"A Site for Which There is No Viable Responsible Party"
EPA or the state is required to determine that there is no viable responsible party that can address the petroleum contamination at the site. If EPA, or the state, identifies a party that is responsible for the activities contemplated by the grant proposal, and that party is financially viable, then the site is not eligible for funding and EPA cannot award the grant. 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.

A petroleum-contaminated site may be determined to have no responsible party if the site was last acquired (regardless of whether the site is owned by the applicant) through tax foreclosure, abandonment, or equivalent government proceedings, and that the site meets the criteria in (1) below. Any petroleum-contaminated site not acquired by a method listed above will be determined to have a responsible party if the site fails to meet the criteria in both (1) and (2) below.

1. No responsible party has been identified for the site through:
   a. An unresolved judgment rendered in a court of law or an administrative order that would require any party (including the applicant) to conduct the activities (including assessment, investigation or cleanup) contemplated by the grant proposal ;
   b. An unresolved enforcement action by federal or state authorities that would require any party (including the applicant) to conduct the activities (including assessment, investigation, or cleanup) contemplated by the grant proposal; or
   c. An unresolved citizen suit, contribution action, or other third party claim brought against the current or immediate past owner for the site that would, if successful, require the activities (including assessment, investigation, or cleanup) contemplated by the grant proposal to be conducted; and

2. The current and immediate past owner did not dispense or dispose of, or own the subject property during the dispensing or disposal of, any contamination at the site, did not exacerbate the contamination at the site, and took reasonable steps with regard to the contamination at the site.[1]

If no responsible party is identified 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

[1] For purposes of determining petroleum brownfield grant eligibility, "reasonable steps with regard to contamination at the site" includes, as appropriate: stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. Reasonable steps are discussed in more detail on pages 9-12 of EPA's March 6, 2003, "*Common Elements*" guidance.

whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site is not eligible for funding.

If there is a responsible party for the site, the applicant should explain in its application what steps it took to determine a responsible party's financial status, and why the information presented indicates that the responsible party is not viable. A state making the "viable responsible party" determination for the applicant may use the standards contained in this Appendix or its own standard. If a state is not making the determination or a tribe is the applicant, EPA will follow the standard set forth in this Appendix. Note that any viability determination made by EPA is for purposes of the CERCLA Section 104(k) grant program only.

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.

Generally, EPA will consider ongoing businesses or companies (corporations, LLCs, partnerships, etc.) and government entities to be viable. EPA will generally deem a defunct or insolvent company and an individual responsible party to be not viable. EPA will apply these assumptions to its petroleum grant viability determinations, unless there is information suggesting that the assumption is not appropriate in a particular case (e.g., if there is information that an individual has adequate financial resources to address contamination at a site, or if there is information indicating an ongoing business is not, in fact, viable). An applicant should indicate if one of the above assumptions applies and provide support for the assertion. In circumstances not covered by one of the above assumptions, the applicant should explain why the responsible party is not viable.

An applicant seeking to determine the financial status (i.e., the viability) of a responsible party should consider consulting the following resources and any other resources it may deem to be useful to make this determination:

1. **Responsible Party**: Ask the responsible party for its financial information (tax returns, bank statements, financial statements, insurance policies designed to address environmental liabilities, etc.), especially if the responsible party is still associated with the site or is the applicant, and, therefore, will receive the benefit of the grant. An applicant that is a responsible party and claiming it is not viable should provide conclusive information, such as an INDIPAY or MUNIPAY analysis, on its inability to pay for the assessment or cleanup.

2. **Federal, State, and Local Records**: Federal, state, and local (i.e., county and city) records often provide information on the status of a business. An applicant that is a state or local government should at the very least search its own records for information on a responsible party. Examples of such resources include regulatory records (e.g., state hazardous waste records), Secretary of State databases, and property/land records.

3. **Public and Commercial Financial Databases**: Applicants also may obtain financial data from publicly available and commercial sources. Listed below are examples of sources for financial data that applicants may consider. Please note that some commercial

sources may charge fees. EPA does not endorse the use of any specific sources, and EPA will accept reliable data from other sources as part of a proposal for funding.

Examples of sources: Lexis/Nexus, Dun & Bradstreet reports, Hoover's Business Information, Edgar Database of Corporate Information, Thomas Register of American Manufacturers, The Public Register, Corporate Annual Reports, internet search engines (Google, Ask).

"Cleaned Up by a Person Not Potentially Liable"
Brownfields funding may be awarded for the assessment and cleanup of petroleum-contaminated sites provided:

1. The applicant has not dispensed or disposed of or owned the property during the dispensing or disposal of petroleum or petroleum product at the site, and
2. The applicant did not exacerbate the contamination at the site and took reasonable steps with regard to the contamination at the site.

"Is not subject to any order issued under §9003(h) of the Resource Conservation and Recovery Act (RCRA)"
Proposals that include requests for an assessment or direct cleanup grant to address petroleum-contaminated sites must not be subject to a corrective action order under RCRA §9003(h). If EPA awards an applicant a revolving loan fund grant, the state or EPA must make the same determination for site(s) that will be cleaned up under a loan or subgrant.

1.3.3 Mine-Scarred Lands

Mine-scarred lands are eligible for brownfields funding. EPA's view is that "mine-scarred lands" are those lands, associated waters, and surrounding watersheds where extraction, beneficiation, or processing of ores and minerals (including coal) has occurred. For the purposes of this section, the definition of extraction, beneficiation, and processing is the definition found at 40 CFR 261.4(b)(7).

Mine-scarred lands include abandoned coal mines and lands scarred by strip mining.

<u>Examples of coal mine-scarred lands may include, but are not limited to:</u>

- Abandoned surface coal mine areas
- Abandoned deep coal mines
- Abandoned coal processing areas
- Abandoned coal refuse areas
- Acid or alkaline mine drainage
- Associated waters affected by abandoned coal mine (or acid mine) drainage or runoff, including stream beds and adjacent watersheds

Examples of non-coal hard rock mine-scarred lands may include, but are not limited to:

- Abandoned surface and deep mines
- Abandoned waste rock or spent ore piles;
- Abandoned roads constructed wholly or partially of waste rock or spent ore
- Abandoned tailings, disposal ponds, or piles
- Abandoned ore concentration mills
- Abandoned smelters
- Abandoned cyanide heap leach piles
- Abandoned dams constructed wholly or partially of waste rock, tailings, or spent ore;
- Abandoned dumps or dump areas used for the disposal of waste rock or spent ore;
- Acid or alkaline rock drainage
- Waters affected by abandoned metal mine drainage or runoff, including stream beds and adjacent watersheds

1.4 Sites Not Eligible for Brownfields Funding

The following three types of properties are not eligible for brownfields funding under the Brownfields Law, even on a property-specific basis. Applicants should not include these types of sites in the funding proposals.

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.
3) Facilities that are subject to the jurisdiction, custody, or control of the U.S. government. Facilities owned by, or under the custody or control of, the federal government are not eligible for brownfields funding. EPA's view is that this exclusion may not extend to:
   a. Privately-owned, Formerly Used Defense Sites (FUDS);
   b. Privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP) properties; and
   c. Other former federal properties that have been disposed of by the U.S. government.

Note that land held in trust by the U.S. government for an Indian tribe is not excluded from funding eligibility. In addition, eligibility for brownfields funding does not alter a private owner's ability to cost recover from the federal government in cases where the previous federal government owner remains liable for environmental damages.

1.5 Particular Classes of Sites Eligible for Brownfields Funding Only With Property-Specific Determinations

The following special classes of property are generally ineligible brownfield sites unless EPA makes a "Property-Specific Determination":

- Properties subject to planned or ongoing removal actions under CERCLA.
- Properties with facilities that have been issued or entered into a unilateral administrative order, a court order, an administrative order on consent, or judicial consent decree or to

which a permit has been issued by the United States or an authorized state under RCRA, FWPCA, TSCA, or SDWA.

- Properties with facilities subject to RCRA corrective action (§3004(u) or §3008(h)) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
- 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.
- Properties where there has been a release of PCBs and all or part of the property is subject to TSCA remediation.
- Properties that include facilities receiving monies for cleanup from the LUST trust fund.

EPA's approval of Property-Specific Determinations will be based on whether or not awarding a grant will protect human health and the environment and either promote economic development or enable the property to be used for parks, greenways, and similar recreational or nonprofit purposes. Property-Specific Determination requests should be attached to your proposal and do not count in the 18-page limit. See the Brownfields FAQ at: http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf for more information on how to prepare and submit a Property-Specific Determination.

1.5.1 Facilities Subject to CERCLA Removal Actions

Properties (including parcels of properties) where there are removal actions may not receive funding, unless EPA makes a property-specific determination of funding eligibility.

EPA's view is that a removal may be identified by the occurrence of one of the following events, whichever occurs first in time: EPA issues an action memo; EPA issues an Engineering Evaluation/Cost Analysis approval memo; EPA mobilizes onsite; EPA issues a notice of federal interest to one or more potentially responsible parties (PRPs), which in emergencies may be made verbally; or EPA takes other actions that are consistent with a removal.

Once a removal action is complete, a property is eligible for brownfields funding without having to obtain a property-specific funding determination. EPA's view is that, solely for the purposes of eligibility to receive brownfields funding, a removal is complete when the actions specified in the action memorandum are met, or when the contractor has demobilized and left the site (as documented in the "pollution report" or POLREP). Applicants applying for brownfields funding for sites at which removal actions are complete must include documentation of the action being complete with their funding proposal.

Parcels of facilities not affected by removal action at the same property may apply for brownfields funding and may be eligible for brownfields funding on a property-specific basis. Property-specific funding decisions will be made in coordination with the on-scene coordinator (OSC) to ensure that all removals and cleanup activities at the property are conducted in safe and protective manners and to ensure that the OSC retains the ability to address all risks and contamination.

Please note that if a federal brownfields-funded site assessment results in identifying the need for a new removal action, the grantee may continue to expend assessment grant funds on additional assessment activities. However, any additional expenditure of federal brownfields funds and any additional site assessment activities should be conducted in coordination with the OSC for the site.

1.5.2 Facilities to which a permit has been issued by the United States or an authorized state under the Resource Conservation and Recovery Act (RCRA), the Federal Water Pollution Control Act, the Toxic Substances Control Act, or the Safe Drinking Water Act

Generally, in cases where a property or a portion of a property is permitted under the Resource Conservation and Recovery Act, Section §1321 of the Clean Water Act, the Safe Drinking Water Act, and/or the Toxic Substances and Control Act, the property, or portion of the property, may not receive funding without a property-specific determination. Therefore, applicants should review the following guidance regarding which types of permitted facilities may not receive funding unless EPA makes a property-specific determination to provide funding. Applicants should note that the exclusion for permitted facilities does not extend to facilities with National Pollutant Discharge Elimination System (NPDES) permits issued under the authorities of the Federal Water Pollution Control Act, but is limited to facilities issued permits under the authorities of the Oil Pollution Act (i.e., §1321 of FWPCA).

In cases where one or more portions of a property are not eligible for funding, the applicant should identify the specific permit and situation that causes the property to be excluded. In addition, the applicant must include, within the proposal, documentation that federal brownfields funding for the assessment or cleanup of the property will further the goals established for property-specific funding determinations as described in the Brownfields FAQ at: http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf.

In some cases, a facility may not have a permit or order because it is not in compliance with federal or state environmental laws requiring that it obtain a permit or the facility has failed to notify EPA of its regulatory status. Such facilities are not eligible for brownfields funding. For example, a RCRA treatment unit operator is required to obtain a permit and/or notify EPA of its operation. An operator that fails to fulfill those obligations will likely not have a permit or order as EPA will be unaware of its existence. Therefore, it is EPA's view that such facilities are ineligible to receive brownfields funds as a result of their failure to comply with a basic regulatory requirement. Additional guidance on the eligibility of RCRA-permitted facilities, including facilities under administrative or court orders, including corrective action orders, is provided in the Brownfields FAQ at:
http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf.

1.5.3 RCRA Sites

RCRA Facilities that are Eligible for Funding
EPA's view is that the following types of RCRA facilities are eligible for brownfields funding and do not require Property-Specific Determinations:

a. RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree.
b. RCRA interim status facilities that are subject to administrative or judicial orders 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).
c. Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order.

RCRA Facilities that Require Property-Specific Determinations
EPA's view is that the following types of RCRA facilities **may not receive funding without a property-specific determination**:

a. RCRA-permitted facilities.
b. RCRA interim status facilities with administrative orders requiring the facility to conduct corrective action or otherwise address contamination, including facilities with orders issued under the authorities of RCRA §3008(a), §3008(h), §3013, and §7003.
c. Facilities under court order or under an administrative order on consent or judicial consent decree under RCRA or CERCLA that require the facility to conduct corrective action or otherwise address contamination at the facility.
d. Land disposal units that have notified EPA or an authorized state of their intent to close and have closure requirements specified in closure plans or permits.

1.5.4 Land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit

RCRA hazardous waste landfills that have submitted closure notifications, as required under 40 CFR 264.112(d) or 265.112(d), generally will not be funded. This may include permitted facilities that have filed notification of closure and for which EPA and/or an authorized state is proceeding with final closure requirements for the facility. For interim status facilities, this is done through approval of a closure plan submitted with closure notification. For permitted facilities, this is routinely done as a modification to the permit, requested by the facility at the time of closure notification.

Please note that RCRA hazardous waste landfills that have submitted closure notifications may be eligible for brownfields funding with a Property-Specific Determination.

1.5.5 Sites Contaminated with PCBs

The Brownfields Law excludes from funding eligibility portions of facilities where there has been a release of PCBs that are subject to remediation under TSCA.

EPA's view is that all portions of properties **are eligible** for brownfields site assessment grants, except where EPA has initiated an involuntary action with any person to address PCB contamination. Also, it is EPA's view that all portions of properties **are eligible** for cleanup and RLF grants, except where EPA has an ongoing action against a disposer to address PCB contamination. However, any portion of a property where EPA has initiated an involuntary action with any person to address PCB contamination and portions of properties where EPA has an ongoing action against a disposer to address PCB contamination will require a Property-Specific Determination to be eligible for brownfields funding, including:

- There is a release (or disposal) of any waste meeting the definition of "PCB remediation waste" at 40 CFR 761.3; **and**
- At which EPA has initiated an involuntary action with any person to address the PCB contamination. Such involuntary actions could include:
  - Enforcement action for illegal disposal;
  - Regional Administrator's order to characterize or remediate a spill or old disposal (40 CFR 761.50(b)(3));
  - Penalty for violation of TSCA remediation requirements;
  - Superfund removal action; or
  - Remediation required under RCRA §3004(u) or §3004(v).

<u>PCBs may be remediated under any one of the following provisions under TSCA</u>:

a. Section 761.50(b)(3), the directed characterization, remediation, or disposal action.
b. Section 761.61(a), the self-implementing provision.
c. An approval issued under §761.61(c), the risk-based provision.
d. Section 761.61(b) to the level of PCB quantification (i.e., 1 ppm in soil).
e. An approval issued under §761.77, the coordinated approval provision.
f. Section 761.79, the decontamination provision.
g. An existing EPA PCB Spill Cleanup Policy.
h. Any future policy or guidance addressing PCB spill cleanup or remediation specifically addressing the remediation of PCBs at brownfield sites.

1.5.6 LUST Trust Fund Sites

The Brownfields Law 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.

However, in cases where the state agency has used LUST trust fund money for state program oversight activities on an UST site, but has not expended LUST trust funds for specific assessment and/or cleanup activities at the site, the site would be eligible for brownfields funding and does not need a Property-Specific Determination. Such sites may receive brownfields funding on a property-specific basis, if it is determined that brownfields funding will protect human health and the environment and the funding will promote economic development or

enable the creation of, preservation of, or addition to greenspace (see guidance on documenting eligibility for property-specific funding determinations provided in the Brownfields FAQ at: http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf).

Examples of sites receiving LUST trust fund monies that EPA would consider to be good candidates to receive brownfields grants or loans:

a. All USTfields pilots (50 pilots).
b. Sites (or portions of properties) where an assessment was completed using LUST trust fund monies and the state has determined that the site is a low-priority UST site, and therefore, additional LUST trust fund money cannot be provided for the cleanup of petroleum contamination, but the site still needs some cleanup and otherwise is a good candidate for economic revitalization.
c. Sites (or portions of properties) where LUST trust fund money was spent for emergency activities, but then the site was determined to be ineligible for further expenditures of LUST trust funds, yet the site needs additional funding for continued assessment and/or cleanup that will contribute to economic revitalization of the site.

1.6 Eligible Response Sites/Enforcement Issues

The Brownfields Law limits EPA's enforcement and cost recovery authorities at "eligible response sites" where a response action is conducted in compliance with a state response program. Section 101(40) of CERCLA defines an "eligible response site" by referencing the general definition of a "brownfield site" in §101(39)(A) and incorporating the exclusions at §101(39)(B). The law places further limitations on the types of properties included within the definition of an eligible response site, but grants EPA the authority to include within the definition of eligible response site, and on a property-specific basis, some properties that are otherwise excluded from the definition. Such property-specific determinations must be based upon a finding that limits an enforcement will be appropriate, after consultation with state authorities, and will protect human health and the environment and promote economic development or facilitate the creation of, preservation, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes. While the criteria appear similar to those for determining eligibility for funding on a property-specific basis, the determinations are distinct, will be made through a separate process, and may not be based on the same information requested in this document for property-specific funding determinations.

Also, please note that in providing funding for brownfield sites, and given that a limited amount of funding is available for brownfields grants, EPA's goal is to not provide brownfields funding to sites where EPA has a planned or ongoing enforcement action. While EPA does not intend that the existence of a planned or ongoing enforcement action will necessarily disqualify a site from receipt of brownfields funding, EPA does believe it is necessary that EPA be aware of the existence of any such action in making funding decisions. As a result, EPA will conduct an investigation to evaluate whether a site is, or will be, subject to an enforcement action under CERCLA or other federal environmental statutes. EPA is requesting that applicants identify ongoing or anticipated environmental enforcement actions related to the brownfield site for which funding is sought.