

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY PROGRAMS
ELLEN GILINSKY, Ph.D., DIRECTOR

P.O.BOX 10009

Richmond, VA 23240-0009

Subject: Guidance Memo No. 05-2015
EPA Brownfields Grant Eligibility Review for Petroleum Contaminated Sites

To: Regional Directors

From: Ellen Gilinsky, Ph.D., Director



Date: November 29, 2005

Copies: Regional Ground Water Managers, Regional Brownfields Contacts, Chris Evans, Robert Weld, Fred Cunningham, Renee Hooper, Lisa Dewey, Cindy Berndt

Summary:

This memorandum summarizes the procedures for regional petroleum staff to use to perform reviews on petroleum-contaminated or potentially petroleum-contaminated sites for eligibility for the Brownfields grant program.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.virginia.gov>.

Contact information:

Please contact Renee Hooper at (804) 698-4018/ rthooper@deq.virginia.gov or Lisa Dewey at (804) 698-4216/ lcdewey@deq.virginia.gov, with any questions concerning the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. 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.

Introduction

Recently, questions have arisen about the interpretation and application of the EPA Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants¹ (EPA Guidelines). This memo will address DEQ petroleum staff's role in one part of the grant application process--evaluating whether petroleum contaminated (or potentially contaminated) property meets certain statutory criteria for Brownfield grant eligibility.

Brownfields Grant Program

Through the Brownfields program, EPA can award three types of grants for Brownfield site assessment and cleanup—assessment, revolving loan fund and cleanup grants—to applicants who meet certain eligibility criteria. The EPA Guidelines 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.” Generally, the Brownfields Law² allows funding for activities at petroleum-contaminated Brownfields sites if:

- 1) EPA or the state determines that the site is of “relatively low risk” compared with other petroleum contaminated sites in the state;
- 2) EPA or the state has determined that there is no viable responsible party;
- 3) the site will not be assessed, investigated or cleaned up by a person who is a potentially liable for cleaning up the site; and
- 4) The site is not subject to a RCRA 9003(h) order.

As part of the application process for all three grants, the applicant must show that the site meets the statutory criteria listed above. Unless the applicant seeking an eligibility determination is a tribal authority, DEQ is responsible for performing this review based on information provided by the applicant.

Review Process- Sites with Potential Petroleum Contamination

In order to receive a grant for a specific site, the grant applicant must identify a potential Brownfield site, obtain an eligibility review from DEQ and then submit the results of the review along with its application to EPA. The applicant must include certain information in the eligibility request, such as:

- 1) the current and immediate past owners' identities;

¹ An electronic copy is available at http://www.epa.gov/brownfields/pg/fy05guidelines_final.pdf.

² The Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, 115 Stat. 2356.

- 2) whether those entities are responsible parties by virtue of having “dispensed or disposed of petroleum or petroleum product, or exacerbated the existing petroleum contamination at the site,” and
- 3) “whether the current and immediate past owner took reasonable steps with regard to the contamination at the site.”

The entire list of required information is included as Appendix 1 and is described in more detail in the Grant Applications section of the EPA Guidelines.

The eligibility review requires regional UST staff to perform the analysis described below and provide the results to the Regional Brownfields contact. The process begins when the Central Office Brownfields Coordinator forwards an application for an eligibility review to the Regional Brownfields contact in the appropriate Regional Office (RO). Appendix 2 of this Guidance provides the contact person for each region and Appendix 3 contains a review screening form for UST staff to use when performing these reviews. The Regional Brownfields contact completes Part 5 of the screening form and forwards the application and screening form to the RO Groundwater Manager. Petroleum staff complete Parts 1 through 4 of the screening form and prepare a draft letter to the applicant describing the results of DEQ’s review. Upon receipt of the completed screening form and draft letter, the Regional Brownfields contact signs the letter and forwards it to the applicant. Staff in the Office of Spill, Response and Remediation are available to assist in drafting the letters. Sample letters are included in Appendix 4.

Eligibility Review

The eligibility review requires a four-pronged analysis. DEQ must investigate:

1. whether the site is of “relatively low risk” compared with other “petroleum-only” sites in the state;
2. whether there is a viable responsible party,
3. whether the site will be assessed, investigated or cleaned up by a person that is potentially liable for cleaning up the site; and
4. whether the site is subject to a RCRA 9003(h) order.

1. Relatively Low Risk

DEQ must first assess whether the site is of “relatively low risk” compared to other petroleum sites in the state. Pursuant to the EPA Guidelines, a site is “high risk,” i.e. not “low risk,” if it is being cleaned up using federal LUST funds³ or it is subject to a response under

³ Petroleum-contaminated sites that receive clean up money from the LUST trust fund are excluded from the definition of a Brownfield site; however, specific sites may still be eligible for funding if EPA makes a site specific determination that the financial assistance will:

the Oil Pollution Act (OPA)⁴. UST program staff should query CEDS to determine whether there is an open PC number for the site in question. Unless the site has an open PC and is using federal LUST funds, it is considered “low risk”. This should be recorded on the screening form.

2. No Viable Responsible Party

a) Can a responsible party be identified?

Next, DEQ must decide whether there is a viable responsible party. EPA requires a 3-part responsible party analysis⁵. (This analysis is different than 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,;
- * an enforcement action; or
- * a pending citizen suit.

To accomplish this, UST 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. UST staff can use CEDS and consult with regional enforcement staff to obtain information concerning possible enforcement actions. UST program staff should contact the Office of Spill Response and Remediation (OSRR) to ascertain whether there are any final or pending third party suits involving the site.

If no responsible party is identified under this part of the analysis, then the next question is whether the site was acquired through tax foreclosure, abandonment or equivalent government proceedings. Acquisition information should be provided by the applicant in its request for an eligibility review. 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 on the screening form.

-
1. Protect human health and the environment and
 2. Either:
 - a. Promote economic development, or
 - b. Enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

Property specific determinations of this nature are made by EPA, and the process is covered under Appendix 4 of the EPA Guidelines.

⁴ A site that is subject to a response under OPA is one where the federal government has initiated an emergency response action to address a spill or similar event.

⁵ The EPA Guidelines contain an Appendix which provides some assistance in performing these analyses. In those circumstances in which information is not available to perform the entire analysis UST staff should perform any parts of the analysis that they can, while identifying those parts that cannot be performed and why.

b) Did the current and immediate past 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 owner disposed of, 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 owner exacerbated contamination at the site, or whether they took reasonable steps with regard to any existing contamination at the site.

Generally, the application 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.⁶

The results of this review can take several forms and if necessary, comments should be included on 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 the site, so that no responsible party can be identified at this time. Also, the application may not contain any information indicating that the current property owner has contributed to pollution of the property because the 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.⁷ If there is information regarding the current and immediate past owner's activities, then those activities should be identified on the screening form.

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

⁶ 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.

⁷ In the event that a responsible party is later identified using either of these two criteria, then DEQ personnel will notify the grant applicant and the EPA.

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. The UST staff should contact DEQ’s Office of Financial Assurance to request an Ability to Pay review to assess whether the responsible party is financially viable. The results of this review should be included on the screening form.

3. Applicant activities

UST 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 exacerbated the contamination and took reasonable steps with regard to the contamination

This review can be made based on the information provided by the applicant. Under a Phase 1 application, it is likely that the applicant will not know if contamination is present at the site. In that case, UST staff would only address (1) above. However, if it has already been established that there is contamination on the site, then UST staff must also address (2). If there is evidence that the applicant might have exacerbated the contamination or might not have taken reasonable steps, then UST staff should note that on the screening form.

4. 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. The Regional Brownfields contact is responsible for this portion of the analysis and should access the RCRA Info database to obtain this information.

Letter to Applicant

Again, UST program staff are responsible for completing the majority of the screening form and preparing the draft letter to the applicant communicating the results of DEQ’s review. Sample letters are included in Appendix 4 (one that certifies eligibility and one that declines to certify) and staff in OSRR are available to assist in drafting these letters.

APPENDIX 1

Required Information from Applicant for Petroleum Site Eligibility Evaluation

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 is identified for the site through, either:
 - a. 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
 - b. 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
 - c. 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.

Your request to the DEQ for an evaluation of site eligibility also must include a brief explanation of why the information requested above is not available.

APPENDIX 2—REGIONAL BROWNFIELDS CONTACTS

Northern Regional Office	Cindy Sale
Piedmont Regional Office	Rob Timmins
South Central Regional Office	Michael Sexton
Southwest Regional Office	Willard Keene
Tidewater Regional Office	Milt Johnston
Valley Regional Office	Larry Simmons
West Central Regional Office	Aziz Farahmand

APPENDIX 3--ELIGIBILITY REVIEW SCREENING

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 me by: _____

Initials: _____ Date: _____
Regional Brownfield Contact

Initials: _____ Date: _____
UST Program Manager

The following criteria were reviewed 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.

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

1. Is the site of relatively low risk compared with other "petroleum-only" sites in the state?
_____ a. Is the site currently being cleaned up using LUST trust fund monies?
_____ b. Is the site currently subject to a response under the Oil Pollution Act (OPA)?

If you answered "no" to (a) and (b), then the site is of relatively low risk. Continue to Part 2. If you answered "yes" to either (a) or (b), the site is not a low risk site. The site is ineligible and no further review is necessary.

COMMENTS: _____

- 2a. Is there a responsible party for the above referenced site?
_____ a. Has a responsible party been identified through a court judgment, an enforcement action or a pending citizen suit?
_____ 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?
_____ c. Do OSRR's records reflect any pending or final third party actions identifying a responsible party for the site?

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 2b.**

2b. Is there a responsible party for the above referenced site?

_____ a. Did either the current or immediate past owner dispose of, or own the subject property during the disposal of, any contamination at the site;

_____ b. Did the current or immediate past owner exacerbate 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, 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, has OFA performed an ability to pay analysis? **If the answer to this question is “no”, contact OFA and request an ability to pay analysis on the responsible party.**

_____ d. If OFA 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?

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

_____ b. If the site is contaminated, did the applicant exacerbate 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 4- 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 City of Richmond regarding an application to receive funding for an environmental assessment through the 2004 EPA Brownfields Assessment Grant. Pursuant to the EPA Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (EPA Grant Guidelines), dated September 2004, the Virginia Department of Environmental Quality (DEQ) has evaluated: (1) whether the site is of relatively low risk; (2) whether there is a viable responsible party; (3) whether the site will be assessed, investigated or cleaned up by a person who is potentially liable for cleaning up the site; and (4) 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 City of Richmond (the City) has provided in its request for a Grant eligibility review.

Pursuant to the EPA Grant Guidelines, it appears that this is a relatively low risk site. This means that the site is not currently being cleaned up using Leaking Underground Storage Tank (LUST) trust fund monies and that the site is not subject to a response under OPA¹.

As defined in the EPA Grant Guidelines, there does not appear to be a responsible party for the referenced site². Specifically, no responsible party has been identified through a court judgment,

¹ Note that under Virginia regulatory guidelines the degree of risk is based on different criteria, including but not limited to the presence or absence of receptors of concern and the likelihood of a petroleum impact to such receptors.

² 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 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.

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, Belulah and Bruce Harrison, 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 the Harrisons operated the service station. The City 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 City indicated it wishes to determine whether contamination exists.

The application materials identify the entity that would assess the site as the City. If the City'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. Based on the information provided, it appears that the City will not be purchasing nor operating the tanks; thus, 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 2004 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 Groundwater Manager
Renee Hooper, DEQ-OSRR
Chris Evans, DEQ-ORP

(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 City of Richmond regarding an application to receive funding for an environmental assessment through the 2004 EPA Brownfields Assessment Grant. Pursuant to the EPA Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (EPA Grant Guidelines), dated September 2004, the Virginia Department of Environmental Quality (DEQ) has evaluated: (1) whether the site is of relatively low risk; (2) whether there is a viable responsible party; (3) whether the site will be assessed, investigated or cleaned up by a person who is potentially liable for cleaning up the site; and (4) 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 City of Richmond (the City) has provided in its request for a Grant eligibility review.

Pursuant to the EPA Grant Guidelines, it appears that this is a relatively low risk site. This means that the site is not currently being cleaned up using Leaking Underground Storage Tank (LUST) trust fund monies and that the site is not subject to a response under OPA¹.

As defined in the EPA Grant Guidelines, there does not appear to be a responsible party for the referenced site². 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.

¹ Note that under Virginia regulatory guidelines the degree of risk is based on different criteria, including but not limited to the presence or absence of receptors of concern and the likelihood of a petroleum impact to such receptors.

² 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.

Additionally, the City stated that it is not known whether the current property owner, City of Richmond Community Facilities, has contributed to pollution of the property. The City 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 City indicated it wishes to determine whether contamination exists.

The application materials identify the entity that would assess the site as the City. If the City'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. The application materials indicate that the City operated the facility as a parking lot for a number of years and a potential source of contamination is surface spills. It is not clear whether the City contributed to any contamination that may exist at the facility. Based on this information, it is not known whether the City would be considered potentially liable³ for investigation and cleanup of any contamination it discovers⁴. Thus, it cannot be stated with certainty that the assessment would not 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 the City's potential liability for investigation and cleanup of spills at the parking lot facility.

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

Sincerely,

Regional Brownfields Contact name and title

cc: Regional Groundwater Manager
Renee Hooper, DEQ-OSRR
Chris Evans, DEQ-ORP

³ I.e., liable under EPA Grant Guidelines standards.

⁴ Under Virginia law, the City would have liability to cleanup surface spills as it was the operator of a facility where a discharge occurred.