

# Railroad Commission of Texas

## Brownfield Response Program

### Frequently Asked Questions

#### 1. What is a Brownfield and what is the Brownfields Response Program?

A "brownfield" is a property with real or perceived contamination in which that contamination is hindering the redevelopment of the property. The Brownfields Program is a national program run by the Environmental Protection Agency (EPA) that provides grants and technical assistance to communities, states, tribes, and others to assess, safely clean up and sustainably reuse contaminated properties.

In Texas, there are two state agencies, the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ), with jurisdiction over environmental contamination. The RRC's jurisdiction is generally over oil and gas exploration and production and TCEQ's jurisdiction is generally over solid wastes (please see [16 TAC § 3.30](#) for more information). Both the RRC and TCEQ Brownfield Programs receive [CERCLA § 128\(a\) grant funds](#) each year from the EPA to provide free environmental site assessment and cleanups to qualified applicants.

#### 2. How much does the program cost?

As a qualified applicant with a qualified property/site, you will pay *nothing* for the environmental assessment or cleanup performed by the RRC. The program is *free* for qualified applicants thanks to [CERCLA § 128\(a\) grant funding](#) from the EPA.

#### 3. Who is a qualified applicant?

Any person/entity who is not a responsible person, as defined in [16 TAC § 4.405\(10, 13\)](#), and the property enrolled into the program is being investigated/remediated on behalf of the following:

- State, local, and tribal governments
- Non-profit organizations
- Quasi-governmental agencies
- Universities and school districts
- Economic Development Corporations, or
- Private landowners with community-supported projects

#### 4. When and why should I use the Brownfields Program?

As an eligible applicant, you should use either the RRC or TCEQ Brownfields Program to conduct a Phase I Environmental Site Assessment (ESA) before you or your organization purchase or acquire a property. By doing so, you will be protected from liability if you purchase the property within 180-days of the report's completion. Additionally, results of the Phase I ESA can help you better determine property value, as well as if there are possible sources of contamination on the property. Further, the Phase I ESA can help determine which Brownfields Program, RRC or TCEQ, the property should be enrolled in to continue assessment and possible cleanup of contamination. Because the assessments and cleanups mentioned above are provided to eligible applicants for free, you and your organization will save a significant amount of money that can be reallocated to other projects. Also note that, as an eligible applicant, you can enter the program at any point during the assessment process. For example, if you or your organization have

already completed a Phase I ESA or even a Phase II ESA and additional work is needed, you can still apply to the program for the additional assessment or cleanup needed on the property.

#### **5. What properties are eligible?**

Any property is eligible for a Phase I ESA. This assessment helps the RRC determine if there are abandoned activities under the RRC's jurisdiction or the TCEQ's jurisdiction, as well as if the property meets the standards required by the All Appropriate Inquires (AAI) Rule (see Question 7 below for more details). If the property meets AAI and if abandoned activities under the RRC's jurisdiction are identified on the property, the RRC can continue to assess and cleanup the property using Brownfield funds.

#### **6. What should I expect while in the program?**

What to expect while in the program will depend on what assessments have been performed, if any, on the property prior to enrollment in the RRC's program. However, each activity (assessment or cleanup) follows the same general process outlined below:

Following the acceptance of your application, the RRC will work with one of our contracted engineering firms to develop a work order for the assessment or cleanup to be performed. Once the work order is approved, the RRC will schedule a meeting with you and the engineering firm to discuss the schedule of work and review any special requirements of the property. Depending on the work to be performed, a Sampling and Analysis Plan (SAP) may need to be developed and submitted to EPA for approval prior to commencing field work. EPA approval of a SAP may take up to 30-days to complete. Once a SAP is approved, field work will generally begin within two weeks. Submittal of a final report detailing the work performed at the site will generally be delivered within 60-days of completing the field work. The RRC will then provide a copy of the final report to you and can schedule a meeting to go over the results as needed.

Please note that due to budget constraints, the RRC generally can only provide one assessment or cleanup per site per year. For example, if you apply to the program in order to conduct a Phase I ESA and results of the Phase I indicate that further assessment is needed, it may take up to 2 years to complete. This timeframe depends on numerous factors such as time of application, funding constraints, and the number of other applicants. Sites enrolled in the RRC's Brownfields Program generally receive a Certificate of Completion within 3 years. However, the RRC has accepted several sites in the past with extensive contamination that took more than five years to fully investigate and remediate. An example of such a site is Turtle Bayou Nature Preserve, which has been enrolled since 2011. This site is currently active and has required annual groundwater monitoring to ensure stability of the elevated chloride concentrations found in groundwater. More information about Turtle Bayou, and other RRC Brownfield sites, can be found on our [Brownfields Success Stories](#) webpage.

#### **7. Am I required to own the property before I enroll?**

No, but you are required to provide consent to enroll the property in the program by the current property owner. Additionally, in order to conduct assessment and cleanup of any recognized environmental conditions at the site with Brownfields funding, you must follow the All Appropriate Inquires (AAI) Rule (40 CFR Part 312), which requires either:

- A Phase I ESA be performed no more than 180 days before the purchase of the property (*we can help you with that!*)
- The property was purchased before January 11, 2002
- Ownership or control of the property was acquired through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other

circumstances in which the government acquired title by virtue of its function as sovereign (this is only applicable for state or local government entities)

Please note that if AAI was not followed (e.g. you purchased the property prior to conducting a Phase I and after January 11, 2002), only a Phase I can be performed for the site using RRC Brownfield funds. The RRC can use Oil & Gas Regulation and Cleanup (OGRC) funds to address potential contamination at the site for Brownfield applicants that did not follow AAI. However, these sites will be placed on the State Managed Cleanup (SMCU) list and ranked based on risk to human health and the environment. Placement on the SMCU list does not guarantee immediate assistance with the site.

**8. Am I required to own the property at any time while enrolled in the program?**

No. You are not required to own the property at any time while enrolled in the program, but you are required to have current landowner consent while enrolled. You are required to notify the RRC if property ownership changes throughout enrollment in the program and must receive consent from the new owner in order to continue enrollment.

**9. What documents are required for the program?**

- [Application form](#)
- Map of the property boundaries (if available)
- Property tax information
- A redevelopment plan for the site
- Information about your organization
- Current property owner consent to participate

**10. Do I need a release of liability?**

A release of liability is only needed for non-responsible parties that investigate/remediate the site themselves since that party is assuming responsibility for contamination. Because the RRC is conducting the investigation/remediation on your behalf through the Brownfields Program, there is no need for a release of liability. However, you will receive a Certificate of Completion for the site that demonstrates that the site no longer poses a risk to human health and the environment.

**11. Can the applicant withdrawal from the program at any time? For any reason?**

Yes. However, please note that the RRC may request that we continue work at the site if the known levels of contamination pose a threat to the environment or human health.

**12. Can we begin redevelopment of the property before the assessment and cleanup of the property is complete?**

Technically, yes. However, the RRC highly discourages this since redevelopment of the property may hinder the RRC's ability to fully investigate and remediate contamination. If requested, the RRC may approve redevelopment of portions of the site that either have no contamination or have already been adequately addressed prior to the issuance of a Certificate of Completion.