


MEMORANDUM
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF LAND PROTECTION AND REVITALIZATION
OFFICE OF SPILL RESPONSE AND REMEDIATION

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SUBJECT: Guidance Memo No. # LPR-SRR-2021-01
**EPA Brownfields Grant Eligibility Review for Petroleum Contaminated Site-
Revised**

TO: Petroleum Program Managers

FROM: Kathryn Perszyk
Land Protection and Revitalization Director 

DATE: May 25, 2022

COPIES: Regional Directors, Deputy Regional Directors, Betty Lamp, Renee Hooper, Lisa Dewey,
Meade Anderson, Vince Maiden

Summary:

This memorandum updates and revises Guidance Memo No. 05-2015 with the procedures for regional Land Division staff to use in performing eligibility reviews for the Brownfields Grant program based on 2018 statutory amendments to the original Brownfields Act. The new guidance also includes a screening questionnaire for Brownfields grant applicants to complete.

Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>);
- The Department's website at <https://www.deq.virginia.gov/land-waste/land-remediation/brownfields>

Contact information:

Please contact Renee Hooper at (804) 659-1352 or renee.hooper@deq.virginia.gov or Lisa Dewey at (804) 659-1331 or lisa.dewey@deq.virginia.gov or Vince Maiden at (804) 914-3860 or vincent.maiden@deq.virginia.gov with any questions regarding the application of this guidance.

Certification:

As required by Subsection B of § 2.2-4002.1 of the Administrative Process Act (APA,) the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

Disclaimer: This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Brownfields Grant Program

EPA can award grants for Brownfield site assessment and cleanup through the Brownfield grant program to applicants who meet certain eligibility criteria. The EPA Guidelines for Brownfield Assessment Grants define a “Brownfield Site” to mean “...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.” The purpose of this Guidance is to provide Land Division staff (Waste, Petroleum and Brownfields staff) with a process and tools to evaluate whether a proposed petroleum-contaminated Brownfield site is eligible for a Brownfield Grant

Generally, the Brownfields Law ¹ allows funding for activities at petroleum-contaminated Brownfields sites if:

- 1) EPA or the state has determined that there is no viable responsible party;
- 2) The site will not be assessed, investigated or cleaned up by a person who is potentially liable for cleaning up the site; and
- 3) The site is not subject to a RCRA 9003(h) order.

As part of the application process, the applicant must show that the site meets the statutory criteria listed above. DEQ is responsible for performing this review based on information provided by the applicant.

Application and Review Process

In order to receive an EPA grant for a specific site, the grant applicant must (1) identify a potential Brownfield site; (2) complete and submit an EPA Region 3 Property Approval Questionnaire for Petroleum Sites (“EPA Questionnaire”) to DEQ for review; and (3) receive an eligibility letter from DEQ and submit it, along with the EPA Questionnaire, to the EPA.

The EPA Questionnaire (attached as Appendix 1) requires grant applicants to provide information necessary to assess whether the site is eligible for a Brownfield grant. DEQ staff should use the information provided by the applicant in this Questionnaire to perform the eligibility review. The applicant should submit the completed EPA Questionnaire to the Petroleum Program Manager in the appropriate Regional Office (RO). DEQ’s Brownfields Program Coordinator is also available for consultation.

¹ The Brownfields Utilization, Investment and Local Development (BUILD) Act was signed into law on October 5, 2018. <https://www.epa.gov/sites/production/files/2018-04/documents/omnibus3.22.18.brownfields.pdf>. The BUILD Act reauthorized EPA’s Brownfields Program, and made amendments to the original 2002 Small Business Liability Relief and Brownfields Revitalization Act (<https://www.govinfo.gov/content/pkg/PLAW-107publ118/html/PLAW-107publ118.htm>).

The RO petroleum program staff, in conjunction with the Brownfields Program Coordinator, reviews the documentation submitted by the applicant and performs the eligibility analysis described below. Appendix 2 of this Guidance contains an optional screening form to assist staff in reviewing the application and preparing the eligibility letter. The screening form is designed to walk staff through the required analysis, but its use is not required.

After the review is complete, the RO sends an eligibility letter to the applicant describing the results of DEQ's review. The letter is usually signed by the RO Land Protection Manager or the Petroleum Program Manager. The RO staff should copy the DEQ Brownfields Program Coordinator on the eligibility letter. Sample eligibility letters are included in Appendix 3. The DEQ Brownfields Program Coordinator and staff in the Office of Spill, Response and Remediation (OSRR) are available to assist in drafting the eligibility letter.

Staff Review and Eligibility Issues

The eligibility review performed by regional petroleum program staff is primarily based on the information provided by the applicant. As part of the grant application, applicants complete the EPA Questionnaire (Appendix 1) to the best of their ability. DEQ staff is responsible for reviewing the information provided in the EPA Questionnaire to assess the following eligibility criteria:

1. **No Viable Responsible Party**

a) Can a responsible party be identified?

DEQ must decide whether there is a viable responsible party. EPA requires a 3-part responsible party analysis. **This analysis is different from the RP analysis that the region would perform under Virginia law.** First, DEQ must establish whether a responsible party has been identified either through:

A court judgment;

A federal or state enforcement action; or

A pending citizen suit.

To accomplish this, petroleum program staff must confirm that DEQ's records do not reflect a judgment, an 1186 order, an NOV, a consent order or a third-party claim identifying a responsible party for a tank release at the site. Petroleum program staff can use CEDS and consult with regional enforcement staff to obtain information concerning possible enforcement actions. Concurrently, petroleum program staff should contact OSRR to ascertain whether there are any final or pending third party suits involving the site. DEQ

staff are not responsible for researching court records for other types of judgments or citizen suits.

If no responsible party is identified under this part of the analysis, then the next question is whether the EPA Questionnaire provided by the applicant indicates that the site was acquired through tax foreclosure, abandonment or equivalent government proceedings. If the answer is “yes” then there is no responsible party for EPA grant purposes, and parts b and c of this responsible party analysis are not required. Staff should document that there is no responsible party for this site in the eligibility letter. (Appendix 3), and on the screening form, if used, (Appendix 2), and continue with Section 2, “Applicant Activities” below.

b) Did the current and immediate past site owner’s activities contribute to or exacerbate the contamination?

If the site was not acquired through tax foreclosure, abandonment or equivalent government proceedings, then the second portion of the responsible party analysis must be performed. This requires a review of the current and immediate past owner’s actions, specifically:

- * Whether the current or immediate past site owner dispensed or disposed of petroleum, or owned the property during the disposal of any contamination at the site, or
- * If contamination exists on the site, whether the current or immediate past site owner caused or contributed to existing contamination at the site.

The EPA Questionnaire provided by the applicant should provide this information. If the grant application is for funding for a Phase 1 Environmental Site Assessment, then the information regarding the activities of the current and immediate past owners with regard to contamination may not be available until after the Phase 1 is complete.² Lack of this information does not render an applicant ineligible for grant funding. If the application is silent on this subject, staff should state in the eligibility letter that the information was not provided by the applicant. See the sample letters in Appendix 3 for an example of appropriate language.

Depending on the results of this review, staff should include comments if they are using the screening form. Comments may include noting that the current available information is insufficient to evaluate the current and past owners’ activities with regard to

² A Phase 1 is an investigation that determines the potential for contamination on a piece of property. Historical information is collected, a visual “walk-through” is conducted and available parties are interviewed. If the Phase 1 indicates a potential for contamination on the property, then a Phase 2 may be recommended. (A Phase 2 is an investigation to confirm the presence or absence of contamination on the property.) If a Phase 1 has not yet been completed, then it may be difficult to perform this analysis. If that is the case, DEQ should perform any reviews that it can, while identifying those that cannot be made and why.

the site, and the responsible party cannot be identified at this time based on EPA's criteria. If the applicant identifies information in its application regarding the current and immediate past owner's activities, then those activities should be identified in the letter and on the screening form, if used.

c) Is the responsible party viable? If any current or past owners of the site are identified as responsible parties, then they must be evaluated to determine whether they are financially viable. A party will be considered financially viable if the party is "financially capable of satisfying obligations under federal or state law to assess, investigate or clean up the site." If a corporation, partnership or limited liability company is defunct (the entity is no longer in existence) or insolvent, it will not be considered viable. If the business entity still exists and has claimed on the EPA Questionnaire that it does not have the financial means to assess and clean up the property, then petroleum program staff should request an Ability to Pay (ATP) review. Staff should contact DEQ's Office of Financial Responsibility and Waste Programs (OFRWP) to request an ATP review to assess the party's claim that it is not financially capable of covering the estimated costs of cleanup. Staff should include the results of this review on the screening form, if used, and in the eligibility letter.

2. Applicant activities

Petroleum program staff must assess:

- (1) Whether the applicant dispensed petroleum or petroleum products at the site; and
- (2) If contamination has been identified on site, whether the applicant caused or contributed to the contamination and took reasonable steps with regard to the contamination.

This review can be made based on the information provided by the applicant. In the case of a Phase 1 application, it is likely that the applicant will not know if contamination is present at the site. In that case, petroleum program staff would only address criterion #1 above. However, if it is established that there is contamination on the site, then petroleum program staff must also address criterion #2. If there is evidence that the applicant might have exacerbated the contamination or might not have taken reasonable steps, then petroleum program staff should note that in the letter and on the screening form, if used. NOTE: If the applicant caused or contributed to the contamination then the property is ineligible for a grant.

For example, the City of Tankville wants to assess a former UST site to stimulate redevelopment using EPA Grant Funds. The current owner previously reported a release and took necessary steps to complete DEQ's remediation requirements. Therefore, the City can receive an EPA Brownfields Grants to conduct Phase I and Phase II Environmental Site Assessments. Ongoing compliance requirements for the current owner would not prohibit

Tankville from conducting the Phase I or II. If a release is discovered during the process, it should be reported to the appropriate DEQ regional office for further evaluation.

3. RCRA 9003(h) Order

Finally, DEQ must identify whether the site is subject to any order under section 9003 (h) of the Solid Waste Disposal Act. Generally, the Regional Land Protection Manager is responsible for this portion of the analysis; however, each RO may designate a different individual for this task. EPA's [RCRAInfo](#) database provides this information. (**NOTE:** If the answer is yes, the property is ineligible for a grant.)

Letter to Applicant

The petroleum program staff are responsible for completing the majority of the analysis and preparing the draft letter to the applicant communicating the results of DEQ's review. Sample letters are included in Appendix 3 (one that certifies eligibility and one that declines to certify) and staff in OSRR are available to assist in drafting these letters.

**APPENDIX 1- EPA SCREENING QUESTIONNAIRE FORM
TO BE COMPLETED BY THE APPLICANT**



**EPA REGION 3 BROWNFIELDS ASSESSMENT
GRANT
PROPERTY APPROVAL QUESTIONNAIRE
FOR PETROLEUM SITES**

Grant Recipient:	_____
Grant Number:	BF- _____
Date Form Completed:	_____

A. PROPERTY DESCRIPTION

1. Property Name:

2. Property Address:

3. Acres (if known):

4. Is the site a brownfield, "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"?

Yes No

5. Describe the property's operational history and current use(s).

6. Identify when and how the property potentially became contaminated.

7. What kind of contamination is suspected?

8. Work to be done:

Phase I Phase II Phase III

Other:

What is the estimated cost of the assessments? \$

9. Is this site possibly included on the National Historic Preservation Registry? (See Section 106 of the National Historic Preservation Act).

Yes No

B. REUSE POTENTIAL

1. Are there firm development plans for the property? Please describe.

2. Is the property an integral part of a local development plan?

3. Does the property have strong development potential as evidenced by past or present interest of a developer?

4. Is there a commitment in place to fund the cleanup? If not, what are some potential sources of cleanup funding that can be used?

5. Is the property located in a federal opportunity zone? Please check the map of opportunity zones:

USEDA: [USA Opportunity Zones Tool](#)

IRS: <https://www.cdfifund.gov/opportunity-zones>

Yes No

C. PROPERTY OWNERSHIP

Petroleum contaminated sites need a written site eligibility determination from your state environmental agency. Check with your EPA project officer for information on who to contact in your state. Please attach a letter from the state with the results of their review of the property.

The state will need the following information provided to them in order to make the determination. If the state is unable to make the determination, then EPA will make the determination.

1. Who owns the property?
 - a. Current Owner: _____
 - b. Immediate past owner: _____

2. How was the property acquired?

- Tax Foreclosure** **Donation** **Eminent Domain** **Bought it outright**
 Other (explain below)

3. Did either the current owner or immediate past owner cause or contribute to the petroleum contamination on the property in any way?

- Yes** **No**

a. Has the current or immediate past owner been identified as responsible for the contamination on the property either through a judgment, court order, administrative order, enforcement action, or third party claim requiring assessment or cleanup of the property?

- Yes** **No**

If yes, who and when?

b. If the current or immediate past owner has been identified as responsible for the contamination, do they have the financial means to assess and clean up the property?

- Yes** **No**

If no, please explain:

4. Is the property subject to an order issued under §9003(h) of the Solid Waste Disposal Act?

- Yes** **No** *(If the answer is yes, the property is ineligible.)*

5. Did your organization cause or contribute to the petroleum contamination on the property in any way?

- Yes** **No** *(If the answer is yes, the property is ineligible.)*

6. Describe the current owner's role in the assessment and cleanup of the property.

7. Will the current owner allow access to the property to conduct the assessments?

Yes No

D. SITES NOT ELIGIBLE FOR FUNDING

1. Is the property listed (proposed for listing) on the CERCLA (Superfund) National Priorities List?

Yes No

2. Is the property subject to a unilateral administrative order, court order, administrative order on consent, or judicial consent decree issued to or entered into by parties under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)?

Yes No

3. Is the property subject to the jurisdiction, custody, or control of the U.S. government?

Yes No

*Note: If the answer is YES to any part of the above (D.1 – 3), the property is **not** eligible.*

E. PARTICULAR CLASSES OF SITES ELIGIBLE FOR BROWNFIELDS FUNDING ONLY WITH PROPERTY-SPECIFIC DETERMINATIONS

Certain properties cannot be approved without a “Property-Specific Determination.” Please answer the following questions to the best of your knowledge:

1. Is the property subject to a planned or ongoing CERCLA removal action?

Yes No

2. Has the property been the subject of a unilateral administrative order, court order, an administrative order on consent, or judicial consent decree, **or been issued a permit** by the U.S. or an authorized state under CERCLA, 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 property 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 property a land disposal unit that has filed 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 property had a release of polychlorinated biphenyls (PCBs) and is subject to remediation under TSCA?

Yes No

6. Has the property received funding for remediation from the Leaking Underground Storage Tank (LUST) Trust Fund?

Yes No

Note: If the answer is YES to any of the above (E. 1-6), a property-specific determination is required. EPA’s approval of Property-Specific Determinations will be based on whether or not awarding a grant will protect human health and the environment and either promote

economic development or enable the property to be used for parks, greenways, and similar recreational or nonprofit purposes. ***Please contact your EPA Project Officer for additional information.***

APPROVALS (EPA STAFF ONLY)

Date of State Eligibility Determination Letter: _____

Site eligible for grant funding for site assessment activities: Yes No

Project Officer

Date

Site ID Number Assigned: _____

**APPENDIX 2- DEQ
SCREENING FORM
EPA BROWNFIELDS GRANT ELIGIBILITY REVIEW
PETROLEUM-CONTAMINATED OR POTENTIALLY
CONTAMINATED SITES**

Regional Office: _____

Grant Candidate Site Name: _____

Date Received: _____ Form should be returned to _____ by Date:

Initials: _____ Date: _____
Regional Land Protection Program Manager

Initials: _____ Date: _____
Petroleum Program Manager

Staff reviewed the following criteria in order to assess eligibility for the site to receive EPA Brownfield's grant funds. The following statements are based on assumptions and definitions contained in the EPA Proposal Guidelines for Brownfield's Assessment, Revolving Loan Fund, and Cleanup Grants (September 2004) and information provided in the grant candidate's application package.

Identify the current and immediate past owner(s) of the property as provided by the applicant on the EPA Questionnaire:

Please answer YES or NO in the blanks provided. Please provide any additional comments necessary.

1. Is there a responsible party (as determined by EPA's process based on the questions below) for the above referenced site?

_____ a. Has a responsible party been identified through a court judgment, an enforcement action or a pending citizen suit? (Staff should review CEDS and/or consult with regional enforcement staff for this information)

_____ b. Do DEQ’s records reflect a judgment, an 1186 order, an NOV or a consent order that identifies a responsible party for the site? (Staff should review CEDS and/or consult with regional enforcement staff for this information)

_____ c. Do OSRR’s records reflect any pending or final third party actions identifying a responsible party for the site? (Staff should contact OSRR for this information)

If you answered “no” to (a), (b), and (c), then continue to (d); if you answered “Yes” to any of these, STOP and go to Part 3 as you have a responsible party.

_____ d. Was the site acquired through tax foreclosure, abandonment or equivalent government proceedings?

If “yes” then there is no responsible party for EPA grant purposes (skip to Part 4). If the answer is “no” proceed to Part 2.

2. Is there a responsible party as defined by EPA for the above referenced site?

_____ a. Did either the current or immediate past owner dispense or dispose of petroleum or petroleum products;

_____ b. Did the current or immediate past owner cause or contribute to contamination at the site; and

_____ c. Did the current and immediate past owner take reasonable steps with regard to the contamination at the site?

If you answered “yes”, to any of these, then describe the information available to you and specify the current or immediate past owner’s activities with regard to the site in the comments section. If you answered “no” to (a) and (b) and “yes” to (c), then there is no responsible party for EPA grant purposes (skip to Part 4). If you answered “yes” to (a) or (b) and “no” to (c), go to Part 3 as you have a responsible party

COMMENTS:

3. If a responsible party has been identified based on EPA’s process, is the responsible party viable?

_____ a. Can the responsible party be located? If you answered “no” to this question, then the letter to EPA should reflect that DEQ has identified a responsible party but cannot locate it to ascertain its viability. Skip to Part 4.

_____ b. If the responsible party has been located and is a business entity (e.g., corporation, partnership, or limited liability company) is it still in existence? (RO can access the Clerk’s Information System on the State Corporation Commission website to ascertain whether a corporation or limited liability company is still active.) If you answered “no” to this question, then there is no viable responsible party. Skip to Part 4.

_____ c. If the responsible party is still in existence, and has claimed that it does not have the financial means to assess and clean up the property on the EPA Questionnaire, has OFRWP performed an ability to pay analysis? If the answer to this question is “no”, contact OFRWP and request an ability to pay analysis on the responsible party.

_____ d. If OFRWP has performed an ability to pay analysis, is the responsible party able to pay any cleanup costs? If you answered “no” to this question, then move on to Part 4.

If you answered “yes” to (a), (b), and (d), then the responsible party is viable. The site is ineligible and no further review is necessary.

COMMENTS: -

4. Will the site be assessed, investigated or cleaned up by a person who is potentially liable for cleaning up the site, based on documentation submitted by the applicant or in DEQ files?

_____ a. Did the applicant dispense or dispose of petroleum or petroleum products at the site?

_____ b. If the site is contaminated, did the applicant cause or contribute to any contamination at the site?

_____ c. If the site is contaminated, did the applicant take reasonable steps with regard to any contamination at the site?

If you answered “yes” to (a), (b), or (c), describe the applicant’s activities with regard to the site in the comments section. If the answer to (a) or (b) is yes and the answer to (c) is no, the site is not eligible. No further review is necessary. If the answer to (a) and (b) is “no” and the answer to (c) is “yes”, move on to Part 5.

COMMENTS:

5. Is the site subject to a corrective action order under section 9003(h) of RCRA (Solid Waste Disposal Act)? (Staff should access RCRA info database to answer this question.)

If you answered “yes” to this question, the site is ineligible.

COMMENTS:-

APPENDIX 3 – SAMPLE LETTERS

(Sample Letter certifying eligibility)

(Date)

Applicant Name
Applicant Address

Re: Site Address

Dear Applicant Name:

This letter is in response to a request from the (APPLICANT) regarding an application to receive funding for an environmental assessment through the EPA Brownfields Assessment Grant. The Virginia Department of Environmental Quality (DEQ) has evaluated: (1) whether there is a viable responsible party; (2) whether the site will be assessed, investigated or cleaned up by a person who is potentially liable for cleaning up the site; and (3) whether the site is subject to a RCRA 9003(h) order. DEQ's conclusions are based on the definitions contained in the EPA Grant Guidelines and the information the (APPLICANT) has provided in its request for a Grant eligibility review.

As defined in the EPA Grant Guidelines, there does not appear to be a responsible party for the referenced site³. Specifically, no responsible party has been identified through a court judgment, an enforcement action or a pending citizen suit, nor do DEQ's records reflect a judgment, order, notice of violation or pending or final third party action that identifies a responsible party. Additionally, the application contains no information indicating that the current property owners, (PROPERTY OWNER NAME), have contributed to pollution of the property. Oral history suggests that a service station was present on the property at one time; however, there is insufficient information to confirm its existence or to determine whether (PROPERTY OWNER NAME) operated the service station. (APPLICANT) provided no information regarding the identity of the immediate past owner of the property or whether the immediate past owner had contributed to contamination at the site. Rather, the (APPLICANT) indicated it wishes to determine

³ Virginia law defines responsible person as "any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time a release is reported to the Board." Virginia Code Section 62.144.34:8. For this Grant eligibility evaluation, the EPA Grant Guidelines definition of responsible party is being applied. If, however, a release were to be reported for this facility, the definition in Virginia law would apply. Under that definition, the currently registered owner of the tanks at this facility and any operator of the tanks at the time of the release report would be considered responsible person(s). If there were no registered owner, then the land owner would be considered owner. DEQ records do not reflect a registered tank owner or operator for this property.

whether contamination exists. *ALTERNATIVE LANGUAGE IF WARRANTED BY THE FACTS: (APPLICANT) provided information that the immediate past owner of the property (PAST OWNER'S NAME) had not contributed to the contamination at the site.*

The application materials identify the entity that would assess the site as the (APPLICANT). If the (APPLICANT's) assessment indicates contamination is present at the facility, the tank owner and/or operator at the time of the release report will be required to investigate and cleanup the site. At this time, the identity of the entity with liability for any investigation and cleanup that may be required is unknown, as documentation regarding the presence or absence of underground storage tanks and tank ownership and operation has not been provided. However, eligibility under this element of the EPA Grant Guidelines appears to hinge on whether the grant applicant: (1) dispensed or disposed of petroleum at the site; (2) caused or contributed to contamination at the site; and (3) took reasonable steps with regard to contamination at the site. Based on the information provided, it appears that (APPLICANT) did not dispense petroleum at the site nor did it contribute to or exacerbate contamination at the site. As no contamination has currently been identified at the site, no steps to address contamination are presently necessary. Thus, pursuant to EPA Grant Guidelines, the assessment would not be conducted by an entity that would have potential liability for cleaning up the site.

Finally, review of DEQ's records did not show that the site was subject to a corrective action order under section 9003(h) of the Solid Waste Disposal Act.

Accordingly, this site appears to be eligible for Brownfields Assessment Grant funding.

Should you have any questions, please contact me at _____ or e-mail me at _____.

Sincerely,

Regional Brownfields Contact name and title

cc: Regional Petroleum Program Manager
Renee Hooper, DEQ-OSRR
Vince Maiden, DEQ-Brownfields

(Sample Letter declining to certify eligibility)

(Date)

Applicant Name
Applicant Address

Re: Site Address

Dear Applicant name:

This letter is in response to a request from the (APPLICANT NAME) regarding an application to receive funding for an environmental assessment through the EPA Brownfields Assessment Grant. The Virginia Department of Environmental Quality (DEQ) has evaluated: (1) whether there is a viable responsible party; (2) whether the site will be assessed, investigated or cleaned up by a person who is potentially liable for cleaning up the site; and (3) whether the site is subject to a RCRA 9003(h) order. DEQ's conclusions are based on the definitions contained in the EPA Grant Guidelines and the information the (APPLICANT) has provided in its request for a Grant eligibility review.

As defined in the EPA Grant Guidelines, there does not appear to be a responsible party for the referenced site⁴. Specifically, no responsible party has been identified through a court judgment, an enforcement action or a pending citizen suit, nor do DEQ's records reflect a judgment, order, notice of violation or pending or final third party action that identifies a responsible party.

Additionally, (APPLICANT) has stated that it is not known whether the current property owner, (PROPERTY OWNER NAME), has contributed to pollution of the property. (APPLICANT) provided no information regarding the identity of the immediate past owner of the property or whether the immediate past owner had contributed to contamination at the site. Rather, (APPLICANT) indicated it wishes to determine whether contamination exists.

⁴ Virginia law defines responsible person as "any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time a release is reported to the Board." Virginia Code Section 62.1-44.34:8. For discharges of oil that are not from an underground storage tank, "[a]ny person discharging or causing or permitting a discharge . . . and any operator of any facility, vehicle or vessel from which there is a discharge . . . shall . . . take . . . action . . . to contain and clean up such discharge . . ." Virginia Code Section 62.1-44.34:18. For this Grant eligibility evaluation, the EPA Grant Guidelines definition of responsible party is being applied. If, however, a release were to be reported for this facility, the definitions in Virginia law would apply.

The application materials identify the entity that would assess the site as (APPLICANT). If the (APPLICANT's) assessment indicates contamination is present at the facility from an underground storage tank, the tank owner and/or operator at the time of the release report will be required to investigate and cleanup the site. If oil contamination is present from a non-tank source, then the person causing or permitting the discharge and/or facility operator, will be required to investigate and cleanup the site. At this time, the identity of the entity with liability for any investigation and cleanup of an underground storage tank release that may be required is unknown, as documentation regarding presence or absence of underground storage tanks and tank ownership and operation has not been provided. However, eligibility under this element of the EPA Grant Guidelines appears to hinge on whether the grant applicant : (1) dispensed or disposed of petroleum at the site; (2) caused or contributed to contamination at the site; and (3) took reasonable steps with regard to contamination at the site. The application materials indicate that (APPLICANT) operated the facility as [XXXX] for a number of years and a potential source of contamination is surface spills. It is not clear whether (APPLICANT) contributed to any contamination that may exist at the facility. Based on this information, it is not known whether (APPLICANT) would be considered potentially liable for investigation and cleanup of any contamination it discovers. (Under Virginia law, (APPLICANT) would have liability to cleanup surface spills as it was the operator of a facility where a discharge occurred.) Thus, it is possible that the assessment could be conducted by an entity that would have potential liability for cleaning up the site.

Review of DEQ's records did not show that the site was subject to a corrective action order under section 9003(h) of the Solid Waste Disposal Act.

However, this site does not appear to be eligible for 2004 Brownfields Assessment Grant funding due to (APPLICANT's) potential liability for investigation and cleanup of spills at the [XXXX] facility.

Should you have any questions, please contact me at _____ or e-mail me at _____.

Sincerely,

Regional Brownfields Contact name and title

cc: Regional Petroleum Program Manager
Renee Hooper, DEQ-OSRR
Vince Maiden, DEQ-Brownfields