STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MEDEP Brownfields Petroleum Eligibility Guidance
Revised 11/17/2026

Background

To utilize US EPA Brownfields grant funding to assess or cleanup a site, EPA must provide written approval with respect to site eligibility. This is typically done by having the Brownfields grantee, with support from their Qualified Environmental Professional (QEP), submit a completed EPA standardized form directly to EPA, who reviews and signs the form. **If, during that process, EPA determines that there is distinguishable petroleum contamination at a site**, EPA requires that the Maine Department of Environmental Protection (MEDEP) make an additional "petroleum eligibility determination" before site work can proceed under Brownfields.

How do I get a petroleum eligibility determination from MEDEP?

To obtain such a determination from MEDEP, Brownfields grantees should:

- Work with their Qualified Environmental Professional (QEP) to draft a memo or letter on the grantee's letterhead and addressed to the MEDEP Brownfields Coordinator requesting such a determination, cc'ing their EPA Project Officer.
- The letter or memo should provide the site name and address, a brief site operational and recent ownership history and, most importantly, must also address the three criteria laid out below, which are based on Section 1.3.2 of current US EPA Brownfields Program webpage guidance and underlying federal regulations (CERCLA § 101(39)(D)(ii)(II)).
- Provided the criteria outlined below are met, MEDEP will provide a determination letter to the EPA Project Officer for the grant, cc'ing the grantee and QEP. If you have any questions regarding this policy or wish to discuss a particular site before drafting a request, please contact MEDEP's Brownfields Program Manager.

How does MEDEP make a Brownfields petroleum eligibility determination?

For a petroleum contaminated site that otherwise meets the definition of a brownfield site to be eligible for funding, EPA requires that three criteria must be met, which are explained in more detail below:

1. There is no viable responsible party;
2. The site will not be assessed, investigated, or cleaned up by a person that is potentially liable for cleaning up the site; and
3. The site must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) § 9003(h).

***There is no viable responsible party*.**
A "responsible party" is generally an entity that caused the petroleum contamination, owned the site at the time when the site became contaminated with petroleum, or that installed or operated petroleum storage/dispensing tanks at the site. This determination must be made for both the current owner of the site **and** the immediate prior owner of the site – if neither is a responsible party, then the "viable" aspect does not need to be addressed.

If a "responsible party" or parties are identified, a "financial viability" determination must be made. If a responsible party is an individual, they are not considered to be financially viable. If an entity (corporation, business, etc.) is bankrupt or otherwise dissolved, they are not considered financially viable. If an entity is a small business owner, such as a "mom & pop" type gas station/convenience store that only has one location (e.g., not a corporate chain), they will generally not be considered financially viable.

***The site will not be assessed, investigated, or cleaned up by a person that is potentially liable for cleaning up the site*.**
The Brownfields grantee (a municipality, council of governments, etc.) funding the assessment or cleanup of a site can't be the entity that caused the contamination or that installed or operated petroleum storage/dispensing tanks at the site. The most common scenario where this comes up would be a municipality with a Brownfields assessment grant that wants to use the grant to assess their own public works garage and associated petroleum contamination they caused. This is generally not allowed by EPA. The site may still be eligible for Brownfields assessment or cleanup funded by another Brownfields grantee that has not owned or operated the site (e.g., MEDEP, EPA, local council of governments).

***The site must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) § 9003(h)*.**
The site may not be designated as an EPA "RCRA 2020" site or subject to ongoing RCRA/hazardous waste program corrective action orders from EPA or MEDEP. Typically, a quick search by the Brownfields QEP can determine this while doing Brownfields site eligibility research. MEDEP staff will verify this determination when drafting Brownfields petroleum eligibility letters.

NOTE: A petroleum eligibility determination by EPA or MEDEP under CERCLA § 101(39)(D) for the purpose of Brownfields grant funding does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit EPA or state enforcement authorities against any party. What constitutes a "responsible party" or a "financially viable" entity or individual only applies in the context of determining whether a site may be assessed or cleaned up with US EPA Brownfields funding. It is unrelated to any other federal or state statutes and may not be applied in other scenarios that may consider whether an entity is responsible or financially viable.