UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

VIA EMAIL AND U.S. MAIL

Gerald C. Smith
City Manager, City of Maquoketa
201 E. Pleasant St
Maquoketa, Iowa 52060

RE: Clinton Engines Site
East Central Intergovernmental Association (Recipient)
City of Maquoketa (Subrecipient)
Cooperative Agreement Number

Dear Mr. Smith:

This letter is in response to your request for clarification on what impact if any there would be to the City of Maquoketa's ("the City's") eligibility for EPA Brownfields programs, and specifically the EPA's Revolving Loan Fund ("RLF") programs, if the City were to opt to leave the Iowa Department of Natural Resources' voluntary Land Recycling Program.

Brownfields Eligibility

Based on your representations and information currently available to EPA, the City of Maquoketa is, as of the date of this letter, eligible for most competitive grants and for RLF as follows:

- The following is a post-award site eligibility review for a subrecipient under a revolving loan fund cooperative agreement under CERCLA § 104(k) with the referenced recipient, subrecipient, and cooperative agreement number. This review has been done pursuant to the Region 7 Brownfields post-award site eligibility determination process (revised March 2010).
- The referenced property is within the jurisdiction of the recipient and historically was used as (*short description of past and current activities at the property*) and may be contaminated with (*list of suspected contaminants at property; if "unknown hazardous substances" so indicate; if "petroleum" so indicate*). The site is a Brownfields site within the definition of CERCLA § 101(39)(A) and is not excluded under any exclusion listed under CERCLA § 101(39)(B).
- The recipient and subrecipient both did not generate, operate, dispose, transport or arrange for disposal of hazardous substances at the property, and are not affiliated with any party that did so. The subrecipient owns the property and acquired it prior to 2002. Prior to acquisition, an ASTM Phase I environmental assessment was completed. The recipient has never owned the property.
- Thus, neither the recipient nor the subrecipient are potentially responsible parties for the site pursuant to CERCLA § 107 for the referenced property.

Land Recycling Program Enrollment

With regard to the question about leaving the state's voluntary program, I can state that your eligibility for the federal brownfields programs is not contingent on whether you are enrolled in the Land

Recycling Program.

There was also a question as to whether there would be any impact to your defense to CERCLA section 107 liability were you to leave the voluntary program. **While you may be Brownfields eligible even without Land Recycling Program enrollment, you may still need to substantively comply with Land Recyling Program requirements, given there is a certain standard of care when it comes to maintaining a property with known contamination after you purchase it.** It becomes important that you can demonstrate this care to support your liability defense if a Superfund enforcement action is ever considered. More information regarding maintaining liability protection and the continuing obligations to take "reasonable steps" with respect to hazardous substance releases is available in the so-called "Common Elements" guidance, which may be found here: https://www.epa.gov/sites/production/files/2019-08/documents/common-elements-guide-mem-2019.pdf

Note that a court, rather than the EPA, ultimately determines whether a landowner has met the criteria for liability protection, such as Bona Fide Prospective Purchaser ("BFPP") status. Thus, the EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain liability protection.

EPA appreciates all the efforts made by the City to put the Clinton Engines Site into productive reuse. If you have any questions or concerns, or wish to discuss this matter further, do not hesitate to contact me at [HYPERLINK "mailto:nazar.kristen@epa.gov"] or at (913) 551-7450.

Sincerely,

Kristen Nazar
Assistant Regional Counsel