



BROWNFIELD PROGRAM

Guidance

FOR SITES CONTAMINATED BY OLD OIL AND GAS EXPLORATION AND PRODUCTION ACTIVITIES, PETROLEUM STORAGE TANKS, AND PIPELINES.

Assessment

Petroleum Brownfields Eligibility Letter

Remediation Oversight

CLEANUP

Project Endorsement

Liability Release



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How the Brownfield Program Works

1.0 Definitions

Brownfield Program – a voluntary cleanup program of Corp Comm that is EPA funded through The Small Business Liability Relief and Brownfield Revitalization Act (January 11, 2002)

Brownfield Site - a real property where expansion, redevelopment, normal use or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For Corp Comm this includes land that is characterized or contaminated by petroleum, petroleum products, and related wastes, including crude, condensate, gasoline and diesel fuel, produced water/brine, glycol and drilling mud. A proposed Brownfield site is a defined area; it does NOT need to be the entire property or lease.

Corp Comm – Oklahoma Corporation Commission

E&P – Exploration and Production activities of the oil and gas industry

EM – electromagnetic survey that used to distinguish between the conductivity of groundwater. Saline water has higher conductivity the fresh water; therefore, you may be able to see brine pollution below the surface.

Excluded Site – a site that CANNOT participate in the Brownfield program because it is:

- (1) controlled by responsible parties excluded from the program (see section B);
- (2) listed on the national priority list (NPL);
- (3) subject to order or consent decree under CERCLA;
- (4) permitted under RCRA, CWA, TSCA, or SWDA;
- (5) a land disposal unit with a closure notification submitted, closure plan or permit;
- (6) owned or under the control of the federal government;
- (7) a portion of a site with PCB pollution subject to remediation under TSCA
- (8) of facilities with an approved or ongoing federal Leaking Underground Storage Tank (LUST) Fund remediation.

Guardian Guidance – the remediation guidance document for the Pollution Abatement Department of the Oil and Gas Conservation Division of the Oklahoma Corporation Commission. The Brownfield program is located with in this Department.

NFA – No Further Action

O&G – Oil and Gas

Operator - any person, public entity, or any other entities (i) which own or operate such facility or property, (ii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.

ORBCA – Oklahoma Risk Based Corrective Action

PST(D) – Petroleum Storage Tank (Division) of the Oklahoma Corporation Commission that has jurisdiction over underground and above ground storage tank facilities, both current and historic.

TBA – Targeted Brownfield Assessment, free site assessment that the EPA provides to specific eligible entities.

TPH – Total Petroleum Hydrocarbons

2.0 Petroleum Brownfield Eligibility Determination

Corp Comm will determine the initial eligibility for any likely petroleum contaminated portion of a Brownfield site. The operator may or may not enter our Brownfield program. Corp Comm has an agreement with the other State agencies to look in our databases to make sure that:

- (a) the site is a relatively low risk site¹, and determine if any money has been spent on the site from another Corp Comm federal program.
- (b) there are no viable responsible parties, and that the current or immediate past owner did not cause or make the pollution worse and took reasonable steps with regard to any pollution that Corp Comm is aware of, and
- (c) there are no judgments, orders, or third party suits because of pollution concerns that Corp Comm is aware of.

3.0 Responsible Party Defined

A person, company, non-profit, or other entity that cannot be in the federally-funded Brownfield program if he/she/it is a “Responsible Party (RP)” for a site. However, an entity is not necessarily an RP just because there is/was existing pollution on a property before it was purchased or leased by the entity. A “RP” is an entity that has done at least one of the following:

- (a) Caused the potential pollution at the proposed Brownfield site, or knew about it and allowed it to occur; and/or

¹ Low Risk compared to hazardous waste and other sites handled by any environmental agency.

- (b) Added to already existing pollution at the site; and/or
- (c) Prevented, or made more difficult, an environmental assessment or pollution remediation of the site; and/or
- (d) Been cited by the Oklahoma Corporation Commission or other governmental environmental agency for any violation of agency rules at the site that could have led to a leak, spill and/or other cause of the pollution at the site, and/or has a demonstrated pattern of uncorrected noncompliance with state or federal laws or rules or a history of noncompliance with state or federal environmental laws or rules as evidenced by past operations indicating a reckless disregard for the protection of human health and safety or the environment.

4.0 Brownfield Program Process

4.1 Pre-Application Information Exchange

The applicant may want to consider a pre-application conference by phone, e-mail, mail, or in person. At that conference, the applicant will be instructed on how to provide Corp Comm with sufficient information to determine whether applicant and the applicant's site is eligible under the law to apply for liability protection and other benefits under the Brownfield Program.

4.2 Eligibility Verification

4.2.1 Applicant Eligibility

An applicant may be any non-responsible party including:

- (a) The legal owner in fee simple, the tenant or lessee of the property, or a person who has a written expression of an interest to purchase the property and the ability to implement a redevelopment proposal, or
- (b) Any person who acquired the ownership, operation, management, or control of the site through foreclosure or under the terms of a bona fide security interest in a mortgage or lien on, or an extension of credit for, the property - and foreclosed on the property or received an assignment or deed instead of foreclosure or some other indication of ownership and thereby becomes the owner of the property, or
- (c) Agencies, non-profit organizations, and others who choose to clean up or otherwise rehabilitate a property for the owner or tenant in order for it to be returned to productive use or to become greenspace (for example, the Oklahoma Energy Resources Board's voluntary E&P site surface restoration program).

This does not mean that a particular piece of property, with a RP, may not be remediated under the Brownfield program by an applicant that is not the RP. If an eligible entity that is not the RP wants to remediate the property, then that eligible entity may apply to the Brownfield program. Once the site completes the process, the entity (not the RP) would be granted limited liability protection.

4.2.2 *Site Eligibility*

Any facility or real property where normal use, reuse, expansion or redevelopment is hindered by pollution or suspected pollution of a substance or substances released by activities regulated by Corp Comm (oil and gas exploration and production, pipelines, and petroleum storage tanks) qualifies as a Brownfield.

For apparently abandoned sites, legal verification of whether or not the former operator(s) of the site can be identified and located as a viable RP will be performed by Corp Comm staff.

All sites that are by definition an excluded site will not be allowed to enter the program (see section A).

4.3 *Program Enrollment*

4.3.1 *Landowner Verification and Consent*

The applicant must demonstrate that they are not seeking a Brownfield certificate for land or for any operation upon land owned by others without their knowledge. The applicant must certify by affidavit that they own the property, or have a current lease/easement of the property, or that they have legally notified the land owner and received their consent to enter the property into the Brownfield program.

4.3.2 *Enrollment Notification*

Brownfield staff will send an acceptance letter to the applicant that the site is formally enrolled in the Brownfield program. Brownfield staff will add the site to the program's public record as an enrolled site.

4.3.3 *Location, Content, and Responsibility of the Public Record*

This record is a requirement under the Brownfields law and must be available to the public. Corp Comm's record of completed and current Brownfields sites can be found by following the Brownfields links from the Oklahoma Corporation Commission's web site (www.occeweb.com).

The public record will contain all current and completed sites under the Corp Comm Brownfields program. The information for each site will include the following:

- (a) Site Name
- (b) Address or Legal Description of the Site
- (c) Town, City, and/or County
- (d) Site Level of Progress
- (e) Allowable use of Revitalized Land
- (f) Place Certificate is Filed

The Corp Comm Brownfield staff is responsible for the maintenance of the public record.

4.4 Targeted Brownfield Assessment (TBA) Application

4.4.1 TBA Eligibility

Any applicant that is not requesting a funded TBA from Corp Comm may skip this step and proceed to 4.5 Brownfield Site Assessments.

Entities eligible to apply for TBAs are governmental entities, quasi-governmental entities, and non-profit organizations. All applicants and properties requesting a TBA must meet federal and state eligibility requirements. These assessments will follow Corp Comm standards and practices in effect at the time of the site visit. Qualified environmental professionals will perform these assessments. Corp Comm may elect to:

- (a) Perform a TBA itself, or
- (b) Request that EPA's contractor perform a TBA, or
- (c) Decline to perform the Targeted Brownfields Assessment for funding or other appropriate reasons.

4.4.2 TBA Application Process

Applicants will be required to submit the Application Form 2004BF for properties in the Brownfield program. In their application, Applicants will provide basic information, demonstrate eligibility, and address several property ranking factors. Brownfield staff will evaluate the application. Potential applicants may discuss eligibility issues with Corp Comm prior to applying.

After a determination is made that an applicant and property are eligible for the program, ranking factors will be used to prioritize Brownfield properties for TBAs. Corp Comm may also take into account the type and size of assessments requested, benefits the project provides to the state as a whole, statewide priorities, funding limitations, availability of other funding, and other factors in ranking and selecting properties for TBAs. The number and timing of TBAs will depend on availability of funding and Corp Comm personnel and will occur strictly at the discretion of Corp Comm. Upon selection of a property for assessment, Corp Comm will notify the applicant by telephone or e-mail. Corp Comm will also notify the applicants if they are not eligible or not selected for a TBA.

4.4.3 Submission Requirements

A copy of the completed application (form 2004BF) must be received at the following address:

Oklahoma Corporation Commission
Oil and Gas Conservation Division
Brownfield Program
P.O. Box 52000
Oklahoma City, OK 73152-2000

Applications may also be delivered to:

Oklahoma Corporation Commission
Oil and Gas Conservation Division
2101 North Lincoln Blvd, Room 256
Oklahoma City, OK 73105

4.5 *Brownfield Site Assessments*

4.5.1 Phase I

Typically, basic site and assessment information as per EPA's All Appropriate Inquiries rule and ASTM E-1527-13 is necessary for known/suspected exploration, production, and/or pipeline sites, and as an initial step at PST storage tank sites. However:

- (a) Detailed historical and records reviews may be waived until the basic physical environmental/pollution assessment is done, and for specific types of sites – see the AAI considerations in Attachment I.
- (b) A Category Index Table (Guardian Guidance, Appendix I) must be submitted for all oil & gas and pipeline sites likely or definitely polluted above action levels, unless an immediate response removing such pollution is done, qualifying a site for NFA status.

Sites that are determined to need no remediation following an acceptable Phase I assessment (and immediate response if performed) can be issued NFA certification once the Brownfield staff receives appropriate documentation.

Please see the All Appropriate Inquiries attachment as to this guidance.

4.5.2 Phase II

Additional assessment work, action levels determination, and remediation guidance:

- (a) For oil & gas (crude and refined product and produced water) sites and pipeline sites, see the Oil & Gas Conservation Division's Guardian Guidance for petroleum assessment and remediation and the produced water/brine remediation guidance at <http://www.occeweb.com/og/abatement.html>.
- (b) For retail petroleum storage tank sites, see the Petroleum Storage Tank Division's ORBCA guidance, on the website under Petroleum Storage Tank Division → Information → Forms and Guidance → Technical. All of these sites will be referred to the PST Division, and will follow their Oklahoma Risk Based Corrective Action (ORBCA) guidelines, for assessment and remediation.
- (c) The Commission recommends that one or more soil and water background sample(s) (unimpacted by the release – upgradient for water samples) be taken. The Commission does not require a cleanup more stringent than background levels.

- (d) Sites, which are determined to need no remediation following appropriate environmental and risk assessment, can be issued NFA certification once the Brownfield staff receives appropriate documentation.

4.6 Brownfield Site Remediation

4.6.1 No Further Action Determination

If the site, at the conclusion of the TBA or Phase I or Phase II investigation (including immediate response), is found to pose no risk or acceptable risk for the population or the environment according to future uses put forward in the application, it is considered an NFA site. Brownfield, PST, or O&G staff determines if an NFA determination will be issued for each site.

4.6.2 Pollution Likely or Demonstrably Present Above Action Levels Determination

Further assessment and remediation will follow one of three pathways:

- (a) Standard Oil & Gas Exploration & Production (O&G E&P) Division guidance for petroleum (Guardian) and produced water (brine) site assessment and remediation oversight, enforcement, approval and verification.
- (b) Standard Petroleum Storage Tank (PST) Division ORBCA Guidance for site assessment and clean up oversight, enforcement, approvals and verification.
- (c) The OERB Abandoned Site Assessment and voluntary surface restoration of E&P sites process, with Brownfields oversight.

All of these programs will work under their own rules and/or guidelines. The Brownfield staff must approve all remediation plans prior to cleanup work. The Corp Comm Brownfield team will act as gatekeepers to the Brownfield program and ensure that Brownfield laws and rules are followed.

4.7 Notices to the Public

4.7.1 Public Notice for Remediation Sites

Sites found to need no further action after environmental assessments will not need public notice, since no actions will be taken.

In the Brownfield program, the applicant will give notice that a site remediation determination is ready for public review. The notice must be published in one newspaper local to the proposed Brownfield site and on Corp Comm's website, identifying locations where the application and documentation may be reviewed. The notice must contain the:

- (a) Name and address of the applicant;
- (b) Name, address and legal description of the Brownfield;

- (c) Purpose of notice;
- (d) Type of action being sought (i.e. remediation or no action);
- (e) Description of activities to be regulated;
- (f) Locations where the NFA or remediation draft may be reviewed;
- (g) Names, addresses, and telephone numbers of contact persons for Corp Comm and for the applicant;
- (h) Description of public participation opportunities and time period for comment and requests;
- (i) Any other information required by Brownfield rules; and
- (j) Any information the applicant deems relevant.

This notice must also contain public participation information. The applicant or the Brownfield staff must either (1) provide for a set time period for public comment and for the opportunity to request a formal public meeting on the draft or (2) must schedule a public meeting, giving a date, time and place for the meeting. The time period must be set at 30 days after the notice is published [27A O.S. § 2-14-302].

Corp Comm will provide a format for the notice. The applicant will provide us with the publisher's affidavit within 20 days after the date of publication. The Brownfield Program may choose to handle the publication.

If Corp Comm receives a written timely request for a public meeting and decides that there is a significant degree of public interest in the draft remediation plan a public meeting will be scheduled. The public will be given at least 30 days notice of the meeting. The meeting will be held in a convenient location near the proposed Brownfield within 120 days after the notice of the draft was published. [See the Uniform Environmental Permitting Act, 27A O.S. Supp. 1996, §2-14-303.]

In the interest of expediency, the applicant may simply give notice of the date, time and place that a public meeting will be held. [See 27A O.S. Supp. 1996, §2-14-302.]

4.7.2 *Public meetings*

The Uniform Environmental Permitting Act and its rules govern procedure for public meetings. [See 27A O.S. Supp. 1996, §2-14-303.] However, the Oklahoma Brownfields law prohibits discussions about zoning or rezoning for any proposed redevelopment. [See 27A O.S. Supp. 1996, §2-15-106(A)]; although not listed in this law, Corp Comm intends to do the same.

Corp Comm Brownfield or Public Information staff will moderate any public Brownfields meeting and will establish its procedure. Anyone may speak or submit written statements and data about the draft. The moderator may set reasonable limits on speakers. The applicant must be available to answer questions. The moderator at his/her discretion may extend the public comment period at the public meeting.

If no one requests a public meeting and if one is not held, and if no comments are received, we will simply go forward with NFA or site remediation.

4.7.3 Response to comments

If Corp Comm receives public comments and/or a public meeting was held in which comments were received, Corp Comm Brownfield staff will then prepare a response to comments within 90 days after the close of the comment period.

4.8 Brownfield Site Closure

4.8.1 Final Surface Remediation Confirmation

- (a) The applicant's Environmental Professional and/or Brownfields, O&G, or PST staff will perform a final survey to confirm the property is ready for the beneficial use of the applicant or the owner; lessee or other interested party the applicant was working on behalf of.
- (b) Applicant will submit final assessment samples to Brownfields, Oil and Gas, OERB, or PST program; whichever is appropriate for the project.
- (c) The appropriate regulatory program will confirm the cleanup standards have been met.

4.8.2 Final Information

- (a) All documentation for the site will be compiled and a copy given to the Brownfield Program.
- (b) The Brownfield team will review that the work was done as required by all applicable regulatory laws and rules.
- (c) The Brownfield team will confirm that any necessary institutional controls have been filed with appropriate authorities.

4.8.3 Request Closure

After all reviews are complete and the site is found to be in compliance with all Brownfield and regulatory laws, a request for closure of the site is made by the applicant. The Brownfield staff reserves the authority to close a site after review of final documentation and compliance with or without a closure request from the applicant.

4.8.4 Records

The Brownfield staff will maintain a digital record of each site file for public review on the Brownfield server(s) used as the program's archival system.

4.9 Brownfield Program Certificates

4.9.1 Certificate of No Further Action

When Corp Comm has approved an NFA determination, a Certificate of No Further Action Necessary shall be issued to the applicant. The specified land use must be listed in the Certificate. The applicant must file the Certificate of No Further Action Necessary in the office of the county clerk where the Brownfield is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to Corp Comm within 30 days. The certificate will state whether or not any institutional controls are in place at the site and the requirements of said controls.

4.9.2 Certificate of Completion

After the final inspection of the site and review of the project, Corp Comm will then issue a Certificate of Remediation Completion. The specified land use must be listed in the Certificate. The applicant must file the Certificate of Remediation Completion in the office of the county clerk where the Brownfield is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to Corp Comm within 30 days. The certificate will state whether or not any institutional controls are in place at the site and the requirements of said controls.

ATTACHMENT I

All Appropriate Inquiries

1.0 AAI COMPONENTS (Source: 40 CFR Part 312, Nov. 1, 2005).

1.1 Duties of Environmental Professional (EP)

- (a) Environmental inquiry
- (b) Visual inspections of the facility and adjoining properties
- (c) Interviews with past and present owners, operators and occupants
- (d) Reviews of historical sources
- (e) Reviews of federal, state, tribal and local government records

1.2 Duties of “User” or “Owner” (can be delegated to EP)

- (a) Searches for recorded environmental cleanup liens
- (b) Consideration of “specialized knowledge” of the subject property and adjoining properties
- (c) Consideration of the relationship of the purchase price to the value of the property, if not contaminated

1.3 Duties Shared by EP and “User”

- (a) Consideration of commonly known information about the property
- (b) Consideration of the "degree of obviousness of pollution"

2.0 AAI EP STATEMENT REQUIREMENT

AAI requires that EP’s place this statement in the Phase I and sign it. I declare that to the best of my professional knowledge and belief, I meet the definition of Environmental Professional as defined in Section 312.10 of this part. I have specific qualifications based on education, training, and experience to assess a property of the nature, history and setting of the subject property. I have developed and performed the all appropriate inquiry in conformance with the standards and practices set forth in 40 CFR Part 312.

3.0 OK CORP COMM O&G SPECIFIC AAI – PHASE I CONSIDERATIONS

3.1 Environmental Issues

If a possible environmental problem (evidence of a spill, staining, odor, dead vegetation training from and E&P site, etc.) is seen, perform some confirming work (i.e. a Limited Assessment [see the Commission’s Guardian Guidance], or soil samples analyzed for TPH in a stained area or salinity analysis in a bare spot, or vapor screening to below a tank or line leak, or a pass with EM equipment to see if a bare spot at an O&G site has the conductivity typical of a produced water/brine spill) - but not the rigor of a Phase II.

3.2 Assessments

The parties performing the initial assessment(s) can

- (a) choose to defer detailed reviews and record checks until a basic physical pollution assessment of the site is done, and
- (b) if no significant pollution is found may decide to not perform these detailed reviews and record checks and instead ask that the case be dismissed or a NFA determination be made for the site.

3.3 Agricultural Areas

In Agricultural areas outside of towns and cities, where the only non-Ag use of property was O&G exploration and/or production, the following will satisfy AAI elements in 1.1 (c)(d)(e), 1.2(a)(b) and 1.3 (a):

- (a) a check of Corp Comm records
- (b) interview E&P site operators & field hands at the time E&P activities have occurred for what they know about site-polluting activities, except for apparently abandoned sites where these cannot easily be located, and do
- (c) interview E&P land owners & property renters at the time E&P activities occurred for what they know about site-polluting activities, except for apparently abandoned sites where these cannot easily be located.

3.4 Property Values and Purchases

1.2 (c) will be waived for sites where:

- (a) no property transactions are occurring and
- (b) the only activity or “economic development” is returning a site to an existing use such as usable farm/ranch land or oil and gas production, or converting it to greenspace.

3.5 Abandoned Sites - RP Verification

Legal verification of whether or not the former operator(s) of an oil & gas or storage tank site can be identified and located for Responsible Party purposes will also have to be done for apparently abandoned sites.