

**COLORADO BROWNFIELDS REVOLVING
LOAN FUND**

PROGRAM GUIDELINES

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PURPOSE AND SCOPE

The purpose of the Colorado Brownfields Revolving Loan Fund (CBRLF) is to facilitate the reuse and/or redevelopment of contaminated sites by making low cost funding available for financing environmental cleanups.

Brownfields are defined as abandoned, idled, or under-utilized industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. A major barrier to redeveloping Brownfields sites in the Colorado Front Range area is the fact that contaminated sites have marginal economic feasibility after considering remediation costs. Even in the growing Colorado real estate market, properties are being avoided because of liability and cleanup cost concerns.

The Cities of Commerce City, Englewood, Lakewood, Loveland, and Denver, the Colorado Housing and Finance Authority (CHFA) and the Colorado Department of Public Health and Environment (CDPHE) have agreed to cooperate and to create the Colorado Brownfields Revolving Loan Fund.. The initial focus of this fund will be to finance environmental cleanups along the Colorado Front Range within the five cities.

In general, CHFA and the other partners will be responsible for outreach and marketing the CBRLF. CHFA, acting as the *fiscal agent* for the state, will provide financial expertise, while the Colorado Department of Public Health and the Environment (CDPHE) will manage the cooperative agreement and will provide the technical knowledge needed to insure successful environmental cleanups.

SUMMARY

The Colorado Brownfields Revolving Loan Fund (CBRLF) pilot program will accomplish its purpose in two ways. First, it will provide loans to carry out cleanups in the metropolitan Denver area. Second, the experience gained from this pilot will provide important information and lessons about how to structure, establish and operate coalition revolving loan funds to effectively support Brownfields cleanup.

Similar revolving loan funds, such as those supporting investments in wastewater treatment, drinking water and general economic development, typically are capitalized with a combination of Federal, State and/or local funds. Through the provision of direct loans, usually at below market interest rates, such revolving loan funds are able to become self-sufficient sources of capital funds for targeted purposes (i.e., in the case of CBRLF pilot program, Brownfields cleanups). The fund *revolves* by using loan repayments (principal and interest) and other program income to provide new loans and other assistance for authorized purposes. If properly managed, such funds can operate in perpetuity.

SECTION I ELIGIBILITY/LOAN TERMS

SECTION 1.1 ELIGIBLE BORROWERS

In order to be eligible for a loan under the program, a potential borrower must meet the following qualifications:

- A. The borrowing entity may not be one which has defaulted or is owned in whole or in part by any individual or entity who has defaulted on any loan made with federal funding or under any program administered by the State.
- B. The borrower must not be a generator or transporter of hazardous materials at the subject site.
- C. The borrower must certify that they are not currently, nor have been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
- D. Someone who has been suspended, debarred, or otherwise declared ineligible cannot be a borrower.
- E. For the site that the borrower seeks to borrow money, the lead agency can determine that the borrower, as the owner/operator, would fall under a statutory exemption from liability, or that the U.S. EPA could use its enforcement discretion and not pursue the party under CERCLA.

SECTION 1.2 ELIGIBLE USES OF LOANS

The CBRLF pilot program is funded as a demonstration project through a grant from the Environmental Protection Agency's Brownfields Program. The funds used in this program have been designated by the U. S. Environmental Protection Agency for **cleanup activities** only.

Acceptable CBRLF activities include (but may not be limited to) cleanup actions associated with removing, mitigating or preventing the release or threat of a release of a hazard substance, pollutant, or contaminant, including:

- >Fences, warning signs or other security or site control precautions;
- >Drainage controls;
- >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;
- >Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;
- >Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; and,
- >Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

The Fund may be used for removal activities, including demolition and/or site preparation that are part of site cleanup. CBRLF funds may not be used for pre-cleanup environmental response activities, such as site assessment, identification, and characterization.

The loan funds may also be used for the purchase of Environmental Insurance.

SECTION 1.3 ELIGIBLE SITES

The CBRLF is limited to use on site that have an actual release or substantial threat of release of a hazardous substance to the environment. The funds may also be used to address releases or substantial threat of release of a pollutant or contaminant that may present an imminent or substantial danger to public health or welfare.

Funds may be used at the following types of sites:

- C Publicly-owned, either directly by a municipality or indirectly through a quasi-public entity such as a community development corporation; and

- C Privately-owned and with clear means of recouping CBRLF expenditures (e.g., through an agreement with the owner or developer, or through a lien or other security interests) - this includes properties undergoing purchase by an entity who meets the definition of a prospective purchaser.

Funds may **not** be used at any of the following sites:

- C Property that is listed or proposed for listing on the National Priorities List;
- C Sites at which regulations require that a removal action must be taken within six months;
- C Property that is subject of a corrective action under orders or agreements issued pursuant to the Colorado Hazardous Waste Act (C.R.S. 25-16 Part 3) or Resource Conservation Recovery Act (RCRA);
- C A facility which has or should have a permit or interim status pursuant to the Colorado Hazardous Waste Act (C.R.S. 25-16 Part 3), for the treatment, storage, or disposal of hazardous waste;
- C Property that is subject to an order issued by or an agreement with the Colorado Water Quality Control Division pursuant to the Colorado Water Quality Control Act (C.R.S. 25-8, Part 6);
- C Property that is subject to the provisions of the Underground Storage Tank Program (C.R.S. 25-18 or C.R.S. 20-8);
- C Property where a federal or State agency is planning or conducting a response or enforcement action; and,
- C Property contaminated by petroleum products except to address a non-petroleum hazardous substance.

SECTION 1.4 LOAN TERMS

Loan terms are flexible and dependent upon project and borrower needs.

- A. Interest rates will be fixed and determined by the CBRLF and CHFA.
- B. There is no minimum size loan. Contact the CDPHE for the maximum size loan available.
- C. There are no prepayment penalties on loans.
- D. Collateral requirements are flexible and will be determined on a case by case basis.

SECTION 1.5 COMMUNITY INVOLVEMENT REQUIREMENT

Attachment A outlines a plan for involving the local community in clean-up decision making process. The borrower will be required to follow this plan as a condition of this loan.

SECTION 1.6 CROSS-CUTTING REQUIREMENTS

Attachment B contains a list of Federal laws and authorities sub-categorized as economic and social authorities that may apply to projects or activities receiving assistance through this loan program. It is unlikely that every law or regulation will apply to a particular project under consideration. The CBRLF in conjunction with the Region VIII Office of the Environmental Protection Agency will provide additional guidance on the 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.

SECTION II CLOSING LOANS

SECTION 2.1 ACQUISITION OF CBRLF COMMITMENT

In order to ascertain whether and under what terms and conditions the CBRLF will make a loan, the borrower must acquire a CBRLF Commitment. The process is shown graphically on Attachment C and is described as follows:

- A. The borrower should contact the CDPHE to determine if the borrower and the use of loan proceeds are eligible for participation under the Program. If the borrower intends to pursue a loan commitment from the CBRLF, a loan package containing as much of the following information as is available must be submitted to the CDPHE. Information not currently available may be submitted at a later date in accordance with a schedule agreeable to CDPHE.

Information Required From All Applicants

1. Loan Application. This includes a Certificate of Eligibility and an Affirmative Action Statement; forms for which, are included in the application package.
2. Complete written description of the Borrower's proposed project, the sources and uses of

funds, estimated collateral values if appraisals are not yet available, and the impact on job creation and retention, including the level of training necessary for such employment. Evaluations/appraisals will be necessary prior to closing.

3. Last three (3) years' of the Borrower's financial statements and tax returns. Included in the financial statements are the Income Statement, Balance Sheet, and Cash Flow Statement.
4. An interim financial statement no more than ninety (90) days old.
5. Two (2) years of financial projections, which must include an Income Statement, Balance Sheet, and Cash Flow Statement for each year.
6. A project plan
7. Tax Certificates. (Note: these are due at the time of loan closing)

Information Required From Start-up Businesses

8. A business plan is encouraged for all applicants, but is required for start-up operations, businesses without three years of operating financial statements, businesses changing product lines or services, or businesses proposing a major expansion.

Additional Information Requirements (Determined On a Case By Case Basis)

9. Personal financial statements no more than ninety (90) days old from all individuals with an ownership interest of twenty percent (20%) or greater may be required. Copies of the last filed federal income tax returns for those individuals.
10. Hazard insurance (if applicable), with the CBRLF as loss payee.
11. 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.

NOTE: The borrower may submit any bank's loan application package containing the equivalent information described above in lieu of submitting an official CBRLF application.

- B. After CDPHE's preliminary review, the package will be forwarded to the CBRLF Board of Director's for City review. Acceptable projects will then be forwarded to CHFA, acting as fiscal agent for the state, for financial review. CHFA's recommendation will then be presented to the CBRLF Board for a

final loan determination. If the loan is approved by the Board of Directors, a commitment will be issued and CHFA will underwrite the loan package.

SECTION 2.2 PREPARATION FOR LOAN CLOSING

The CHFA staff will prepare closing documents. Draft documents will be available at least ten working days prior to closing. All conditions cited in the Commitment must be satisfied prior to closing. If CBRLF determines an environmental review is necessary, closing will be delayed until the completed assessment can be delivered, reviewed and approved by the CBRLF.

CBRLF form documents will be used for all closings.

SECTION 2.3 CLOSING COSTS

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

- A. Credit reports on individuals and Dun & Bradstreet reports on company.
- B. Title commitment and policy.
- C. UCC filing fees for property and equipment.
- D. Recording fees for real estate.
- E. Appraisal and valuation fees.
- F. Environmental site assessments, if determined necessary by CBRLF.
- G. Commitment and origination fees as determined by the CBRLF, in no case exceeding one and one-half percent (1.5%) in combination.
- H. Professional fees.
- I. Tax certificates.
- J. Hazard insurance, with the CBRLF named as loss payee.
- K. 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.

- L. Voluntary Cleanup Program review.

SECTION III SERVICING OF LOANS

SECTION 3.1 PAYMENT PROCEDURES

- A. Loan payments shall be made directly to the CHFA. Loan payments are due 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 sixth (6th) day of the month.
- B. Monthly remittances to the CHFA shall be mailed to the following address:

Colorado Housing and Finance Authority
Colorado Brownfields Revolving Loan Fund
1981 Blake Street
Denver, CO 80202-7363

SECTION 3.2 ONGOING REPORTING BY THE BORROWER

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

- A. reports (possibly as often as quarterly) 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 CBRLF. This will include any necessary forms to demonstrate compliance with pertinent requirements such as to seek minority- and women-owned businesses when choosing contractors.
- B. financial statements (possibly as often as quarterly) including basic accounting and control mechanisms to track legitimate use of funds and document that the funds are put to authorized uses. Borrowers accounting system must track site-specific cost, and track cost by activity and operable unit if applicable. Financial statements are considered to be: (i) Income Statements; (ii) Balance Sheet; and (iii) Cash Flow Statement.
- C. additional reports as necessary.

SECTION 3.3 RECORD KEEPING

The borrower must keep records of compliance with the terms and conditions of the loan and must agree to maintain all records on file for a minimum of ten (10) years from the end of the loan term.

SECTION 3.4 DELINQUENCIES

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

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

SECTION IV - REMEDIATION PLANS

SECTION 4.1 VOLUNTARY CLEANUP PROGRAM APPLICATION

Borrower will be responsible for submission and approval of a Voluntary Cleanup Plan to the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (HMWMD), under the Voluntary Cleanup and Redevelopment Act (C.R.S. Title 25, Article 16, Part 3).

SECTION 4.2 ENGINEERING EVALUATION/COST ANALYSIS

In addition to the Voluntary Cleanup application, the Borrower must submit to the HMWMD an evaluation of the effectiveness, feasibility and cost of alternatives that would satisfy the CBRLF objectives. The engineering evaluation/cost analysis must include a schedule of activities for the cleanup action.

SECTION 4.3 CLEANUP ACTIVITY

The cleanup must be completed within a twelve month period to be eligible for a CBRLF loan.

Attachment A

COMMUNITY INVOLVEMENT PLAN

Colorado Brownfields Cleanup Revolving Loan Fund

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 Fund. The plan will be documented on the attached form entitled-*Site Specific Community Involvement Plan*.

The following criteria will be used as the basis for developing specific plans:

- C A spokesperson will be designated to inform the community of actions taken, respond to inquiries, and provide information.
- C Prior to approval of the Colorado Voluntary Cleanup Program application (the equivalent of an engineering evaluation/cost analysis (EE/CA)) interviews will be conducted with local officials, community residents, public interest groups, or other interested and affected parties, as appropriate.
- C Prior to approval of the Colorado Voluntary Cleanup Program application, a Community Relations Plan will be prepared based on community interviews and other relevant information. It will specify the community relations activities that Commerce City expects will be undertaken during the cleanup.
- C At least one local information repository will be established at or near the location of the cleanup action that includes public information related to the cleanup. The public will be informed of the repository and notice provided of the availability of the administrative record for public review.
- C Notice will be published of availability of the Voluntary Cleanup Plan in a major local newspaper of general circulation.
- C A 30 day opportunity will be provided for written and oral comments on the Cleanup Plan. Upon timely request, the public comment period will be extended by a minimum of 15 days.
- C A written response to significant comments will be prepared.

NOTE: CBRLF funds may be used to support Community relations and public involvement activities and therefore, are not subject to the borrower-s ten percent cap on such expenditures.

SITE SPECIFIC COMMUNITY INVOLVEMENT PLAN

Colorado Brownfields Cleanup Revolving Loan Fund

BORROWER
ADDRESS:

SITE LOCATION:

SPOKESPERSON:
name:
organization:
address:

telephone:

INTERVIEWS [if determined to be necessary, interviews must be held prior to approval of the Colorado Voluntary Cleanup Plan):

Are interviews deemed appropriate for this site? **yes** **no**

If no, explain why not:

If yes, who was interviewed?
[include notes from interviews as attachment to this form]

COMMUNITY RELATIONS PLAN:

Information Repository

Has the Administrative Record (including a copy of the proposed Voluntary Cleanup Plan) been established and placed in an information repository? **yes no.** {note: creation of this file is mandatory}

Location, name of contact person, and telephone number of information repository:

List each instance of Public Notice given regarding availability of Administrative Record.

Date of latest Public Notice?

Close of comment period (last date of notice plus 30 days):

Were there requests to extend comment period? **yes no**

If yes, date extended comment period ends (minimum of 15 day extension):

Public Meetings

Based on public interest and public comments, were any Public Meetings held regarding this loan and cleanup? **yes no**

If yes, attach meeting notes {including time, location, list of attendees, and comments received} to this form.

RESPONSE TO COMMENTS:

Has the mandatory written response to comments been prepared? **yes** **no**

If no, explain why not:

If yes, attach a copy of the response and the list of recipients to this form.

ATTACHMENT B

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. 276 c), (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

Attachment C - Colorado Brownfields Revolving Loan Process Flow Chart

