



TRAILS & PARKS INITIATIVE - ASSESSMENT AWARD GUIDELINES

Introduction

As a part of its Trails & Parks Initiative (“TPI”), the Indiana Brownfields Program (“Program”) offers assessments (“Assessment Awards”) to qualifying Indiana political subdivisions (as defined by Indiana Code (“IC”) 13-11-2-164(c)) and qualifying nonprofit organizations (collectively, “Applicants”). Examples of political subdivisions that have qualified as Applicants for Program financial assistance in the past can be found on the Program’s web site at www.brownfields.in.gov. Eligible nonprofit organizations are discussed below.

An eligible Indiana political subdivision or nonprofit organization may apply to the Program for an Assessment Award to have an environmental site assessment conducted for an identified brownfield within its jurisdiction on which trails, parks, or other greenspace/recreational reuse is planned. Assessment Awards are available for sites with hazardous substances and/or petroleum contamination as the Program received a collective U.S. Environmental Protection Agency (“EPA”) assessment grant award of \$400,000 in May 2007 to conduct site assessments on both types of contaminated property. In an effort to provide assessments for projects that may not meet federal eligibility criteria for use of EPA funds, a maximum of \$200,000 in state funds from the Indiana Finance Authority (“Authority”) has been made available to match the EPA award, making \$600,000 in total available for TPI site assessment work over the next three years.

In August 2007, the Program issued a Request for Qualifications (“RFQ”) to retain several environmental consulting firms (“Consultants”) to provide technical services to Applicants for Phase I and/or Phase II environmental site assessments. In September 2007, the Authority announced its selection of five (5) Consultants that will bid on scopes of work put out for bid by the Program following the determination by the Program that a site is eligible for an Assessment Award under these guidelines. Eligible political subdivisions and/or nonprofit corporations will not directly receive grant funding from the Program, and after sites have been selected for an Assessment Award, the Authority, the Authority’s Consultant, and the Indiana State Budget Agency will execute a Financial Assistance Agreement for each project that will cover each party’s obligations in executing the site assessment work using the Assessment Award.

Multiple funding rounds are anticipated during the three-year project period for the Trails & Parks Initiative. Application deadlines will be posted on the Program’s web site at www.brownfields.in.gov. There will be no maximum Assessment Award per Applicant or project per round, but funding caps may be established based on the type of assessment work for which an award is made (e.g., Phase I site assessment vs. sampling activities associated with Phase II investigation).

Assessment Award Activities

Assessment Awards are available to conduct environmental assessment activities at eligible brownfield sites. Assessment Award activities will include:

- Phase I Environmental Site Assessments (ASTM E1527-05)
- Phase II Environmental Site Assessments and related activities
- Asbestos surveys
- Lead-based paint surveys

Assessment activities conducted with an Assessment Award will be performed consistent with the IDEM Risk Integrated System of Closure (“RISC”) guidelines. RISC is a set of health-based standards used to evaluate cleanup options and contaminants based on detailed site data and proposed site end use to determine the appropriate cleanup option and contaminant reduction level necessary. **Funding for remediation-related costs, demolition expenses, and reimbursement for prior investigation activities will not be provided.**¹

Eligibility Criteria

The following items are considered threshold eligibility criteria and may disqualify an application from consideration for a TPI Assessment Award. Threshold criteria are pass/fail – applications must meet all of the threshold criteria. Only those applications that meet all of the threshold criteria will be evaluated against the ranking criteria. For purposes of threshold eligibility review, the Program, if necessary, may seek clarification of Applicant information and/or consider information from other sources, including the Indiana Department of Environmental Management (“IDEM”), the Authority, or EPA files.

Applicant Eligibility

1. The Applicant meets the definition of a:
 - a) political subdivision as defined in IC 13-11-2-164(c) (*see* reference to examples above); or,
 - b) nonprofit corporation as defined in 31 U.S.C. § 6101(4)(6), Section (4)(6) of the Federal Financial Assistance Management Improvement Act.²

For Applicants other than towns/cities or counties, documentation of your eligibility must be attached to the application (e.g., resolutions, authorizing statutes, etc...). The Program will accept documentation from the U.S. Internal Revenue Service (e.g., current letter verifying 501(c)(3) tax exempt status) or from a State that has authority under its laws to grant nonprofit status to an organization.

2. The Applicant or any entity involved in the project (i.e., co-applicant, property owner, developer) is not liable under IC 13-25-4, IC 13-23 or IC 13-24-1 or the Comprehensive

¹ Other funding is available from the Indiana Brownfields Program for assessment, demolition, and remediation activities. Please visit <http://www.brownfields.in.gov> for more information.

² The term “nonprofit organization” means any corporation, trust, association, cooperative, or other organization that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization. In accordance with the Lobbying Disclosure Act, 2 U.S.C. § 1601 et. seq., non profit organizations exempt from taxation under Section 501(c)(4) of the Internal Revenue Code that lobby are *not* eligible for EPA grant funding. U.S. EPA has adopted a definition of nonprofit organization that includes universities and other nonprofit educational institutions, which will therefore be eligible for an Assessment Award under these guidelines.

Environmental Response Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601, et. seq.,³ at the site at which the Assessment Award will be utilized.

If the Applicant cannot satisfy the above, the Applicant or any entity involved in the project (i.e., co-applicant, property owner, developer) did not cause or contribute to the contamination found on the brownfield or own and/or operate at the site at the time of disposal of hazardous substances or release of petroleum on the site at which the Assessment Grant Award will be utilized.

3. If the Applicant intends to apply for an Assessment Award to conduct a Phase II Environmental Site Assessment or a lead-based paint and/or asbestos survey, an American Society for Testing and Materials (“ASTM”) Phase I (Standard E1527-05), including any updates (180-day or one-year) required per the standard, must be submitted with the application.
4. The current owner of the brownfield, if not the Applicant, has provided written consent for site access (Access Agreement) to perform the Assessment Award activities. Access to the brownfield must be provided to IDEM, the Authority, the Consultant, and the Applicant until the Program’s issuance of a comment letter indicating acceptance of final reports received from the Consultant pertaining to investigation activities at the site. A template Access Agreement is attached hereto as “Exhibit A” as an example of what the Program will accept.

Site Eligibility & Property Ownership Eligibility

1. The site meets the state definition of a brownfield. Indiana defines a brownfield as a parcel of real estate that is abandoned or inactive; or may not be operated at its appropriate use; and on which expansion, redevelopment, or reuse is complicated; because of the presence or potential presence of a hazardous substance, a contaminant, petroleum, or a petroleum product that poses a risk to human health and the environment. IC 13-11-2-19.3.
2. The site, if not owned by a town, city or county, has a letter of support from the locality in which the site is located.
3. The site is not subject to an open or pending state or federal administrative or judicial enforcement action.

³ Under CERCLA § 107, current owners and operators of a facility, owners and operators of a facility at the time of disposal of hazardous substances, parties that arranged for the treatment or disposal of hazardous substances, and parties that accepted hazardous substances for transport to disposal or treatment facilities are potentially liable for cleanup or paying the cost of cleaning up a site. **Thus, an owner of contaminated land may be liable under CERCLA § 107 even though he/she did not cause or contribute to the contamination at the site.** Note, however, that CERCLA § 107 does not apply to petroleum sites. In addition, CERCLA provides certain liability protections for owners and prospective purchasers of contaminated properties who are not responsible for the contamination (and not affiliated with a responsible party) and comply with certain specific conditions provided in the statute.

4. The site is not subject to RCRA Corrective Action for hazardous substances contamination or petroleum contamination (under section 9003(h) of the Solid Waste Disposal Act (RCRA § 6991b(h))).
5. The site is not listed or proposed for listing on the National Priorities List.
6. The site is not subject to the jurisdiction, custody, or control of the U.S. government.
7. The site is not subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.
8. The site does not present an imminent threat to human health or the environment.

Petroleum Sites- the additional eligibility criteria below apply only to sites with petroleum contamination (not co-mingled with hazardous substances).

1. The site is of “relatively low risk” compared with other “petroleum-only” sites in the state.
2. There is no viable responsible party.
3. The Applicant is not a person that is potentially liable for cleaning up petroleum contamination at the site.
4. The site is not eligible for Excess Liability Trust Fund (“ELTF”) reimbursement from the state and is not receiving/has not received Leaking Underground Storage Tank (“LUST”) Trust Fund monies from the federal government.⁴

The TPI Assessment Award application requests additional information for petroleum-contaminated sites pertaining to the above-listed criteria that the Program will then evaluate to determine project eligibility for use of the federal portion of funding available for TPI assessments. The following excerpts from U.S. EPA grant proposal guidance provides some background for the above-listed criteria that should facilitate your answering of the related questions on the application:

“Relatively Low Risk” - Applicants whose brownfield site(s) include properties or portions of properties contaminated with petroleum or petroleum products must provide information in their application indicating that the property represents a relatively low risk (compared to other petroleum-only sites). Our view is that the following types of petroleum-contaminated sites are high risk sites, or are not of “relatively low risk.”

- (1) “High risk” sites currently being cleaned up using LUST trust fund monies.
- (2) Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

Note: Any site that does not fall under any of the provisions listed above would be considered to be of relatively low risk for purposes of determining eligibility for an assessment award.

⁴ If the site has received LUST Trust Fund monies in the past it may be eligible for a property-specific determination of eligibility.

“A Site for Which There is No Viable Responsible Party” - EPA or the state is required to determine that there is no viable responsible party that can address the petroleum contamination at the site. If EPA, or the state, identifies a party that is responsible for the site, and that party is financially viable, then the site is not eligible for funding and the Program cannot provide an assessment award using federal funds. This analysis is twofold -- EPA or the state must first determine whether a responsible party exists and, if a responsible party is identified, then determine whether that party is viable. Applicants must provide information in their application to demonstrate that the property or portion of property contaminated with petroleum or petroleum product for which they seek funding has no viable responsible party.

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) through tax foreclosure, abandonment, or equivalent government proceedings, and the site meets the criteria in (1) below. Any petroleum-contaminated site not acquired by a method listed above may be determined to have no responsible party if the site meets the criteria in both (1) and (2) below.

(1) No responsible party has been identified for the site through:

(a) a judgment rendered in a court of law or an administrative order that would require any party (including the applicant) to assess, investigate, or clean up the site,

(b) an enforcement action by federal or state authorities that would require any party (including the applicant) to assess, investigate, or clean up the site, or

(c) a 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 assessment, investigation, or clean up the site, and

(2) The current and immediate past owner did not dispense or dispose of, or own the subject property during the dispensing or disposal of, any contamination at the site, did not exacerbate the contamination at the site, and took reasonable steps with regard to the contamination at the site.⁵

If no responsible party is identified above, then the petroleum-contaminated site may be eligible for funding from the federal portion of funding available for TPI assessments. If a responsible party is identified above, EPA or the state must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site may be eligible for funding only from the Authority’s match funding. A party will be considered viable if:

(3) the party is financially capable of satisfying obligations under federal or state law to assess, investigate or clean up the site. For example, a corporation that may be responsible for the cleanup of the site that is insolvent or defunct will generally not have the financial capacity to satisfy its obligations.

⁵ For purposes of determining petroleum brownfield grant eligibility “reasonable steps with regard to contamination at the site” includes, as appropriate: stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. Reasonable steps are discussed in more detail on pages 9-12 of EPA’s March 6, 2003, “*Common Elements*” guidance.

“Cleaned Up by a Person Not Potentially Liable” - Brownfields funding may be awarded for the assessment of petroleum-contaminated sites provided:

- (1) the applicant has not dispensed or disposed of petroleum or petroleum-product at the site, and
- (2) the applicant did not exacerbate the contamination at the site and took reasonable steps with regard to the contamination at the site.

Application Procedure

Please follow the instructions provided on the “TPI Application for Site Assessment” available on the Program’s website at www.brownfields.in.gov. Applicants must complete the application and submit the following to the Program by 5:00 p.m. on the application deadline:

1. One fully-completed application; and,
2. Documentation evidencing the Applicant meets the definition of political subdivision as defined by IC 13-11-2-164(c) if it is not a town, city or county; or,
3. Documentation evidencing the Applicant meets the definition of a nonprofit corporation; and,
4. An Access Agreement from the current owner of the brownfield (if not owned by the Applicant); and,
5. A Phase I Environmental Site Assessment (ASTM E1527-05) if the Applicant is applying for funding to conduct a Phase II Environmental Site Assessment, or a lead and/or asbestos survey;
6. A letter of support from the locality in which the site is located if the Applicant is not a city, town, or county, and,
7. Other submittals as indicated in the application or as desired.

Applications that pass the threshold review will be evaluated and ranked based upon the criteria set forth below. Assessment Awards will be made to the highest ranking applications. A Financial Assistance Agreement between the Authority, the Authority’s Consultant, and the Indiana State Budget Agency will be required for any site receiving an Assessment Award.

An application must be received by the Program no later than 5:00 p.m. on the day it is due. If the application deadline referred to in these guidelines falls on a day on which the Program offices are closed for business, applications shall be due on the next business day. There is no application fee.

Selection Criteria

Applications will be competitively evaluated in one of two categories depending on the size of the community. Assessment Award dollars will be allocated to categories based on the number of potential applications in each category and the ranking of projects.

Category One:	Cities, Towns and Counties with populations of 10,000 or more:	50%
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Category Two: Cities, Towns and Counties with populations of less than 10,000: 50%

Projects will be scored based on the following criteria and 410 total possible points:

1. Local Support for Project (100 possible points)
 - A. Neighborhood Comment and Input (50 possible points)

Plans announced at public hearing and comments sought from public	20 points
Favorable responses received and/or proactive follow up to any negative comments	10 points
Additional or more focused community and/or neighborhood input sought	20 points
 - B. Coordinated Local Efforts (50 possible points)

Local coalition/organization meeting and working regularly on brownfield issues and/or brownfield coordinator designated; local brownfield sites identified and/or prioritized	50 points
Joint local effort by numerous parties to apply for award; some type of coalition to address brownfield issues locally	35 points
Firm plans to form brownfields workgroup or coalition to address brownfield issues locally	20 points
No brownfields workgroup or coalition exists to address brownfields issue locally; joint local effort by more than one party to apply for award	10 points
None of the above	0 points
2. Leverage of Additional Funds (50 possible points)

A dedicated pool of public and/or private funds has been identified and is of a sufficient amount to complete project	50 points
Partial project funding available and/or fundraising underway; public and/or private funds have been identified and are being pursued	25 points
No funds have been committed to project completion; no current effort is underway to identify and pursue funds	0 points

3. Project Development (20 possible points)
What is the stage of project development?

Ready for construction bid	20 points
Land acquired	15 points
Ready for land acquisition	10 points
Development plan complete	5 points
Ready for planning	0 points

4. Redevelopment Potential for Site – Subjective (200 possible points)

Applications will be evaluated by the Program for the following criteria, with the number of possible points associated with each criterion decreasing from top to bottom:

- Long-term plans for the site, including its place in the overall economic and community development plans of the community;
- Potential for project success based on formal contracts and/or designated funds to accomplish remediation and redevelopment;
- Specific regulations, policies and programs in place for long-term care and maintenance of the project
- Identified funding for the long-term care and maintenance of the project
- Project will connect or extend existing trails, will provide public access points to an existing trail or greenway, and/or abuts an existing trail;
- Project is part of a proposed/planned corridor that crosses two or more counties and/or is part of a proposed/planned corridor that contains trail segments that are completed, under development, or formally planned;
- Project has associated development opportunities, including potential increase to tax base, job creation, and investment in project property;
- Project characteristics include pollution prevention and reduced resource consumption (i.e., infrastructure reuse, native landscaping, innovative stormwater management/reuse, construction debris/fill reuse, green building techniques, and/or others);
- Project will serve multiple use functions;
- Previous local efforts to redevelop property and/or address environmental issues of the site.

5. Geographic Distribution of Grant Money (30 possible points)

- | | |
|---|-----------|
| A. This is the only project Applicant is applying for in this round. | 10 points |
| B. This is the only project seeking an Assessment Award from the county in which it is located in this round. | 5 points |
| C. This is the only project from a two or more county area seeking an Assessment Award in this round. | 5 points |

D. This Applicant has not received other state assessment grant funding in any prior round.

10 points

6. “Hoosiers on the Move” Comprehensive Trails Plan (10 points)

The project is part of “Hoosiers on the Move: The Indiana State Trails, Greenways and Bikeways Plan” found online at:

<http://www.in.gov/dnr/outdoor/planning/trailsplan2006.pdf>. Additional information about the “Hoosiers on the Move” comprehensive trails plan can be found at <http://www.in.gov/indot/3512.htm>.

Contact Information

We welcome comments on the TPI Assessment Award Guidelines at any time. Questions regarding these guidelines or the TPI Assessment Awards can be directed to the Program’s Financial Resources Coordinator at (317) 234-1688 or EPA Grants Coordinator at (317) 233-1504. These guidelines may be modified at any time by the Indiana Finance Authority Board to address demand and other issues to promote the effective and efficient administration of the Indiana Brownfields Program.

EXHIBIT A

Template Access Agreement

**SITE ACCESS AGREEMENT
PERMISSION TO ENTER PROPERTY
INDIANA BROWNFIELDS PROGRAM
TRAILS & PARKS INITIATIVE**

This Site Access Agreement (“Agreement”) is made by and between [insert property owner] (“Owner”), and [insert applicant] (*choose* “City/Town/County/Non-profit”) regarding the Owner’s property located at [insert address] (“Site”), Indiana Brownfields Program (“Program) Site Identification Number [insert site number]. The (*choose* “City/Town/County/Non-profit”) requests permission to enter the Site for the exclusive purposes of conducting environmental investigation activities.

1. Owner hereby gives permission to (*choose* “City/Town/County/Non-profit”), or the (*choose* “City/Town/County/Non-profit”)’s agents or assigns (including, but not limited to, (*choose* “City/Town/County/Non-profit”) employees, authorized environmental consultants and/or contractors, Indiana Department of Environmental Management (“IDEM”) employees, Indiana Finance Authority (“IFA”) employees, or other designees authorized by the (*choose* “City/Town/County/Non-profit”) (collectively, “Authorized Parties”) to enter upon the Site to perform investigation activities at the Site. This permission is effective immediately upon the execution of this Agreement by Owner and the (*choose* “City/Town/County/Non-profit”).
2. The permission granted by Owner under this Agreement is contemplated to be used for the following activities that may be performed by Authorized Parties:
 - a. Investigation of soil and groundwater, including, but not limited to, the installation of soil borings, test pits and/or groundwater monitoring wells, the use of geophysical equipment, the use of drilling equipment for collection of soil and sediment samples, the logging, gauging and sampling of existing wells, video taping, preparation of site sketches, taking photographs, any testing or sampling of groundwater, soil, surface water, sediments, air, soil vapor or other material deemed appropriate by the Program and the like.
 - b. Survey of asbestos-containing material and lead-based paint conditions.
 - c. On-Site observation and oversight of environmental investigation activities.
 - d. Disclosure of environmental information as required by law.
3. Upon completion of the investigation, Authorized Parties will restore the property as near as practicable to its condition immediately prior to the commencement of such activities.
4. The granting of this permission by the Owner is not intended, nor should it be construed, as an admission of liability on the part of the Owner or the Owner’s successors and assigns for any contamination discovered on the Site.
5. Authorized Parties may enter the Site during normal business hours and may also make special arrangements to enter the Site at other times after agreement from the Owner.
6. Authorized Parties shall enter upon the Site at their own risk, and Owner shall not be held responsible or liable for injury, damage, or loss incurred by any Authorized Party arising out of or in connection with activities under this Agreement, except to the extent that any injury is caused due to the acts or omissions of Owner, any lessee of the Site, or any employee or agent of the Owner.
7. Each Authorized Party severally hereby indemnifies and holds Owner harmless from any and all claims or causes of action arising out of or related to the acts or omissions of said Authorized Party in connection with the performance of activities under this Agreement, except to the extent that any injury is caused due to the acts or omissions of Owner, any lessee of the Site, or any employee or agent of Owner.

8. The Program will supply to Owner all information derived from the environmental investigation conducted at the Site. The (*choose* "City/Town/County/Non-profit") may use such information for any purpose at the (*choose* "City/Town/County/Non-profit")'s sole discretion. Information will be held in confidence except as instructed by the Owner, (*choose* "City/Town/County/Non-profit"), the Program, or as required by law.

9. In exercising its access privileges, Authorized Parties will take reasonable steps not to interfere with the Owner's operations on the Site.

10. Authorized Parties will give notice to the Owner at least one (1) week in advance of the start of field activities on the Site.

11. Owner ensures that Owner and any/all Site operators will give Authorized Parties access to the entire Site for the purposes set forth in this Agreement.

12. Any party to this Agreement may terminate this Agreement by giving two (2) months advanced written notice, or all parties may terminate the Agreement at any time by written agreement.

13. This Agreement shall expire upon the Program's issuance of a comment letter indicating completion of project activities under the (*choose* "City/Town/County/Non-profit")'s assessment award.

[insert name]
Site Owner

Witness

Date

Date

Site Owner's Telephone Number: _____

Site Owner's Mailing Address (if other than Site address): _____

For the benefit of [*choose & insert name of* (City/Town/County/Non-profit)]

[insert authorized signatory's name]
[insert signatory's title]

Date

Accepted by the Indiana Brownfields Program by:

Susan Tynes Harrington
EPA Grants Manager

Date