

## **Example Site Eligibility Determination Outline**

*Modified Based on EPA Region 8 document, reviewed and approved for this use, by  
EPA Region 7. To be used for determining site eligibility under community-wide  
Assessment Grants, RLF Grants, and site-specific work under 128(a) Grants*

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### **A. GENERAL INFORMATION**

1. Grantee Name:
2. Grant Number:
3. Name of RLF Applicant (RLF only):
4. Grant Type:
  - 104(k) Assessment
  - 104(k) RLF
  - 128(a) State
  - 128(a) Tribal
5. Work to be conducted (please check all that apply):
  - Phase 1 Assessment
  - Phase 2 Assessment
  - Cleanup Planning
  - RLF Loan
  - RLF Subgrant
6. How much funding do you anticipate spending on the site?
7. Date of proposed work:
8. Date of this document:

### **B. BASIC SITE INFORMATION**

1. Property Name:
2. Property Address:
3. Who is the current owner of the property? Please include the date the property was acquired, or date of planned acquisition.
4. Known or Suspected Contaminant(s):

- Hazardous Substances (including mind scarred lands and controlled substances)
- Hazardous Substances Commingled with Petroleum
- Petroleum Only

5. List known or suspected contaminants:

6. Identify when and how the site became contaminated and describe previous known uses. If the land has been vacant for many years, why does the grantee think that it is contaminated?

7. Does the site meet the definition of a Brownfields Site? (Is the site “real property, the expansion, redevelopment or reuse of which is complicated by the presence or potential presence of hazardous substances, pollutants or contaminants”?)

- YES  NO

8. Please explain how the reuse of the site has been inhibited by presence or potential presence of contamination.

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

*If the answer is Yes to any of the questions below (C1-3) the site is not eligible.*

1. Is the facility listed (or proposed for listing) on the National Priorities List?

- YES  NO

2. Is the facility subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA?

- YES  NO

3. Is the facility subject to the jurisdiction, custody, or control of the US government. (Land held in trust by the US government for an Indian tribe is eligible.)  YES  NO

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

*If the answer is Yes to any of the below questions (D1-6), then a property specific determination is required. The grantee will need to submit additional information, which can be found in Appendix A to this document.*

1. Is the site/facility subject to a planned or ongoing CERCLA removal action?

- YES  NO

2. Has the site/facility been the subject of a unilateral administrative order, court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or been issued a permit by the U.S. or an authorized state

under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SWDA)?

YES  NO

3. Is the site/facility subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and has there been a corrective action permit or order issued or modified to require corrective measures?  YES  NO

4. Is the site/facility a land disposal unit that has submitted a RCRA closure notification under subtitle C of RCRA and is subject to closure requirements specified in a closure plan or permit?  YES  NO

5. Has the site/facility had a release of polychlorinated biphenyls (PCBs) that is subject to remediation under TSCA?  YES  NO

6. Has the site/facility received funding for remediation from the leaking Underground Storage Tank (LUST) Trust Fund?  YES  NO

#### **E. HAZARDOUS SUBSTANCE/COMMINGLED CONTAMINATION SITES**

*For petroleum only sites, skip to F.*

1. Does the grantee/RLF applicant own the site?  YES  NO

2. Answer the following if the grantee/RLF applicant *is the current site owner*:

a. Is the owner a  Unit of State or Local Government **or**  Other

b. If the owner is a governmental unit, how was the property acquired?

Tax Foreclosure  Donation  Eminent Domain  Bought it outright

Other (Explain):

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

*(If property was acquired by one of the first 3 options (tax foreclosure, donation or eminent domain) you, do not need to answer c or d)*

c. Did the owner conduct All Appropriate Inquiry prior to acquiring property?

Please include dates AAI was performed.

YES  NO

d. Did the owner take reasonable steps with regards to the contamination at the site?

YES  NO

e. Does the owner have a defense to CERCLA liability?

YES – Bona Fide Prospective Purchaser (BFPP)

YES – Contiguous Property Owner

YES – Innocent Land Owner

- YES – Indian Tribe
- NO

f. Is the owner liable at the site as an  Operator,  Arranger, **or**  Transporter  
OR  None Applicable

g. Did all disposal of hazardous substances at the site occur before the owner acquired the property?  YES  NO

h. Did the owner cause or contribute to any release of hazardous substances at the site?

- YES  NO

3. Answer the following if the grantee/RLF applicant *is not the site owner*.

a. Is the grantee/RLF applicant liable at the site as an  Operator,  Arranger, **or**  Transporter  
OR  None Applicable

## F. PETROLEUM ONLY CONTAMINATION SITES

*If petroleum is not the predominant contaminant on the site, skip this section and proceed to section G. Petroleum sites need a written site eligibility determination by the state or EPA.*

1. If the state *has made* the petroleum eligibility determination, the grantee/RLF applicant must provide EPA with the letter from the state.

2. If the state *was unable to make* the determination or the site is *located on tribal land*, EPA must make the determination consistent with the Guidelines (note that EPA staff will need to refer to Appendices of the most recent ARC Guidelines to conduct the petroleum determination). The grantee/RLF applicant must provide information regarding the following:

a. Whether the site is of “relatively low risk” compared with other “petroleum-only” sites in the state. Two key questions for this determination follow:

1. Have Leaking Underground Storage Tank funds been expended at this site?

- YES  NO

2. Have Federal Oil Pollution Act response funds been expended at this site?

- YES  NO

b. Whether there is a viable responsible party at the site. Key questions for this

determination follow:

1. Was the site last acquired through tax foreclosure, abandonment or equivalent government proceedings?  YES  NO

2. Has a responsible party been identified through:

a) a judgment rendered in a court of law or an administrative order that would require any party to assess, investigate, or cleanup the site;  YES  NO or

b) a filed enforcement action brought by federal or state authorities that would require any party to assess, investigate, or cleanup the site;  YES  NO or

c) a citizen suit, contribution action or other 3<sup>rd</sup> party claim against the current or immediate past owner, that would, if successful, require that party to assess, investigate, or clean up the site.  YES  NO;

*Skip to "b.5" if the site was acquired through tax foreclosure, abandonment or equivalent government proceedings; if not, answer question b.3 and b.4.*

3. The current owner is: \_\_\_\_\_ [fill in the blank]

Has the current owner:

a) dispensed or disposed of petroleum or petroleum product at the site?  YES  NO

YES  NO

b) owned the property during the dispensing or disposal of petroleum product at the site?  YES  NO

e) exacerbated the contamination at the site?  YES  NO

d) taken reasonable steps with regard to contamination at the site,  YES  NO.

4. The immediate past owner is: \_\_\_\_\_ [fill in the blank] Has the immediate past owner:

a) dispensed or disposed of petroleum or petroleum product at the site?  YES  NO

b) owned the property during the dispensing or disposal of petroleum product at the site?  YES  NO

c) exacerbated the contamination at the site?  YES  NO

d) taken reasonable steps with regard to contamination at the site,  YES  NO

5. Based on the above, for purposes of Brownfields funding, is there a responsible party?  YES  NO If "YES" go on to #6, if "NO" proceed directly to F.2.C.

6. If there is a responsible party, is that party viable (has adequate financial resources to pay for assessment of the site).  YES  NO If "NO", explain the basis for that conclusion:

*If there is a viable responsible party, the petroleum site is ineligible. If there is no responsible party, or if there is a responsible party who is not viable, continue. NOTE: States may apply their own laws and regulations to make the petroleum site determination instead of the previous questions; if they do so, the grantee must submit their determination and rationale.*

c. Whether the grantee/RLF applicant is potentially liable for cleaning up the site.

Key questions for this determination follow:

1. Has the grantee/RLF applicant ever:

a) dispensed or disposed of petroleum or petroleum product at the site?  YES  NO

b) exacerbated the contamination at the site?  YES  NO

d. Is the site subject to any order issued under Sec. 9003(h) of the Solid Waste Disposal Act?  YES  NO

#### **G. ACCESS**

Does grantee/RLF applicant have access or an access agreement for this property?

YES  NO