

Montana Petroleum Brownfields Guidance Document

I) Introduction

A brownfields site is “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. The petroleum brownfields program has separate funding to address “petroleum-only” brownfield sites, which are sites where the sole contaminant is petroleum, or if minor amounts of non-petroleum contaminants are present, remediation of the petroleum contamination would also address the non-petroleum contamination. This guidance only addresses petroleum brownfield sites and does not address hazardous substance brownfield sites or mine-scarred land. Montana’s petroleum brownfields strategy is to promote environmental protection, support community revitalization, and promote economic redevelopment through the assessment, cleanup and sustainable reuse of petroleum brownfield sites throughout the State of Montana.

Transforming petroleum contaminated or potentially contaminated sites into sustainable commercial businesses, affordable housing, or open space, broadens prospects for a healthy environment for future generations by protecting the quality of the natural environment and safeguarding human health. It also reduces long term environmental liability and the possibility of petroleum releases in the future from that same property. Reinvesting in an abandoned or underutilized property within Montana cities helps limit sprawling development into valued open spaces and adjacent farmlands, reducing resource consumption, and stimulating economic development through the creation of jobs, providing an increase to the local and statewide tax base. In addition, the assessment, cleanup, and revitalization of petroleum contaminated properties will help to foster partnerships between state, local and private groups to support community efforts and maximize resource leveraging between public and private partnerships to restore underutilized and abandoned gas station properties and other petroleum-contaminated sites to sustainable and productive uses within the local communities.

Site redevelopment plans may be combined with most community master plans and economic development plans through other state agencies. Specific strategies for environmentally sound reuse planning may include native landscaping of open spaces to reduce water consumption, smart growth, alternative storm water management plans, or energy-efficient buildings. Brownfields revitalization funding will help move sites toward these objectives. DEQ case managers will work with property owners, applicants, and development corporations on assessment and cleanup plans to ensure that Montana cleanup standards are met and that sites may be categorized as resolved in accordance with Administrative Rules of Montana (ARM) 17.56.607(4) in addition to achieving local re-development goals.

II) Brownfields Grant Types

The Environmental Protection Agency (EPA) offers competitive grants for assessment and cleanup of brownfield sites and to establish revolving loan funds (RLFs) for brownfields cleanup. These three grant types are briefly discussed in sections II(A), II(B), and II(C). Guidelines and required application materials for each of these grants are available on EPA's website at

<http://www.epa.gov/oswer/grants-funding.htm#EPA-OSWER-ORCR-09-04>.

Property owners and responsible parties for DEQ regulated petroleum release sites are required to work with DEQ on meeting cleanup standards regardless of funding source. Using brownfields funding to assess and cleanup petroleum release sites does not waive this or any other regulatory requirement.

To find a list of brownfield grants awarded in Montana, visit the EPA's Brownfields Grant Fact Sheet Search at http://cfpub.epa.gov/bf_factsheets/index.cfm. Hyperlinks to economic development companies in Montana, many of which have been awarded these grants, can be found at <http://www.ecodevdirectory.com/montana.htm>.

In order to apply for a brownfields grant, the applicant must be one of the following:

- A general purpose unit of local government;
- A 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;
- A government entity created by state legislature;
- A regional council or group of general purpose units of local government;
- A redevelopment agency that is chartered or otherwise sanctioned by a state;
- The state;
- An Indian Tribe; or
- A nonprofit agency (MAY APPLY FOR CLEANUP GRANTS ONLY)

A) Brownfields Assessment Grants

Brownfields Assessment Grants provide funding for developing inventories of brownfields sites, prioritizing sites, conducting community involvement activities, and conducting site assessments and cleanup planning related to brownfields sites. Only the eligible entities listed above may apply for Brownfields Assessment Grants from EPA. An eligible entity can use assessment grant funds to perform assessments at brownfields eligible sites that the grantee does not own, provided that the owner grants access to the site. For more information on Brownfields Assessment Grants, see <http://www.epa.gov/oswer/grants-funding.htm#EPA-OSWER-ORCR-09-04>.

B) Brownfields Cleanup Grants

Brownfields Cleanup Grants provide funding to carry out cleanup activities at specific brownfields sites that are owned by the applicant. Unlike Brownfields Assessment and Revolving Loan Fund Grants, nonprofit

organizations are eligible to apply for Brownfields Cleanup Grants. The applicant for a cleanup grant *must* be the sole owner of the property to be cleaned up as of October 16 of the grant year. For purposes of eligibility determinations, the term “owner” means the holder of fee simple title to the property. DEQ will require a copy of the recorded deed evidencing the ownership of the property at the time of proposal submission. Applicants for cleanup grants must have performed Phase I and Phase II Environmental Site Assessments on the site to be cleaned up. For more information on Brownfields Cleanup Grants, see <http://www.epa.gov/oswer/grants-funding.htm#EPA-OSWER-ORCR-09-04>.

C) Brownfields Revolving Loan Fund Grants

RLF Grants provide funding for a grant recipient to capitalize a revolving loan fund from which to provide loans and subgrants to carry out cleanup activities at brownfield sites. Only entities eligible to apply for a brownfields grant can receive a *subgrant* under an RLF. However, if an eligible entity has been awarded a Revolving Loan Fund Grant, a private entity within the area covered by the grantee may apply for a *loan* from the RLF fund administered by the grantee provided the brownfield site eligibility criteria are met. For more information on Brownfields RLF Grants, see <http://www.epa.gov/oswer/grants-funding.htm#EPA-OSWER-ORCR-09-04>.

D) Targeted Brownfields Assessments

In addition to the grants listed above, applicants with sites that are eligible for brownfields funding may apply for Targeted Brownfields Assessments (TBA) from EPA or Montana Brownfields Assessments (MBA) from DEQ. These assessments are applied for directly to the regional EPA office or DEQ, and EPA or DEQ contracts the work directly through one of their own contractors if funding is available.

After the initial assessment work has been completed, a report is prepared that documents the findings and provides recommendations. When necessary, meetings are held to discuss the results of assessment activities and the potential for future work. If necessary, a projected budget for future work is prepared and discussed. When evaluating the site for possible future work, DEQ will incorporate risk-based decision making in order to find the most cost effective solution to bring the site to redevelopment and sustainable reuse.

Contact Wendy Thomi of the EPA Region 8 Montana Office at (406) 457-5037 for information on applying for a TBA from EPA or Nicholas Sovner of the DEQ LUST/Brownfields Section at (406) 841-5053 for information on applying for an MBA from the DEQ. Since resources for MBAs are limited, the criteria outlined in Table 1 below will be applied to determine those sites for which MBA-funded assessments may be completed.

Table 1
MONTANA PETROLEUM BROWNFIELDS RANKING CRITERIA
<p>Local Community Needs</p> <ul style="list-style-type: none"> • Protection of Human Health & the Environment • Environmental Justice Factors may include: <ul style="list-style-type: none"> Rural versus Urban Community Needs Poverty & Unemployment Rates Low Income &/or Minority Communities Special Needs or Sensitive Populations • Economic & Community Benefit Derived from Site
<p>Redevelopment & Reuse Resource Leveraging Potential & Funding Strategies</p> <ul style="list-style-type: none"> • Cost/Benefit & Land Reuse Analysis of Conducting Site Assessment
<p>Assessment & Site Cleanup</p> <ul style="list-style-type: none"> • Funding or Cost/Resource Sharing Mechanisms • Physical Resource Leveraging between Stakeholders
<p>Site-Specific Criteria</p> <ul style="list-style-type: none"> • Land Ownership & Access Availability • Property Size • Property Configuration • Development Potential • Total Assessed Value of Site • Current Zoning • Proposed Land Usage • Demolition & Site Reclamation Costs • Site Assessment & Investigation Costs • Anticipated Cleanup Costs & Effectiveness • Remedial & Technical Feasibility • Protection of Sensitive Receptors • Protection of Human Health & the Environment • Economic & environmental benefit to local community for revitalization of underutilized & contaminated property

III) Petroleum Brownfields Site Eligibility

In order for petroleum brownfield funds to be spent at a site, the site itself must meet eligibility criteria. Non-tribal applicants are responsible for requesting an eligibility review by DEQ. DEQ is responsible for making site eligibility determinations for all non-tribal Montana sites regardless of the funding source. DEQ has chosen to adopt EPA's eligibility criteria for brownfield sites and has prepared a form, found in Appendix A, for applicants to fill out with information necessary for DEQ to evaluate whether the site meets the brownfields eligibility criteria. This form, along with supporting documentation, must be submitted to DEQ before DEQ may evaluate whether the site meets eligibility criteria for brownfields funding.

NOTE: A determination by DEQ or by EPA that a petroleum-contaminated site is eligible for brownfields funding does NOT release any party from obligations under state or federal law or regulation or under common law, and does not impact or limit EPA or state enforcement authority against any party to remediate environmental impacts or comply with federal or state laws or regulations.

The brownfields applicant should be further aware that, in many cases, additional cleanup or monitoring of the site will be necessary after brownfields funding facilitates assessment and/or cleanup, and the owner of the property will continue to be responsible for fulfilling those obligations until no further corrective action status is attained, or until the petroleum release at the site may be categorized as resolved in accordance with Administrative Rules of Montana (ARM) 17.56.607(4). The objective of Montana's state brownfields program is to get underutilized properties assessed and/or cleaned up so that they can be redeveloped and reach a state where 1) minimal corrective action is necessary to achieve no further corrective action status and 2) the value of the property exceeds the remaining corrective action costs.

As per the Brownfields Revitalization and Environmental Restoration Act of 2001 (<http://www.epa.gov/brownfields/html-doc/hr2869.htm#subtA>), in order for a petroleum release site to be eligible for brownfields funding, the site must meet the following four criteria:

- The site must be of relatively low risk compared to other “petroleum only” sites in the state;
- The site must not be subject to any order issued under §9003(h) of the Solid Waste Disposal Act or comparable state law;
- There can be no viable responsible party for the site; and
- The site will not be assessed, investigated or cleaned up, using brownfields funding, by a person that is potentially liable for cleaning up the site.

The following section of this guidance document is intended to assist in interpreting and applying the four brownfields eligibility criteria outlined above and promoting a better understanding of the petroleum brownfields eligibility criteria and the evaluation process for potential brownfield sites:

A) Relative Risk

The site must be of relatively low risk compared to other petroleum only sites in the state. The EPA's definition of a “relatively low risk” brownfields site is a site that is not high risk, and their definition of a high risk site is a site that is currently being cleaned up using LUST Trust funds or is subject to a response action under the Oil Pollution Act (OPA).

B) Corrective Action Order

The site must not be subject to any order issued under §9003(h) of the Solid Waste Disposal Act or comparable state law. Sites assessed or cleaned up

using brownfields funding cannot be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) §9003(h) or a comparable state law such as the Montana Underground Storage Tank Act, §§ 75-11-501 through 75-11-526, Montana Code Annotated (MCA).

C) Viable, Responsible Party

There can be no viable responsible party for the site. This criterion is addressed in two parts:

- First, it must be determined whether there is a responsible party for the site; and
- Second, if there is a responsible party, it must be determined that the responsible party is not viable.

- 1) The following questions must be answered, and corresponding documentation and information must be provided, by an applicant in order for DEQ to ascertain that there is no responsible party for a site:
 - a) Has there been a judgment rendered in a court of law, or an administrative order that would require any party to assess, investigate, or clean up the site?
 - b) Has there been an enforcement action by federal or state authorities that would require any party to assess, investigate, or clean up the site?
 - c) Has there been a citizen suit, contribution action or other third party claim brought against the current or immediate past owner of the site that would require that owner to assess, investigate, or clean up the site?

If the answer to any of the questions in 1(a) through 1(c) above is “yes”, there is a responsible party and it must be determined whether that responsible party is viable. A petroleum contaminated site may be determined to have no responsible party if the site was last acquired through tax foreclosure, abandonment, or equivalent government proceedings (regardless of whether the applicant owns the site), and the answer to all three questions in 1(a) through 1(c) is “no.” In order for a petroleum-contaminated property that was not acquired through tax foreclosure, abandonment, or equivalent government proceedings to not have a responsible party, it must both answer “no” to all three questions in 1(a) through 1(c) and it must be determined that the current and immediate past owner did not dispense or dispose of, or own the property during the dispensing or disposal of any contamination at the site, did not exacerbate contamination at the site, and took reasonable steps with regard to the contamination at the site for a determination that there is no responsible party for the site.

- 2) If a responsible party is identified, a determination must be made that the responsible party is not viable. A viable responsible party is financially

capable of assessing and cleaning up the petroleum contamination at the site. A determination of financial viability can be made by DEQ through an ability to pay analysis, which will require the submittal of the responsible party's financial documents such as tax records and bank statements.

- a) If the responsible party is an individual, an INDIPAY analysis will be done. The INDIPAY model requires five years of individual tax return data and an Individual Ability to Pay Claim Form. Additionally, sole proprietors must submit the last five years of year-end financial statements, including balance sheets, income statements, and statements of cash flow, supplemental notes and auditor's opinion (if available).
- b) If the responsible party is a corporation, an ABEL analysis will be done. Documents required for an ABEL analysis include tax return data, or if tax return data is not available, analysis of private corporations can be performed using financial statements, loan applications, and Dun & Bradstreet reports.
- c) If the responsible party is a municipality or regional utility, a MUNIPAY analysis will be done. MUNIPAY performs two different analyses, a demographic comparison, which uses U.S. Census data to compare the municipality to state and national norms, and an affordability calculation, which assesses the amount of currently available funds and, if necessary, funds available through financing.

D) Liability of Applicant

Brownfields funding may not be awarded for the assessment, investigation or cleanup of a petroleum contaminated site when the applicant is potentially liable for addressing petroleum contamination at the site. In order to meet this fourth criteria it must be determined that the applicant has not dispensed or disposed of petroleum or petroleum products at the site, and the applicant did not exacerbate the contamination at the site and took reasonable steps with regard to contamination at the site. "Reasonable steps" may include tank removal, assessment or cleanup efforts coordinated with the DEQ, or other activities conducted with the goal of stopping continuing releases, preventing threatened future releases, mitigating contamination on the site, or otherwise protecting human health and the environment from exposure to petroleum contamination.

Appendix A

Montana Department of Environmental Quality
Petroleum Brownfields Eligibility Determination Form**

****Please note that this form is designed to assist the Montana DEQ in evaluating site eligibility for petroleum brownfields. It is not an application for a brownfields grant or loan. Additionally, a determination of eligibility does not waive liability for obligations to remediate environmental impacts or comply with federal or state laws or regulations, and does not impact or limit EPA or state enforcement authorities against any party.**

Contact Person

Name: _____
Community/Group/Entity: _____
Telephone number: _____
Fax number: _____
Mailing address: _____
E-mail address: _____

Site/Project Location

Current site/business name: _____
Current owner and date of acquisition: _____
Immediate past owner and date of acquisition: _____
Previous site/business names or aliases: _____

Site address or general location: _____

Acreage: _____

Please include a map with the site location.

Legal description: _____

City and county: _____

Facility ID and Release ID numbers, if applicable: _____

Please answer the following questions completely and accurately, even if the information is on file at DEQ. Your answers will assist DEQ in evaluating criteria set forth in the EPA Fiscal Year 2010 Guidelines for Brownfields Assessment, Cleanup, and Revolving Loan Fund Grants. For additional information on eligibility requirements, please refer to the Montana Petroleum Brownfields Guidance Document. Eligibility determinations will be delayed if all information is not provided on or accompanying this form. If assistance is needed to complete the form, please contact Nicholas Sovner of the LUST/Brownfields Section at (406) 841-5053.

Criteria 1. The site must be of “relatively low risk” compared with other “petroleum-only” sites in the state.

- ___ 1.1 Is the site currently being cleaned up using LUST Trust Fund money?
- ___ 1.2 Is the site currently subject to a response under the Oil Pollution Act?

If you answered yes to either of the questions above, the site is *not* of relatively low risk and is not eligible for brownfields funding. If you answered no to both questions, please continue to Criteria 2.

Criteria 2. The site must not be subject to any order issued under §9003(h) of the Solid Waste Disposal Act or comparable state law (i.e. MUSTA).

- ___ 2.1 Is the site subject to a corrective action order under Resource Conservation and Recovery Act (RCRA) §9003(h) or any other corrective action order from a state or federal agency? (DEQ will verify this information.)
- ___ 2.2 Describe any environmental investigations at the site. Include date, investigation, and results. This could include investigation for enforcement purposes or environmental assessments conducted to facilitate a property transfer. If assessment or corrective action reports are not on file with the DEQ, please submit copies with this application. _____

If the answer to question 2.1 is yes, the site is ineligible for brownfields funding. If you answered no, please continue to Criteria 3.

Criteria 3a and 3b. There is no viable responsible party.

Criteria 3a. There is no responsible party.

- ___ 3a.1 Has a responsible party been identified for the site through a judgment rendered in a court of law or an administrative order that would require any party to assess, investigate, or clean up the site?
- ___ 3a.2 Has a responsible party been identified through an enforcement action by federal or state authorities that would require any party to assess, investigate, or clean up the site?

responsible party—please provide copies of official recorded deeds for the current and immediate past owners and skip to Criteria 4.

Criteria 3b. If a responsible party has been identified, is that responsible party financially capable of satisfying obligations under federal or state law to assess, investigate, or clean up the site?

____ 3b.1 Name of responsible party: _____

Please provide documentation of efforts to locate the individual.

____ 3b.2 If the responsible party is a business entity (e.g., corporation, partnership, or limited liability company) is it still active? (DEQ will verify—if no, skip to Criteria 4.)

____ 3b.3 Has an ability to pay analysis been performed? If the responsible party is an individual or a sole proprietorship, please submit the most current five years of signed tax returns and complete an Individual Ability to Pay Claim Form (can be obtained from the DEQ) so that an INDIPAY analysis may be completed. If the entity is a sole proprietorship, please also submit the last five years of year-end financial statements, including balance sheets, income statements, and statements of cash flow, supplemental notes and auditor’s opinion (if available.) If the responsible party is a corporation, please submit tax returns, financial statements, loan applications, and/or Dun & Bradstreet reports so that an ABEL analysis may be completed. Please contact the DEQ prior to submission of documentation to ensure that adequate information is submitted.

____ 3b.4 If an ability to pay analysis has been performed, is the responsible party able to pay any cleanup costs? If the answer to this question is no, the responsible party is not viable. Please continue to Criteria 4.

Criteria 4a. In order to be eligible for Petroleum Brownfields funding there must be evidence that petroleum products were dispensed, stored, or disposed of on or near the site.

____ 4.1a Is there reason to believe that petroleum products were dispensed, stored, or disposed of on or immediately adjacent to the property, i.e. gasoline, diesel, waste oil, heating oil?

____ 4.2a Describe the locations of any petroleum products that could have potentially been released to the environment. _____

Criteria 4b. The site will not be assessed, investigated, or cleaned up by a person that is potentially liable for cleaning up the site.

____ 4.1b Has the applicant dispensed or disposed of petroleum or petroleum product at the site or owned the property during a time when petroleum was dispensed or disposed of?

____ 4.2b Has the applicant exacerbated contamination at the site?

____ 4.3b Has the applicant taken reasonable steps with regard to the contamination at the site? Please explain. _____

If the answers to questions 4.1b and 4.2b are no, and the answer to question 4.3b is yes, the applicant may be eligible for brownfields funding.

Please read the statement below and sign and date the form:

The information provided on this form is complete and accurate to the best of my knowledge.

Form Preparer: _____ Date: _____

Please return this form, along with all required supporting documentation, to:

Nicholas Sovner
MT DEQ
PO Box 200901
Helena, MT 59620

For DEQ Use Only:	
Does the site meet brownfields eligibility requirements?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Petroleum Brownfields Coordinator Review: _____	Date: _____
Agree with eligibility determination? <input type="checkbox"/> Yes <input type="checkbox"/> No	Comments: _____

LBS Supervisor Review: _____	Date: _____
Agree with eligibility determination? <input type="checkbox"/> Yes <input type="checkbox"/> No	Comments: _____

LBS Attorney Review: _____	Date: _____
Agree with eligibility determination? <input type="checkbox"/> Yes <input type="checkbox"/> No	Comments: _____

References:

Economic Development Directory Publishing LLC, 2009,
<http://www.ecodevdirectory.com/montana.htm>

EPA, Brownfields Grant Fact Sheet, http://cfpub.epa.gov/bf_factsheets/index.cfm

EPA, FY10 Guidelines for Brownfields Assessment Grants, <http://www.epa.gov/oswer/grants-funding.htm#EPA-OSWER-ORCR-09-04>.

EPA, FY10 Guidelines for Brownfields Cleanup Grants, <http://www.epa.gov/oswer/grants-funding.htm#EPA-OSWER-ORCR-09-04>.

EPA, FY10 Guidelines for Brownfields Revolving Loan Fund (RLF) Grants,
<http://www.epa.gov/oswer/grants-funding.htm#EPA-OSWER-ORCR-09-04>.

EPA, H.R. 2869 Small Business Liability Relief and Brownfields Revitalization Act,
<http://www.epa.gov/brownfields/html-doc/hr2869.htm#subtA>

EPA Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants, http://www.epa.gov/swerosps/bf/pg/appendix3_fy06.htm

EPA, PRP Search Manual, September 2003,
<http://www.epa.gov/Compliance/resources/publications/cleanup/superfund/prpmanual/prp-search-man-cmp.pdf>