



EPA PREPARED THESE FREQUENTLY ASKED QUESTIONS AND ANSWERS TO ASSIST POTENTIAL APPLICANTS FOR BROWNFIELDS GRANTS. PLEASE REVIEW THE FISCAL YEAR 2006 GRANT PROPOSAL GUIDELINES PUBLISHED IN OCTOBER 2005 WHEN PREPARING YOUR PROPOSAL. IF THERE IS A CONFLICT BETWEEN THE ANSWER TO A QUESTION AND THE STATUTE, REGULATION, OR THE GUIDELINES, THE STATUTE, REGULATION OR THE GUIDELINES TAKE PRECEDENCE.

**Brownfield Grant Guidelines
Frequently Asked Questions (FAQ)**

I. Definitions and Grant Eligibility

A. Definitions

Q1. What is a Brownfields Site?

AI. For the purposes of EPA's Brownfields grant program, a "Brownfields Site" is: "...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." In order to be eligible for Brownfields grant funding, the site(s) covered by your application must meet the definition of a Brownfield site.

Brownfields sites also include, but are not limited to, three specific types of properties eligible for funding:

- *sites contaminated by petroleum or a petroleum product;*
- *sites contaminated by controlled substances; and,*
- *mine-scarred lands.*

Some sites are excluded from the definition of a Brownfield site unless EPA makes a "property-specific funding determination" that allows grant funds to be used at that site. This process is explained in Appendices 3 and 4 of the Brownfields grant proposal guidelines.

For a more detailed discussion of Brownfields sites eligible for funding, please refer to the

Appendices of the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants on the EPA website at:

<http://www.epa.gov/brownfields/applicat.htm>

Q2. How does EPA interpret “non-profit organization” and how can such organizations participate in brownfields revitalization under the new amendments?

A2. For the purposes of the brownfields grant program, EPA will use the definition of non-profit organizations contained in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107, 31§ USC 6101, Note.

This law defines non-profit organizations to mean “any corporation, trust, association, cooperative, or other organization that–

- (A) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;*
- (B) is not organized primarily for profit; and*
- (C) uses net proceeds to maintain, improve, or expand the operations of the organization.”*

EPA will accept documentation from the U.S. Internal Revenue Service (e.g. 501(c)(3) tax exempt status) or from a State or tribal government that has authority under its laws to grant non-profit status to an organization.

Non-profit organizations, with the exception of organizations subject to section 501(c)(4) of the Internal Revenue Code that lobby, are eligible to receive cleanup grants and subgrants under Revolving Loan Fund (RLF) capitalization grants. Non-profit organizations are also eligible to receive job training grants. Private nonprofit educational institutions are eligible to compete for these grants.

See the Proposal Guidelines for Brownfields Job Training Grants for further information (www.epa.gov/brownfields).

Non-profit organizations are not eligible to receive brownfields assessment or RLF grants under 104(k)(2) and 104(k)(3), respectively .

B. Eligibility and Ineligibility

Q3. Who is eligible to apply for the grants?

A3. *The Brownfields law defines entities eligible to receive grants, based on the type of grant requested:*

- *assessment and revolving loan fund grants - state, local, and tribal governments, with the exception of Indian tribes in Alaska, as well as a range of government entities, including a general purpose unit of local government or land clearance authority or other quasi-governmental entity operating under the control, supervision, or as an agent of a local government, a governmental entity or redevelopment agency created or sanctioned by a State, or a regional council of governments, are eligible. An Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act, and the Metlakatla Indian community are eligible.*
- *cleanup grants - include those eligible governmental entities identified above as well as non-profit organizations and non-profit educational institutions. (Please see another Question and Answer for EPA's definition of a non-profit organization that applies to this program). All eligible entities, including non-profit organizations, must own the site and provide documentation to demonstrate ownership (e.g. copy of the fee simple title) by June 30, 2006.*
- *job training grants -include those eligible governmental entities identified above as well as non-profit organizations, including non-profit educational institutions.*
- *For-profit organizations are not eligible for Brownfields grant funding from EPA.*

Q4. What sites are not eligible for property-specific funding determinations for Brownfields grants?

A4. *The Brownfields Law excludes the following three types of properties from funding eligibility and prohibits EPA from making property-specific determinations on these properties:*

- 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; and*
- 3.) *Facilities that are subject to the jurisdiction, custody or control, of the United States government. (Note: Land held in trust by the United States government for an Indian tribe is **eligible** for brownfields funding.)*

Q5. Are properties on lands held in trust by the Federal government for Indian tribes eligible for brownfields grant funding?

A5. *Generally, properties on lands held in trust by the Federal government for Indian tribes are eligible for brownfields grant funding. You should contact your Brownfields coordinator for further information.*

Q6. What happens if I accidentally include an ineligible site in my proposal or I didn't realize I needed a property-specific funding determination?

A6. Applicants may not substitute sites if EPA determines a site is not eligible. EPA may provide applicants a limited opportunity to clarify site eligibility issues during the proposal application process. If EPA has reason to believe a site that falls in the "excluded" category is eligible for a property-specific funding determination, EPA may seek clarification from the applicant before making that determination. EPA strongly encourages applicants to evaluate their site against the information provided in Appendices 3 and 4 of the guidelines. In addition, applicants should contact their Regional Brownfields Coordinators for pre-application assistance on site eligibility.

Applicants may not substitute sites if EPA determines a site is not eligible.

Q7. How do I know if I need to apply for a property-specific funding determination?

A7. A list of the types of sites that are only eligible for Brownfields funding via a property-specific determination is provided in Appendix 4 of the Brownfields grant proposal guidelines. Grant applicants must determine if any properties, or facilities, included in their proposal require a property-specific funding determination, and then provide EPA with the information necessary to make this determination.

*EPA makes property-specific funding determinations based on whether the grant will protect human health and the environment, **and** either promote economic development or enable the creation, preservation or addition of parks, greenways, undeveloped property, recreational property, or other property used for non-profit purposes.*

Applicants should review the list of sites eligible for a property-specific determination in Appendices 3 and 4 of the Guidelines (<http://www.epa.gov/brownfields/applicat.htm>) and contact your EPA Regional Brownfields Coordinator if you have further questions regarding property-specific funding determinations.

Q8. Are RCRA sites eligible for Brownfields grant funding?

A8. Some RCRA sites may be eligible. RCRA facilities that may be eligible for Brownfields funding, (subject to meeting all other Brownfields grant eligibility requirements), include:

- RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;*
- RCRA interim status facilities that are subject to administrative or judicial orders or consent decrees 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); and*

- *Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order to conduct corrective action.*

*Facilities with permits issued under the authorities of the Resource Conservation and Recovery Act (RCRA), Toxic Substances and Control Act (TSCA), and the Safe Drinking Water Act (SDWA), as well as facilities with permits issued under section 1321 of the Clean Water Act (the oil and hazardous substance liability provisions) are excluded from the definition of brownfield site but **may be eligible for funding if the EPA makes a property-specific funding determination**. Without a property-specific funding determination provided for in §101(39)(C), these specified RCRA facilities can not receive grant or loan funding.*

When making this determination, EPA assesses if Brownfields funding for assessment or cleanup activities will:

- *ensure protection of human health and the environment; **and** either*
- *promote economic development, or*
- *promote the creation, preservation, or addition to parks, greenways, undeveloped facility, other recreational facility, or other property used for non-profit purposes.*

Q9. Are former military installations that have been closed and subsequently turned over to local and/or state governments or non-profit organizations eligible for funding under the FY06 guidelines?

A9. Yes. Generally, former military installations that are no longer owned or under the custody or control of the U.S. government, including properties that have been closed and subsequently turned over to governments or non-profit organization may be eligible for brownfields funding.

For example, the following types of facilities may be eligible for brownfields funding:

- 1. Privately-owned, Formerly Used Defense Sites (FUDS)*
- 2. Privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP) properties.*
- 3. Other former federal properties that have been disposed of by the U.S. government.*

*Facilities owned by, or under the custody or control of the federal government **are not eligible** for brownfields funding with the exception of land held in trust for an Indian tribe. Applicants should contact their Regional Brownfields Coordinator for additional information.*

II. General Application Information

Q10. What were the results of the 2005 competition process?

A10. EPA was pleased to receive over 700 proposals for Brownfields grants in FY 2005. Continued national interest in the new law resulted in a highly competitive selection process, with a total of 302 grants announced nationwide in FY 2005.

Q11. How has the application process for Brownfields assessment, revolving loan fund and cleanup grants changed in FY 2006?

A11. EPA estimates that \$72 million will be available to award approximately 200 grant awards, contingent upon the availability of funds in FY 2006.

Criteria and prohibitions, which are statutorily based, remain the same in FY 2006. A provision of the 2005 Transportation Equity Act amended CERCLA to broaden the availability of Brownfields assessment and cleanup grants for use at sites previously ineligible because the owner acquired the property before January 11, 2002.

The application process has changed for FY 06, based upon feedback received on the FY 2005 process, including the following:

- *Applicants may submit their proposals through the U.S. Postal Service, commercial delivery service, or electronically through grants.gov. Proposals sent through the U.S. Postal Service or sent via a commercial delivery service must be postmarked by December 14, 2005, 5:00 p.m. EDT. All proposals must be sent to Environmental Management Support, Inc. (contractor to EPA), and applicants shall also submit one complete copy of their proposal, including attachments, to the appropriate EPA Regional Brownfields Contact listed in Appendix 1 of the guidelines. Additional submission instructions are contained in Section IV, "Proposal and Submission Information."*
- *The proposal(s) must be sent to the following address via U.S. Postal Service or Commercial Delivery Service: Environmental Management Support, Inc., Attn: Mr. Don West, 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910. Phone 301-589-5318.*
- *Applicants may submit their proposals electronically through grants.gov; proposals submitted through grants.gov must be received by 5:00 p.m. EDT on December 14, 2005. Please refer to Appendix 5, "Grants.gov Application Instructions for Brownfields," for specific instructions for use of grants.gov. **Note: There is a registration process to complete for electronic submission via grants.gov, which may take a week or more to complete.***
- *Applicants submitting proposals for **cleanup grants** must explain the site assessment activities that have been completed to date. At a minimum, an applicant must have a written ASTM or equivalent Phase I report completed and an ASTM or equivalent Phase II underway or completed in order to apply for a cleanup grant.*
- *The performance period for cleanup and assessment grants has been extended from two to three years. Applicants submitting proposals for cleanup and*

assessment grants should take this extension into consideration when developing project budget plans.

- *Applicants submitting proposals for **cleanup grants must obtain sole ownership of the site by way of fee simple title by June 30, 2006.***
- *Applicants submitting proposals for **revolving loan fund grants may only apply for community-wide grants** in FY2006. RLF applicants must include in their proposal a definition of the jurisdiction (e.g. the corporate limits of a city or town) that will be served by their RLF. Applicants may provide (an) example(s) of sites that may be targeted through their proposed RLF program, however site eligibility issues will be dealt with as a matter of grants administration.*

Applicants must provide a cover letter that briefly describes the overall Brownfields project and how funding this proposal will advance project goals. The letter must be prepared on the applicant's letterhead and signed by an official of the organization.

The guidelines now provide that EPA will not consider proposals that fail to comply with certain mandatory provisions of the guidelines. The Agency strongly urges applicants to carefully read the guidelines.

Q12. Can I submit my proposal electronically?

A12. Applicants may submit proposals electronically, via <http://www.grants.gov/Proposals> submitted through Grants.gov must be received by December 14, 2005, 5:00 PM EDT to receive consideration.

*The electronic submission of your application must be made by an official representative of your institution who is registered with Grants.gov. For more information, go to <http://www.grants.gov>. **Note that the registration process may take a week or longer.***

EPA strongly encourages applicants to review Appendix 5 of the Brownfields Grant guidelines for specific instructions on submitting proposals electronically via Grants.gov.

Q13. What is the grant application process in Fiscal Year 2006?

A13. EPA has prepared guidelines on the application process for three types of grants: assessment, revolving loan fund and cleanup. The process for applying for assessment, revolving loan fund and cleanup grants is a one step process as discussed in the new guidelines (www.epa.gov/brownfields/applicat.htm). Applicants may also wish to consult the Grants.gov website established as one of the Office of Management and Budget's e-Government initiatives. (<http://www.grants.gov/Index>).

Applicants may submit their proposals through the U.S. Postal Service, commercial delivery

service, or electronically through grants.gov. Proposals sent through the U.S. Postal Service or sent via a commercial delivery service must be postmarked by **December 14, 2005, 5:00 p.m. EDT**. All proposals must be sent to Environmental Management Support, Inc. (contractor to EPA), and applicants shall also submit one complete copy of their proposal, including attachments, to the appropriate EPA Regional Brownfields Contact listed in Appendix 1. Additional submission instructions are contained in Section IV of the announcement. **Proposals received by EPA or postmarked after the respective dates and times specified above will not be considered. Facsimile delivery of proposals is not permitted. Proposals received by facsimile submission will not be considered or evaluated for award.**

*Prior to **December 14, 2005**, - if resources permit, EPA Regions may conduct open meetings with potential applicants. Please check with your regional office for date and location information. EPA Regions will also respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** 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.*

*Proposals received in response to the guidelines will initially be reviewed by the appropriate regional office to determine compliance with the Section V Threshold Criteria that apply to the grant type being proposed for. Each proposal by grant type (assessment, RLF, and cleanup), which successfully meets all of the applicable threshold criteria for that grant type, will then be evaluated by national panels chosen to address the range of activities associated with the National Brownfields Program. The evaluation panels, composed of EPA Headquarters and Regional staff and other federal agency representatives, **will base their evaluations solely on the applicable ranking criteria described in Section V of the guidelines** that apply to the different grants types and will assign an evaluated point score.*

*Funding requests for each grant type will be **evaluated and ranked separately**.*

Completed evaluations will then be referred to a 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 and other statutory and policy considerations (see below).

In addition to considering the evaluation of proposals based on the factors identified above for the type of grant being proposed for, EPA's Selection Official, in making selection recommendations, may consider other factors such as fair distribution of funds between urban and non-urban areas and among EPA's ten Regions; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; whether the proposed project will assist in addressing environmental justice concerns (such as the disproportionate impact on or presence of brownfields sites near low-income and/or minority citizens, i.e., whether the

proposed project will assist in addressing disproportionately high and adverse human health or environmental effects on minority populations and low-income populations); compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; population; whether the applicant is a federally recognized Indian tribe; or whether the applicant is a community with an Official Recognition (OR) from the Department of Justice for its Weed and Seed strategy.

EPA will inform successful proposal applicants in writing of the Agency's selection.

Funding will be awarded as a cooperative agreement. EPA anticipates substantial involvement with the cooperative agreement recipient. 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 an EPA-approved work plan, a final budget, and required forms. Cooperative agreements approved under this final selection step will include terms and conditions. These terms and conditions will be binding on the grant recipient and cover areas such as complying with all applicable federal and state laws and ensuring that cleanups protect human health and the environment. 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. In addition, successful grant applicants will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which is required when applying for federal grants or cooperative agreements on or after October 1, 2003. For more information, please go to www.grants.gov. EPA will work closely with the successful applicant to complete and process the cooperative agreement package.

Assistance agreement competition-related disputes will be resolved in accordance with the Dispute Resolution Procedures published in 70 FR (Federal Register) 3629, 3630 (January 26, 2005) located on the web at:

- <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-1371.htm>.

Copies of these procedures may also be requested by contacting EPA Regional Brownfields contacts identified in Appendix 1 of the guidelines.

In accordance with Executive Order 12372, EPA encourages applicants to contact their State Intergovernmental Review Office early so that the required intergovernmental review process may begin immediately upon selection by EPA. If the state does not have an Intergovernmental Review Office, the successful applicant must provide notice of the proposed agreement directly to affected state, area-wide, regional, and local entities. Contact your Regional Brownfields Contact for assistance, if needed.

EPA reserves the right to reject any or all proposals or applications and make no awards.

EPA anticipates that successful applicants will be notified in the Spring of 2006.

For additional information regarding the FY 2006 grant application process for brownfields

assessment, revolving loan fund and cleanup grants, contact your EPA Regional Brownfields Coordinator.

Q14. How do I get help in understanding and responding to the new grant proposal guidelines?

A14. EPA urges applicants to review the grant proposal guidelines carefully and any supplemental information on the EPA brownfields website. EPA may add additional questions to this list, if necessary.

*In addition, if resources permit, EPA Regions may conduct open meetings with potential applicants. Please check with your regional office for date and location information. EPA Regions will also respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** 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.*

Applicants may contact their EPA Regional Brownfields Contact for general information or questions regarding the threshold criteria, including eligibility. A list of EPA Regional Brownfields Contacts and their mailing addresses can be found in Appendix 1 of the guidelines <http://www.epa.gov/brownfields/applicat.htm>.

*All proposals will be reviewed and evaluated objectively against the criteria identified in the grant guidelines and ranked based upon their written response. **Applicants are responsible for making decisions on the content of their proposals.***

Q15. What is the amount of funding available through individual grants?

A15. Under the new Brownfields law, an eligible entity may apply for:

- *Assessment Grants. An eligible entity may submit **no more than 2 assessment proposals**. An eligible entity may apply for up to \$200,000 to assess a site contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to \$200,000 to address a site contaminated by petroleum. For site specific proposals, applicants may seek a waiver of the \$200,000 limit and request up to \$350,000 for a site contaminated by hazardous substances, pollutants, or contaminants and up to \$350,000 to assess a site contaminated by petroleum. Such waivers must be based on the anticipated level of hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) or petroleum at a single site. Total grant fund requests must not exceed a total of \$400,000 per applicant unless the applicant requests a waiver. Due to budget limitations, no entity may apply for*

more than \$700,000 in assessment funding. The performance period for an Assessment Grant is 3 years.

- *Revolving Loan Fund Grants. Grants may be awarded up to \$1 million for an initial revolving loan fund (RLF) grant. A coalition of eligible entities may apply together under one application for up to \$1 million per eligible entity. The performance period for a Revolving Loan Fund Grant is 5 years.*
- *Cleanup Grants. Grants may be awarded up to \$200,000 per site for cleanup. Due to budget limitations, no entity may submit more than five applications which apply for funding cleanup activities at more than five sites. The performance period for a Cleanup Grant is 3 years.*

Q16. Must I ‘own’ the site when I apply for a Cleanup grant?

A16. No. However, by statute, cleanup grant recipients and revolving loan fund subgrant recipients must own these sites at the time of grant award. For budget purposes, EPA has established a policy that, for cleanup grants, the site must be owned by June 30, 2006 for this FY06 grant cycle. If an applicant does not own the property by that date, EPA will deem that site ineligible for funding under the Fiscal Year 2006 grant cycle, and the applicant may reapply in future years. For purposes of grant eligibility and the guidelines only, ownership is fee simple title. Other arrangements may be considered on a case-by-case basis. As noted above, the applicant must have sole ownership of the site by June 30, 2006 to be eligible for the award of the grant.

Q17. Do tribes “own” tribal trust lands for purposes of brownfields cleanup grants and RLF cleanup subgrants?

A17. Generally, EPA believes tribes have a sufficient ownership interest in tribal trust lands to “own” such lands for purposes of brownfields cleanup grants and RLF cleanup subgrants. Applicants should contact their Regional Brownfields Coordinator for additional information.

Q18. Do applicants for brownfields grants (assessment, revolving loan fund or cleanup grant) need to inform their State regarding the submission of a grant proposal to EPA?

A18. Yes. Applicants (other than a State or tribal environmental authority) must provide a letter from a State or Tribal environmental authority that acknowledges the applicant’s planned activities in their grant proposal and where specific sites are identified, eligibility determination on those sites, where appropriate. Only one letter reflecting all proposed activities is needed if the applicant applies for multiple grant types or multiple grants.

Q19. What is meant by community notification?

A19. The grant guidelines require the applicant to notify the community about the preparation and submission of the brownfields grant proposal(s) for FY06 grant funding prior to the submission. The applicant is responsible for providing community notification and

opportunity for public comment about the proposal(s). Community notification can be conducted by or on behalf of the applicant. The proposal must demonstrate how the applicant was involved in the community notification (ie., attended a public meeting, responded to comments, etc), even if another party acts on behalf of the applicant. EPA must determine that the applicant has adequately notified the community regarding the proposal to pass this threshold requirement.

Community notification has been an important facet of the brownfields program since its inception and remains an important element under the new amendments. The applicant must describe how the community was notified. Some examples of community notification include:

- discussing a brownfields proposal during an open government (e.g. city council sessions) meeting;*
- holding a public meeting;*
- placing a public notice in a local newspaper or community bulletin board;*
- notifying affected residents door-to-door; and,*
- soliciting public comment.*

Applicants may describe other methods used to notify the community.

Applicants must notify the community of the FY06 proposal being submitted to EPA, even if the applicant has received an EPA brownfields grant in the past and the community is aware of brownfields projects underway. Similarly, even if an applicant has notified the community regarding an application submitted under a previous EPA Brownfields grant competition, the applicant must notify the community of its FY06 proposal.

III. Use of Brownfield Grant Funding

A. General Brownfield Grant Information

Q20. If funds have been expended at a site under a cleanup grant, can additional funding be provided for additional cleanup work at the same site?

A20. Yes, an entity may apply for additional funding through 128 funds or through a revolving loan fund. A city/town or other eligible entity may also apply for a cleanup grant for a site on which a state has already expended 128 funds.

Q21. How does EPA enforce the requirement for cost sharing for the cleanup and revolving loan fund grants?

A21. The Agency requires recipients to report on their cost sharing in financial status reports. Recipients must have documentation to support cash and in-kind contributions of labor, material and services for cost sharing expenses to be eligible and allowable. If a recipient fails to provide its agreed upon cost share, EPA may take action to recover all or part of the grant as well as take other

enforcement actions authorized by Agency grant regulations.

Q22. If my application is successful, will EPA reimburse me for costs I incurred prior to the award?

A22. It depends. EPA may reimburse successful applicants for pre-award costs incurred up to 90 days prior to award, even if the applicant did not request prior approval to incur pre-award costs provided the costs are eligible, allowable, and included in the approved budget and work plan for the grant. For example, costs for contracts are allowable only if the contract was entered into in a manner that complies with the competitive procurement provisions of EPA's grant regulations. Costs incurred more than 90 days prior to award require specific approval of an EPA award official.

Please note that applicants incur pre-award at their own risk and that EPA is not obligated to reimburse applicants for pre-award costs that are not included in the work plan and budget the Agency approves. EPA has no obligation to reimburse unsuccessful applicant for pre-award costs.

Q23. Are Administrative costs eligible for funding under EPA brownfields grants?

A23. No. The Brownfields law prohibits EPA from reimbursing recipients for administrative costs. Administrative costs include indirect costs even if a recipient has an approved indirect cost rate. Please see Appendix 2 of the Guidelines for further information.

Q24. If I am a successful applicant, will EPA reimburse me for the costs of paying a consultant to prepare my grant application?

A24. No. Proposal preparation costs are prohibited administrative costs.

Q25. Can I use brownfields grant funds to purchase environmental insurance?

A25. Yes. Applicants that receive grants or loans to perform characterization, assessment or cleanup of a brownfields site may use a portion of their brownfields grant or loan funds to purchase environmental insurance. This amount must be less than 100 percent of the total grant or loan funds awarded under the Brownfields law. Purchases must be consistent with the applicable OMB Cost Circulars: A-21 is applicable to universities and educational institutions, A-87 is applicable to governmental units, and A-122 is applicable to non-profit organizations.

Q26. What kind of environmental insurance can I purchase with a brownfields grant?

A26. There are many different kinds of environmental insurance policies for brownfields sites

that companies offer. Typically, these policies cover risks related to cleanup cost overruns, third-party liability, and lender liability. Insurance carriers do not use the same names for these policies, and coverage is generally negotiated to cover site-specific risks. Therefore, successful applicants are encouraged to work closely with EPA to ensure any policy to be purchased with EPA funds does not cover ineligible expenses, including but not limited to:

- paying for a penalty or fine
- paying a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
- paying for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA §107.

Q27. As a local government applicant, what program activities can be funded under the 10% provision of the new amendments?

A27. Under the Brownfields Law, a local government (as defined in 40 CFR Part 31.3, Local Government) may use up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. **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.** To effectively oversee assessments and cleanups, local governments may use grant funds (within the overall 10 percent limit) for other related program development and implementation activities (e.g., writing local brownfield-related ordinances) described in their EPA approved scope of work.

B. Assessment Grants

Q28. Can I apply for assessment supplemental funds on a non-competitive basis under the new amendments?

A28. No. There are no provisions for non-competitive supplemental funding for brownfields assessment grants, with the exception of a site specific waiver allowing a recipient to expend up to \$350,000 on a site. See Question 15. However, existing assessment grant recipients can compete for new grants and receive funding within the limits established by the Brownfields law (see earlier question).

Q29. We have identified a specific site for assessment with our EPA grant. What sort of information should I have available when I ask EPA to determine its eligibility for funding?

A29. The Guidelines provide information on sites eligible for brownfields funding under CERCLA § 104(k) in Appendices 3 and 4. Section V. D. 1 and 3 -12, pp. 20 - 24 outline the types

of information necessary to make an eligibility determination. Below are the types of information that will need to be considered.

Basic property and grant eligibility information, such as:

- *the property's name and address*
- *the grant recipient's name*
- *the type of assessment proposed (Phase I, Phase II, etc.)*
- *how the property has been used in the past (from today going back to its first known use)*
- *why the property is thought to be contaminated, especially if it's been vacant for many years*
- *whether the property is a "brownfield site," as defined by the statute (including whether the property is subject to any of the exclusions to the definition of "brownfield site" and if so, whether it is eligible for a property-specific determination).*
- *Whether the CERCLA Section 107 prohibition applies (i.e., whether you are potentially liable as an owner/operator (current or at the time of disposal), arranger, or transporter).*

Information about the current owner that will be of interest:

- *the current property owner's name*
- *what your relationship is with the owner and what will be their role in the work that is to be performed*
- *whether you have access to the property, or if not, how you will obtain access to the property*

If you are the current owner, EPA will also want to know:

- *if and when you conducted All Appropriate Inquiry and whether you are affiliated with a liable part.*
- *whether you can take advantage of a CERCLA liability protection (i.e., are a Bona Fide Prospective Purchaser, a Contiguous Property Owner, an Innocent Land Owner, or not)*
- *if you are a municipality, how you acquired the property (e.g., foreclosure, donation, eminent domain, purchased, etc.).*

For petroleum sites you will also need to:

- *Obtain a written determination of statutory eligibility by the state LUST contact. (Talk to your project officer for assistance)*
- *If the state is unable to make the determination, you will need to have available information regarding*
 - *whether the site is of "relatively low risk" compared to other petroleum-only sites in the state*
 - *whether there is a viable responsible party that can address the petroleum contamination at the site (whether a party is "responsible" and "viable" is defined in the Guidelines)*
 - *whether you, the applicant, are potentially liable for cleaning up the site, as defined in the Guidelines*

*(be prepared to provide information regarding whether the party having such legal obligations has adequate financial resources to meet the obligation)
- whether the site is subject to an order issued under 9003(h) of the Solid Waste Disposal Act*

Please note that some sites may either require a property-specific determination or may not be eligible at all for funding (see Appendix 3, p. 9 of the Guidelines)

C. Revolving Loan Fund Grants

Q30. What does an existing revolving loan fund (RLF) pilot do to “transition” under the new Law?

A30. A Brownfields Cleanup Revolving Loan Fund (BCRLF) pilot established prior to January 11, 2002 may “transition” under the new Brownfields Law. The EPA has published guidelines on how to transition that can be found on the EPA website.

(<http://www.epa.gov/brownfields/html-doc/bcrlf-4.htm>)

These guidelines were sent directly to all the current BCRLF pilots in October 2002.

The transition process will be managed through EPA Regional offices.

Q31. Who can apply for RLF non-competitive supplemental funds under the Brownfields Law, and how do they apply?

A31. Only RLF recipients awarded grants since passage of the 2002 Brownfields law, and existing BCRLF pilots who “transition” to the new program, that have made at least one loan can apply for non-competitive supplemental funding. The EPA will consider supplemental funding based on the following statutory considerations:

- the number of sites and the number of communities addressed;*
- the demand for funding by eligible entities that have not previously received a grant under the new amendments;*
- the demonstrated ability of the eligible entity to use the revolving loan fund (RLF) to enhance remediation and provide funds on a continuing basis; and,*
- such other factors as the Agency considers appropriate to carry out the RLF.*

RLF recipients interested in non-competitive supplemental funding must apply through their EPA Regional office. You should contact your Regional Brownfields Coordinator for details.

Q32. As an RLF grant recipient, will intra-governmental loans (i.e. loans

between parts of the same governmental entity) be allowed under the Brownfields law?

A32. Yes. RLF recipients may make intra-governmental loans under the new Brownfields law.

Q33. As an RLF recipient, will intra-governmental cleanup subgrants be allowed under the Brownfields law?

*A33. No. Cleanup subgrants, unlike loans, may **not** be made by the RLF recipients within the same governmental entity that receives the RLF grant (e.g. one department of a city government cannot “subgrant” to another department of the same governmental entity). However, RLF recipients may choose to apply to EPA separately for a cleanup grant. RLF recipients may also make subgrants to different eligible governmental entities as well as non-profit organizations.*

IV. Brownfields Liability Issues

Q34. Are tribes considered "potentially responsible parties" (PRPs) and therefore prohibited from using Brownfields grant funds to pay for response costs at a site for which the recipient is potentially liable under CERCLA §107?

A34. Generally, EPA has not considered tribes to be liable as PRPs under CERCLA and, therefore, they are not subject to the statutory prohibition (however, the other prohibitions on uses of Brownfields funds may still apply). Applicants should contact their Regional Brownfields Coordinator for additional information.

Q35a. What are the federal standards for conducting “All Appropriate Inquiries?”

A35a. In November 2006 EPA published final federal standards governing the conduct of all appropriate inquiries (see the Federal Register website at <http://www.gpoaccess.gov/fr/>). Parties wishing to establish protection from CERCLA liability as a bona fide prospective purchaser, innocent landowner, or contiguous property owner, must conduct all appropriate inquiries prior to acquiring a property. Until November 1, 2006, parties may conduct all appropriate inquiries in accordance with the interim standard established by Congress (see answer to Q34b below) or in accordance with the final rule (40 CFR 312). After November 1, 2006, parties must comply with either the standards and practices set forth in the final rule on all appropriate inquiries (40 CFR 312 – see www.epa.gov/brownfields after November 1, 2005) or use the process established in ASTM E1527-05 Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process (available at www.astm.org after November 1, 2005).

Q35b. What are the interim standards for “All Appropriate Inquiries?”

A35b. The Brownfields Law set two different interim standards for conducting "all appropriate inquiries" that apply depending on the date the property was purchased.

1. For properties purchased prior to May 31, 1997, the law provides that a court shall consider the following when making a determination with respect to a defendant: specialized knowledge or experience of the defendant; the relationship of the purchase price to the value of the property, if it were not contaminated; commonly known or reasonably ascertainable information about the property; the obviousness of the presence or likely presence of contamination, and the ability of the defendant to detect contamination by appropriate inspection.

2. For properties purchased on or after May 31, 1997, the law requires the use of procedures developed by the American Society for Testing Materials (ASTM), in particular ASTM's standard E1527-97, or "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process." Parties can also use the E1527-2000 standard.

Q36. What is “All Appropriate Inquiries” and who conducts “All Appropriate Inquiries” under the Brownfields law?

A36. The Brownfields Law establishes that site characterizations or assessments conducted with the use of brownfields grants awarded under CERCLA Section 104(k)(2)(B)(ii) must be conducted in accordance with the federal "all appropriate inquiries" standards established under CERCLA.

All appropriate inquiries also refers to the requirements for assessing the environmental conditions of a property prior to its acquisition, for purposes of establishing certain landowner liability protection under subtitle B of Title II of the Brownfields Law. These landowner liability protections require that a person perform “all appropriate inquiries” into the previous ownership and uses of a property before acquiring title to the property. The landowner liability protections include the bona fide prospective purchaser, innocent landowner, and contiguous property owner provisions of CERCLA (see below).

Depending on the date of purchase, the Brownfields Law (§ 101(35)(B) of CERCLA) specifies which all appropriate inquiries standards are applicable (see answer to question 29b above).

- To qualify as a bona fide prospective purchaser, a person must meet the criteria set forth in § 107(r) and 101(40) of CERCLA, purchase the*

property after January 11, 2002, and must perform all appropriate inquiries prior to purchase. These parties may buy knowing, or having reason to know, of contamination on the property. Please note that brownfields grant applicants that otherwise would meet the requirements for a bona fide prospective purchaser, except for having purchased the property prior to January 11, 2002, are eligible for federal brownfields funding.

- *To qualify as a contiguous property owner, a person who owns property that is contiguous or otherwise similarly situated to a facility that is the only source of contamination found on his/her property must meet the criteria set forth in CERCLA § 107 (q)(1)(A). Contiguous property owners must perform all appropriate inquiries prior to purchase and cannot know, or have reason to know, of contamination on the property.*
- *To qualify as an innocent land owner, a person must meet the criteria set forth in CERCLA § 107(b)(3) and 101(35), perform all appropriate inquiries prior to purchase of a property and cannot know, or have reason to know, of contamination on the property.*

Applicants should note that there are continuing obligations after purchase that are relevant to the liability protections.

Q37. What are the statutory criteria for conducting “All Appropriate Inquiry”?

A37. Congress directed EPA to establish, by regulation, standards and practices for conducting all appropriate inquiries. EPA will promulgate such regulations in November 2005. In the Brownfields Law, Congress directed EPA to include, within the standards for all appropriate inquiries, the ten criteria shown below:

- *The results of an inquiry by an environmental professional;*
- *Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility;*
- *Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land-use records, to determine previous uses and occupancies of the real property since the property was first developed;*
- *Searches for recorded environmental clean-up liens against the facility that are filed under Federal, State, or local law;*

- *Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records concerning contamination at or near the facility;*
- *Visual inspections of the facility and adjoining properties;*
- *Specialized knowledge or experience on the part of the defendant;*
- *The relationship of the purchase price to the value of the property if the property was not contaminated;*
- *Commonly known or reasonably ascertainable information about the property; and*
- *The degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate investigation.*

V. Petroleum Brownfields

Q38. Can a petroleum brownfields grant be used for the assessment and/or cleanup of hazardous substances?

A38. No. As a general rule, a petroleum brownfields grant must be used to assess or cleanup sites contaminated with petroleum. However, if the 'principal purpose' of the assessment grant is to assess a site potentially contaminated with petroleum or to clean up a petroleum contaminated site, a petroleum brownfields grant may be used for the incidental assessment and/or cleanup of hazardous substances.

Q39. What information must I provide to a state or EPA so that my petroleum contaminated site is eligible for grant funding?

A39. The Brownfields Law allows certain sites contaminated with petroleum or petroleum product to be eligible for brownfields grant funding. Eligibility will be determined by EPA or the state, as appropriate (See Appendix 3, part 3.3.2 Contamination by Petroleum or Petroleum Product for a description of the eligibility requirements). Because each state has different requirements for making a petroleum determination it is important that the applicant coordinate with its state to adhere to applicable state policies and procedures.

Non-Tribal applicants must provide the information requested below to your state, so that the state can make the necessary determinations on petroleum site eligibility in Appendix 3, part 3.3.2. Include any response to your request received from your state regarding site eligibility with this proposal. If you do not receive a response from your state by the deadline for filing proposals, please indicate this in your proposal cover letter. (Note: You must provide EPA with the date you requested your state to make the petroleum site determinations. 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 following information with their proposal to EPA. EPA will make the petroleum site eligibility determinations for Tribes.

Provide the following information to your state and to EPA:

- 1. Identify the current and immediate past owner of the site.*
- 2. Acquisition of Site. Identify when and by what method the current owner acquired the property (e.g., purchase, tax foreclosure, donation, eminent domain).*
- 3. No Responsible Party for the Site. Identify whether the current and immediate past owner dispensed or disposed of petroleum or*

petroleum product, or exacerbated the existing petroleum-contamination at the site, and whether the current and immediate past owner took reasonable steps with regard to the contamination at the site.

4. *Cleaned Up 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.*
5. *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.*
6. *Judgments, Orders, or Third Party Suits. Provide information that no responsible party (including the applicant) is identified for the site through, either:
 - (1) 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
 - (2) 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
 - (3) 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.*
7. *Subject to RCRA. Identify whether the site is subject to any order under section 9003(h) of the Solid Waste Disposal Act.*
8. *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 (c) or (f) 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.*

Your request to a state or EPA for the determination on site eligibility also must include a brief explanation as to why the information requested above is not available.

Q40. Based on the information I provided (see Question 38 above), what statutory determinations must my state (or EPA) make to assure that petroleum-contaminated sites (or portions of properties contaminated with petroleum) are eligible for brownfields funding.

A40. For a petroleum contaminated site(s) that otherwise meets the definition of a brownfields 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; and

3. funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.

In addition, petroleum-contaminated sites must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h).

With the exception of Tribes, applicants must first request that their state make these determinations. If the state is unable to make the determinations, the applicant may request that EPA make the determinations. For further information see Guidelines Appendix 3, part 3.3.2 Contamination by Petroleum or Petroleum Product.

VI. Additional Brownfield Questions

Q41. Can brownfields grant funds be used to assess or clean up sites contaminated with PCBs?

A41. Yes. All portions of properties potentially contaminated with PCBs may be eligible for brownfields site assessment, cleanup and revolving loan fund grants (without a property-specific determination), except where EPA has initiated an involuntary action to address PCB contamination at the facility or a portion of a facility. In cases where EPA has initiated an action under the Toxic Substances and Control Act against a property owner to address the illegal disposal of PCBs, the property still may be eligible for brownfields funding if an applicant can demonstrate that the funding will ensure protection of human health and the environment and promote either economic development or the creation or preservation of greenspace.