

## **Alaska Native Claims Settlement Act (ANCSA) Conveyed Contaminated Sites Eligibility for EPA Brownfields Funding**

*This fact sheet is intended to help guide whether ANCSA conveyed contaminated sites may be eligible for EPA Brownfield funding, but EPA and/or Alaska Department of Environmental Conservation (ADEC) will determine the eligibility of each site and applicant depending on the facts of each case.*

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**CERCLA defines a “brownfield site” as “. . . 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.”**

**CERCLA also identifies three additional types of properties that are specifically eligible for funding:**

1. Sites contaminated by controlled substances;
2. Sites contaminated by petroleum or a petroleum product; and
3. Mine-scarred lands.

**CERCLA prohibits EPA brownfields grant funds from being used at certain sites, including the following:**

1. Sites listed or proposed for listing on the National Priorities List;
2. Sites subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA;
3. Sites that are subject to the jurisdiction, custody, or control of the U.S. government; and
4. Sites for which the brownfields grantee could be found liable for the contamination at the property. See CERCLA §101(39)(B) and CERCLA §101(20)(E).

**Specific considerations when evaluating eligibility of contaminated sites that were conveyed under ANCSA:**

*For sites that are contaminated primarily with hazardous substances:*

Alaska Native Village Corporations and Alaska Native Regional Corporations that acquired title to property from the U.S. Government under the Alaska Native Claims Settlement Act are excluded from CERCLA’s definition of “owner/operator” and are therefore exempt from CERCLA liability for any previous contamination at the property provided that the Alaska Native Village Corporation or Alaska Native Regional Corporation did not cause or contribute to the contamination. Entities that satisfy these conditions are eligible for a Brownfields Grant. See CERCLA §101(20)(E).

Site-specific eligibility determination from EPA required, following standard process for determining eligibility for Brownfields funding.

*For sites that are contaminated primarily with petroleum products:*

Conveyance of a site under ANCSA can be considered to be an “equivalent government proceeding” for the purposes of determining whether a responsible party exists for a petroleum-contaminated site:

“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/recipient) through tax foreclosure, abandonment, or equivalent government proceedings, and the site meets the criteria in (1) 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 to be conducted/submitted as part of a site eligibility determination.”

See [Information on Sites Eligible for Brownfields Funding under CERCLA § 104\(k\)](#).

Site-specific petroleum eligibility determination letter from ADEC and eligibility determination from EPA required, following standard process for determining eligibility for Brownfields funding.

#### **Additional Information & References:**

EPA Brownfields Frequently Asked Questions (See Question #8 “Are all brownfield sites eligible to receive EPA grant funding for assessment and cleanup?”) -

<https://www.epa.gov/brownfields/frequently-asked-questions>

EPA Region 10 – Contamination on ANCSA Conveyed Lands

<https://www.epa.gov/r10-tribal/contamination-ancsa-conveyed-lands>

Information on Sites Eligible for Brownfields Funding under CERCLA § 104(k)

<https://www.epa.gov/brownfields/information-sites-eligible-brownfields-funding-under-cercla-ss-104k>

FY2023 Cleanup Grant Guidelines (See Threshold Eligibility Criteria III.B.12.a.i.(2))

<https://www.epa.gov/grants/fy23-guidelines-brownfield-cleanup-grants>

EPA Multipurpose, Assessment, Revolving Loan Fund, and Cleanup (MARC) Frequently Asked Questions

<https://www.epa.gov/brownfields/frequently-asked-questions-about-multipurpose-assessment-rlf-and-cleanup-grants>