Title 33
Environmental Quality

Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation

Chapter 11. Brownfields Cleanup Revolving Loan Fund Program

§1101. Introduction

A. The Louisiana Legislature has found that the cleanup, redevelopment, and reuse of brownfields sites in the state should be encouraged and facilitated for the benefit of the citizens of the state by way of economic development, health, and aesthetics. The legislature has also found that providing loans for the cleanup of brownfields sites will result in benefits to the public by reducing risk to public health and the environment.

B. The purpose of these regulations is to establish procedures for the establishment and operation of a Brownfields Cleanup Revolving Loan Fund Program that will make low-interest loans available to political subdivisions, public trusts, quasi-governmental organizations, nonprofit organizations, or private entities for the cleanup of brownfields properties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:** (September 2005).

§1103. Authority

A. Act 655 of the 2004 Regular Session of the Louisiana Legislature enacted R.S. 30:2551-2552, which authorize the creation of a Brownfields Cleanup Revolving Loan Fund. This act also authorizes the department to make loans to political subdivisions, public trusts, quasi-governmental organizations, nonprofit organizations, or private entities for the cleanup of brownfields properties.

B. Act 655 of 2004 further provides authority for the department to establish regulations and procedures for the loan program and authorizes political subdivisions, public trusts, quasi-governmental organizations, nonprofit organizations, or private entities to make loans from the fund.

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§1105. Definitions

Applicant—any entity that submits an application for a loan in accordance with these regulations.

Bonds—bonds, notes, renewal notes, certificates of indebtedness, refunding bonds, interim certificates, debentures, warrants, commercial paper, or other obligations or evidences of indebtedness authorized to be issued by the department.

Brownfields Site—real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Such property may also be referred to as a brownfield or as brownfields property.

Department—the Department of Environmental Quality.

Eligible Costs—those project costs that are reasonable, necessary, and allocable to the project, permitted by appropriate federal and state cost principles and approved in the loan agreement, and that are not prohibited by federal or state regulations or guidance.

Fund—the Brownfields Cleanup Revolving Loan Fund.

In-Kind Contributions—non-cash third-party contributions made directly to a federally assisted project or program, including donated time and effort, real and nonexpendable personal property, and goods and services that meet the requirements of applicable federal guidance.

Loan—a loan of money from the Brownfields Cleanup Revolving Loan Fund.

Nonprofit Organization—any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized principally for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

Responsible Person—a responsible person as defined in R.S. 30:2285.2.

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§1107. Eligibility for Participation in the Program

A. Applicant Eligibility. The applicant must meet all of the following requirements to be eligible to participate in the Brownfields Cleanup Revolving Loan Fund Program.

1. The applicant must be authorized to incur debt and enter into legally binding agreements.
2. The applicant must own the brownfields site to be remediated using loan funds prior to the initial disbursement of funds.
3. The applicant must not be a *responsible person* as defined in LAC 33:VI.1105.
4. The applicant must demonstrate the financial ability to repay the loan in a timely fashion.
5. The applicant must not be subject to any unpaid fines or penalties for lack of compliance with environmental laws or regulations at the brownfields site subject to the loan.
6. The applicant must not be subject to any past-due fees owed to the department.
7. The credit history of the applicant must be in good standing.
8. Applicants for loans made from federal brownfields funding sources must meet requirements for such applicants provided in federal guidance.

B. Site Eligibility. All sites must meet the following requirements in order to be eligible and to remain eligible to participate in the Brownfields Cleanup Revolving Loan Fund Program.

1. Only brownfields sites located in the state of Louisiana are eligible.
2. The site must be eligible for participation in the Louisiana Voluntary

Remediation Program as provided in LAC 33:VI.Chapter 9, and the applicant must enter the program by submitting a completed voluntary remediation application for the site to the department within 120 days of the execution of the loan agreement, unless an extension is granted by the administrative authority. The site must remain in the Louisiana Voluntary Remediation Program to remain eligible for the loan program. All application and oversight fees associated with the voluntary remediation shall be paid in a timely fashion in accordance with those regulations.

3. Cleanup of the site shall be accomplished within 18 months of the date of the execution of the loan agreement, unless an extension is granted by the administrative authority.

4. The cleanup of contamination associated with motor fuels underground storage tanks that are eligible for the Louisiana Motor Fuels Underground Storage Tank Trust Fund is not eligible for the loan program.

5. Sites at which only petroleum contamination is present (petroleum-only sites) must meet eligibility requirements for petroleum sites found in federal guidance.

6. Sites at which loans would be funded from federal brownfields funding sources must meet all requirements provided in federal guidance.

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§1109. Ineligible and Eligible Costs

A. Ineligible Costs. Loan funds cannot be used for:

1. payment of penalties or fines, or for federal cost-sharing requirements;

2. indirect costs or for any administrative costs such as direct costs associated with grant administration incurred to comply with the Uniform Administrative Requirements for Grants in 40 CFR Part 30 (however, loan funds may be used for programmatic costs);

3. payment of any fees or oversight cost reimbursements required by the department;

4. site acquisition or development/redevelopment and construction activities that are not corrective actions;

5. pre-cleanup activities (i.e., site investigation and identification of the nature and extent of contamination and associated data collection);

6. monitoring and data collection necessary to apply for, or comply with, environmental permits under other state or federal laws, unless such a permit is a required component of the corrective action;

7. ordinary operating expenses of the local government or nonprofit or private organization;

8. personal injury compensation or damages arising out of the project;

9. purchase of any equipment costing more than $5,000;

10. cleanup of a substance that occurs in a natural condition at a site; or

11. any other costs prohibited by federal regulation or guidance.

B. Eligible Costs. Loan funds may be used for:

1. programmatic costs that are integral to achieving the purposes of the loan as described in the most current edition of the federal "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants" guidance document or its equivalent;

2. preparation of a voluntary remediation application, including development of the voluntary remedial action plan, as described in LAC 33:VI.911.B;

3. remediation of an eligible site pursuant to and in conformance with the Louisiana Voluntary Remediation Program;

4. preparation of a voluntary remedial action report, as described in LAC 33:VI.913.C.1;

5. required public notice, public hearing, and other community involvement activities associated with the remediation of an eligible site; and

6. purchase of environmental insurance.

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§1111. Loan Requirements

A. The maximum loan amount shall be $200,000 per brownfields site and shall not exceed the estimated cost of the project. Under special circumstances this maximum loan amount may be increased by the department. The department may award loans that are less than the total project cost for a brownfields site. Loan amounts cannot be increased after the loan award due to cost overruns or other reasons. The borrower must apply for another loan to get additional funds.

B. The interest rate for loans will be updated by the department as needed and will be less than the current prime interest rate. Loan agreements may provide for reduction or forgiving of interest rates for early repayment of the loan. There shall be no penalties imposed for early repayment of a loan.

C. The term of the loan (the time period over which the loan must be paid back) shall not exceed 20 years from the date of the completion of the project. The actual term for each loan shall be determined by the department and the department may require a shorter loan term based on circumstances. Loan principal and interest repayment schedules shall be set by the department, with the first installment being due within one year of the date of the project's completion.

D. A match (cost-share) of up to 20 percent of the loan amount may be required of the applicant by the department for any loan made. Eligible "in-kind" contributions may be allowed as cost-shares by the department.

E. Applicants must demonstrate their ability to repay the loans. The department may require a loan recipient to provide security or collateral for the loan, including the subject property. A local government or nonprofit applicant may be required to provide evidence of a dedicated revenue source to repay the loan.

F. Applicants subject to oversight by the State Bond Commission must comply with R.S. 30:2552.

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particular R.S. 30:2551-2552.

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§1113. Loan Application Process

A. The department may choose to accept loan applications on a continuous basis as funding permits or may announce specific application periods for acceptance of loan applications. If the department announces specific application periods, loan applications must be received on or before the deadline set by the department.

B. Applicants for loans shall complete and submit to the department an application package in a format specified by the department, including a Brownfields Cleanup Revolving Loan Fund Application Form that will be provided by the department. The application package must also include, but is not limited to:

1. a complete description of the project, including the sources and uses of funds, the project schedule, the estimated cost to complete the project, the estimated completion date, the amount of loan funds requested, and the source of other funding, if needed, to complete the project;

2. the last three years of the borrower's financial statements, which shall include the income statement, balance sheet, and cash flow statement, and tax returns;

3. an interim financial statement no more than 90 days old;

4. two years of financial projections, which must include an income statement, balance sheet, cash flow statement, and notes to the financial statements for each year;

5. an approved remedial investigation report as described in LAC 33:VI.911.B.3;

6. a written access agreement providing the department and its authorized representatives full access to the site;

7. an agreement to maintain financial records of the project, to conduct financial audits of these financial records, and to make the records available to the department promptly upon request;

8. if a cost-share is required by the department during this loan application period, a description of how the applicant will provide the cost-share for the project;

9. all information regarding the site required by the department to assist the department in determining eligibility of the site for participation in the loan program;

10. other information regarding the project requested in the application package to assist the department in ranking the project for funding;

11. proof of ownership of the property, or a purchase agreement with the current owner of the property, including evidence of clear title;

12. an appraisal of the estimated value of the property after the voluntary remedial action is complete;

13. discussion and evidence, as requested in the application form, demonstrating the eligibility under these regulations of the applicant and the property for a revolving loan;

14. a comprehensive redevelopment plan describing the future redevelopment and use of the property, including cost estimates for the redevelopment plan, and any economic and community benefits resulting from the cleanup and redevelopment of the property; and

15. other items specified in the application form or otherwise required by the

department.

C. The department may request clarification or further information from applicants after receiving the applications. The department also reserves the right to reject incomplete applications.

D. Brownfields Cleanup Revolving Loan Fund applications accepted by the department may be ranked according to prioritization criteria to be established by the department.

E. Applicants will be accepted for loan funding based upon ranking and site-specific criteria, state-wide priorities, funds currently allocated and available for lending, and other relevant factors as determined by the department.

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§1115. Loan Agreements, Closing of Loans, and Disbursement of Loan Funds

A. Upon selection of an applicant to receive a loan, the department will prepare and execute a loan agreement with the applicant. The loan agreement will provide for:

1. the loan term;
2. the repayment schedule;
3. the interest rate;
4. provisions in case of default;
5. a cost-share, if required;
6. timelines and budgets for completing various phases of the project of voluntary remediation;
7. provisions for disbursement of loan funds to the borrower;
8. any required security or collateral for the loan; and
9. other necessary provisions as determined by the department.

B. No loan funds shall be disbursed to the borrower until the loan agreement is executed and until such costs are incurred by the borrower.

C. Disbursement requests shall be of the form and type required by the department and shall be supplemented with copies of all invoices for each cost incurred. The borrower shall maintain complete documentation of all project costs for audit purposes. The borrower shall be responsible for maintaining financial control of the project by carefully reviewing all disbursement requests and supplemental documentation before submitting disbursement requests to the department. The borrower must certify each disbursement request before submittal.

D. Disbursement requests must be received by the date established by the department.

E. The borrower shall promptly remit each disbursement to the firm or individual to whom payment is due, and the borrower is solely responsible for paying those firms or individuals. The department may at its discretion make certain payments directly to such firms or individuals as provided in specific loan agreements.

F. Documentation of project costs paid for with revolving loan funds, as well as disbursement requests and invoices, must record and account for costs separately from any project costs paid or to be paid for from other funding sources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

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§1117. Recordkeeping, Confidentiality of Records, and Inspection of Records and Participating Sites

A. The applicant must maintain complete financial and other records as required in the loan application and loan agreement, and make them available promptly to the department upon request as provided in Subsection B of this Section. Financial records must account for and record costs and expenditures to be funded with revolving loan funds separately from costs and expenditures to be funded from other funding sources. Recordkeeping shall meet the requirements of applicable federal guidance, and all records shall be kept by the borrower until the loan is completely repaid or at least three years after the cleanup is completed, whichever is later.

B. From the time of first submission of the loan application, throughout all stages of remediation, and at any time during the applicant's participation in the loan program, authorized representatives of the department shall have the right to inspect any and all projects, and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which the application was made. The department shall further have the same right to inspect any and all books, accounts, records, contracts or other instruments, documents, or information possessed by the applicant or entity representing the applicant that relates to the receipt, deposit, or expenditure of loan funds or to the planning, design, construction, and operation of any facilities that may have been constructed as a result of such loan funds. By submittal of a revolving loan fund application, the applicant shall be deemed to consent and agree to the right of reasonable inspection and the applicant shall allow the department all necessary and reasonable access and opportunity for such purposes.

C. Any requests for confidentiality of any documents submitted by an applicant or loan recipient must be handled in accordance with and will be governed by LAC 33.I.Chapter 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

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§1119. Prioritization of Applicants and Sites to Receive Loan Funds

A. Applicants may be prioritized for receipt of loan funds based on the ranking criteria in this Section. These factors may be further elaborated, refined, or detailed in the loan application.

B. The criteria (not in order of importance) for ranking applicants are as follows:

1. the potential of the site for redevelopment and productive reuse;
2. the potential for creation of temporary and permanent jobs and/or increased state and local tax revenues by the cleanup, redevelopment, and reuse of the site;
3. the potential of the project to create greenspace;
4. the ability of the applicant to repay the loan;

5. other cleanup funds available to the applicant to supplement revolving loan fund dollars;

6. funds available to the applicant to redevelop the property;

7. the degree of need for community revitalization in the area surrounding the site, as evidenced by significant deterioration, job loss, majority low-income households, or other factors as determined by the department;

8. the estimated value of the remediated property as compared to the estimated cost of the cleanup of that property; and

9. other ranking factors provided by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

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