

Appendix A Brownfield Definition

Brownfields

With certain legal exclusions and additions, the term "brownfield site" means 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.

Definition Source:

The Brownfields Site definition is found in Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002.

"DEFINITION OF BROWNFIELD SITE- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

(39) BROWNFIELD SITE-

(A) IN GENERAL- The term "brownfield site" means 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.

(B) EXCLUSIONS- The term "brownfield site" does not include—

- (i) a facility that is the subject of a planned or ongoing removal action under this title;
- (ii) a facility that is listed on the National Priorities List or is proposed for listing;
- (iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this Act;
- (iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);
- (v) a facility that--
 - (I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and
 - (II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

- (vi) a land disposal unit with respect to which--
 - (I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and
 - (II) closure requirements have been specified in a closure plan or permit;

- (vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

- (viii) a portion of a facility--
 - (I) at which there has been a release of polychlorinated biphenyls; and
 - (II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

- (ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

(C) SITE-BY-SITE DETERMINATIONS- Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 104(k) to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

(D) ADDITIONAL AREAS- For the purposes of section 104(k), the term "brownfield site" includes a site that—

- (i) meets the definition of "brownfield site" under subparagraphs (A) through (C); and

- (ii)(I) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

- (II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of "hazardous substance" under section 101; and
- bb) is a site determined by the Administrator or the State, as appropriate, to be
 - (AA) of relatively low risk, as compared with other petroleum-only sites in the State; and
 - (BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

(III) is mine-scarred land."