

EPA CLEANUP GRANTS: THRESHOLD CRITERIA

Those liable for contamination on a site are not eligible for EPA Brownfields Grant funding. Use this information to ensure you are not liable for cleanup costs at your site or determine if your petroleum site is eligible for funding.



Section A is for sites contaminated with hazardous substances. **Section B** is for sites contaminated with petroleum. If your site is **co-mingled** with both, determine which is more prevalent and respond to that section of the grant. If your site is contaminated with both, but in distinguishable, **separate areas**, respond to both sections.

SECTION A: PROPERTY OWNERSHIP ELIGIBILITY- HAZARDOUS SUBSTANCES

Liable parties may include all current and former owners and operators, and those who arranged for or contributed to the disposal and/or treatment of hazardous substances on the site. To be eligible for EPA grant funding, you must demonstrate that you:

1. Are exempt from CERCLA liability; or
2. The property is publicly owned and was acquired prior to January 11, 2002; or
3. Meet requirements for an affirmative defense to CERCLA liability

1. EXEMPTIONS TO CERCLA LIABILITY

- Indian Tribes
- Alaska Native Village Corporations and Alaska Native Regional Corporation
- Property acquired under certain circumstances by units of state and local government:
- Seizure or in connection with a law enforcement activity
- Bankruptcy
- Tax delinquency
- Abandonment
- Escheat or certain inter-governmental transfers
- See [FY2025 FAQs](#) for further information

2. EXCEPTIONS TO MEETING THE REQUIREMENTS FOR ASSERTING AN AFFIRMATIVE DEFENSE TO CERCLA LIABILITY

- **Publicly owned** brownfield sites acquired prior to January 11, 2002

INFO NEEDED!

To demonstrate (1) **the State or local government is exempt** OR To demonstrate (2) you qualify for the **Publicly-Owned Brownfields Sites exception** the following information is required:

- Conditions under which the property was acquired
- Date the property was acquired
- Whether all hazardous substance disposal occurred before your ownership
- Confirmation that you have not caused or contributed to the release of hazardous substances
- Confirmation that you have not arranged for the disposal of or transported hazardous substances to the property



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3. LANDOWNER PROTECTIONS FROM CERCLA LIABILITY

To be eligible for grant funding under these exceptions, you must establish that you are a Bona Fide Prospective Purchaser (BFPP), contiguous property owner (CPO), or innocent landowner (ILO).

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

imposes liability on parties responsible for, in whole or in part, the presence of hazardous substances at a site.

To be considered a Bona Fide Prospective Purchaser (BFPP) all of the following must be met:

- Have acquired the title to the property after January 11, 2002.
- Conducted all appropriate inquiries (AAI) prior to acquiring the property. This is typically met by completing a **Phase I Environmental Site Assessment**. AAI must be conducted or updated within one year prior to the date the property was acquired. Certain aspects must be updated **within six months** prior to the acquisition.
- Are not responsible or liable for contamination in any way or be affiliated with anyone who is.
- All disposal of hazardous substances occurred before you acquired the property.
- Taken **reasonable steps** to address releases and potential exposures to hazardous substances.
- Are complying with land use restrictions and any institutional controls associated with response actions.
- Are providing full cooperation, assistance, and access to authorized persons.
- Are complying with CERCLA information requests and subpoenas and providing all legally required notices with respect to hazardous substances found at the site.
- Supporting response actions or natural resource restoration.



What are reasonable steps?

Reasonable steps may include things like limiting access to your property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent exposure to hazardous substances may depend on location or use of the site.

To demonstrate that the applicant meets BFPP CERCLA liability protection requirements the following information must be submitted:

- a. Information on the property acquisition:
 - How you acquired (or will acquire) ownership and the date acquired
 - The nature of your ownership
 - The name and identity of the party from which you acquired the property and all affiliations you have or had with all prior owners and operators
- b. Pre-Purchase Inquiry:
 - Types of site assessments performed, the dates of each assessment, and who they were performed for
 - Who performed the assessments and what his/her qualifications are to perform such work
 - If the original assessment was conducted more than 180 days prior to the date you acquired the property, affirm that you conducted the appropriate updates



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3. LANDOWNER PROTECTIONS FROM CERCLA LIABILITY (CONT.)

c. Timing and/or Contribution Toward Hazardous Substances Disposal:

- Did the disposal of hazardous substances occur after you acquired the property?
- Did you cause or contribute to any release of hazardous substances at the site?
- Did you arrange for the disposal of or transport hazardous substances to the site?

d. Post-Acquisition Uses:

- Describe all uses of the property since you acquired ownership, including any uses by persons or entities other than you.
- Provide a **detailed timeline** with names of all current and prior users during the time of your ownership.

e. Continuing Obligations

- Describe in detail the **reasonable steps** taken with respect to hazardous substances at the site.
- Confirm your commitment to comply with any and all restrictions, institutional controls, information requests, and administrative subpoenas. Confirm that you will cooperate with those performing the cleanup and provide all legally required notices.

What do I do if the answer is yes?



Contact
Mid-Atlantic TAB!

Call the TAB Hotline
E-mail us
or
Sign-up for a 1-on-1
consultation!

For further information see the EPA [Brownfield's AAI](#) page.

Non-Publicly Owned Sites Acquired Prior to January 11, 2002

An applicant that is not a public entity is eligible for a grant if it: acquired the site prior to January 11, 2002; performed environmental due diligence; and did not cause or contribute to the release or threatened release of a hazardous substance. The following information is needed to determine this:

- Describe in detail the circumstances of the acquisition
- Provide the date the property was acquired
- Discuss the environmental due diligence performed prior to your acquisition of the site
- Identify whether all disposal of hazardous substances occurred before property was acquired
- Affirm that entity has not caused or contributed to any release of hazardous substances at the site
- Affirm that entity has not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site
- Describe in detail the **reasonable steps** taken with respect to hazardous substances at the site.

For more information on the CERCLA landowner liability protections, please refer to this [Fact Sheet](#).



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SECTION B: PROPERTY OWNERSHIP ELIGIBILITY- PETROLEUM SITES

Eligibility for petroleum sites is determined by the following criteria:

- There can be no viable responsible party
- The applicant cannot be potentially liable for cleaning up the site
- The site must not be subject to a RCRA corrective action order



Petroleum site eligibility is generally decided by the state, but the EPA steps in when the state is unable. The EPA also makes the determination for tribes.

1. INFORMATION REQUIRED FOR A PETROLEUM SITE ELIGIBILITY DETERMINATION

Property Information:

- Identify property information including current/past property owner, when the property was acquired, and how the property was acquired.

Responsible and Viable Parties:

- Identify parties who are responsible for clean up at the site and if they are financially viable to do so.

Judgments/RCRA:

- Provide documentation that no party is identified as potentially liable for cleaning up the site.
- Identify whether the site is subject to any order under §9003(h) of the Solid Waste Disposal Act.



Note: If **no** responsible party was identified, the site may be eligible for funding. If a responsible party **was** identified, EPA or the state must determine if they are viable. If they are not viable, the site may be eligible for funding.



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