



EASTERN NORTH CAROLINA BROWNFIELDS COALITION

REVOLVING LOAN FUND

PROGRAM GUIDELINES

JANUARY 25, 2016



**CITY OF GREENVILLE, NC
EPA BROWNFIELDS PROGRAM**

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LIST OF ACRONYMS

ASTM –

BFPP – Bona Fide Prospective Purchaser

CA – Cooperative Agreement

CERCLA – Comprehensive Environmental Response, Compensation and Liability Act

CPO – Contiguous Property Owner

ENCBFC – Eastern North Carolina Brownfields Coalition

EPA – Environmental Protection Agency

FWPCA – Federal Water Pollution Control Act

ILO – Innocent Landowner

LOC – Letter of Credit

LRC – Loan Review Committee

LUST – Leaking Underground Storage Tank

NCBA – North Carolina Brownfields Agreement

NCDENR – North Carolina Department of Environment and Natural Resources

NCGS – North Carolina General Statute

OPA – Oil Pollution Act

RCRA – Resource Conservation Recovery Act

RLF – Revolving Loan Fund

SBA – Small Business Administration

SWDA – Solid Waste Disposal Act

TBD – To Be Determined

TIF – Tax Increment Financing

TSCA – Toxic Substances Control Act

UCC – Uniform Commercial Code

USDA – United States Department of Agriculture

UST – Underground Storage Tank

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PURPOSE AND SCOPE

The purpose of the Eastern North Carolina Brownfields Coalition (ENCBC) Revolving Loan Fund (RLF) program is to facilitate the redevelopment of brownfield sites by making low interest loans or sub-grants available to eligible entities to finance environmental cleanup. Often the potential liability associated with contamination complicates business development, property transactions or expansion of property. Environmental clean-up of properties designated as Brownfields will create opportunities for employment and revitalization of the community.

The Cities of Wilson and Greenville, North Carolina, have agreed to collaborate and create the Eastern North Carolina Brownfields Coalition (“Coalition”). The Coalition will be responsible for implementation of the RLF program (“RLF Program”) across Wilson, Pitt and Greene counties. The focus of the RLF program will be to finance environmental cleanups throughout the three contiguous counties on sites with the high potential for redevelopment and/or job creation.

INTRODUCTION

The RLF program is funded through the U.S. Department of Environmental Protection Agency (EPA) to serve the needs of public and private entities whose properties are complicated by the presence or potential presence of environmental contaminants. The RLF program acknowledges that “gaps” exist in traditional lending markets for funding for brownfields clean-up activities. This program will provide financial assistance to those property owners who need help to fund the remediation required for site cleanup, which will then allow redevelopment projects and job creation to move forward.

The EPA defines a brownfield as:

“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.”

The 2002 Brownfields Law further defines the term to include a site that is:

“contaminated by a controlled substance; contaminated by petroleum or a petroleum product excluded from the definition of ‘hazardous substance’; or mine-scarred land.”

The RLF program offers low-interest variable rate loans to qualifying political subdivisions, non-profit organizations, and private, for-profit organizations for clean-up activities at eligible brownfield sites. The RLF Program loan may be used for activities associated with removing, mitigating or preventing the release or threat of release of a hazardous substance, pollutant or contaminant. Eligible Applicants will receive funds directly from the RLF Program. After sites have been selected for an RLF loan, borrowers will be required to execute a financial assistance agreement (“Loan Agreement”) with the Coalition. The Borrower will also be required to provide evidence of a contract with the selected consultant to perform the environmental work. The Loan Agreement will address each party’s obligations regarding the site remediation work to be funded with RLF Funds.

Applicants may apply for a loan at any time during the five year project period for the RLF Program, which ends on September 30, 2019. Loans will be funded on a first come, first served basis. A loan application and required supporting documentation will be posted on the RLF Program's website at www.ctcbrownfields.com/wilson. Applicants can request a pre-application meeting with a staff member of the Coalition to receive programmatic and technical assistance. Loan terms, interest rates and collateral requirements are determined on a case-by-case basis. A non-refundable application processing fee, loan origination fee and closing fee will be required at the responsibility of the Applicant.

APPLICANT ELIGIBILITY

The following items are considered threshold eligibility criteria and may disqualify an application from consideration for a loan. For purposes of threshold eligibility review, the RLF Program, if necessary, may seek clarification of Applicant information and/or consider information from other sources, including the NC Department of Environment and Natural Resources (NCDENR), the Coalition, or U.S. EPA files. In addition, a determination of eligibility to receive a loan from the Coalition under these guidelines does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit state or U.S. EPA enforcement authorities against any party.

Eligible Borrowers

Eligible borrowers can be any political subdivision, non-profit organization, or private, for-profit entity with control over (ownership or purchase option) or access to an eligible brownfield site within the jurisdiction of the Eastern North Carolina Brownfields Coalition and that is authorized to incur debt, enter into legally binding agreements and is financially sound.

The borrower must meet the definition of a:

- Political subdivision, such as a county, city, or town as defined in N.C.G.S. §153A-1(3) or N.C.G.S. §160A-1(2); or
- Non-profit corporation as defined in 31 U.S.C § 6101(4)(6), Section (4)(6) of the Federal Financial Assistance Management Improvement Act;¹ or,
- Private, for-profit entity (i.e., any person, sole proprietor, corporation, company, firm, partnership, association, trust, joint venture, investor, developer, or other business enterprise).

¹ The term "non-profit 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 U.S. 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 RLF Loan under these guidelines.

For Applicants other than cities, towns, or counties applying as a political subdivision: (e.g., a redevelopment commission) documentation of eligibility (e.g., resolutions, authorizing statutes, etc.) must be attached to the loan application.

For non-profit Applicants: current documentation verifying 501 (c)(3) tax exempt status from the U.S. Internal Revenue Service or from a State that has authority under its laws to grant non-profit status to an organization must be attached to the loan application.

If the Applicant is a private, for-profit entity: documentation such as Articles of Organization, an Operating Agreement, Certificate of Limited Partnership, Partnership Agreement, or a Certificate of Existence (Good Standing) from the Secretary of State's office must be attached to the loan application.

In addition, an Applicant must be exempt from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). An Applicant seeking to demonstrate it is not liable under CERCLA by means of a landowner liability exemption (e.g., bona fide prospective purchaser ("BFPP"), contiguous property owner ("CPO"), or innocent landowner ("ILO")), must meet certain threshold criteria and satisfy certain continuing obligations to maintain its status as an eligible borrower or sub-grantee.

These include, but are not limited to the following:

- All Applicants asserting a BFPP, CPO, or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, **on or before the date of their acquisition** of the property.
- Applicants seeking to qualify as a BFPP or a CPO must *not* be:
 - potentially liable, or affiliated with any other person that is potentially liable, for clean-up costs through: 1) any direct or indirect familial relationship; or 2) any contractual, corporate, or financial relationships; or
 - a recognized business entity that was potentially liable; or
 - otherwise liable under CERCLA § 107(a) as a prior owner/operator, or generator or transporter of hazardous substances to the facility.
- Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
 - complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
 - taking reasonable steps with respect to hazardous substance releases;

- providing full cooperation, assistance, and access to persons that are authorized to conduct clean-up actions or natural resource restoration;
- complying with information requests and administrative subpoenas (applies to BFPPs and CPOs); and
- complying with legally required notices (again, applies to BFPPs and CPOs).

See CERCLA §§ 101(40)(b)-(h), 107(q)(1)(A), 101(35)(A)-(B). See also, CERCLA §§ 101(35), 101(40), 107(b) and 107(q) (outlining additional obligations to maintain landowner liability protections).

In order to demonstrate the above, or any other potentially applicable liability exemption (i.e., involuntary acquisition by a political subdivision), provide written answers to the questions found in “Appendix A” of these guidelines as a part of your application. The Coalition recommends the applicant to complete Appendix A prior to the full application to determine eligibility.

Ineligible Borrowers

An Applicant that meets one or more of the following criteria is an ineligible borrower:

- **Responsible party:** any Applicant that is considered a responsible party under CERCLA at the site at which the RLF Program Funds will be utilized.
- **Non-compliance:** any Applicant that has a demonstrated a pattern of uncorrected environmental non-compliance with the NCDENR Brownfields Agreement at any time during the application and closing process.
- **Previous ineligibility:** any Applicant that has been suspended, debarred, or declared ineligible for Federal or State financial assistance programs.
- **No site access:** any Applicant that does not have written consent for access (access agreement) to perform the cleanup activities using RLF Program Funds on a site it does not own. Access to the brownfield must be provided to the Coalition, NCDENR, and the Applicant until the Program’s issuance of a completion letter indicating acceptance of final reports received from the consultant pertaining to remediation activities at the site. (A template site access agreement is attached hereto as “Appendix B” as an example of the type of consent the Program will accept).

SITE ELIGIBILITY

Eligible Brownfields Sites

RLF Program funds must be used only at sites that are eligible for funding under the Brownfields Law. Therefore, borrowers may perform cleanup work *only* at the site identified in the Loan Agreement. The boundaries specified in the Loan Agreement may not be changed without an amendment approved by the Coalition.

Applicants must demonstrate the following at the time an application is submitted:

- The site meets the U.S. EPA and 2002 Brownfields Law definition of a “brownfield” to be eligible for funding.
- The primary contamination, or potential contamination, must be a hazardous substance as defined in CERCLA § 101(14) or a pollutant or contaminant as defined in CERCLA § 101(33).
- The site must have a Phase I and II Environmental Site Assessment completed in accordance with ASTM standards and a state Brownfields Agreement has been completed or pending.
- The site is located within one of the three North Carolina counties (Wilson, Pitt, or Greene Counties) in which the Coalition has jurisdiction. (Some exceptions may apply).

NOTE: Sites with petroleum or petroleum products contamination, controlled substances contamination, and mine-scarred lands require additional eligibility analysis.

Eligible Petroleum Contaminated Sites

For petroleum contaminated sites to be eligible for funding, that otherwise meets the general definition of a “brownfield site”, the Applicant must demonstrate that the EPA or the state has determined:

- The site is of ‘relatively low risk’ compared with other ‘petroleum only’ sites in the state; and
- There is “no viable responsible party” for the contaminated site; and
- The site will not be assessed, investigated or cleaned up by a person that is potentially liable for cleaning up the site; and
- The Applicant is not potentially liable for petroleum contamination to assess, investigate, or clean up the site; and
- The site is not subject to RCRA Corrective Action for hazardous substances or petroleum contamination under §9003(h) of the Solid Waste Disposal Act (SWDA) (RCRA § 6991b(h)).

“Appendix C” of these guidelines requests additional eligibility information as a part of an application for RLF Program Funds for petroleum contaminated sites.

These criteria are set forth in CERCLA § 101(39)(D)(ii)(II).

Ineligible Brownfield Sites

A property that meets one or more of the following at the time an application is submitted is ineligible for a loan (and not eligible for a property-specific determination) through the RLF program:

- The site is listed or proposed for listing on the National Priorities List.
- The site is subject to the jurisdiction, custody, or control of the U.S. government, except for land held in trust by the U.S. for an Indian tribe.
- The site is subject to unilateral administrative order, court order, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.
- The site is subject to an open or pending State or Federal administrative or judicial enforcement action.
- The site presents an imminent threat to human health or the environment.

Ineligible Petroleum Contaminated Sites

A property that meets one or more of the following at the time an application is submitted is ineligible for a loan (and not eligible for a property-specific determination) RLF Program:

- The site is 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))).

Property-Specific Determinations

Certain sites that do not satisfy the U.S. EPA definition of a brownfield may be eligible for RLF funding if EPA makes a property-specific determination that allows the use of RLF funds. A property that meets any or all of the following criteria at the time an application is submitted to the RLF Program may be eligible for a property-specific determination:

- Sites subject to planned or ongoing response actions under CERCLA;
- Sites that are subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees, or to which a permit has been issued by the U. S. government or an authorized state under the Resource Conservation and Recovery Act (“RCRA”), the Federal Water Pollution Control Act (“FWPCA”), the Toxic Substances Control Act (“TSCA”), or the Solid Waste Disposal Act (“SWDA”);
- Sites that are subject to corrective action orders under RCRA § 3004(u) or 3008(h) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;
- Sites that are land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit;
- Sites where there has been a release of polychlorinated biphenyls and all or part of the site is subject to remediation under TSCA; and
- Site which has received or may be eligible for specific cleanup assistance under Subtitle I of the Resource Conservation and Recovery Act (RCRA) from the NC Underground Storage Tank (UST) Trust Fund.

Contact a Program Manager with the Coalition for additional information if you are interested in using the RLF Program on a site that may require a property-specific determination. The general criteria necessary for making a property-specific determination of eligibility include that a loan on such property will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for non-profit purposes. In order to demonstrate satisfaction of the required criteria for a property-specific determination, please provide written answers to the related questions found in “Appendix D” of these guidelines as a part of your application.

PROJECT ELIGIBILITY

The Applicant will need to provide the following documents as part of the application packet regarding the project:

- **Remedial Action Plan Summary** – A technical description of work to be done including contracts and cost estimates; and
- **Redevelopment Plans** – A description of the cleanup project and the Reuse Plan and compliance with the eligible site and project costs criteria. Additional criteria to be considered in the making of a RLF loan are the socioeconomic and public benefits of redevelopment projects; and
- **Business Plan** – A description of the business goals, strategies and action plans demonstrating redevelopment feasibility; and
- **Financial Plan** – Pro forma financial statements which demonstrate the economic viability of the project and identify sources of repayment for the loan.

These documents should contain the following information:

- Site location, site size, and physical characteristics of site;
- Development plan for site;
- Quantity and quality of jobs created;
- Estimated/anticipated increase in property valuation (including how it has been calculated);
- Compliance with zoning requirements (if applicable) and impact on surrounding area;
- Development challenges, project schedule and timing;
- Project quality;
- Expected impacts on the local community and extended target areas;
- Participation of minority and/or women-owned enterprises;
- Need for additional community/city services;

- The socioeconomic and public benefits of the redevelopment project;
- Creation/preservation of greenspace.

USES OF RLF PROGRAM FUNDS

Eligible Activities

RLF Program Funds are designated for cleanup activities at eligible brownfields sites. All activities sought to be paid for with Loan Funds must receive RLF Program approval prior to implementation.

RLF Program Funds may be used for the following actions and activities:

- Removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant, contaminant, petroleum product, or controlled substance into the environment;
- Oversight of cleanup activities;
- Installation of fences, warning signs, or other security or site control precautions;
- Installation of drainage controls;
- Stabilization of berms, dikes, or impoundments;
- Drainage or closing of 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 contaminated soils;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants, including petroleum;
- Removal of source materials, including free product recovery;
- Containment, treatment, or disposal of hazardous materials and petroleum products;
- Site monitoring activities, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- Sampling as related to design and implementation of a selected cleanup plan; and
- Costs associated with documenting the Analysis of Brownfield Cleanup Alternatives (ABCA).

Ineligible Activities

RLF Program Funds *cannot* be used for the following activities:

- Pre-cleanup environmental assessment activities, such a site assessment, identification, and characterization with the exception of site monitoring activities as described above;
- Addressing public or private drinking water supplies that have deteriorated through ordinary use;
- A cleanup or other response cost at a brownfield site for which the borrower is potentially liable under CERCLA § 107;
- Sampling or assessment activities related to analyzing cleanup alternatives;
- Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
- Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new facility);
- Cost sharing or matching requirement for another federal grant (absent statutory authorization);
- Support of job training;
- Lobbying efforts; and
- Purchasing insurance intended to provide coverage for any of these ineligible activities.

Eligible Costs

Under CERCLA § 104(k)(B)(i)(III), no part of a grant or loan may be used for the payment of an administrative cost; however, this prohibition does not apply to “programmatic” costs. The following costs are eligible for funding with RLF Program Funds:

- Costs for design and performance of a response action; or
- Costs for monitoring of a natural resource (e.g., soil, groundwater) for contamination.
- Expenses for site cleanup activities under CERCLA § 104(k)(3)(A)(ii);
- Voluntary cleanup program or state cleanup program fees associated with the site remediation;
- Costs required to purchase insurance if the purchase of such insurance is necessary to carry out cleanup activities;
- Costs incurred for complying with procurement provisions of 40 C.F.R. Part 31 as applicable.
- Costs for performance and programmatic financial reporting required under 40 C.F.R. §§ 30.51-30.52, and 40 C.F.R. §§ 31.40-31.41;
- Costs associated with monitoring the health of populations exposed to hazardous substances from a brownfields site (limited to local government grantees); and

- Costs associated with meeting public participation, community notification, worker health and safety, and programmatic management requirements.

COLLATERAL OPTIONS

A variety of financial resources are acceptable repayment sources for a loan under the RLF Program. They include bonds backed by property taxes, tax increment financing (“TIF”), or local option income taxes. Private and non-profit borrowers may be able to securitize a loan under the RLF Program through a mortgage or with a letter of credit (“LOC”). If an LOC is pledged to the Coalition as collateral for an RLF Loan, the LOC and issuing bank need to be pre-approved by the Coalition before loan closing.

MAXIMUM AMOUNT OF LOAN AND LEVERAGE REQUIREMENTS

The actual loan amount will be determined on an individual basis. The Coalition will recommend a maximum loan amount based on analysis of the loan application and cost of cleanup activities. Factors to be considered may include but not limited to, financial feasibility, ability to repay, collateral, nature of the project, project scale, and public benefit.

A comprehensive cleanup and reuse/redevelopment project financing may include RLF, Section 108 Loan, private banks, Small Business Administration (SBA), US Department of Agriculture (USDA) or other institutional funds or industrial revenue bonds. Total project financing will require at least 10% equity from borrower in cash or property value. If RLF is the only loan participating in financing the project, then borrower equity must be at least 20%.

INTEREST RATES

The interest rate is the amount of interest charged to the applicant for the loan. The RLF Program interest rates will be determined on a project-specific basis, but will be set below the current market rate.

MATCHING COST REQUIREMENT

The borrower will be requested to provide matching costs of at least 20% of the amount of the total loan. This match must come from payment of eligible RLF Program activities. Each specific match amount will be determined on a project-specific basis.

TERMS

The term (payback period) is negotiable and will be established according to the applicant’s eligibility and/or need. There is no penalty for prepayment of the loan.

DISBURSEMENT PROCEDURES

Loan disbursements will be made by the Coalition to the borrower under the following conditions:

- Prior to any disbursement, the Coalition must receive and approve invoices for work performed and are consistent with RLF Program-approved activities.
- The borrower will provide a written disbursement request with copies of 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 the disbursement request to the Coalition.
- Disbursements will not be processed more often than once monthly.
- The borrower shall remit each disbursement to the firm or individual to whom payment is due within 15 days unless otherwise approved by the Coalition.
- Expenses that have been incurred prior to loan closing cannot be reimbursed.

LOAN REVIEW COMMITTEE (LRC) APPROVAL

After determining that the project and the applicant qualify for an RLF Program Loan, the Coalition's Loan Review Committee (LRC) will review the complete Financing Package, including all of the supportive documentation and any firm Letters of Commitment from the other participating lenders for the project. The LRC shall approve or disapprove the loan application.

NON-REFUNDABLE FEES

- A non-refundable application fee at time of submittal shall be 0.500% of total loan request or a minimum of \$500, whichever is greater.
- An origination and administration fee of 3% of the loan is payable at closing and is eligible to be included in the principal balance.
- The applicant will be responsible for all other fees, including bank/SBA/independent institutional lender fees, inspection fees, appraisal and environmental fees, and legal fees from outside firms. Applicants will receive a Good Faith Estimate of the projected RLF Program fees, which may or may not be adjusted at closing.

PAYMENT SCHEDULE

Repayment terms for loans may be structured for repayment from 5 to 15 years based on standard underwriting practices. The payments will start upon disbursement of funds, unless the Coalition determines that delay in initial repayment is appropriate. There is no prepayment penalty.

Loan payments shall be made directly to the Coalition. Loan payments are due on the first (1st) of the month, with a late fee of five percent (5%) of the payment due with any payment received on or after the tenth (10th) day of the month.

Monthly remittances to the Coalition shall be mailed to the following address:

City of Wilson
Planning and Community Revitalization Department
ENC Brownfields Coalition-RLF Program
P.O. Box 10
Wilson, NC 27894

DELIQUENCIES

Collection procedures for delinquent loans will include, but are not limited to:

- Written notification of late fee assessment.
- Written reminder notices of delinquency to the borrower at fifteen (15) and thirty (30) days delinquent.
- Follow-up reminder notices with telephone contacts with the borrower at thirty (30) days delinquent and as necessary thereafter.
- Personal contact with the borrower after thirty (30) days delinquent and on-site inspections of the project.
- Notification of Default at sixty (60) days delinquency. Exercise of remedies per loan documentation.

UNDERWRITING

In considering an application for a loan, the Coalition will perform a detailed underwriting that will include, but not limited to, a review and analysis of:

- Business history and redevelopment project concept and viability
- Business structure, management and staffing
- Historical and projected financial statements
- Credit history
- Collateral evaluation

CLOSING PROCEDURE AND COSTS

The Coalition will prepare closing documents. Draft documents will be available at least ten (10) working days prior to closing. All conditions cited in the loan agreement must be satisfied prior

to closing. If the Coalition determines an environmental review is necessary, closing will be delayed until the completed assessment can be delivered, reviewed and approved by the Coalition.

In order to prevent delays in closing, the borrower is responsible for the following costs, some of which may be financed as part of the loan (if requested at time of application):

- Credit reports on individuals and company
- Title commitment and policy
- Uniform Commercial Code (UCC) filing fees for property and equipment
- Recording fees for real estate
- Appraisal and valuation fees
- Environmental site assessments (not eligible for financing)
- Application and origination fees as determined by the Coalition, in no case exceeding three and one-half percent (3.5%) in combination.
- Professional fees
- Tax certificates
- Hazard insurance, with the Coalition named as loss payee
- Flood insurance if the property is located in a flood or mud slide hazard area, as designated by the Federal Insurance Administration of the Department of Housing and Urban Development
- Fees associated with NCDENR Brownfields Agreement (if applicable)

COMPETITIVE BIDDING

Applicants must demonstrate that services to be reimbursed with RLF Program funds have been/will be competitively bid in accordance with 40 CFR 31. The Coalition may assist in developing bid specifications for work to be performed with RLF Program funds. Applicants that do not submit detailed information demonstrating a competitive bidding process with their RLF Program Loan applications will be required to do so with funding disbursement requests.

CROSS CUTTING REQUIREMENTS

Appendix E contains a list of Federal laws and authorities subcategorized as economic and social authorities that may apply to projects or activities receiving assistance through this RLF Program. The Coalition in conjunction with Region IV Office of EPA will provide additional guidance on applicability of specific cross-cutting requirements on a case-by-case basis. Those cross-cutting requirements deemed applicable to a specific project will be included as loan conditions.

REPORTING BY THE BORROWER

The specific borrower reporting requirements/frequency will be determined at the time of closing. They include:

- Reports on the cleanup that document that they are in compliance with all relevant Federal and State environmental regulations and that they meet the requirements of the ENCBC-RLF Program. This will include any necessary forms to demonstrate compliance with pertinent requirements such as to seek minority- and women-owned businesses when choosing contractors.
- Financial statements including basic accounting and control mechanisms to track legitimate use of funds and document that the funds are put to authorized uses. Borrower accounting system must track cost by activity and operable unit, if applicable.

RECORD KEEPING BY THE BORROWER

The borrower must document their use of funds and provide financial records to the RLF Program on a regular basis.

- Institute and maintain a reporting system to the recipient that incorporates basic accounting and control mechanisms to ensure legitimate use of funds.
- Document use of funds and only use RLF Program funds for eligible activities.
- Possess adequate collateral and repay funds within the terms of the loan agreement.
- Provide financial records and documentation to the Coalition on a regular basis.
- Keep records of compliance with the terms and conditions of the loan including applicable federal and state requirements.
- Comply with applicable statutory requirements, such as the Davis-Bacon Act and the Uniform Relocation Act, and federal cross-cutters as outlined above.
- Provide documentation of compliance with relevant federal and state regulations.
- Comply with all applicable federal and state requirements to clean-up the contamination to levels that protect public health and the environment in accordance with the intended reuse, safely supporting redevelopment of the former brownfields.
- Comply with requirements for Institutional Controls.
- Maintain and provide access to records for three (3) years after the end of the RLF Programs period of performance (September 30, 2019), completion of an ongoing audit, or for the length of the individual loan, whichever is the longest retention period.
- Maintain project accounts in accordance with GAAP standards.

COMMUNITY INVOLVEMENT REQUIREMENT

A borrower is required to provide the community with an opportunity for public comment prior to issuing its decision document that selects the final clean-up action for the site and plans for redevelopment. An important aspect of community involvement is allowing the public to comment on the various required environmental documents drafted in preparation for the site, and any comments must be considered as part of the final clean-up decisions. A Community Involvement Plan must be developed for each site receiving a loan through this program. The plan will be site specific and will, therefore, be developed only after a redevelopment project has been selected to receive monies from the RLF Program. Guidelines and a template for a Community Involvement Plan can be found at www.epa.gov/superfund/community/toolkit.htm.

The borrower must adhere to the following public notice requirements:

- Provide public notice of the availability of the administrative record, which includes the ABCA and site-specific community involvement plan, and other documents that provide the basis for the proposed cleanup. The notice may be placed in a major local newspaper of general circulation, on the Internet, or similar measure to inform the general community and target area of the availability of the administrative record for public review;
- Provide reasonable opportunity, typically 30 days, for written and oral comments on the administrative record and other documents; and
- If deemed appropriate by the Program, the borrower, or that state/tribal response program; a meeting may be held during the public comment period to discuss the proposed clean-up and solicit comments from interested parties.
- Response to public comments (acknowledged in the decision document).

U.S. EPA COOPERATIVE AGREEMENT

The terms and conditions contained in the U.S. EPA Cooperative Agreement (“CA”), through which the RLF Program awards funds, are extended to a borrower through its Loan Agreement. Therefore, the Coalition advises Applicants to familiarize themselves with the terms and conditions of the CA to ensure an understanding of the federal requirements and obligations associated with the use of RLF Program Funds. For example, use of RLF Program Funds must comply with federal “cross-cutting” requirements, such as Davis-Bacon prevailing wage rates determined by the U.S. Department of Labor. A copy of the CA can be obtained on the RLF Program’s website at www.ctcbrownfields.com/wilson.

SUB-GRANTEE REQUIREMENTS

Eligible sub-grantees are limited to states, political subdivisions, U.S. territories, Indian tribes, and non-profit organizations that own the site they intend to clean up and must retain ownership at the time the funds are awarded and throughout the period of performance of the sub-grant. Eligible entities are responsible for complying with eligible fund uses and documenting all fund uses as required by the RLF Program.

In addition to the RLF application, the sub-grantee must document the extent to which the sub-grant will:

- Facilitate the creation or preservation of greenspace;
- Benefit the needs of low income communities who have limited sources of funding for environmental remediation and redevelopment;
- Facilitate the use of existing infrastructure; and
- Promote the long-term use of RLF funds.

The sub-grantees must document their use of funds and provide financial records to the RLF Program on a regular basis.

- Document use of RLF funds complies with all applicable federal and state clean-up requirements and applicable EPA grants regulations.
- Non-profit and educational institutions must comply with the Office of Management and Budget Circulars, *A-122 Cost Principles for Non-Profit Organizations* and *A-21 Cost Principles for Educational Institutions* respectively.
- Government sub-grantees must comply with Office of Management and Budget Circular, *A-87 Cost Principles for State, Local, and Indian Tribal Governments*.

APPLICATION PROCEDURE/REVIEW

1. Pre-Application

Before an application is prepared, the applicant should schedule a pre-application appointment with a Brownfields Program Manager. Staff will collect preliminary information from the applicant and other sources to determine, to the maximum extent possible, that the potential borrower and project are eligible. This first step in the loan selection process will be a staff review of the proposed activity to screen for conformance with the objectives and guidelines of the program.

2. Loan Application

The ENCBC RLF loan applications and guidance will be provided upon request to applicants. The applicant will submit a completed ENCBC RLF loan application to the Coalition for eligibility review. The Brownfields Project Manager will review the loan application for borrower and project eligibility and to ensure all required documents are submitted and complete.

3. Financial Review

The Brownfields Project Manager, with assistance from the Financial Services Department, will review the application forms, financial documents, credit reports, as well as, the budget feasibility analysis provided by the applicant.

4. Brownfields Loan Review Committee

The Brownfields Loan Review Committee will review all required loan paperwork and make a decision to fund or not fund an application. It is the goal of the RLF Program to approve or deny

an application within 45 working days of receipt of the application. The applicant shall be notified in writing of the decision of the Brownfields Loan Review Committee.

APPLICATION PACKET

Please follow the instructions provided on the “Application for Brownfield RLF Program Loan” available on the Coalition’s website at www.ctcbrownfields.com/wilson. All Applicants must complete and submit to the Coalition the following information:

- 1. One fully completed ENCBC RLF application**
- 2. Applicant Eligibility**
 - Supporting documents demonstrating the applicant’s organizational status (pgs 8-10) and exemption from CERCLA liability (Appendix A – if not completed during pre-application meeting).
- 3. Site Eligibility**
 - ESA Phase I and II reports
 - North Carolina Brownfields Agreement
 - Property Specific Determination Eligibility Criteria (Appendix D – if applicable)
 - Confirmation from NCDENR of required form for asbestos abatement activities, if RLF funding will be used
 - Petroleum Eligibility Determination (Appendix C – if applicable)
- 4. Site Access**
 - A Site Access Agreement from the current property owner of the brownfield (if not owned by the Applicant) granting permission to the Coalition, NCDENR, EPA consultant(s), the Applicant, and any other respective representatives or agents to access the site for the duration of the clean-up activities (Site Access Agreement template provided in Appendix B).
- 5. Planned Clean-up Activities**
 - Remedial Action Plan Summary (pg 13); and
 - Redevelopment Plans (pg 13); and
- 6. Financial Evaluation**
 - Financial Plan; and
 - Documentation of a minimum of three (3) competitive bids for services to be reimbursed with RLF Program Funds; and
 - Executive Summary of Business Plan (pg 13); and
 - Most recent audit statements from the State or independent; and

- An ordinance or resolution authorizing the Applicant to enter into a Loan Agreement and designating the source of repayment; and
- Feasibility study if the repayment source includes revenues; and
- Business federal tax returns for the past three (3) years; and
- Federal tax returns for each principal owner listed in Section III of the application for the past three (3) years; and
- Personal Financial Statement; and
- Interim Financial Statement; and
- Accountant prepared business financial statements:
 - Profit and Loss statements for past three (3) years; and
 - Balance sheet statements for the past three (3) years; and
 - Cash flow projections for two (2) years; and
 - Cash flow for the past three (3) years.
- Quotes for purchase or collateral appraisal documents

Additional information related to financial solvency or feasibility of pledged source of repayment may be requested of an Applicant, if necessary for the Coalition to approve a loan.

7. Costs

- Application fee.

8. Other

- Management resumes; and
- Sub-grantee supporting documentation (see page 21).

APPENDICES

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APPENDIX A

APPLICANT AND SITE ELIGIBILITY QUESTIONNAIRE

RLF funds may not be used to pay for response costs at a brownfield site for which an Applicant is potentially liable under CERCLA § 107 or at a site that fails certain eligibility criteria discussed in the RLF Program Guidelines. The following questions are intended to help the Program ensure that the Applicant is not liable under CERCLA (or applicable state laws pertaining to hazardous substance and petroleum contamination) for response costs at the site designated in its application, and that the site itself does not fail eligibility requirements. Please type your answer to the following questions fully, as applicable, and in the order they appear on a separate sheet of paper.

NOTE: based on the responses, and as mentioned in the RLF Program Guidelines, the Coalition may need to obtain additional information in order to make the determination of applicant and site eligibility required by the U.S. EPA.

1. Responsible Party. Affirm that the Applicant is not potentially liable for contamination at the site under CERCLA § 107 (e.g., as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of a hazardous substance, a party that arranged for the treatment or disposal of hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) and explain why.²
2. Enforcement Actions. Identify known ongoing or anticipated state or federal environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the Applicant is aware of regarding the responsibility of any party (including the Applicant) for the contamination at the site. The information provided in this section may be verified, and the Program may conduct an independent review of information related to the Applicant's responsibility for the contamination of the site.
3. Information on Liability and Defenses/Protections.
 - a. Information on the Property Acquisition. (To save space, the information in subsections i-v below may be combined into one response, though please be sure to completely address each question). Describe:

² Because current owners of sites are potentially liable under CERCLA, Applicants who own the site (or plant to acquire the site) must be able to meet the requirements of one of the CERCLA landowner liability protections, such as the bona fide prospective purchaser provision (CERCLA § 107 (r)), the innocent landowner defense (CERCLA § 107 (b)(3) and 101(35)(A)), or the exclusion for state or local governments that involuntarily acquire property (CERCLA § 101(20)(D)).

- i. How the Applicant acquired or will acquire ownership (e.g. by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
 - ii. The date the Applicant acquired or will acquire the property;
 - iii. The nature of the Applicant's ownership (fee simple or other), if applicable;
 - iv. The name and identity of the party from whom the Applicant acquired ownership (i.e. the transferor), if applicable;
 - v. All familial, contractual, corporate or financial relationships or affiliations the Applicant has or had with all prior owners or operators (or other potentially responsible parties) of the property (including the person or entity from which the Applicant acquired the property).
- b. Timing of Hazardous Substance Disposal. Identify whether all disposal of hazardous substances at the site occurred before the Applicant acquired (or will acquire) the property and whether the Applicant caused or contributed to any release of hazardous substances at the site. Affirm that the Applicant has not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances to the site.
- c. Pre-Purchase Inquiry. Describe any inquiry by the Applicant or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership. Please include in the description:
- i. The types of site assessments performed (e.g. ASTM Phase I or equivalent), the dates of each assessment,³ and the entity for which they were performed (state whether the assessment was performed specifically for the Applicant, or if not, the name of the party that had the assessment performed and that party's relationship to the Applicant); and
 - ii. Who performed the assessments and identify his/her qualifications to perform such work.
- d. Post-Acquisition Uses. Describe all uses to which the property has been put since the Applicant acquired ownership (or the uses that the Applicant anticipates once it acquires the property) through the present, including any uses by persons or entities other than the Applicant. Please provide a timeline with the names of all current and prior users during the time of the Applicant's ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to

³ Please note that if the Applicant's Phase I assessment was conducted more than 180 days prior to the date it plans to purchase the property, the Applicant will need to update certain aspects of the Phase I in order to take advantage of the bona fide prospective purchaser provision. If this is the case, please affirm that the Applicant has or will conduct the appropriate updates within 180 days of purchase.

which the use was claimed or taken (e.g. lease, license, trespass); and the Applicant's relationship to the current and prior users.

- e. Continuing Obligations.⁴ Describe in detail the specific appropriate care that the Applicant exercised (or if the property is yet to be acquired, that the Applicant will exercise upon acquiring the property) with respect to hazardous substances found at the facility by taking reasonable steps⁵ to:
 - i. Stop any continuing releases;
 - ii. Prevent any threatened future release;
 - iii. Prevent or limit exposure to any previously released hazardous substance.
- f. Please confirm your commitment to:
 - i. Comply with all land use restrictions and institutional controls;
 - ii. Assist and cooperate with those performing the cleanup and to provide access to the property;
 - iii. Comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
 - iv. Provide all legally required notices.

⁴ Owners of contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, owners must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices.

⁵ Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously-released hazardous substances may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site. Program technical staff are available to discuss reasonable steps for a site should an Applicant require assistance to determine the reasonable steps required at the brownfield.

APPENDIX B
SITE ACCESS AGREEMENT
PERMISSION TO ENTER PROPERTY
EASTERN NORTH CAROLINA BROWNFIELDS COALITION
REVOLVING LOAN FUND

This Site Access Agreement (“Agreement”) is made by and between [*insert property owner*] (“Owner”), and [*insert applicant*] (“Borrower”) regarding the Owner’s property located at [*insert address*] (“Site”), Eastern North Carolina Brownfields Coalition RLF Program (“Program”) Site Identification Number [*insert site number*]. The Borrower requests permission to enter the Site for the exclusive purposes of conducting environmental remediation and cleanup activities.

1. Owner hereby gives permission to Borrower, or the Borrower’s agents or assigns (including, but not limited to, the Borrower’s employees, authorized environmental consultants and/or contractors, Eastern North Carolina Brownfields Coalition (“Coalition”) staff, or other designees authorized by the Borrower (collectively, “Authorized Parties”) to enter upon the Site to perform remediation and cleanup activities at the Site. This permission is effective immediately upon the execution of this Agreement by Owner and the Borrower.
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. [*Activities TBD*]; and
 - b. Disclosure of environmental information as required by law.
3. Upon completion of remediation and cleanup activities, 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. To the extent permitted by law, the Borrower agrees to indemnify, defend and hold harmless, the Owner, the State, the Coalition and their staff, officers, and employees from

any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and suits, including (but not limited to) court costs, attorney's fees and other costs and expenses arising out of or related to the acts or omissions of the Borrower, its agent or assigns (including, but not limited to, the Borrower's employees, authorized environmental consultants and/or contractors, or other designee authorized by the Borrower that is not a State agency or related State government entity) 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. Neither the State nor the Coalition is providing any indemnification, either jointly or severally, to the Owner of the Borrower or its agents, assigns or designees.

8. The Program will supply to Owner all information derived from the remediation and cleanup activities conducted at the Site. The Borrower may use such information for any purpose at the Borrower's sole discretion. Information will be held in confidence except as instructed by the Owner, the Borrower, 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 Borrower's RLF Loan.

Site Owner (please print name)

Site Owner Signature

Date

Witness (please print name)

Witness Signature

Date

Site Owner Phone Number: _____

Site Owner Mailing Address: _____

For the benefit of: [insert name of Borrower here]

Borrower Signature

Date

[insert Borrower name here]

[insert Borrower title here]

Accepted by the Eastern North Carolina

Brownfields Coalition RLF Program by:

 [insert name of Coalition staff here]

Coalition Staff Signature

Date

[insert Coalition staff name here]

[insert Coalition staff title here]

APPENDIX C

PETROLEUM ELIGIBILITY DETERMINATION CRITERIA

The information below in Part I is intended to assist the Applicant in answering the Questions in Part II relating to petroleum-contaminated sites (not commingled with hazardous substances contamination). If a site satisfies the criteria discussed below, it may be determined by the U.S. EPA or the RLF Program to be eligible for an RLF loan.

Part I

“Relatively Low Risk”

U.S. EPA’s view is that the following types of petroleum-contaminated sites are high risk sites, or are not of “relatively low risk”:

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

The RLF Program also searches State databases for the status of petroleum contaminated sites with respect to other State remediation and/or enforcement programs. Any site that does not fall under the provisions listed by U.S. EPA above, or about which the RLF Program has obtained no information suggests the site is of a “high risk” nature, would be considered to be of relatively low risk for purposes of determining eligibility for an RLS loan.

“A Site for which there is No Viable Responsible Party”

If U.S. EPA or the RLF Program identifies a party that is responsible for the site, and that party is financially viable, then the site is not eligible for an RLF loan. This analysis is twofold; U.S. EPA or the Program 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 an RLF loan 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; or

- 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 cleanup of the site.
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.⁶

If no responsible party is identified above, then the petroleum contaminated site may be eligible for an RLF loan. If a responsible party is identified above, U.S. EPA or the Program must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum contaminated site is not eligible for an RLF loan. If there is a responsible party for the site, the Applicant should explain in its application what steps it took to determine a responsible party's financial status, and why the information presented indicates that the responsible party is not viable. U.S. EPA and the Program will consider a party to be viable if the party is financially capable of satisfying obligations under federal or State law to conduct the activity (i.e., assessment, investigation, or cleanup) identified in the application. Generally, U.S. EPA and the Program will consider ongoing businesses or companies (corporations, LLC's, partnerships, etc.) and government entities to be viable. U.S. EPA and the Program will generally deem a defunct or insolvent company and an individual responsible party to be not viable. U.S. EPA will apply these assumptions to its petroleum funding viability determinations, unless there is information suggestions that the assumption is not appropriate in a particular case (e.g., if there is information that an individual has adequate financial resources to address contamination at a site, or if there is information indicating an ongoing business is not, in fact, viable). An Applicant should indicate in its application if one of the above assumptions applies and provide support for the assertion. In circumstances not covered by one of the above assumptions, the Applicant should explain why the responsible party is not viable.

“Cleaned Up by a Person Not Potentially Liable”

RLF funds may be awarded for the cleanup of petroleum contaminated sites provided:

1. The Applicant has not dispensed or disposed of or owned the property during the dispensing or disposal 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.

⁶ 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 U.S. EPA’s March 6, 2003, “*Common Elements*” guidance.

Part II

In order to demonstrate satisfaction of the required criteria for a petroleum eligibility determination, please provide written answers to the questions below as a part of your application.

1. Is the site currently being cleaned up using Leaking Underground Storage Tank (LUST) trust fund?
2. Is the site subject to a response action under the Oil Pollution Act (OPA)?
3. Was the site last acquired (regardless of whether the site is owned by the Applicant) through tax foreclosure, abandonment, or equivalent government proceedings?
4. Is the Applicant aware of any of the following?
 - a. A judgment in a court of law or an administrative body that would require that party assess, investigate or remediate the site?; or
 - b. A filed enforcement action brought by federal or state authorities, or is party to a citizen suit, that would, if successful, require that party to assess, investigate or clean up the site?; or
 - c. A citizen suit, contribution actin 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 remediation of the site?
5. Did the current and immediate past owner (and Applicant, if not an owner) dispense or dispose of, or own the subject property during the dispending or disposal of, any contamination at the site?
6. Did the current and immediate past owner (and Applicant, if not an owner) exacerbate the contamination at the site? If not, did the current and/or immediate past owner (and Applicant, if not an owner) take reasonable steps with regard to the contamination at the site?
7. If underground storage tanks (USTs) were operated on the site and are the suspected source on the petroleum contamination on the site, when was operation of the USTs discontinued?
8. If Applicant is aware of a responsible party for the site, is that party financially capable of satisfying obligations under federal or state law to conduct cleanup activities? Is the responsible party an ongoing business or company (e.g., corporation, LLC, partnership, etc.) or a governmental entity? Or, is the responsible party an individual or an insolvent, bankrupt or defunct company? Please provide any available information regarding the party potentially liable to cleanup petroleum contamination at the site (e.g., types and duration of site operations, etc.).

APPENDIX D

PROPERTY SPECIFIC DETERMINATIONS ELIGIBILITY CRITERIA

As outlined in the RLF Guidelines, certain types of sites are categorically ineligible to receive RLF funds. Others, however, may be eligible for a property specific determination of eligibility for funding. The question posed below will help the Program determine the eligibility for your site for use of RLF funds.

Ineligible Brownfield Sites

Please answer the following questions “YES” or “NO”. If the answer to any question is “YES”, the site is ineligible for an RLF loan.

1. Is the site currently listed or proposed for listing on the National Priorities List?
2. Is the site subject to the jurisdiction, custody, or control of the U.S. government (except for land held in trust by the U.S. for an Indian tribe)?
3. Is the site subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA?
4. Is the site an open or pending State or federal administrative or judicial enforcement action?
5. Does the site present an imminent threat to human health or the environment?

Otherwise Ineligible Sites that May Obtain a Property-Specific Determination

Please answer the following questions “YES” or “NO”. If the answer to any question is “YES”, the site may be eligible for a property-specific determination of eligibility if the Applicant fulfills the requirements for demonstrating that the site meets the criteria for a property-specific determination for funding.

1. Is the site subject to planned or ongoing removal actions under CERCLA?
2. Is the site subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees, or to which a permit has been issued by the U.S. government or an authorized state under the Resource Conservation and Recovery Act (“RCRA”), the Federal Water Pollution Control Act (“FWPCA”), the Toxic Substances Control Act (“TSCS”), or the Solid Waste Disposal Act (“SWDA”)?
3. Is the site subject to corrective action orders under RCRA § 3004(u) or 3008(h) and to which a corrective action permit or order has been issued to require the implementation of corrective measures?
4. Is the site a land disposal unit that has filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit?

5. Is the site one where there has been a release of polychlorinated biphenyls and all or part of the site is subject to remediation under TSCA?
6. Is the site one for which funding for remediation has been obtained from the LUST trust fund?

If the answer to any of the above listed questions is “YES”, the RLF Program and U.S. EPA may still determine that the site qualifies for funding if the expenditure of brownfield funding at the site will: 1) protect human health and the environment, and 2) either promote economic development, or enable the creation, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for non-profit purposes.

If your site requires a property-specific determination, submit with your application an explanation, in as much detail as possible, why the availability of brownfields funding will protect human health and the environment and promote economic development or the creation or preservation of greenspace (or other listed objectives). Such documentation should include information such as the following:

As it pertains to human health and the environment:

1. Specific examples of health risks that will be mitigated;
2. Specific environmental improvements that can be anticipated to result from cleanup;
3. Specific examples of contamination that will be addressed and the environmental media that will be address;
4. Description of how the proposed clean up and redevelopment will ensure protection of human health and the environment and that protectiveness of t remedy consistent with the planned reuse of the site.

As it pertains to economic development:

1. Description of economic development activities that can reasonably be expected to occur as a result of RLF loan funding (e.g., number of jobs created, estimated increase in the property and/or profits/sales tax base to community, additional business expansion or new business relocation that may occur within the community);
2. Description of how the redevelopment of the site will contribute to community-wide redevelopment and revitalization plans with a specific emphasis on how funding for the brownfield redevelopment is integral to the success of the community-plan;
3. Description of new businesses or business expansions that are planned for the site.

As pertains to creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for non-profit purposed:

1. Description of the proposed park, recreational property, greenspace, undeveloped space, or other type of property to be used for non-profit purposed, including size, use, and surrounding environment that will be preserved or created as a result of RLF loan funding;

2. Description of how the property will be used and by whom;
3. Description of how the property will be integrated with surrounding properties or environments;
4. Description of how the property will be maintained or preserved for its continued use as a greenspace, recreational area, etc.

APPENDIX E

CROSS CUTTING REQUIREMENTS

Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549
- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as amended
- Davis Bacon Act, as amended (40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222)

Social Policy Authorities

- Age Discrimination Act of 1975, Pub. L. 94-135
- Anti-Lobbying Provisions (40 C.F.R. Part 30)
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333) and the Anti-kickback Acts, as amended (40 U.S.C. 276c), (18 U.S.C. 874)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)
- Equal Employment Opportunity, Executive Order 11246
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

APPENDIX F

THE DAVIS-BACON ACT AND BROWNFIELDS

By their design, EPA Brownfields grants depend upon the efforts of a wide range of participant, including public-and private-sector entities who finance transformation of brownfields sites, as well as the individual workers and laborers on the front lines of cleanup and redevelopment. The U.S. government has laws in place to ensure that any worker involved in a federally-funded public works project is compensated in a fair and timely manner. This legislation, known as the Davis-Bacon Act, applies to EPA-funded brownfields cleanup activities and projects funded under EPA Brownfields Cleanup and Revolving Loan Funds (RLF) grants.

For more detailed information, including copies of explanatory brochures and regulatory and interpretative materials, please refer to the links below or contact your local Wage and Hour Division office (a list of local Wage and Hour Division offices is available at <http://www.dol.gov/esa/whd/america2htm>). A Wage and Hour Division help line is also available at 1-866-4US-WAGE (487-9243).

RELATED LINKS

Davis-Bacon and Related Acts Home Page at the U.S. Department of Labor
<http://www.dol.gov/esa/whd/programs/dbra/index.htm>

Davis Bacon Act Compliance Guide
(U.S. Department of Labor's Office of Compliance Assistance Policy)
<http://www.dol.gov/compliance/guide/dbra.htm>

Additional Davis-Bacon Wage Determination Reference Material
<http://www.access.gpo.gov/davisbacon/referencemat.html>