



Petroleum Brownfields

TRP WEBINAR

SEPTEMBER 29, 2021

Petroleum Brownfields

Brownfields are abandoned, unused, or underused properties that are hindered from desired reuse or redevelopment due to contamination or potential contamination from hazardous substances, **petroleum**, or both.

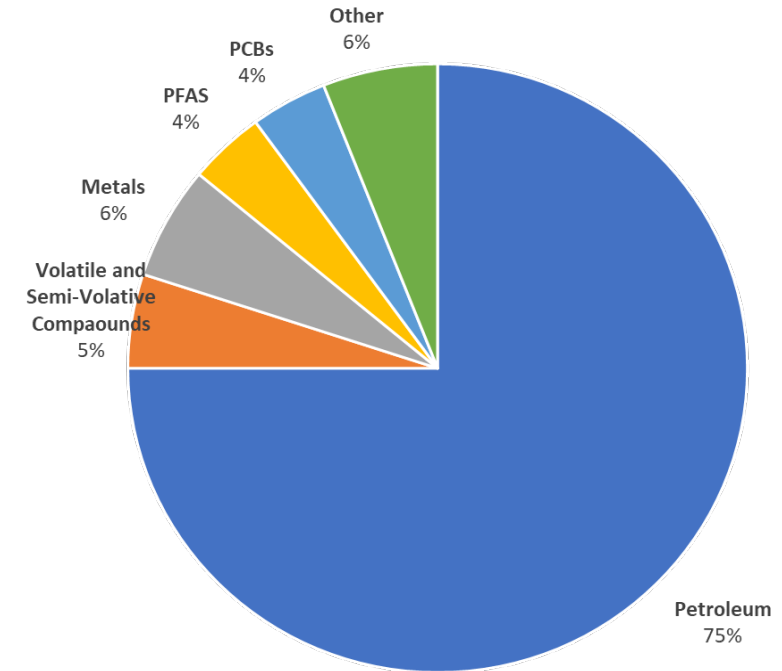
- ▶ **Petroleum is the most common contaminant in Alaska.**
- ▶ There are **special requirements for petroleum sites to be eligible for brownfields funding** from EPA or for DEC Brownfields Assessment and Cleanup (DBAC) services.

Petroleum brownfields are any properties that are contaminated or potentially contaminated by petroleum or petroleum products (e.g., gasoline or home heating oil) and are usually found at sites that use or store these products where spills or leaks or more likely to occur (e.g., gas stations or a leaking above- or underground storage tank).



Petroleum Brownfields

- ▶ EPA estimates 450,000 brownfield sites across the United States; of these, approximately one-half are thought to be impacted by petroleum.
- ▶ In Alaska, petroleum contaminants are of concern at approximately 75 percent of all sites (brownfields and non-brownfields) tracked on the DEC Contaminated Sites Database.



Examples of Petroleum Brownfields

- ▶ Former gas stations with underground storage tanks (USTs)
- ▶ Old tank farms
- ▶ Leaking home heating oil tanks
- ▶ Commercial property with aboveground storage tanks (ASTs)
- ▶ Abandoned drums



Identifying Potential Petroleum Issues

- Site history/inventory
- Sheen
- Dead or Disturbed Vegetation
- Photoionization Detector (PID) Readings/ Petroflag
- Samples



Common Clean Up Methods in Alaska

- ▶ Landfarming
- ▶ Landspreading
- ▶ Bioremediation
- ▶ Monitored Natural Attenuation
- ▶ Excavation and Disposal
- ▶ Soil Vapor Extraction
- ▶ Others

Considerations

- ▶ Cleanup Goals
- ▶ Cost
- ▶ Time
- ▶ Space
- ▶ Climate

For more information, see DEC's *Environmental Cleanup Methods Fact Sheet*:

dec.alaska.gov/media/14662/cleanup-methods.pdf



Eligibility for Brownfields Funding (including DBACs)

For more information, see EPA's *Information on Sites Eligible for Brownfields Funding under CERCLA § 104(k)*:

www.epa.gov/sites/default/files/2018-10/documents/web-content-info-on-site-eligibility.pdf

- ▶ **Petroleum sites need a written determination of eligibility from DEC or EPA**
- ▶ To be eligible, a site must otherwise meet the definition of a brownfield and:
 1. There is no viable responsible party.
 2. The site will not be assessed, investigated, or cleaned up by a person that is potentially liable for cleanup.
 3. The site must not be subject to a corrective action order.
- ▶ If a party is identified as being responsible for contamination at the site and that party is financially viable, then the site is not eligible for brownfields funding directly or indirectly from EPA.



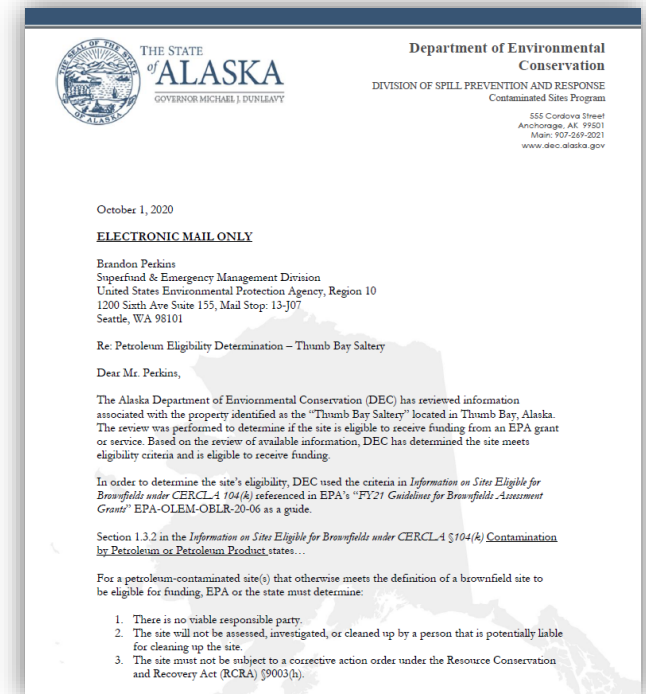
Criteria One: A Site for Which There is No Viable Responsible Party

Determined by evaluating:

- ▶ If the property was acquired through tax foreclosure, abandonment, or equivalent government proceedings

Part 1:

- ▶ No viable responsible party has been identified through:
 - 1) an unresolved judgment rendered in a court of law or an administrative order
 - 2) an unresolved enforcement action by federal or state authorities
 - 3) an unresolved citizen suit, contribution action, or other third party claim brought against the current or immediate past owner



Criteria One: A Site for Which There is No Viable Responsible Party, Cont.

Part 2:

- ▶ The current owner has not dispensed or disposed, or owned the property during the dispensing or disposing of petroleum
- ▶ The previous owner did not dispense or dispose, or owned the property during the dispensing or disposing of petroleum

"A Site for Which There is No Viable Responsible Party"

Section 1.3.2 states "...A petroleum-contaminated site may be determined to have no responsible party if the site was last acquired (regardless of whether the site is owned by the applicant) through tax foreclosure, abandonment, or equivalent government proceedings, and the site meets the criteria in (1) below. Any petroleum-contaminated site not acquired by a method will be determined to have a responsible party if the site fails to meet the criteria in both (1) and (2) below:

1. **No responsible party** has been identified for the site through:
 - a. an unresolved judgment rendered in a court of law or an administrative order that would require any party (including the applicant/recipient) to conduct the activities (including assessment, investigation or cleanup) proposed in the grant proposal/submitted as part of a site eligibility determination;
 - b. an unresolved enforcement action by federal or state authorities that would require any party (including the applicant/recipient) to conduct the activities (including assessment, investigation, or cleanup) proposed in the grant proposal/submitted as part of a site eligibility determination; or
 - c. an unresolved citizen suit, contribution action, or other third party claim brought against the current or immediate past owner for the site that would, if successful, require the activities (including assessment, investigation, or cleanup) proposed in the grant proposal/submitted as part of a site eligibility determination.
2. The **current and immediate past owner** did not dispense or dispose of, or own the subject property during the dispensing or disposal of, any contamination at the site, and took reasonable steps with regard to the contamination at the site.

Response: The current owner of the property is Chenega, Corporation. The past owner is Knight Island, LLC.

DEC has not identified any unresolved judgments rendered in a court of law or an administrative order that would require a party to assess, investigate, or cleanup the site. DEC does not have any unresolved enforcement actions against any party to assess, investigate, or cleanup the site. DEC has not identified any unresolved citizen suit, contribution action or other third party claim brought against the current or former owners that would require a party to assess, investigate or cleanup the site.

The current owner did not dispense or dispose of petroleum; own the subject property during the dispensing or disposal of petroleum; and took reasonable steps with regard to contamination at the site and took ownership of the property. According to the information available, Knight Island, LLC also did not dispense or dispose of petroleum during their ownership.

Therefore, as the property does not appear to have a responsible party identified through unresolved actions, the current or former owner are not considered a responsible party at this time. This determination is solely for the purpose of determining eligibility for the brownfields program funding.

"Cleaned Up by a Person Not Potentially Liable"

Section 1.3.2 states "Brownfields funding may be awarded for the assessment and cleanup of petroleum-contaminated sites provided they meet the requests below:



Criteria Two: Cleaned Up by a Person Not Potentially Liable

Determined by evaluating:

- ▶ The applicant or recipient has not dispensed or disposed of or owned the property during the dispensing or disposal of petroleum product at the site, and
- ▶ The applicant or recipient did not exacerbate the contamination at the site
- ▶ The applicant or recipient has taken reasonable steps with regard to the contamination at the site.

"A Site for Which There is No Viable Responsible Party"

Section 1.3.2 states "... A petroleum-contaminated site may be determined to have no responsible party if the site was last acquired (regardless of whether the site is owned by the applicant) through tax foreclosure, abandonment, or equivalent government proceedings, and the site meets the criteria in (1) below. Any petroleum-contaminated site not acquired by a method will be determined to have a responsible party if the site fails to meet the criteria in both (1) and (2) below.

1. No responsible party has been identified for the site through:

- a. an unresolved judgment rendered in a court of law or an administrative order that would require any party (including the applicant/recipient) to conduct the activities (including assessment, investigation or cleanup) proposed in the grant proposal/ submitted as part of a site eligibility determination;
- b. an unresolved enforcement action by federal or state authorities that would require any party (including the applicant/recipient) to conduct the activities (including assessment, investigation, or cleanup) proposed in the grant proposal/ submitted as part of a site eligibility determination; or
- c. an unresolved citizen suit, contribution action, or other third party claim brought against the current or immediate past owner for the site that would, if successful, require the activities (including assessment, investigation, or cleanup) proposed in the grant proposal/ submitted as part of a site eligibility determination.

2. The current and immediate past owner did not dispense or dispose of, or own the subject property during the dispensing or disposal of, any contamination at the site, and took reasonable steps with regard to the contamination at the site.

Response: The current owner of the property is Chenega, Corporation. The past owner is Knight Island, LLC.

DEC has not identified any unresolved judgments rendered in a court of law or an administrative order that would require a party to assess, investigate, or cleanup the site. DEC does not have any unresolved enforcement actions against any party to assess, investigate, or cleanup the site. DEC has not identified any unresolved citizen suits, contribution action or other third party claim brought against the current or former owners that would require a party to assess, investigate or cleanup the site.

The current owner did not dispense or dispose of petroleum, own the subject property during the dispensing or disposal of petroleum, and took reasonable steps with regard to contamination at the site and took ownership of the property. According to the information available, Knight Island, LLC also did not dispense or dispose of petroleum during their ownership.

Therefore, as the property does not appear to have a responsible party identified through unresolved actions, the current or former owner are not considered a responsible party at this time. This determination is solely for the purpose of determining eligibility for this brownfields program funding.



Criteria Three: Is not subject to any order issued under §9003(h) of the Resources Conservation and Recovery Act (RCRA)

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Determined by evaluating:

- If the site is not subject to any order issued under §9003(h) of the Resources Conservation and Recovery Act (RCRA)

1. The applicant/recipient has not dispensed or disposed of or owned the property during the dispensing or disposal of petroleum or owned the property during the dispensing or disposal of petroleum or petroleum product at the site, and
2. The applicant/recipient did not exacerbate the contamination at the site and took reasonable steps with regard to the contamination at the site."

Response: Chenega Corporation has not dispensed or disposed of nor owned the property during the dispensing or disposal of petroleum product at the site. Additionally, Chenega Corp. has not exacerbated the contamination at the site.

"Is not subject to any order issued under §9003(h) of the Resources Conservation and Recovery Act (RCRA)".

Response: The property identified as the "Thumb Bay Saltery" is not subject to a corrective action order under the Solid Waste Disposal Act of RCRA.

Based on the above discussion, DEC has determined that site identified as the "Thumb Bay Saltery" is eligible for petroleum funding from an EPA grant or service.

If you have any questions or need clarification of any of the issues addressed in this letter, please do not hesitate to contact me at (907) 269-2021.

Sincerely,



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SPAR/CST/Brownfields
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Info needed to make a site eligibility determination

- ▶ DEC can assist in researching the site's history to fill in any data gaps if some information is not readily known or available.
 - Names of the current and immediate past owners;
 - When and by what method the current owner acquired the site;
 - Information establishing that the current and immediate past owner of the property is not a responsible party for any contamination;
 - Information that the party applying for assessment or cleanup funding or services is not potentially liable for any contamination;
 - Information that a responsible party has not been identified through an unresolved judgment, order, or third-party suit;
 - Information that the site is not subject to an order under the Resource Conservation and Recovery Act (RCRA); and
 - Information that the current or immediate past owner, if responsible, is not financially viable to meet their obligations.









Hypothetical Scenario: The Abandoned Tank Farm

There is a former tank farm with no tanks on the site. The tanks were removed as part of a tank farm consolidation project completed in 2001. The property is currently owned by a public entity who applied for Brownfield funding or services. They purchased the property in 2003. They did not dispense or dispose, or own the property while petroleum was dispensed or disposed of. The immediate past owner (a private party) did own the property while petroleum was being dispensed. The current owner has kept a fence around the property. There are no citizen suits, court judgments, administrative orders, or third party claims on the property. The site does not have a RCRA order on it.

Is the property considered eligible?

Criteria One: A site for which there is no responsible party.

- ▶ The property was acquired through tax foreclosure, abandonment, or equivalent government proceedings 
- ▶ No viable responsible party has been identified through:
 - 1) an unresolved judgment rendered in a court of law or an administrative order 
 - 2) an unresolved enforcement action by federal or state authorities 
 - 3) an unresolved citizen suit, contribution action, or other third party claim brought against the current or immediate past owner 
- ▶ The current owner has not dispensed or disposed, nor owned the property during the dispensing or disposing of petroleum 
- ▶ The previous owner did not dispense or dispose, nor owned the property during the dispensing or disposing of petroleum 

There is a Responsible Party, now what?

Remember the language states **VIABLE** responsible party

DEC (and EPA) have a mechanism for evaluating financial viability:

- ▶ Contact DEC, who will refer to the Response Fund Administration (RFA) within the Spill Prevention and Response division
- ▶ RFA reaches out to the responsible party with forms and a request to submit three years of tax returns
- ▶ Once these items are received by RFA, they run the information through software which determines likelihood of being able to afford future assessment and cleanup
- ▶ RFA issues a written determination that the party is or is not financially capable of completing assessment or cleanup



Criteria Two: Cleaned Up by a Person Not Potentially Liable

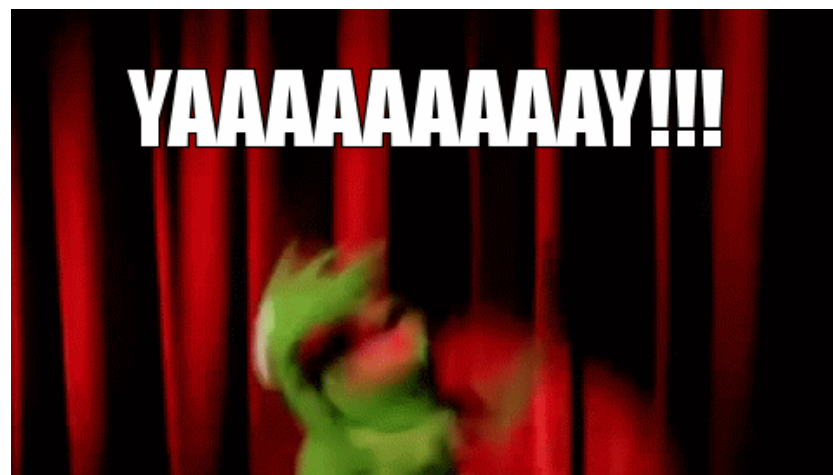
- ▶ The applicant or recipient has not dispensed or disposed of or owned the property during the dispensing or disposal of petroleum product at the site, and ✓
- ▶ The applicant or recipient did not exacerbate the contamination at the site ✓
- ▶ The applicant or recipient has taken reasonable steps with regard to the contamination at the site. ✓

Criteria Three: Is not subject to any order issued under §9003(h) of the Resources Conservation and Recovery Act (RCRA)

- ▶ The site is not subject to any order issued under §9003(h) of the Resources Conservation and Recovery Act (RCRA)



Conclusion: Eligible for Petroleum Brownfields



Frequently Asked Questions



Can EPA or DEC funding be used to remove tanks?

An EPA assessment grant or DEC services may be used to remove a tank only if it is determined that the tank must be pulled in order to conduct an effective assessment. The appropriate EPA project officer must concur with this determination prior to conducting field work.

Frequently Asked Questions

Can brownfields funding be used to respond to a spill?

No. Brownfields funding is not available to immediately respond to a spill; however, it may be available to assess and/or cleanup a petroleum release if the initial response does not address all potential contamination and depending upon site-specific circumstances.



Frequently Asked Questions

What do I do if there is a spill?

If there is a leak, overfill or other petroleum release, the owner or operator must notify DEC within 24 hours and take immediate action to prevent any further release, including removing the petroleum from the tank if necessary.

| Reporting an Oil-Petroleum Products Spill to DEC | |
|--|----------------|
| During Normal Business Hours, Call the Nearest Response Office | |
| Central Alaska: Anchorage | (907) 269-3063 |
| Northern Alaska: Fairbanks | (907) 451-2121 |
| Southeast Alaska: Juneau | (907) 465-5340 |
| Alaska Pipeline: Fairbanks | (907) 451-2121 |
| Outside Normal Business Hours | |
| Toll Free | 1-800-478-9300 |
| International | 1-907-269-0667 |



For More
Information

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<http://brownfields.dec.alaska.gov/>

