NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Affairs and Criminal Investigations Division

Brownfields Cleanup Revolving Loan Fund Program

(LAC 33:VI.1103, 1107, 1109, 1111, and 1113) (IA06)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation regulations, LAC 33:VI.1103, 1107, 1109, 1111, and 1113 (IA06).

A brownfields site is 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 brownfields or as brownfields property.

Currently, only brownfields sites enrolled in the LDEQ Voluntary Remediation Program qualify for the LDEQ Brownfields Cleanup Revolving Loan Fund. The proposed Rule will remove the requirement that only sites enrolled in the LDEQ Voluntary Remediation Program are eligible for funding from the LDEQ Brownfields Cleanup Revolving Loan Fund. The proposed Rule change allows LDEQ to financially expand the LDEQ Brownfields Cleanup Revolving Loan Fund to a wider base of properties, and therefore cleanup and redevelop a larger number of brownfields properties. The basis and rationale for this proposed Rule change are to expand the use of the LDEQ Brownfields Cleanup Revolving Loan Fund by increasing the number of brownfields projects eligible for funding. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

This Rule has no known impact on small business as described in R.S. 49:978.1 - 978.8.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by IA06. Such comments must be received no later than June 1, 2021, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to DEQ.Reg.Dev.Comments@la.gov. Copies of these proposed regulations can be purchased by contacting the LDEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of IA06. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

**Public Hearing**

A public hearing will be held on May 25, 2021, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Courtney J. Burdette

General Counsel

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substances Site Remediation**

**Chapter 11. Brownfields Cleanup Revolving Loan Fund Program**

**§1103. Authority**

A. — B. …

C. Act 612 of the 2018 Regular Session of the Louisiana Legislature amended R.S. 30:2552 to repeal the Brownfields Cleanup Revolving Loan Fund Program, effective July 1, 2020. However, Act 91 of the 2020 Regular Session of the Louisiana Legislature repealed the provisions of Act 612 on June 5, 2020, prior to the effective date of Act 612. As such, the Brownfields Cleanup Revolving Loan Fund Program was reinstated.

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 31:2217 (September 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division LR 47:

**§1107. Eligibility for Participation in the Program**

A. — B.1. …

2. ~~The site must be eligible for participation in the Louisiana Voluntary Remediation Program as provided in~~The nature and extent of contamination to be remediated at the site using loan funds must be defined and documented in a department-approved Risk Evaluation / Corrective Action Program (RECAP) investigation report, voluntary remediation investigation report as provided in LAC 33:VI.Chapter 9, and/or other applicable report, such as a lead and asbestos containing materials survey. A site cleanup plan shall be submitted to the department’s brownfields coordinator within~~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 cleanup must be conducted with department oversight~~site must remain in the Louisiana Voluntary Remediation Program~~ to remain eligible for the loan program. All application and oversight fees associated with the remediation shall be paid in a timely fashion in accordance with ~~those~~applicable regulations.

3. — 6. …

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 31:2217 (September 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division LR 47:

**§1109. Ineligible and Eligible Costs**

A. — A.11. …

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 terms and conditions of the applicable federal cooperative agreement funding the loan~~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 cleanup planning documents such as:

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

b. a Risk Evaluation / Corrective Action Program (RECAP) compliant corrective action plan;

c. a department-approved remedial action plan;

d. a Quality Assurance Project Plan (QAPP) for data collection activities to be conducted during the remedial action;

e. a community relations plan; and

f. an Analysis of Brownfields Cleanup Alternatives (ABCA) to meet federal grant requirements;

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

4. preparation of a ~~voluntary~~ remedial action report, as detailed in the approved loan agreement ~~described in LAC 33:VI.913.C.1~~;

5. — 6. …

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 31:2218 (September 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division LR 47:

**§1111. Loan Requirements**

A. The maximum loan amount shall be $~~2~~500,000 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. — F. …

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 31:2218 (September 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division LR 47:

**§1113. Loan Application Process**

A. — B.4. …

5. a~~n~~ department-approved remedial investigation report ~~as described in LAC 33:VI.911.B.3~~;

6. — 11. …

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

B.13. — E. …

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 31:2218 (September 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division LR 47:

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**FOR ADMINISTRATIVE RULES**

Person

Preparing

Statement: Rebecca Otte Dept.: Dept. of Environmental Quality

Phone: (504) 736-7069 Office: Office of Environmental Assessment

Return Rule

Address: 602 North Fifth Street Title: Brownfields Cleanup Revolving Loan Fund

Baton Rouge, LA 70802 (LAC 33:VI.1103, 1107, 1109, 1111, and 1113)

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not result in implementation costs or savings to state or local governmental units. The proposed rule change removes the requirement that a site is enrolled in the Voluntary Remediation Program in order to be eligible for funding from the Louisiana Department of Environmental Quality (LDEQ) Brownfields Cleanup Revolving Loan Fund.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effects on revenue collections of state or local governmental units are anticipated from the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule change would affect developers and local governments applying for funding to clean up a brownfields property under LDEQ's Brownfields Cleanup Revolving Loan Fund by expanding funding eligibility to brownfields sites remediated under any LDEQ program, as opposed to only brownfields sites enrolled in the Voluntary Remediation Program. This action is not anticipated to affect costs, workloads, or additional paperwork they may have to incur as a result of the proposed action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment as a result of this proposed rule change.

Signature of Agency Head or Designee Legislative Fiscal Officer or Designee

Courtney J. Burdette, General Counsel

Date of Signature Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**FOR ADMINISTRATIVE RULES**

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

1. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The proposed rule change will remove the requirement that only sites enrolled in the Voluntary Remediation Program are eligible for funding from the LDEQ Brownfields Cleanup Revolving Loan Fund.

1. Summarize the circumstances, which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

A brownfields site is a vacant or underutilized property where environmental concerns inhibit redevelopment/expanded use. Currently, only sites that are enrolled in LDEQ's Voluntary Remediation Program are eligible for funding under LDEQ's Brownfields Cleanup Revolving Loan Program, which prevents sites that have only lead or asbestos contamination, or sites being remediated under LDEQ's Risk Evaluation/Corrective Action Program from accessing the funds. The proposed rule change would allow any brownfields site remediated, with LDEQ oversight, to be eligible for the Brownfields Cleanup Revolving Loan Fund, which will facilitate the use of the Brownfields Cleanup Revolving Loan Fund and allow LDEQ to support the cleanup and redevelopment of a larger number of brownfields properties.

1. Compliance with Act 11 of the 1986 First Extraordinary Session
   1. Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, the proposed rule change will not result in any increase in the expenditure of funds.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) Yes. If yes, attach documentation.

(b) NO. If no, provide justification as to why this rule change should be published at this time

This question is not applicable.

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**WORKSHEET**

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

No increases or decreases in costs are anticipated to implement the proposed action.

**COSTS FY 21 FY 22 FY 23**

Personal Services 0 0 0

Operating Expenses 0 0 0

Professional Services 0 0 0

Other Charges 0 0 0

Equipment 0 0 0

Major Repairs & Constr. 0 0 0

**TOTAL** 0 0 0

**POSITIONS (#)**

1. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

No costs or savings are anticipated as a result of the implementation of the proposed rule change.

1. Sources of funding for implementing the proposed rule or rule change.

**SOURCE FY 21 FY 22 FY 23**

State General Fund 0 0 0

Agency Self-Generated 0 0 0

Dedicated 0 0 0

Federal Funds 0 0 0

Other (Specify) 0 0 0

TOTAL 0 0 0

1. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No additional funds are required to implement the proposed rule change.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

No impacts of the proposed rule change on local government units' workload or paperwork requirements are anticipated.

1. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

No impacts of the proposed rule change on sources of funding of local government units are anticipated, therefore no funding sources will be affected.

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**WORKSHEET**

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

1. What increase (decrease) in revenues can be anticipated from the proposed action?

No increase or decrease in revenues are anticipated from the proposed rule change.

**REVENUE INCREASE/DECREASE FY 21 FY 22 FY 23**

State General Fund 0 0 0

Agency Self-Generated 0 0 0

Dedicated Funds\* 0 0 0

Federal Funds 0 0 0

Local Funds 0 0 0

**TOTAL** 0 0 0

\*Specify the particular fund being impacted.

1. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues will be realized.

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**WORKSHEET**

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

A. What persons, small businesses, or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The proposed rule change would affect developers and local governments applying for funding to clean up a brownfields property under LDEQ's Brownfields Cleanup Revolving Loan Fund by expanding funding eligibility to any brownfields sites remediated, with LDEQ oversight, as opposed to only brownfields sites enrolled in the Voluntary Remediation Program. This action is not anticipated to affect costs, workloads, or additional paperwork they may have to incur as a result of the proposed action.

1. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impacts on receipts and/or income resulting from this proposed rule change to these groups are anticipated.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

No impacts on competition and employment in the public and private sectors are anticipated as a result of the proposed rule change.