

## Brownfield FAQs:

### Q: What is a brownfield?

A: A brownfield is defined by the EPA as “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.” In other words, a brownfield site may not necessarily be contaminated, but the perception that it may be is hindering use or development of the site. Examples of possible brownfield sites in Alaska include abandoned tank farms, old BIA schools, old canneries, former military sites, former dry cleaners, former gas stations, and others.

If you suspect you may have a brownfield in your community, ask yourself the following three questions about the site:

1. Does the site have known or suspected contamination?
2. Is the site abandoned, under-utilized, or not reaching its full potential?
3. Is there a reuse/redevelopment plan for the site?

If you answered “yes” to all of these questions, the site may be a brownfield. See the EPA’s [brownfields web page](#) and ADEC’s [brownfields web page](#) for more information on brownfield sites.

### Q: Why is it important to manage and clean up brownfields?

A: Cleaning up brownfields can have positive health, environmental, social, and economic impacts on your community. Examples of benefits can include:

- Protecting plants, animals, and water on or around the site from contaminant exposure
- Protecting community members from direct exposure to contamination, or indirect exposure through consuming contaminated food and water
- Increasing the aesthetic appeal of the property
- Increasing the economic value of the property
- Promoting community unity and gathering through redevelopment (for example, by building a new playground or community center, or restoring a subsistence area)
- Creating new economic opportunities for the community (for example, building a new store or community garden)
- Cleaning up and redeveloping a brownfield site is an opportunity for the community to create a vision and complete a project together
- And more!

### Q: What kinds of contaminants are commonly found in brownfields?

A: Common contaminants found on brownfields in Alaska include (but are not limited to) gasoline, diesel, asbestos, lead, solvents, polychlorinated biphenyls (PCBs), and pesticides. Petroleum contamination is especially common in Alaska. While small contaminant levels may occur naturally in the environment, most brownfield contamination is the result of human activity, such as spills, leaks, or

improper storage of waste or hazardous materials. For more information on brownfield contaminants and their sources and effects, please refer to the EPA's [Brownfields Road Map](#) or DEC's [contaminant information sheet](#).

**Q: How can I find out if there are brownfields in my community?**

A: You may already be aware of potential brownfield sites in your community based on your knowledge of the community area. Speaking to elders, other community members, and your village and regional corporations about the area's history may reveal potential brownfield sites. If your community has a Tribal Response Program, visit their office or website to peruse their public records and community brownfields inventory. If your community does not, check to see if your community is covered under a Consortia TRP. You can find a list of the current TRPs [here](#). DEC also maintains a [Contaminated Sites Database](#), which allows you to search for known contaminated sites in your community and view information on their history and management. If you recognize a site on this database that has incorrect information (i.e. location) let the DEC Project Manager know. The sharing of this information provides a clearer picture of the site, which may help with future assessments and clean-ups. Please keep in mind that DEC's database is not comprehensive, and brownfields may exist in your community that have not been inventoried yet. Refer to Q1, "What is a brownfield?" for more information on what qualifies a site as a brownfield.

**Q: What does ANTHC's TRP do?**

A: The ANTHC TRP (contained within the larger ANTHC Contamination Support Program) works with tribal communities within the Anchorage Service Unit and oftentimes assists with many communities throughout Alaska to identify potential brownfield sites through outreach and education, and work towards remediating identified sites. Assistance from ANTHC TRP can include aid in creating an inventory of contaminated sites, conducting research on site history, connecting communities with potential partners, site reuse planning, and other services as requested.

**Q: Who do I contact with questions about brownfields?**

A: Call the ANTHC Contamination Support Program at 907-729-5630 or email us at [contaminationsupport@anthc.org](mailto:contaminationsupport@anthc.org) with any questions you have about brownfields.

**Q: What is CERCLA?**

A: CERCLA stands for the Comprehensive Environmental Response, Compensation, and Liability Act. This act was passed by Congress in 1980 to create federal authority to respond to contamination, or potential contamination, which may pose a threat to the environment and public health. For more information, see the EPA's [CERCLA Overview](#).

**Q: What is SBLRBRA?**

A: SBLRBRA stands for the Small Business Liability Relief and Brownfields Revitalization Act. This Act was passed by Congress in 2002, and amended CERCLA by providing funds to assess and clean up brownfields, clarified CERCLA liability protections, and provided funds to enhance state and tribal response programs. For more information, see the EPA's [SBLRBRA page](#).

**Q: I think my community may have a brownfield. What should I do?**

A: Identifying and managing a brownfield can be a complex process, as every brownfield site is different. Contact the ANTHC Contamination Support Program if you need help deciding how to proceed.

First, ask yourself three questions about the site to determine whether it could be a brownfield:

1. Does the site have known or suspected contamination?
2. Is the site abandoned, under-utilized, or not reaching its full potential?
3. Is there a reuse/redevelopment plan for the site?

If you answered “yes” to all three questions, the site may be a brownfield.

To determine the best course of action for a potential brownfield site, it is a good idea to compile as much information as you can about the site. Check DEC's [Contaminated Sites database](#) to see if the site is already in their inventory. Investigate the site's history, ownership, and whether any assessment or sampling has been done on the site. Dr. Keith Torrance from EMI compiled a list of useful resources for.

It can also be useful to investigate the area surrounding the site, firstly to gauge potential impacts of contamination (for example, if a subsistence area is downhill from the site), and secondly to see if any other sites could be contributing to contamination in the area (for example, if a former military site is nearby). Asking community members and elders what they know about the site may also reveal important information.

When you have gathered baseline information about the site, contact the ANTHC Contamination Support Program and we can assist you with determining appropriate next steps.

**Q: What types of services are available for tribes to address brownfield sites?**

A: Alaska Tribes are eligible for [Targeted Brownfields Assessments](#) and [DEC Brownfield Assessment and Cleanup \(DBAC\)](#) services for qualifying brownfield sites, assuming they meet all eligibility criteria (see the “R10 Brownfields Eligibility Worksheet” on our website). They may also be eligible for private funding from foundations and other sources. While Alaska tribes are not eligible for EPA competitive brownfield cleanup funding, Alaska Native Regional Corporations, Alaska Native Village Corporations, and Intertribal Consortia are eligible, and Alaska tribes can work with eligible entities to obtain assistance for their communities. Contact the ANTHC Contamination Support Program with any questions about brownfields project assistance.

**Q: Will my tribe or corporation be held liable for brownfields on our land?**

A: Brownfields liability is a complex determination informed by many factors. Brownfield response operates under a strict “polluter pays” principle; liability laws exist so that responsible parties, and not the public or innocent parties, pay for the contamination that they cause. Refer to page 3 of the EPA’s [handbook on brownfield liability concerns](#) for a summary of who is considered liable for contaminated sites and why.

In early 2018, Congress passed the Brownfields Utilization, Investment and Local Development (BUILD) Act. This act relieves Alaska Native Regional and Village Corporations of liability for contamination on ANCSA-conveyed lands that was present *before* the land was conveyed. Corporations and tribes remain responsible for any contamination that they caused or allowed to continue *after* the land was transferred to their ownership. If you are a Corporation or landowner who believes they have contaminated land that was conveyed via ANCSA, please visit our ANCSA Contaminated Lands Partnership Group page and/or Contact the ANTHC Contamination Support Program.

**Q: What is the difference between a potentially responsible party (PRP) and a responsible party (RP)? When does that status change?**

A: A potentially responsible party, or PRP, is a party that the government holds liable for cleanup costs on a contaminated site *prior to* official litigation. According to the EPA, “Under CERCLA statute 107, a person, including a local government, may be considered a PRP if the person:

- Is the current owner or operator of the contaminated property;
- Owned or operated the property at the time of disposal of the hazardous substance;
- Arranged for the hazardous substances to be disposed of or treated, or transported for disposal or treatment; or
- Transported the hazardous substances to the property.”

A PRP then becomes an established responsible party (or RP) after litigation has been completed for the site, if the court finds them to be liable.

**Q: What is the difference between “all appropriate inquiries” and “due diligence?”**

A: These two terms are interchangeable. Performing all appropriate inquiries or due diligence essentially means “buyer beware”; the buyer should investigate the likelihood of any potential contamination *before* accepting the property. If the buyer conducts all appropriate inquiry before purchasing property, they may be eligible for certain liability protections if contamination is discovered at the site.

**Q: Are there any legal protections from liability for landowners who own a brownfield site?**

A: Yes, under certain circumstances. In 2002, the Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) established protections from liability for landowners meeting certain criteria, and the protections apply regardless of the type of contamination involved at the site. Pages 5-

10 of the EPA's [handbook on brownfield liability concerns](#) provide a more detailed overview of the protections. In summary, they are:

- [Bona Fide Prospective Purchasers \(BFPPs\)](#): A person who has tenancy or leasehold interests or acquires ownership of a site with knowledge of potential contamination, having performed all appropriate inquiries prior to acquisition
- [Contiguous Property Owners \(CPOs\)](#): Landowners who own property that is or may be contaminated, but is not the original source of the contamination
- [Innocent Landowners \(ILOs\)](#): Entities that acquire property and did not know, and had no reason to know, of the contamination at the time of purchase

BFPP, CPO, and ILO designations are only given if your tribe successfully disputes its liability for a brownfield site in court. BFPP and CPO are types of legal defenses that can protect you from liability if you demonstrate to the court that you meet the strict eligibility criteria. Meeting these criteria and continuing obligations requires the landowner to be very involved and attentive to the site, and the slightest mistake or oversight can result in financial liability; take extreme care with your brownfield site management if you or your tribe anticipates requesting liability protection for the site. For more information on how to qualify for these protections, refer to the EPA's "[Common Elements](#)" [Guidance Reference Sheet](#) and [Landowner Liability Protections](#) pages, or this [EPA memo](#) regarding eligibility criteria for all three provisions.

**Q: How do I conduct all appropriate inquiries sufficiently to meet CERCLA requirements?**

A: Anyone wishing to receive liability protection must conduct All Appropriate Inquiries (AAI) within six months prior to acquisition if claiming protection from liability. If the Phase I Assessment is older than 180 days, it must be updated before acquisition to remain eligible for liability protection. Remedial Investigations and Feasibility Studies do not fulfill the AAI requirement. A Qualified Environmental Professional (QEP) must conduct AAI, and you can contact DEC for assistance identifying a QEP for your inquiry. See [DEC's web page on QEPs](#) for more information on QEP qualifications. For information on AAI reporting requirements and suggestions on reporting content, see this [EPA factsheet](#).

**Q: What are "continuing obligations" for liability protection?**

A: If a landowner receives either BFPP, CPO, or ILO liability protections, they must continue to meet certain criteria to maintain their protection. See the EPA's [Common Elements Reference Sheet](#) under "Continuing Obligations Criteria" for a description of these continuing obligations and information on how to meet them.

**Q: What does "affiliation" mean in the context of liability protections?**

A: According to the EPA, "BFPPs or CPOs must not be potentially liable or affiliated with any other person who is potentially liable for the site response costs...[including] direct and indirect familial relationships and many contractual, corporate, and financial relationships." This clause ensures that if BFPPs and CPOs receive liability protection, they do not indirectly benefit a liable party with whom they have a relationship. For clarification on how the EPA decides what constitutes an "affiliation," see this [EPA memo](#).

**Q: What does viability vs. non-viability mean when the government determines liability?**

A: To be a “viable party” means that they have the means to address contamination at the site in question. Conversely, a “non-viable party” does not have the means to address the contamination; usually, this means that they do not have sufficient funds for cleanup (i.e. bankrupt businesses). In Alaska, the State determines whether a responsible party is viable or non-viable by analyzing their bank records, Department of Law determinations, and other documentation.

Viability comes into play when determining whether a site is eligible for brownfields grant funding. If there is a viable responsible party for the site, they may not be eligible for federal brownfields funding, and they will be held liable for site assessment and cleanup costs. Conversely, if there is no viable responsible party for a site, the site may be eligible for federal funding assistance.

**Q: What are orphan sites?**

A: At the moment, this term is subject to being changed. According to DEC, a site is considered an “orphan” if contamination was present at time of conveyance, and the site is not currently within a cleanup program. The site is sitting dormant for one of a few reasons: either no responsible party has been found for the site, the state has been unable to prove a party’s responsibility, the responsible party is unwilling to take action to address the site, or the responsible party is unable to take action.

**Q: What are some examples of brownfield redevelopment?**

A: One of the wonderful things about brownfield redevelopment is that the possibilities are endless! If the plan is viable and benefits the community, you can reuse a brownfield site in any number of ways. Some ideas could include a building a new school, community center, playground, community garden, or boat launch. You don’t necessarily have to build a new building; you could restore the site as a subsistence gathering area, or plant grass and turn the area into a park. It is highly encouraged to engage other community members, hold visioning meetings, find out what people really want and need, and design a reuse plan that addresses those needs. Feel free to reach out to ANTHC Contamination Support Program if you have ideas for redevelopment, or need help organizing community visioning meetings.

**Q: What is Tribal TAB and how is ANTHC involved?**

A: The Tribal Technical Assistance to Brownfields (Tribal TAB) program is a national program funded by EPA that provides brownfields technical assistance to all federally recognized tribes in the U.S., including Alaska. The Tribal TAB team is spearheaded by Kansas State University and is a network of professionals and experienced staff with extensive knowledge of 128(a) TRPs, brownfields, brownfields-related topics and issues, tribal backgrounds and experience, and understanding of brownfield issues in a tribal context. Technical assistance from Tribal TAB is free and provided on a first-come, first served basis, and can include trainings, community visioning, site-specific assistance, and other services as requested.

The ANTHC Contamination Support Program serves as the Tribal TAB technical assistance hub for all Alaska tribes. To request Tribal TAB assistance or if you have any brownfields questions, contact us at 907-729-5630 or [contaminationsupport@anthc.org](mailto:contaminationsupport@anthc.org).

**Q: What is the BUILD Act of 2018 and how does it affect Alaska?**

A: In March 2018, Congress passed the Brownfields Utilization, Investment, and Local Development (BUILD) Act, which amends the brownfields provisions of CERCLA. BUILD brought about many changes, including increasing funding for brownfield remediation grants, establishing a new category of funding called “Multipurpose Brownfield Grants,” and expanding eligibility for non-profit organizations. A more comprehensive summary of legislative changes brought about by the BUILD Act is located [here](#).

BUILD specifically impacts Alaska by providing liability relief for Alaska Native Village and Regional Corporations for any contaminated lands/facilities received under the Alaska Native Claims Settlement Act (ANCSA), as long as the entity did not cause or contribute to the release of contamination on the site. BUILD does not change brownfields funding eligibility for Alaska tribes.

An important note: Congress passed two acts named “BUILD” in 2018; the other is the “Better Utilization of Investments Leading to Development Act.” If you are researching this legislation, be sure you are looking at the correct BUILD Act.