



# EPA Brownfields Grants, CERCLA Liability, and All Appropriate Inquiries

Environmental Protection Agency's (EPA) Brownfields Program provides direct funding, in the form of competitive grants, for brownfields assessments and cleanup, for the capitalization of revolving loan funds, and to support environmental job training programs. Eligible entities for brownfields grants include states, tribes, local governments, regional governments, and quasi-governmental entities. Nonprofit organizations are eligible for brownfields cleanup grants. To be eligible for a brownfields cleanup grant, the eligible entity must own the brownfield that will be cleaned up using grant funds, and the entity cannot be potentially responsible, or liable, for the contamination at the brownfield.

To be eligible for a U.S. EPA Brownfields grant to address contamination at brownfields properties, eligible entities must demonstrate that they are not liable under CERCLA for contamination at the site. Eligible entities who can be considered "potentially responsible parties" under CERCLA must demonstrate that they meet one of the liability protections or defenses set forth in CERCLA by establishing that they are an innocent landowner, contiguous property owner, bona fide prospective purchaser or government entity that acquired the property involuntarily through bankruptcy, tax delinquency or abandonment, or by exercising power of eminent domain.

To claim protection from liability as an innocent landowner, contiguous property owner or bona fide prospective purchaser, property owners, including state and local governments, must conduct all appropriate inquiries (AAI) before acquiring the property.

## What is CERCLA?

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, persons can be held strictly liable for cleaning up hazardous substances at properties they either currently own or operate, or owned or operated in the past. Strict liability under CERCLA means that liability for environmental contamination can be assigned based solely on property ownership.

The Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields Amendments) amended CERCLA to provide liability protections for certain landowners and potential property owners. The Brownfields Amendments provide liability protections for certain property owners if the property owners comply with specific provisions outlined in the statute, including conducting AAI for present and past use of the property.

## Can state and local governments be found liable for contamination at brownfields?

Yes. Under CERCLA, state and local governments (and individuals) can be liable by virtue of property ownership or by virtue of their actions with respect to a particular site. For sites with a release or threatened release of hazardous substances, potentially responsible parties include any person or party that:

- Currently owns or operates the property.
- Formerly owned or operated the property at the time of the disposal of hazardous substances.
- Arranged for hazardous substances to be disposed of at the site or transported to the site for disposal.
- Transported hazardous substances to the site.



Eastern Manufacturer Brewer, Maine, prior to cleanup



Eastern Manufacturer Brewer, Maine, after cleanup

Brownfields grant applicants should note that CERCLA employs a “strict liability” scheme—that means it is without regard to fault. A person who owns a property that has had a release of hazardous substances can be held liable by virtue of ownership, despite intent.

## If I am applying for a Brownfields grant, do I have to worry about CERCLA liability?

Yes. Brownfields grantees are prohibited from using grant money to pay response costs at a brownfields site for which the grantee is potentially liable under CERCLA.

All brownfields grantees who are potentially liable at the site for which they are seeking funds must demonstrate that they are not liable for the contamination that will be addressed by the grant, subgrant or loan. Applicants who own or operate the property for which they are seeking funding, or who may have owned or operated the property at the time of disposal of hazardous substances, must demonstrate that they fall within one of the liability protections.

Cleanup grant applicants, in particular, should note this prohibition. Because cleanup grantees are required to own a site to receive brownfields funding—and because owners of contaminated property are liable under CERCLA—cleanup grant applicants must demonstrate they meet one of the liability protections described above. Some grant applicants who do not own the property for which they are seeking funding, or who are not seeking site-specific grant funds, may not fall within one of the categories of potentially responsible parties, and they may not have to demonstrate that they qualify for liability protection.

Please contact your EPA Regional Brownfields representative if you are not sure whether you need to demonstrate liability protection to be eligible for a grant.

## Who is protected from liability under CERCLA?

The CERCLA statute provides protection from liability for certain parties, provided they comply with specific criteria. Parties with liability protection under CERCLA include:

- Innocent landowners, CERCLA Section 101(35)(A).
- Contiguous property owners, CERCLA Section 107(q).
- Bona fide prospective purchasers, CERCLA Sections 101(40) and 107(r).
- Units of state or local government that acquire ownership or control involuntarily through bankruptcy, tax delinquency or abandonment, CERCLA Section 101(20)(D).
- Government entities that acquire property through eminent domain, CERCLA Section 101(35)(A)(ii).

## What are the conditions for attaining liability protection under CERCLA?

To be eligible for liability protection under CERCLA as an innocent landowner, contiguous property owner or bona fide prospective purchaser, prospective property owners must:

- Conduct AAI in compliance with the Code of Federal Regulations (CFR), 40 CFR Part 312, before acquiring the property.
- Comply with all continuing obligations after acquiring the property, CERCLA Sections 101(40)(C-G) and Sections 107(q)(A) (iii-viii)).
- Not be affiliated with any liable party through any familial relationship or any contractual, corporate or financial relationship (other than a relationship created by conveying or financing the property).

Note: Property acquisition includes properties acquired as gifts or through zero-price transactions.

## How can a state or local government demonstrate that it is not liable for contamination at a brownfields site?

All state and local governments that are potentially liable for a site for which they are applying for funding, including site-specific assessment grants, cleanup grants or subgrants or loans from revolving loan funds, must demonstrate that they qualify for one of the CERCLA liability protections. All nonprofit entities applying for Brownfields cleanup grants also must demonstrate that they are protected from liability under CERCLA.

To demonstrate qualification as an innocent landowner, contiguous landowner, or bona fide prospective purchaser, the applicant must:

- Conduct AAI before acquiring the property, and
- Comply with all continuing obligations after acquiring the property.

State and local governments that acquired a property involuntarily through bankruptcy, tax delinquency, or abandonment, or by exercising the power of eminent domain, do not have to conduct AAI before acquiring the property, but they must exercise “due care” after acquiring the property (CERCLA Sections 101(35)(A) and 107(b)(3) (a-b)). Note: One threshold criterion for applicants seeking cleanup grant funding is that a Phase I environmental site assessment must be conducted before application submission. Although state and local governments that acquired property involuntarily are not required to conduct AAI to establish liability protection, they may have to conduct AAI to be eligible for a cleanup grant.

## What are “All Appropriate Inquiries”?

AAI is the process of evaluating a property’s environmental conditions and assessing potential liability for any contamination.

EPA recognizes two ASTM International Standards as compliant with AAI requirements: ASTM E1527-13 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” and E2247-16 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.”

## When must AAI be conducted?

- AAI must be conducted or updated within one year before the date of acquisition of a property.
- Certain aspects or provisions of AAI (i.e., interviews of current and past owners, review of government records, on-site visual inspection and searches for environmental cleanup liens) must be conducted or updated within 180 days before acquiring ownership of a property.

## Who can perform AAI?

The individual who supervises or oversees the conduct of the AAI and signs the final required report must meet the definition of an “environmental professional” stated in the AAI final rule, 40 CFR Section 312.10.

A person who does not qualify as an environmental professional can assist in the conduct of the AAI if he or she is under the responsible charge of a person meeting the definition.

## What are continuing obligations?

After acquiring a property, to maintain liability protections, landowners must comply with “continuing obligations” during their property ownership. The continuing obligations include:

- Provide all legally required notices for the discovery or release of a hazardous substance.
- Exercise appropriate care of the hazardous substances by taking reasonable steps to stop or prevent continuing or threatened future releases and exposures, and to prevent or limit human and environmental exposure to previous releases.
- Provide full cooperation, assistance, and access to individuals authorized to conduct response actions or natural resource restoration.
- Comply with land-use restrictions and not impede the effectiveness of institutional controls.
- Comply with information requests and subpoenas.

## Further information

For more information, visit the EPA Brownfields website at [www.epa.gov/brownfields](http://www.epa.gov/brownfields).

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