

BROWNFIELD PROGRAM

FREQUENTLY ASKED QUESTIONS

Assessment

Petroleum Brownfields Eligibility Letter

Remediation Oversight

CLEANUP

Project Endorsement

Liability Release



BROWNFIELD PROGRAM MOST FREQUENTLY ASKED QUESTIONS

What is a Brownfield?

Brownfields are real property, the expansion, redevelopment, normal use or reuse of which may be prevented or complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties and making them available for normal use takes development pressures off of undeveloped, open land and both improves and protects the environment.

What types of facilities qualify as Brownfields?

Any facility or real property where normal use, expansion or redevelopment is hindered by pollution caused by substances and/or activities regulated by Corp Comm (Oil & Gas or PST and pipelines) qualify as a Brownfield. However, certain persons/entities may not apply for liability protection under this program. Those include:

- Anyone responsible for causing the pollution or taking corrective action on the site under state or federal laws or EPA or Corp Comm rules.
- Anyone who is not in substantial compliance with an agency order or court order secured by any state or federal agency relating to the generation, storage, transportation, treatment, recycling or disposal of regulated substances; or
- Anyone who has a demonstrated pattern of uncorrected noncompliance, i.e., a history of noncompliance with state or federal environmental laws or rules or regulations promulgated thereto, as evidenced by past operations clearly indicating a reckless disregard for the protection of human health and safety, or the environment.

What is a Targeted Brownfield Assessment (TBA)?

A Targeted Brownfields Assessment is a study conducted by Corp Comm or by the EPA contractor at the request of Corp Comm to determine the presence and extent of any deleterious substance or pollutants prior to expansion, reuse or redevelopment of the property. Subtitle C of the Brownfields Revitalization Act provides funds for TBAs to be conducted by Corp Comm. Subtitle C also provides funds to assist states and tribes with their voluntary response program.

Who is eligible to apply for a TBA?

Eligible applicants for these environmental site assessments are public (local units of governments), quasi-public (community development organizations), and non-profit entities. Tribal governments as well as governmental entities created by state legislatures are eligible to apply.

Funds are provided to assess property that is publicly owned by a municipality or quasi-public entity. If property is privately owned but has potential for redevelopment that will result in significant benefits to the general public, funding for an environmental assessment will be considered. However, if privately owned, the applicant cannot be the owner nor have an

association with the property owner. Written property access agreement is required before entering the property

What types of certifications are available?

There are two certificates, a Certificate of Completion and a Certificate of No Further Action Necessary (also called NFA). Corp Comm issues a "Certificate of Completion" when an applicant has successfully completed Commission-approved risk-based remediation of a property. Corp Comm issues a "Certificate of No Further Action Necessary" or NFA when no remediation is deemed necessary for a planned use. Also called a "land use disclosure", Certificates are required to be filed in the office of the county clerk of the county where the site is located.

How much liability will I retain after certification? I understand that there can be "reopeners". How can I feel secure with the certificate if the state reserves the right to reopen the case?

The Certificates apply only to

- (a) conditions caused by pollution on the property,
 - (b) applicable state or federal laws and rules
- that existed at the time of submission of the application.

The release of liability does not apply to:

- (a) any environmental pollution and consequences that the applicant causes outside the scope of the certificate issued by Corp Comm;
- (b) any pollution caused by or resulting from any subsequent redevelopment of the property;
- (c) existing pollution caused by regulated substances not addressed prior to issuance of the Certificate of Completion or the Certificate of No Further Action Necessary; or
- (d) any person responsible for pollution who has not participated in the voluntary remediation.

Corp Comm and EPA are prohibited from taking administrative penalties and civil actions against the applicant, lenders, lessees, and successors and assignees for any remediation, which is completed and certified. The Certificate (NFA or Completion) remains in effect as long as the property is in substantial compliance with the Certificate.

How do the certificates protect me from third party lawsuits?

State law mandates that the certificate must include provisions, which state:

"[T]he applicant and all lenders, lessees, and successors and assigns shall not be subject to civil liability with regard to the remedial actions taken by the applicant for environmental pollution caused by regulated substances, if the remedial action is not performed in a reckless or negligent manner" OR, in the case of a no further action determination: nothing in this law will be construed to limit or negate any other rights of any person from pursuing or receiving legal or equitable relief from the applicant or any other person or legal entity causing or contributing to the environmental pollution."