

Ohio Water Development Authority / Ohio Department of Development Brownfield Loan Program Policies

Program Description: The Ohio Water Development Authority (OWDA) created its Brownfield Loan Program in 1995 pursuant to Ohio Revised Code Section 6123.032 for the purpose of providing financial assistance for the undertaking of any "voluntary action" (as defined in Ohio Revised Code Section 6123.01) and thereby providing funding for the clean-up of contaminated property, especially in urban areas, through direct loans or credit enhancement. The Department and OWDA, utilizing the Brownfield Loan Program, may provide loans up to \$5,000,000 for cleanup projects and up to \$500,000 for assessments.

The following policies were established for the Brownfield Loan Program as a result of the approved expansion and enhancement of the Brownfield Loan Program, including partnership with the Ohio Department of Development (Department), under OWDA Resolution 103-10, dated December 9, 2010.

Section 1: Eligible Borrowers

- 1.01 Eligible borrowers (hereinafter "borrowers") for the Brownfield Loan Program include local government entities including townships, municipal corporations, counties, port authorities, and conservancy districts; and any private entity, including those that have caused or contributed to the contamination of the property.
- 1.02 Borrowers must own or control the eligible brownfield site within the state of Ohio.
- 1.03 Borrowers must be exempt from Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended CERCLA liability for hazardous substance cleanup applications.
- 1.04 Borrowers must be authorized to incur debt and enter into legally binding agreements.
- 1.05 Borrowers must be financially sound and have the ability to repay the loan.
- 1.06 Borrowers identified in Policy 1.01 shall be signatories on the OWDA Loan agreement entered into with the Director of OWDA and these entities.
- 1.07 OWDA loans shall be disbursed by OWDA only to borrowers identified in Policy 1.01, pursuant to the loan agreement entered into between OWDA and such borrowers.

Section 2: Ineligible Borrowers

- 2.01 Ineligible borrowers include an entity that meets any of the following criteria:
 - Currently in environmental non-compliance.
 - Currently delinquent in taxes, loan payments, or other indebtedness to the State of Ohio or any political subdivision.

Section 3: Eligible Properties

- 3.01 Properties are eligible only if they meet the definition of a brownfield as follows:

- A property containing asbestos or asbestos-containing material; or
 - An abandoned, idled, or under-used property where expansion or redevelopment is complicated by known or potential releases of hazardous substances.
- 3.02 The borrower must demonstrate that it possesses all necessary legal access to the property to complete the project. If the property or any portions of the property are subject to a lease agreement, the application must include a copy of the lease agreement or other agreement that provides the borrower with legal access to complete the project.

Section 4: Ineligible Properties

- 4.01 A site is ineligible if it meets any of the following criteria:
- Listed or proposed listing on the US Environmental Protection Agency (EPA) National Priority List;
 - A Federal or state agency is planning or conducting a response or enforcement action;
 - Former solid waste facilities;
 - Current agricultural property; or
 - Deemed ineligible as determined by the Agency utilizing the principles described above for eligible Brownfield Sites.

Section 5: Eligible Project Costs

- 5.01 The expenditures of the Brownfield Loan Program are to remove environmental conditions preventing redevelopment of a property and to address issues "where expansion or redevelopment is complicated by known or potential releases of hazardous substances," on a brownfield.
- 5.02 Activities funded by the Brownfield Loan Program are environmental assessments, cleanup of hazardous substances and/or asbestos, and demolition. Assessment and cleanup activities must follow the rules of (1) Phase II property assessment and (2) Remediation as defined in OAC 3745-300-07 and OAC 3745-300-11 respectively.
- The maximum application request for a Phase II Environmental Assessment loan is \$500,000;
 - The maximum application request for a Cleanup loan is \$5,000,000;
- 5.03 Only to the extent that hazardous substances exceed applicable cleanup standards identified in the application will cleanup be funded.
- 5.04 Costs for a risk assessment are eligible costs.
- 5.05 For property that is the subject of an existing covenant not to sue, costs for additional cleanup are eligible costs. For the purposes of this Policy, the additional cleanup must result in the property's compliance with new applicable standards, which improve the applicable standards upon which the issuance of the existing covenant not to sue was based.
- 5.06 Clearance activities that are necessary to prepare the site for cleanup and/or redevelopment activities are eligible costs.

- 5.07 In accordance with O.R.C. Chapter 4115, prevailing wage rates may apply to all activities that are part of the assessment and cleanup's total project costs.
- 5.08 Removal and disposal of Regulated Asbestos Containing Material (RACM) are eligible costs.
- 5.09 Funds for indirect and/or administrative costs are eligible costs, which include but are not limited to the costs of: application preparation, legal counsel related to the application and/or project implementation, consulting fees and compliance with applicable local, state, and federal laws rules and policies governing the project and/or loan agreement.
- 5.10 The cost of employing a Certified Professional as defined in O.R.C. Chapter 3746.01 (F) is an eligible cost.
- 5.11 The Brownfield Loan Program will pay only for activities specifically required to undertake and complete the appropriate remediation to meet applicable cleanup standards under ORC Chapter 3746.
- 5.12 After the No Further Action letter or the applicable project completion report is submitted, costs incurred responding to the Ohio EPA's comment letter are eligible costs.
- 5.13 Costs for eligible activities will be reimbursed based upon the submission of the required documents to the Department and OWDA.

Section 6: Ineligible Project Costs

- 6.01 Phase I site assessments.
- 6.02 Cleanup costs of a naturally occurring substance below background levels, products that are part of the structure and result in exposure within residential, business or community structures (e.g., interior lead-based paint contamination which results in indoor exposure), or public/private drinking water supplies that have deteriorated through ordinary use.
- 6.03 Development costs that are not remedial actions (e.g., construction of a new facility or marketing of property).
- 6.04 Acquisition of brownfield properties and the installation of infrastructure.
- 6.05 Tire removal and disposal.
- 6.06 Removal of BUSTR (Bureau of Underground Storage Tank Regulation) regulated underground storage tanks and remediation of petroleum leaks from such tanks.
- 6.07 Removal of solid waste is not an eligible cost, except to the extent that the solid waste is commingled with hazardous substances.

Section 7: Total Project Costs

- 7.01 Total project costs are all dollars to be expended at the property for conducting an assessment or a cleanup of a brownfield. Borrowers can receive loan funds for eligible costs expended up to six (6) months before the loan agreement has been executed, and eligible costs expended after the loan agreement has been executed.
- 7.02 The cost estimates must be signed by a Certified Professional for work to be completed under O.R.C. Chapter 3746, and must be accompanied by a statement certifying that the cost estimates are reasonable and necessary and are no higher than for like expenditures on like projects in Ohio. Any remedial cost estimates for non-VAP work, including demolition, must be certified by an Ohio Professional Engineer as defined in O.R.C. 4733.
- 7.03 The Department and OWDA retain the right to require any additional documentation in support of the reasonable and necessary cost estimates. The burden will be on the borrower to show, to the Department and OWDA's satisfaction, that the above standard has been met.
- 7.04 The total project costs must be presented in the application in a unit and itemized cost form. All subcontractor costs greater than \$15,000 for assessment projects and \$25,000 for cleanup project must be accompanied by a third party cost estimate for the services that would be provided.

Section 8: Loan Terms

- 8.01 The term of a loan awarded under the Brownfield Loan Program for assessment will not exceed five (5) years, and the term of a loan awarded under the Brownfield Loan Program for cleanup will not exceed ten (10) years.
- 8.02 Repayment of the loan will be by semi-annual payments of principal and interest to OWDA, and pursuant to a contract between the borrower and OWDA. The sale or leasing of the property during the term of the loan shall trigger prepayment of the outstanding principal in full as determined by the Department or OWDA.
- 8.03 The initiation of repayment will be negotiated between the borrower and the Department when the loan terms are being established.
- 8.04 The Department imposes no pre-payment penalty.
- 8.05 Interest rates for the Brownfield Loan Program will be determined in negotiations between the borrower and the Department.
- 8.06 Under the Brownfield Loan Program, OWDA requires a shared priority mortgage and/or lien position on the assets financed with the brownfield loan proceeds to be established via a multi-party agreement between the participating lenders(s), OWDA and the borrower. Personal guarantees are required from owners with more than 20 percent ownership in the company. In appropriate circumstances the Department and OWDA will evaluate other types of credit enhancement equal to the shared priority mortgage and/or lien position on the assets financed with loan proceeds from the Brownfield Loan

Program. OWDA also will consider subordination, of its mortgage and/or security position, to the security of banks and other providers of traditional senior debt, where deemed appropriate.

- 8.07 Additional security measures may include corporate guarantees from related companies; a full or partial letter of credit; and/or the life insurance on key business owners and/or managers.

Section 9: Application Process

- 9.01 All applicants are required to hold a Project Resource and Advisory Meeting that includes a visit to the project property with the Department prior to the submission of the application to the Department. Applicants must complete a meeting request form at <http://www.development.ohio.gov/urban/blp>.
- 9.02 All applicants will submit an application to be on the Ohio EPA Brownfield Inventory during the Brownfield Loan Program application process.
(<http://www.epa.state.oh.us/derr/SABR/Brown/BrownDtb/browndtb.html>)
- 9.03 The applicant must submit one original copy and one electronic copy of the completed application, with all required financial documentation and the application fee, to the following address:
Ohio Department of Development, Urban Development Division
Attn: OWDA Brownfield Loan Program
77 South High Street, 26th floor
Columbus, Ohio 43215
- 9.04 Upon receipt of the application, the Department will perform the application review and credit analysis.
- 9.05 Credit analysis will include but is not limited to the following factors:
- The legal structure of the applicant;
 - The adequacy, timeliness and completeness of the applicant's financial statements;
 - Applicant's record of earnings and cash flow;
 - Applicant's history of borrowing and adherence to the terms and conditions of those borrowings;
 - Information from bank and credit references;
 - Applicant's Redevelopment Plan demonstrating the economic viability of the project and identifying the sources of repayment of the loan;
 - Applicant's ability to manage the project; and
 - Other factors the Department may deem appropriate to the particular conditions of the project.

Section 10: Application Contents

- 10.01 The following items shall be included with the application:
- Part A
 - Applicant and Project Information Form
 - Development Partner Certification and partnership agreement (if applicable)
 - Tax Information and Disclosure Form
 - Financial Liability Form
 - Copy of legal description and plat map(s)

- Copy of current property title
- Copy of access agreement (if applicable) and purchase agreement (if applicable), for the entire project property
- Application Summary
- Concept Plan and Schedule (assessment only)
- End User Documentation and Development Schedule (cleanup only)
- Part B
 - Most recent audit or auditor report from state auditor's website
 - Three years historical financial statements/past budgets
 - Interim financial statement/current budget
 - Projected financial statements for the current and next three years/projected budgets
 - Personal financial statements (if applicable)
 - Real Estate Appraisal
 - Pro forma for the development project (if applicable)
 - Participating parties and lenders contact information
 - Sources and Uses of Funds
- Part C
 - Remedial Action Plan (cleanup only)
 - Project Assumptions and Cost Estimates (PACE)
 - Executive summaries, and charts, figures and summary tables of the required documents per section 11
 - Electronic copies only of the entirety of the required documents per section 11

Section 11: Environmental Documents Required for Phase II Assessment and Cleanup Loans

All documents in this section must be included with the application at the time of submission to the Department.

- 11.01 The submittal for a Phase II assessment loan shall include:
- Completed application;
 - A Voluntary Action Program (VAP)-compliant Phase I property assessment which also meets the requirements of the applicable regulatory program (O.R.C. 3746);
 - Description of the proposed Phase II assessment activities that comply with the applicable regulatory program (O.R.C. Chapter 3746) and the rules adopted thereunder.
- 11.02 An application for cleanup projects subject to O.R.C. Chapter 3746 (VAP), shall include:
- Completed application;
 - Copy of a VAP-compliant Phase I property assessment;
 - Copy of a VAP-compliant Phase II property assessment that complies with the requirements of O.R.C. Chapter 3746 and rules adopted thereunder, and that characterizes the contamination at the property in a manner sufficient to support and justify the selection and cost estimation of a remedy that will meet applicable standards upon implementation.
- 11.03 For Cleanup projects where Regulated Asbestos Containing Materials (RACM) will be removed, and disposed, the application must include an Asbestos Inspection report. The Asbestos Inspection Report must be conducted by a professional who is Ohio Department of Health certified, and contain the following components: 1) identification of material, including locations and quantity 2) square footage or

linear feet of material; 3) sampling that demonstrates RACM greater than 1%; 4) description of current condition; and 5) explanation of any planned demolition.

- 11.04 In addition to the required documents in Section 11.02, an application for cleanup projects under O.R.C. Chapter 3746 that rely on an Urban Setting Designation (USD) or a variance under O.R.C. Chapter 3746, and applicable rules adopted thereunder, shall include a copy of the approved USD or variance at the time a copy of the application is submitted to the Department.

Section 12: Loan Approval Process

- 12.01 If a project is to be recommended for funding, preliminary terms will be provided by the Department staff to the borrower after receiving the application.
- 12.02 The borrower will accept the preliminary terms provided by the Department.
- 12.03 The Department will submit recommended projects to OWDA on the 15th of each month.
- 12.04 The Board of OWDA will vote to approve or disapprove the project at its monthly meeting. The borrower is required to attend this meeting.
- 12.05 The loan commitment letter will be issued to the borrower by OWDA.
- 12.06 Upon receipt of the signed loan commitment letter, loan closing documents will be prepared by OWDA with assistance from the Department.
- 12.07 The borrower will submit the signed loan agreement along with the loan administration fee to OWDA.
- 12.08 Upon completion of eligible activities at the property, the borrower will submit loan disbursement requests to the Department. The Department will review requests and recommend disbursement to OWDA who will disburse proceeds to the borrower.

Section 13: Approved Projects

- 13.01 Approved assessment projects must commence within six (6) months of the loan agreement effective date. Commencement includes award of contract for the Certified Professional.
- 13.02 Approved cleanup projects must commence within twelve (12) months of the loan agreement effective date. Commencement includes award of contract for the Certified Professional, and award of contract for the demolition and/or remediation contractors.
- 13.03 Assessment projects must be completed, by way of submitting a Phase II Environmental Assessment to the Department within eighteen (18) months of the date that the loan agreement is executed by the Director of OWDA, unless an extension is granted by the Department or OWDA.

- 13.04 Cleanup projects must be completed, by way of submitting a copy of the No Further Action letter to the Department within three (3) years of the date that the loan agreement is executed by the Director of OWDA, unless an extension is granted by the Department or OWDA.
- 13.05 The property legal description at the time of project completion must be identical to the property legal description identified in the application.

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

Definitions

Ability to pay - Legal solvency or having sufficient assets to pay the costs of cleanup or remediation.

Brownfield - An abandoned, idled, or under-used property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or asbestos.

Certified professional - A person certified by the director pursuant to rules adopted under division (B)(5) of section 3746.04 of the Revised Code, or deemed to be certified under division (D) of section 3746.07 of the Revised Code, to issue no further action letters under section 3746.11 of the Revised Code.

Cleanup - Any action to contain, remove, or dispose of hazardous substances at a brownfield project. Cleanup includes remediation and demolition performed at a brownfield.

Clearance activities - Include but not limited to clearing and grubbing of vegetation, trees or other organic material prior to cleanup and/or redevelopment of a property.

Covenant Not to Sue - The final findings and orders issued by the director of environmental protection pursuant to O.R.C. section 3746.12.

Loan Agreement Effective Date – The date on which the Loan Agreement is signed by both the OWDA and the borrower.

No Further Action date - The date on which the Director of Ohio EPA receives a copy or an original No Further Action letter.

No Further Action letter (NFA) - A letter that is prepared by a certified professional when, on the basis of the best knowledge, information, and belief of the certified professional, the certified professional concludes that the cleanup or remediation of a brownfield meets the applicable cleanup standards and that contains all of the information specified in rules adopted under division (B)(7) of section 3746.04 of the Revised Code.

Project - Those eligible activities in the loan agreement to be completed within the timeline of the loan agreement.

Property - Any parcel of real property, or portion of such a parcel, and any improvements to it.

Remedial Action Plan - A description of the proposed cleanup or remediation that includes timeframes and actions to meet applicable standards.

Risk Assessment - A quantification of the risk posed by exposure of a human or ecological receptor to hazardous substances or petroleum that is performed in compliance with the criteria of the applicable regulatory program to demonstrate that a property meets the applicable cleanup standards for the property (e.g., for projects subject to VAP applicable standards, O.A.C. rule 3745-300-09).

Total project costs - All dollars expended (or to be expended) at the property for eligible activities in Section 5 of these policies, and any other dollars required to complete the assessment or cleanup project (e.g. acquisition or infrastructure costs).

Urban Setting Designation (USD) – A designation granted by the Director of the Ohio EPA that may be requested under the VAP when there is no current or anticipated future use of ground water by local residents for drinking, bathing or cooking. The USD is given only in areas with a population of at least 20,000 residents, and at least 90 percent of the parcels within the city or urban township where the property lies must be connected to a community water system.

Voluntary Action Program (VAP) - The Voluntary Action Program established within the Ohio EPA under O.R.C. Chapter 3746. The rules adopted under O.R.C. Chapter 3746 are contained in O.A.C. Chapter 3745-300.