

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Application for State-Provided Brownfields Site Assessment

Introduction

The Texas Commission on Environmental Quality (TCEQ) will direct the completion of a limited number of federally funded Brownfields Site Assessments (BSAs) for qualifying local governments and non-profit groups in Texas. BSAs are similar to Phase I and Phase II Environmental Site Assessments (ESAs) conducted by the real estate industry for commercial and industrial properties. In addition to performing assessment activities the TCEQ will provide regulatory guidance. Such guidance includes developing cleanup levels, cleanup options, and clarification of environmental regulatory requirements as applicable.

The BSAs will help identify the degree of contamination on Brownfields properties (properties underused or dormant due to real or perceived contamination). The BSAs are designed to discover the real or perceived environmental barriers to redevelopment and provide the environmental information required in real estate and/or financial transactions on Brownfields properties. By assessing the degree of contamination on Brownfields properties, local governments and non-profit groups are more likely to successfully market those properties and facilitate local redevelopment.

Funding is provided through the "**Small Business Liability Relief and Brownfields Revitalization Act**" (Brownfields Law) enacted by the federal government in January 2002. This law defines a Brownfields site and allows greater flexibility in the use of grant funds. In response to this flexibility, the TCEQ can now perform BSAs on a limited number of non-hazardous petroleum contaminated sites and is initiating a Resource Conservation and Recovery Act (RCRA) BSA program. The RCRA BSA program with approval of the EPA, can perform assessment activities on sites that do not meet the federal definition of a Brownfields site (i.e. subject to an order or permit). In addition, the BSA program may provide technical oversight for Brownfields projects that have been awarded EPA Subtitle A Brownfields Grants.

The Brownfields Law while providing greater flexibility on the range of sites also states that funds can not be used at a Brownfields site where the recipient is potentially liable under CECLA Section 107. Under this section of CERCLA **a current property owner can be potentially liable even if the property owner did not cause or**

contribute to the contamination. The Brownfields Law established liability protection for innocent land owners, contiguous property owners, and bona fide prospective purchasers of contaminated land. Applicants that own a contaminated site may qualify for one of these landowner liability protections. For example, applicants that purchased contaminated land on or after the enactment date of the Brownfields Law (January 11, 2002) and meet statutory landowner liability criteria may qualify for a Brownfields site assessment.

Petroleum Sites: 25 percent of the EPA grant funds set aside for Brownfields site assessments may be utilized on a non-hazardous petroleum site that: 1) is determined to be a "relatively low risk" site; 2) there is no viable responsible party and that the applicant is not a potentially liable party; and 3) the site is not subject to a RCRA 9003(h) order. Sites where Leaking Underground Storage Tank (LUST) Trust Funds were used are not eligible for a BSA without EPA approval.

RCRA Brownfields: The TCEQ has initiated a RCRA BSA program for sites that do not meet the standard Brownfields definition. These are usually sites that are subject to RCRA enforcement or permit. Prior to the TCEQ assisting a RCRA Brownfields it must receive authorization from the EPA under the "site-by-site determination" in the Brownfields Law. The EPA must find that the assistance will protect human health and the environment and either promote economic development or enable the creation, preservation, or addition to park land, greenways, and other recreational non-profit property. The TCEQ may perform two RCRA BSA's per fiscal year.

Brownfields Grant Assistance: The TCEQ can provide technical review and oversight of Brownfields projects which have received EPA Subtitle A grants. This includes the review and comment on Assessment Reports, Response Action Plans, Response Action Completion Reports, and other information as requested. The goal of the assistance will be to issue a Voluntary Cleanup Program Certificate of Completion.

Based on the application, the Brownfields project manager will determine the types of assessments that will be completed by the TCEQ contractor. These assessments can include the following: Phase I ESA, Phase II ESA which includes Environmental Media Sampling, Analysis of Soils, Groundwater and Surface Water.

Each BSA provided by the TCEQ will generally include:

- records review;
- site reconnaissance;
- interviews with past and current owners, operators, neighbors, governmental officials;
- sampling performed under TCEQ contract.

What Sites are Eligible?

For sites to be eligible to receive a TCEQ BSA all of the following items must apply:

1. The applying government or non-profit must not be potentially liable under CERCLA §107.
2. The site must meet one of the following:
 - a. be owned or plan to be owned by the applying local government;
 - b. property taxes must be owed to the local government on the site and foreclosure for failure to pay those taxes is likely; or
 - c. redevelopment will result in ownership and/or long-term beneficial use by the local government or non-profit organization.
3. There is no unresolved federal/state enforcement or Superfund action associated with the site.*
4. The site, or portions thereof, is not a RCRA permitted or interim-status facility.*
5. The site is targeted for redevelopment by the local government or non-profit group.
6. The local government agrees to arrange for site access and security for TCEQ personnel and their representatives conducting site assessments. Entry into potentially unsafe buildings will require permission and assistance from the local authorities trained to make such determinations.

* May be eligible for a RCRA BSA.

How Will Sites be Chosen?

The TCEQ would like to provide BSAs for as many eligible sites as possible. However, in the event that the number of eligible sites nominated outnumbers the available resources, sites will be prioritized based on the following criteria (order does not imply importance):

1. Site location
2. Years that the site has been abandoned
3. Site ownership
4. Tax status of site
5. Condition of site
6. Transportation access
7. Contamination concerns
8. Taxable appraised value added after cleanup
9. Timely employment creation
10. Redevelopment plan

How To Apply?

To apply for a BSA on a property, a local government (applicant) must complete and submit the enclosed application, along with a CORE Data Form (TCEQ Form-10400) which can be found online at the web address <http://www.tceq.state.tx.us/remediation/bsa/bsa.html>. The TCEQ would like to provide BSAs for as many eligible projects as possible as long as resources remain. To increase the chances of your project being funded, submit applications as soon as possible to:

Ms. Christine Whitney, Brownfields Program
MC-221
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

or hand carried to:

Building D
12110 Park 35 Circle, Building D
Austin, Texas 78753

Application Format?

The application is organized in five sections. Fill out all sections completely. Where information is not available or not applicable to a site, a brief explanation should be included. The five sections are as follows:

1. General Information. This Section provides general information for determining eligibility and obtaining additional information on the site.
2. Property Profile. This section requests factual information from the applicant regarding site location, latitude, longitude, size, access, features, layout, location of utilities and contamination. The BSA relies heavily upon this section during the scoping process.
3. Brownfields Redevelopment Plan. This section requests a summary of redevelopment plans.
4. Attachments. Place all maps, supporting documentation and previously prepared Environmental Site Assessment or Investigation documents in this section.
5. Site Access Agreement.

6. CORE Data Form. Please fill out TCEQ Form No. 10400. This form is used to maintain basic information about regulated entities.

TCEQ Contact Persons?

Questions related to the contents of this Request for Applications and the applications requirement should be directed to:

Christine Whitney
(512) 239-0843

RCRA Brownfields questions may be directed to:

Allen Posnick
(512) 239-2332

Limitations of TCEQ Brownfields Site Assessments

The following limitations of the TCEQ BSA should be considered prior to completing a BSA application:

1. The BSA process is not appropriate to correct situations where an immediate and substantial endangerment to human health and the environment exists. For the assessment and remediation of such sites, the applicant is directed to contact the nearest regional office of the TCEQ.
2. The BSA process is generally not appropriate for asbestos-containing materials, lead-based paint in/on buildings, lead in drinking water systems, wetlands, or radon gas.
3. The applicant should recognize that environmental site assessments cannot eliminate all uncertainty, are not always exhaustive in their level of inquiry, or warrant being exhaustive in their level of inquiry. Therefore the TCEQ cannot be held liable for any damage arising from contamination not discovered during the TCEQ BSA or from any damages, monetary or otherwise, from contamination discovered during the TCEQ BSA.
4. The BSA process cannot address all of the safety hazards associated with a site.

Application to Receive a TCEQ Brownfields Site Assessment

The applying local government should fill out the entire application. At the sole discretion of the TCEQ, applications containing unsubstantiated statements will be determined ineligible. For many sections of the application, supporting documentation should be attached to the end of the application. **Please also fill out TCEQ Form No. 10400 - CORE Data Form along with this application.**

Type of Assistance Requested: (Check the appropriate box.)

Section 1: General Information

Site Information

Property Site Name

Property Size in Acres: _____

Regulated Entity Reference No. (if issued): CN-

If requesting oversight assistance, amount and year of Brownfield grant:

Are there any federal or state enforcement or superfund actions associated with this site?
If so, please elaborate.

Is the site, or portions thereof, a Resource Conservation and Recovery Act permitted or interim-status facility? If so, please elaborate.

Are you aware of any Leaking Underground Storage Tank (LUST) Trust Funds used on the property?

Has there been any prior contact with any state or federal environmental regulatory programs or agencies relating to environmental issues at this site? Yes No
If yes, please describe all prior contact with any state or federal environmental regulatory programs or agencies which relate to each of these questions. Attach additional sheets as necessary.

Please provide any and all state and federal identification numbers related to the property in question, including any solid waste registration, leaking petroleum storage tank, CERCLIS, RCRIS, UIC, etc. registration numbers which have been associated with this site:

Latitude/Longitude

Applicant Information

Applicant (Local Government/Non-Profit)

If Owned by Applicant, When did you take Ownership of the Property? _____

How did you take Ownership of the Property? (Purchase, Back Taxes) _____

Have you Performed a Phase I ESA and/or Phase II ESA? (yes or no)

Did you operate the Property? (If yes, you may not be eligible for a BSA) _____

Financial Incentives Available for Property by Applicant

In-Kind Services Available to Assist the TCEQ with the BSA

Section 2: Property Profile

Property Name:

Other Common Names:

Current Owner:

Ownership in Dispute? Please explain.

Legal Description:

Property History

Begin with the current owner and include information regarding the types of business operations as far back as the earliest known industrial/commercial development.

Property Layout

Type and Number of Buildings on the property (include structures such as loading docks, lifts, racks, paved parking areas, etc.):

Condition of Buildings/Structures:

Total Floor Space (approximate square footage):

Site Zoning:

Transportation Access to the Site:

Assessed Value (include date of last known appraisal and source of appraisal, i.e. bank, county, private, etc.),
and appraised value from most recent Property Taxes:

Are property taxes paid up-to-date on this property?

Please provide the contact name, address, phone number and e-mail address, if possible, for verifying the property tax records:

Please provide the contact name, address, phone number and e-mail address, if possible for any possible lien holders:

Level and Type of Contamination Present

List all environmental investigation reports that have been completed at this site. Attach copies of each listed report to this application. If no investigations have been completed, indicate none.

List the potentially contaminated areas on the property (provide site map indicating all areas of concern):

Exterior:

Interior:

Utilities and Process Information (provide site maps indicating all present and former, active and inactive utilities, piping, tanks, bays, and machinery):

Describe the locations of any adjacent properties that may have the potential for creating environmental concern:

Location and Ownership

Is the site owned by the applying local governmental entity or are property taxes owed on the site with foreclosure for failure to pay property taxes likely? Please explain.

Is there any dispute over site ownership? Please explain.

Is the site inside a current federally-designated Empowerment Zone, Federally-designated Enterprise Community (EZ/EC), Texas Reinvestment Zone, or a state-designated Texas Enterprise Zone (TEZ)?

Is the site abandoned? If so, how long has it been abandoned?

Is the applying local government able to arrange for site access and security for TCEQ personnel and their representatives conducting site assessments?

Section 3: Brownfields Redevelopment Plan

Please provide a summary of the redevelopment plan. Discuss any public/private partnerships, other state or federal agency involvement, private industry interest, etc. Discuss the envisioned final product, including increase in taxable appraised value of the property and potential employment creation.

Section 4: Attachments

List all attached maps, supporting documentation, and previously prepared Environmental Site Assessment/Investigation documents here.



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Individuals are entitled to request and review their personal information that the agency gathers on its forms. They may also have any errors in their information corrected. To review such information, contact the TCEQ at 512/239-3282.

CONSENT FOR ACCESS TO PROPERTY

Please Print

(Name of Property Owner or Tenant in Residence)

(Street Number and Street Name of Property)

_____, Texas
(City or Town in Which Property Is Located) (ZIP Code of Property)

(County in Which Property Is Located)

()
(Telephone Number of Property Owner or Tenant in Residence)

I voluntarily consent to agents, contractors, subcontractors, officers, designees, and employees of the Texas Commission on Environmental Quality (TCEQ) entering and having continued access to my property for the following purposes:

- (1) taking such soil, water, and air samples as may be necessary; and
- (2) taking other actions related to the investigation of the surface or subsurface conditions;

I realize that these actions by the TCEQ are undertaken pursuant to its authority under the Texas Health and Safety Code and the Texas Water Code, including Section 361.032 of the Texas Health and Safety Code and Section 26.014 of the Texas Water Code.

(Signature of Property Owner or Tenant in Residence) (Date)

(Name of Site)