

## Brownfield Revolving Loan Fund (BRLF) Program Policies

**Program Description:** The Brownfield Revolving Loan Fund offers below-market rate loans to assist with the remediation of brownfield properties to return them to productive economic use in communities.

- 1.0 Eligible Borrowers:** Any public or private entity that meet all of the following criteria:
- Control over (ownership or purchase option) or access to an eligible site within the state of Ohio
  - Exempt from liability as determined by the Bureau of Underground Storage Tank Regulations (Agency) for petroleum cleanup applications
  - Exempt from Comprehensive Environmental Response, Compensation and Liability Act, as amended CERCLA liability for hazardous substance cleanup applications
  - Authorized to incur debt and enter into legally binding agreements
  - Financially sound
  - Completed a viable redevelopment plan or a long-term maintenance plan for greenspace development
- 2.0 Ineligible Borrower:** An entity that meets any or all of the following criteria:
- A generator or transporter of contamination at a Brownfield site
  - Currently or previously in environmental non-compliance
  - Previously suspended, debarred or declared ineligible for Federal financial assistance programs
  - Currently delinquent in taxes, loan payments, or other indebtedness to the State of Ohio or any political subdivision
- 3.0 Eligible Brownfield Sites:** Meet any or all of the following criteria:
- For petroleum cleanup projects:
    - Possess an actual release or substantial threat of a release of an Agency regulated petroleum contaminant (as listed under 37 ORC 3737.882 <http://codes.ohio.gov/orc/3737.882>)
    - As determined by the Agency utilizing the following principles:
      - The site is of relatively low risk, as compared to other petroleum sites in the state
      - There is “no viable responsible party” for the site
      - The person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site
      - The site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act
  - Possess an actual release or substantial threat of a release of a hazardous substance (as listed under 40 CFR Part 302.4) or
  - Possess a release or substantial threat of release of a pollutant or contaminant (as defined by CERCLA 101(33)) that may present an imminent or substantial danger to public health or welfare under CERCLA 104(a)(1).
- 4.0 Ineligible Brownfield sites:** Meet any or all of the following criteria:
- Listed or proposed listing on the USEPA National Priority List
  - A Federal or state agency is planning or conducting a response or enforcement action; or
  - Deemed ineligible as determined by the Agency utilizing the principles described above for eligible Brownfield Sites

## 5.0 Eligible Project Costs:

For Hazardous substance cleanup projects eligible costs are as defined in CERCLA 101(23) and described in the NCP, 40 CFR Part 300.415.

- Costs associated with removing, mitigating, or preventing the release or threat of release of a hazardous substance, pollutant or contaminant, including:
  - Fences, warning signs, or other security or site control precautions;
  - Drainage control;
  - Stabilization of berms, dikes, or impoundments or drainage or closing lagoons;
  - Capping of contaminated soils;
  - Using chemicals and other materials to retard the spread of the release or mitigate its effects;
  - Excavation, consolidation or removal of highly contaminated soils from drainage or other areas;
  - Removal of drums, barrels, tanks or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
  - Containment, treatment, disposal, or incineration of hazardous materials;
- Site monitoring costs, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
- Costs associated with meeting the public participation, worker health and safety, and interagency coordination requirements.
- Costs associated with removal activities, including demolition and/or site preparation that are part of the site cleanup.
- Costs associated with the use of a Certified Professional or appropriate environmental personnel to comply with the requirements set forth in the appropriate regulatory program.

For Petroleum cleanup projects eligible costs are as defined in Ohio Administrative Code (OAC) 1304

- Costs associated with removing, mitigating or preventing the release or threat of release of a petroleum contaminant including:
  - Fences, warning signs, or other security or site control precautions;
  - Drainage control;
  - Stabilization of berms, dikes, or impoundments or drainage or closing lagoons;
  - Capping of contaminated soils;
  - Using chemicals and other materials to retard the spread of the release or mitigate its effects;
  - Excavation, consolidation or removal of highly contaminated soils from drainage or other areas
- Site monitoring costs, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
- Costs associated with meeting the public participation, worker health and safety, and interagency coordination requirements.
- Costs associated with removal activities, including demolition and/or site preparation that are part of the site cleanup.
- Costs associated with the use of a Certified Professional or appropriate environmental personnel to comply with the requirements set forth in the appropriate regulatory program

## 6.0 Ineligible Project Costs

- Pre-cleanup environmental response activities costs, such as site assessments, identification and characterization;
- Cleanup costs of a naturally occurring substance below background levels, products that are part of the structure and result in exposure within residential, business or community structures (e.g., interior lead-based paint contamination which results in indoor exposure), or public/private drinking water supplies that have deteriorated through ordinary use, except as determined on a site-by-site basis and approved by EPA Headquarters, consistent with CERCLA §§ 104(a)(3) and (4);
- Monitoring and data collection costs necessary to apply for or comply with environmental permits under other Federal and state laws, unless such a permit is required as a necessary or essential component of the cleanup action; and
- Development costs that are not remedial actions (e.g., construction of a new facility or marketing of property).

**7.0 Loan Terms:** The term of any loan awarded under the BRLF program will not exceed ten (10) years. Repayment of the loan will be by either semi-annual or monthly payments of principal and interest. If the principal and interest are deferred for any period of time (maximum two (2) years), the balance of the loan shall be amortized within the remaining term of the loan. The sale or leasing of the property during the term of the loan shall trigger prepayment of the outstanding principal as determined by the Department of Development (Department).

The Department may in support of its economic and community development goals develop with public and non-profit borrowers flexible loan terms, which may after review of the loan proposal, include the use of balloon payments, deferred forgivable loans and other terms.

**8.0 Sub Grant Terms:** The Department may provide a borrower or eligible entity with a subgrant. For-profit entities are not eligible for subgrants. A subgrant may not exceed \$200,000 or 20% of the loan principle whichever is less. Subgrants must be used for eligible project costs. Subgrants require a separate agreement from the loan documents.

**9.0 Available Funding:** The Department under the BRLF program may provide financing up to \$1,000,000 for hazardous substance cleanup projects and up to \$300,000 for petroleum cleanup projects.

**10.0 Interest Rate:** Interest rates for the BRLF program will be offered at below market rates.

**11.0 Collateral:** The Department requires under the BRLF program, a shared priority mortgage and/or lien position on the assets financed with the BRLF loan proceeds to be established via a multi-party agreement between the participating lenders(s), the Department and the borrower. Personal guarantees are required from owners with more than 20 percent ownership in the company. The Department will evaluate in appropriate circumstances other types of credit enhancement, if necessary equal to the shared priority mortgage and/or lien position on the assets financed with BRLF loan proceeds. The Department will also consider subordination in appropriate circumstances, of its mortgage and/or security position to the security of banks and other providers of traditional senior debt.

## 12.0 Additional Security Requirements:

- Corporate guarantees from related companies (may be required)
- Full or partial letter of credit (may be required)
- Life insurance on key business owners and/or managers (may be required)

13.0 **Prepayment:** The Department imposes no pre-payment penalty

14.0 **Prevailing Wage:** Federal prevailing wage is required for cleanup and remediation related activities. Rates and payment of prevailing wages are determined the United States Department of Labor.

## 15.0 BRLF Program Application Process:

- Contact the Ohio Department of Development Urban Development Division staff to discuss the project
- Site Eligibility Determination
- All applicants will enroll in the Ohio EPA Brownfield Inventory Program prior to completion of public notice requirements (<http://www.epa.state.oh.us/derr/SABR/Brown/BrownDtb/browndtb.html>)
- Complete Public Notice Requirements
- Submit a completed Financial Assistance Application and necessary supporting documentation
- Eligibility review and credit analysis conducted by the Department staff. The appropriate environmental regulatory program will conduct its review of the scope of work and Remedial Action Plan
  - Credit analysis will include but are not limited to the following factors
    - The legal structure of the applicant
    - The adequacy, timeliness and completeness of the applicant's financial statements
    - Applicants record of earnings and cash flow
    - Applicant's history of borrowing and adherence to the terms and conditions of those borrowings
    - Information from bank and credit references
    - Outlook for the applicants' industry
    - Applicant's Business Plan
    - Applicant's Redevelopment Plan demonstrating the economic viability of the project and identifying the sources of repayment of the loan
    - Applicant's ability to manage the cleanup project
    - And other factors the Department may deem appropriate to the particular conditions of the project
- Enrollment of the property in the appropriate environmental regulatory program (e.g. VAP, VAP MOA, BUSTR)
- The Department Approval Process
  - Preliminary project term sheet provided by the Department staff
  - Acceptance of the project term sheet by the borrower
  - Loan final approval decision made by the Department
  - Loan commitment letter issued by the Department
  - Upon receipt of the signed loan commitment letter loan closing documents are prepared
  - Loan proceeds are disbursed after loan closing and upon completion of activities at the property

## 16.0 Application Checklist:

- Project description including sources and uses of funds (includes specific use of loan proceeds)

- Business financial information
  - Past three (3) fiscal years of income statements & balance sheets
  - Current business financial statement (less than 90 days old)
  - Business financial projects for three (3) fiscal years (privately held companies only)
  - Business financial information for the past three (3) fiscal years on affiliate businesses, if any
    - Income statements & balance sheets
    - Current business financial statement (less than 90 days old)
  - Current personal financial statement from all 20+ percent owners
  - Other financial commitments
    - Bank commitment and/or term sheet (if applicable)
- The resumes of owners and/or key management, schedule for redevelopment and concept plan
- Supporting Resolution (if applicable)
- Legal description and associated maps of the project property
- Public notice documents
- Required Assessment Reports and Documentation
- Remedial Action Plan
- Analysis of Brownfield Cleanup Alternatives document (ABCA)
- Community Relations Plan
- Third party cost estimates for all work greater than \$25,000
- Project Budget
- Purchase agreement (if applicable)
- Property Appraisal
- Current county auditor value of the property

#### **17.0 Public Notice Requirements:**

- No later than 30 days prior to the public meeting, the applicant shall place the application in a public library, place a notice of the public meeting in a newspaper of general circulation in the county where the brownfield is located, and post a sign at the property. The 30 days includes the day of the publication of the public meeting but not the day of the meeting.
- A copy of the application shall be placed in the public library or local government office nearest to the brownfield as well as made available in electronic PDF format on the applicant's or local government partner's public website, if available.
- The notice shall be placed in a newspaper, which circulates in the community where the majority of the brownfield is located. The notice may appear as either a classified legal notice or as a display advertisement.
- The notice shall include, at a minimum: the date, time and location of the public meeting; amount of the request; a statement that the application is available for review at the public library; the name and location of the public library where the application is available for public review; and, the intent of the applicant to apply for the program.
- At the public meeting applicants shall conduct so as to allow for questions and comments from the public.
- Applicants shall address at the public meeting any written comments received during the 45-day public comment period.

- Applicants shall take minutes of the meeting that accurately reflect the number of individuals in attendance and the comments, questions, debate and discussion that occur at the meeting.
- Applicants must prepare a responsiveness summary addressing comments made during the public comment period. The responsiveness summary must summarize related comments and demonstrate how the comments were integrated into the decision making process or explain why the comments were not included.
- The following documentation is not subject to the public review period: financial statements (personal and business); tax returns, if applicable; Tax Information and Disclosure Form; Financial Liability Form.
- A public information sign must be posted at the property within two weeks of loan closing. The sign shall conform to requirements for re-zoning notices as set forth in local code. In the absence of such code the sign shall not be less than four feet by four feet unless otherwise prohibited by local code, in which case the sign must be the maximum size allowed by local code.
- The sign shall include the name and location of the public place where the application is available for review; the website where the application is also available for review; the funding source as Brownfield Revolving Loan Fund from the Ohio Department of Development; contact information for public inquiry;

Program policies will be revised on a periodic basis to ensure compliance with changes in Federal and State laws, rules and regulations