

NJIT TAB & USEPA RLF Workshop October 13 & 14, 2010



RLF 101
Site & Borrower/Subgrantee
Eligibility



Topics

- Eligible Sites
- Property Specific Determinations
- Eligible Borrowers & Subgrantees
 - Hazardous Substances
 - Petroleum



Eligible Sites

- The site must be a Brownfield:
“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”





Eligible Sites

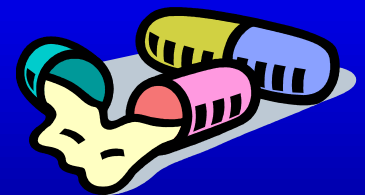
- Hazardous Substances

- ✓ Metals, PAHs, PCBs, etc.
- ✓ Asbestos
- ✓ Lead paint
- ✓ See CERCLA § 101(14) & § 101(33)



- Controlled Substances Sites

- ✓ Methamphetamine labs
- ✓ See Section 102 of the Controlled Substances Act, 21 USC § 802





Eligible Sites

- Mine-Scarred Land Sites

- ✓ Abandoned coal mines
- ✓ Abandoned lands scarred by strip mining
- ✓ Associated support and processing areas



- Petroleum Sites





Eligible Sites

- Sites **Not** Eligible

- ✓ Listed or proposed for listing on National Priorities List (NPL)
- ✓ Subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued or entered into under CERCLA
- ✓ Subject to the jurisdiction, custody, or control of the US Government (does not include tribal land)





Property Specific Determinations

- Sites Requiring Property Specific Determinations
 - ✓ Planned or ongoing CERCLA removal action
 - ✓ Permit issued under Solid Waste Disposal Act, FWPCA, TSCA, or SDWA
 - ✓ Subject to corrective action under RCRA 3004(u) or 3008(h)
 - ✓ Land disposal unit submitting a closure notification under RCRA subtitle C
 - ✓ Release of PCBs subject to remediation under TSCA
 - ✓ Received funding from LUST Trust Funds



Property Specific Determinations

- Property Specific Determination criteria:
 - ✓ Protect human health & the environment AND either:
 - Promote economic development or
 - Enable the creation, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or non-profit purposes





Eligible Borrowers & Subgrantees

- Eligible Borrowers

- ✓ States
- ✓ Municipalities
- ✓ Political Subdivisions
- ✓ US Territories
- ✓ Indian Tribes
- ✓ Non-Profits
- ✓ Private Developers

- Eligible Subgrantees

- ✓ States
- ✓ Municipalities
- ✓ Political Subdivisions
- ✓ US Territories
- ✓ Indian Tribes
- ✓ Non-Profits



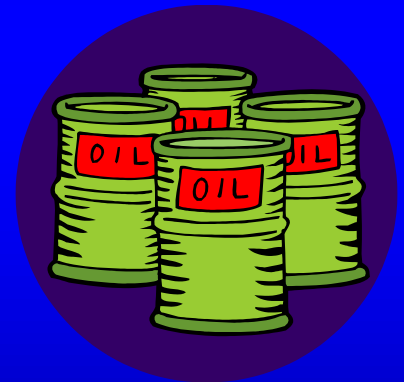


Eligible Borrowers & Subgrantees

- Petroleum Sites

✓ States or EPA make statutory determinations:

- Site is relatively low risk
- No viable responsible party
- Applicant is not liable for contamination
- Site not subject to corrective action under RCRA §9003(h)





Eligible Borrowers & Subgrantees

- Petroleum Sites

- ✓ Borrower or subgrantee is not responsible party at site
 - Did not dispense or dispose of any contamination at the site
 - Did not own the site at the time of dispensing or disposal of contamination at the site
 - Did not exacerbate contamination at the site
 - Took reasonable steps with regard to contamination at the site
 - Stop continuing releases
 - Prevent future releases
 - Limit exposure to earlier petroleum releases



Eligible Borrowers & Subgrantees

- Hazardous Substances Sites
 - ✓ The borrower or subgrantee cannot be potentially liable under CERCLA § 107; liable parties under CERCLA include:
 - Current owners and operators of facility
 - Past owners or operators at time of disposal of hazardous substances
 - Generators or transporters of hazardous substances



Eligible Borrowers & Subgrantees

Hazardous Substances

- CERCLA Liability Protections or Defenses
 - ✓ Bona fide prospective purchaser
 - ✓ Involuntary acquisition by units of state or local government
 - Tax delinquency or foreclosure
 - Eminent domain
 - Abandonment
 - Bankruptcy
 - ✓ Contiguous property owner
 - ✓ Innocent landowner





Eligible Borrowers & Subgrantees

Hazardous Substances

- General requirements for most CERCLA liability protections

Property owner must:

- ✓ Conduct All Appropriate Inquiries PRIOR to acquiring property
- ✓ Not be potentially liable or affiliated with any person who is potentially liable through:
 - Familial relationship
 - Contractual, corporate, or financial relationship OTHER THAN
 - One through which title to the facility is transferred or financed
 - Contract for sale of goods and services
- ✓ Comply with all continuing obligations AFTER acquiring property



Eligible Borrowers & Subgrantees

Hazardous Substances

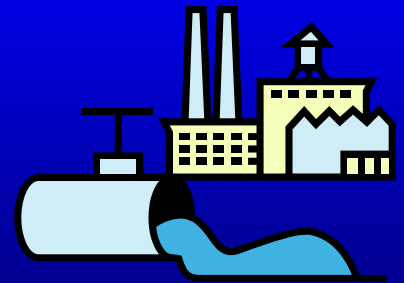
- Bona fide prospective purchaser (BFPP)
 - ✓ All disposal of hazardous substances occurred PRIOR to acquisition of property
 - ✓ Conducted all appropriate inquiries (AAI) PRIOR to acquisition of property
 - ✓ Not liable for contamination at site or affiliated with any other person potentially liable for response costs at site
 - ✓ Exercises appropriate care regarding contamination including
 - Stopping any continuing releases
 - Preventing future releases or exposures.



Eligible Borrowers & Subgrantees

Hazardous Substances

- Bona fide prospective purchaser (BFPP) con't.
 - ✓ Provides all legally required notices
 - ✓ Provides access to persons authorized to conduct response actions
 - ✓ Cooperates with persons authorized to conduct response actions if release of hazardous substances occurs on the property.
 - ✓ Complies with any land-use restrictions on the property.





Eligible Borrowers & Subgrantees

Hazardous Substances

- Innocent landowner
 - ✓ Property acquired AFTER disposal of hazardous substances
 - ✓ Must perform AAI PRIOR to acquisition
 - ✓ DID NOT KNOW or have reason to know that hazardous substances were disposed of on property
 - ✓ The act causing release of hazardous substances was by a third party with whom property owner has no relationship



Eligible Borrowers & Subgrantees

Hazardous Substances

- Contiguous property owner
 - ✓ Must perform AAI prior to acquisition of property
 - ✓ DID NOT KNOW or have reason to know that property was or could be contaminated by hazardous substances from contiguous property
 - ✓ Not affiliated with person potentially liable for response costs



Eligible Borrowers & Subgrantees

- Additional subgrantee eligibility requirements:
 - ✓ The subgrantee must own the site (fee simple title) at the time the subgrant is awarded and throughout the period of performance of the subgrant
 - ✓ You must document how each subgrant will:
 - Facilitate the creation or preservation of greenspace;
 - Benefit the needs of low income communities who have limited sources of funding for cleanup & redevelopment;
 - Facilitate the use of existing infrastructure; and
 - Promote the long-term use of RLF funds



Eligible Borrowers & Subgrantees

- Subgrant flexibility & limitations:
 - ✓ RLF grantee **CANNOT** subgrant to itself
 - ✓ Maximum \$200k per property (more with waiver)
 - ✓ Can combine with \$200k EPA cleanup grant
 - ✓ Can combine subgrants from two or more RLFs from separate entities



Acronyms

- AAI – All Appropriate Inquiries
- BFPP – Bona Fide Prospective Purchaser
- CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
- FWPCA – Federal Water Pollution Control Act
- LUST – Leaking Underground Storage Tanks
- NPL – National Priorities List
- PAH – Polycyclic Aromatic Hydrocarbons
- PCB – Polychlorinated Biphenyls
- PRP – Potentially Responsible Party
- RCRA – Resource Conservation and Recovery Act
- SDWA – Safe Drinking Water Act
- TSCA – Toxic Substances Control Act



Questions?





Eligibility Exercise

- Read the three example projects
- For each example site consider:
 - Is this an eligible site?
 - What information led you to make this decision?
 - Is the borrower or subgrantee eligible?
 - What information led you to make this decision?
 - Is the information provide enough to make these determinations?
 - What additional information do you need?
 - Would the site and borrower or subgrantee be eligible if you received additional information?