

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 221. BROWNFIELDS**

SUBCHAPTER 1. GENERAL PROVISIONS

252:221-1-4. Terms not defined by Code or rule

Any term not defined in the Oklahoma Environmental Quality Code (27A O.S. § ~~1-1-10~~2-1-101 *et seq*) or Title 252 of the Oklahoma Administrative Code shall be defined by:

- (1) The Dictionary of Geological Terms, latest revised edition, American Geological Institute,
- (2) Its generally accepted scientific meaning, or
- (3) Its standard dictionary meaning.

252:221-1-6. Transitioning from Voluntary Cleanup Program to Brownfield Program

A participant in the Voluntary Cleanup Program may transition to the Brownfield Program by notifying the Brownfield Program in writing and meeting the requirements in ~~27A O.S. §15-101~~ *et seq* and the rules in this Chapter.

SUBCHAPTER 3. THE BROWNFIELD PROGRAM

252:221-3-2. Process

(a) **Eligibility.** The participant must provide sufficient information for the DEQ to determine whether:

- (1) the participant is eligible for liability protection under the state Brownfields law; and
- (2) the site qualifies for the EPA enforcement bar under CERCLA.

(b) **Information.** The participant shall provide the DEQ with information specified in 27A O.S. § 2-15-105 and this Chapter.

(c) **Project tracking database.** The participant shall submit the name of the site, with the latitude and longitude, legal description, and street address as well as contact information for the participant.

252:221-3-3. Proposal

The participant shall develop a Proposal in accordance with 27A O.S. § 2-15-105 and the rules in this Chapter and shall propose either a remedial option or a request for a no action necessary determination. DEQ and the participant shall consider the history of the site and surrounding area in determining the type of sampling and analysis to be conducted and risk-based decision making.

(1) **Site characterization.** In addition to the requirements of 27A O.S. § 2-15-105, the participant shall submit a work plan for site characterization, which includes a plan to control the quality of the data generated for the project commensurate with the complexity of the site, a discussion of existing data, the data gaps, a sampling plan to delineate areas of contamination, and a contaminant and site-specific plan to protect worker and public health and safety during site work.

(2) **Previously acquired data.** The participant may submit previously generated data, if appropriate, with corresponding Quality Assurance/Quality Control documentation. Temporal issues will be considered on a site by site basis. The DEQ may consider this information in determining the appropriateness of further investigation of the site.

- (A) The DEQ may require verification sampling to validate the information submitted.
 - (B) If the information submitted does not fully address the requirements of the Brownfield program, the participant shall collect additional data as required by the DEQ.
 - (C) The DEQ may require additional analytes, at its discretion.
- (3) **Future use.** The participant shall identify the future use of the contaminated property. If the future use of the site is other than "unrestricted use", the Proposal must include a plan for the implementation and maintenance of engineering and institutional controls and a plan for long term stewardship.
- (4) **Risk evaluation.** On a site specific basis, the participant shall identify and evaluate all potential receptors and exposure pathways. If the proposal claims that an exposure pathway is not complete and therefore no receptor is threatened, specific information must be provided that documents and supports the claim.
- (5) **Risk-based cleanup levels.** Using risk evaluation methodology approved by the DEQ, the participant shall:
- (A) compare site contaminant levels to published screening levels approved by the DEQ;
 - (B) calculate a default risk-based cleanup level in accordance with DEQ guidance; or
 - (C) conduct a risk assessment of the contaminated property to produce site-specific risk-based cleanup levels. DEQ must approve the model and input parameters used in any risk assessment.
- (6) **Remedial option evaluation.** The participant shall identify alternatives for remediation and shall submit narrative information which discusses each alternative's risk-based cleanup levels, protectiveness, economic feasibility, technical feasibility, and reliability of each remedial alternative considered. Additionally, the participant shall include a discussion of engineering and institutional controls needed for each option to maintain the remedy and control the use of the property in the future. Examples of specific institutional controls must be included in the Proposal for evaluation unless the future use is "unrestricted use".
- (7) **Preferred option.** The participant shall identify its preferred option.
- (8) **No Action Determination.** A request for a no action determination does not require a remedial option evaluation as described in subsection (f) above.
- (9) **Submittal.** The Proposal must be written in plain language, with technical terms defined. The participant shall submit ~~two~~ one paper ~~copies~~ copy and one electronic copy, as instructed by the DEQ, of the Proposal to the DEQ for review and comment.

252:221-3-5. Public participation

(a) Public review. The participant must make the Proposal and its amendments available to the public for review for 20 working days. The Proposal must be placed at a convenient location local to the site that provides easy access to the public to review or made available electronically to the public.

(b) Public notice. The participant must place a public notice on a public website or in a newspaper of general circulation local to the site announcing the availability of the Proposal for public review and comment. The notice must include, at a minimum:

- (1) the name(s) and contact information of the participant(s);
- (2) the site name;
- (3) the location (street address and legal description) of the site;
- (4) the proposed future use of the property;

- (5) the proposed remedy;
- (6) the location where the Proposal may be reviewed;
- (7) the beginning and ending dates for the 20 working day review and comment period;
- (8) the opportunity to request a public forum on the Proposal and its amendments within the 20 working day review period; and
- (9) the DEQ contact person and mailing address where comments will be received.

(c) Public forum. If the DEQ receives a timely request for a public forum on the Proposal and its amendments and determines that there is a significant degree of public interest in the Proposal, the DEQ shall expeditiously schedule and hold a public forum. Notice of the forum shall be given to the public at least 10 working days prior to the public forum in the same manner as in subsection (b) above. The public forum shall be held at a location convenient to and near the Brownfield site. The participant must attend the meeting or send a designated representative.

SUBCHAPTER 5. VERIFICATION OF BROWNFIELDS PROJECTS

252:221-5-1. Applicability

This Subchapter applies to Brownfields projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account pursuant to 82 O.S. §~~1084.1~~1085.51 *et seq.* and other state or federal funding sources.

SUBCHAPTER 7. REVOLVING LOAN FUNDS (RLF)

252:221-7-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Subchapter is to implement ~~Executive Order 98-37, mandating state agencies to establish criteria for local project funding contracts~~ the Brownfields Revolving Loan Fund that originates from federal grants administered by EPA Region 6.

(b) **Authority.** This subchapter is adopted pursuant to 27A O.S. § 2-2-101 *et seq.* and § 2-15-101 *et seq.*, and 75 O.S. § 302 ~~and Executive Order 98-37.~~

(c) **Applicability.** The rules in this Subchapter apply to any private entity, political subdivision or unit of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use Revolving Loan Funds (RLF) for brownfield cleanup activities.

(d) ~~**Oklahoma Department of Commerce—RLF Fund Manager.** The Oklahoma Department of Commerce (ODOC) is the RLF Fund Manager responsible for ensuring that the RLF applicants meet all financial requirements. Applicants are on notice that the ODOC may have specific rules governing loan applications and eligibility requirements.~~ DEQ utilizes an RLF Fund Manager to ensure that loan applicants meet all financial requirements.

(e) **Federal "cross-cutting" requirements.** "Cross-cutting requirements" are those federal requirements in addition to CERCLA § 104(k) [42 U.S.C. § 9604(k)] and associated administrative authorities which are applicable to the RLF by operation of federal statutes, President's Executive Orders and federal regulations. These cross-cutting federal authorities apply by their own terms to projects and activities receiving federal financial assistance regardless of whether the statute authorizing the assistance mentions them specifically. ~~RLF cross-cutters include but are not limited to social and economic policy authorities such as equal employment opportunities (President's Executive Order 11246) and government wide debarment and suspension rules (President's~~

~~Executive Order 12549), the Demonstration Cities and Metropolitan Development Act, procurement prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, Anti-lobbying provisions of 40 CFR Part 30, Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, the Contract Work Hours and Safety Standards Act, Anti-kickback Acts, the Women and Minority Business Enterprise Act, Section 13 of the Federal Water Pollution Act amendments, the Drugfree Workplace Act of 1988, Section 504 of the Rehabilitation Act of 1973 and Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988 and the Davis Bacon Act.~~

252:221-7-2. Definitions

In addition to the definitions found in OAC 252:221-1-3, the following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Administrative Record" means a record available to the public, containing all relevant site information and documents that form the basis for the selection of a cleanup.

"Brownfield", as used in this subchapter, is defined in 42 U.S.C. § 9601(39) and has a different meaning than the term as used in Subchapters 1, 3 and 5 of this Chapter.

"Brownfields Revolving Loan Fund" means funding, originating from grants from the United States Environmental Protection Agency or repaid loans, which are made available to eligible entities as low interest loans or subgrants for environmental cleanup of eligible sites.

~~**"RLF response"** means planned cleanup actions.~~

"Borrower" means a public or private entity that uses RLF funds for cleanup and cleanup-related activities and agrees to the terms of a loan agreement between itself and the DEQ ~~and ODOC.~~

"Eligible response site" means properties that do not meet the definition of a Brownfield but may be eligible if EPA makes a property-specific determination that the site is eligible for funding.

"Grantee" Means a grant given from the RLF Award to an eligible public entity or nonprofit.

"Post-Closeout Program Income" Program Income received after a grant has been closed out by EPA.

"Program Income" means loan payments, interest, and fees received from borrowers, interest earned on accounts holding Program Income, and other income generated from RLF operations.

~~**"Governmental borrower"** means states, tribes and political subdivisions as defined at 40 CFR 35.6015.~~

~~**"Loan discount"** means a decision made by the DEQ and ODOC under OAC 252:221, to allow a borrower to repay less than the full amount of a loan, subject to certain restrictions.~~

~~**"Nonprofit borrower"** means "nonprofit organization" as defined in accordance with the Federal Financial Assistance Management Improvement Act of 1999, 31 U.S.C. 6101.~~

~~**"Private borrower"** means a for profit company or private individual not representing a governmental entity or non-profit organization.~~

"Subgrant" means a portion of the RLF award available as grants to eligible entities, at the DEQ's discretion.

252:221-7-3. Borrower eligibility

(a) Private entities, political subdivisions or units of local government, including municipal and county governments and school districts, non-profit borrowers, and federally recognized Indian

tribes are eligible for low interest loans.

(b) Political subdivisions or units of local government, including municipal and county governments and school districts, non-profit borrowers, and federally recognized Indian tribes are eligible for subgrants.

~~(a)~~(c) An owner/operator (o/o) who was the generator or transporter of contamination at the site is not eligible for a RLF loan/grant for that same site.

~~(b)~~(d) An owner who does not qualify as an innocent landowner, contiguous property owner, or bona fide prospective purchaser is not eligible for an RLF loan unless they are a public entity that is exempt under CERCLA § 104(k)(2)(C) [42 U.S.C. § 9604(k)(2)(C)].

~~(e)~~(e) A State or local government entity may borrow RLF funds to clean up property for which acquired through eminent domain ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as a sovereign CERCLA § 101(20)(D) [42 U.S.C. § 9601(20)(D)].

252:221-7-4. Eligible uses

(a) Eligible uses of RLF funds from active grants: The RLF funds may be used to clean up hazardous substances, pollutants, contaminants, petroleum (contingent on funding), mine-scarred land and controlled substances as defined in the Controlled Substances Act, 21 U.S.C. § 802.

(b) Eligible uses of RLF funds from Post-Closeout Program Income: The Post-Closeout Program Income may have different eligible uses.

252:221-7-5. Ineligible fund uses

(a) **Ineligible activities.** RLF funds shall not be used for any of the following activities, including but not limited to:

- (1) Pre-cleanup environmental response activities, such as site assessment, identification, and characterization
- (2) Monitoring and data collection necessary to apply for, or comply with, environmental permits under other state and Federal laws, unless such a permit is required as a component of the cleanup action;
- (3) Development activities that are not cleanup actions (e.g., construction of a new facility or marketing of property);
- (4) To support job training; or
- (5) Indirect costs.

(b) **Ineligible sites of RLF Funds from active grants.** RLF funds shall not be used at any sites:

- (1) Listed, or proposed for listing, on the National Priorities List; or
- (2) That do not meet the definition of an eligible response site.

(c) Ineligible uses. The Post-Closeout Program Income may have different ineligible uses.

252:221-7-7. Project selection criteria

(a) **Funding available.** Loans will be made to eligible projects as funding allows.

(b) **Priority projects.** Priority will be given to projects that:

- (1) remove environmental risks as opposed to managing them long term;
- (2) use deconstruction techniques to remove structures as opposed to demolition;
- (3) use sustainable material management techniques for demolition/deconstruction wastes;

- (4) redevelop property using LEED standards or promote energy efficiency;
- (5) promote reuse by a green industry;
- (6) use sustainable landscaping or sustainable redevelopment techniques;
- (7) create green jobs;
- (8) facilitate the creation of, preservation of or addition to a park, a greenspace; undeveloped property, recreational property or other property used for nonprofit purposes;
- (9) meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community; or
- (10) facilitate the use or reuse of existing infrastructure.

~~(b)~~(c) **Compliance with state and federal laws and rules.** The borrower/grantee must comply with the ~~the~~ rules in this subchapter, the agency of jurisdiction's rules, and relevant and appropriate provisions of CERCLA and the NCP.

~~(e)~~(d) **Contribution to local community revitalization.** The borrower/grantee shall submit documentation to support its position that the cleanup of a particular site will significantly contribute to local community revitalization.

~~(d)~~(e) **Environmental compliance history.** A borrower/grantee must submit information regarding its overall environmental compliance history. The DEQ will strongly consider this history in its analysis of the borrower/grantee as a cleanup and business risk. Each borrower/grantee must certify that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan. An entity that has been suspended, debarred or otherwise declared ineligible, ~~as those terms are defined in 40 CFR Part 32,~~ cannot be a borrower/grantee.

252:221-7-8. Protocol for demonstrating eligibility

The borrower/grantee shall provide the following documentation to the DEQ:

- (1) Description of project to be funded;
- (2) How loan or grant monies will be used;
- (3) Explanation of how the project, if selected, would be consistent with RLF program objectives;
- (4) Environmental compliance history;~~and~~
- (5) Documentation showing that the potential borrower/grantee is an innocent landowner, contiguous property owner, bona fide prospective purchaser or other proof of non-responsibility for the environmental contaminants that are the subject of the cleanup; and
- (6) If the borrower/grantee is selected for a loan/grant, he/she must submit the following additional documents:
 - (A) Analysis of Brownfields Cleanup Alternatives (ABCA);
 - (B) Community ~~Involvement~~Relations Plan; and
 - (C) Quality Assurance Project Plan (QAPP).

252:221-7-9. Public Involvement

(a) **Community ~~Involvement~~Relations Plan.** The Borrower/grantee must involve the public in the process prior to site cleanup. This public process involvement must be documented in the Community ~~Involvement~~Relations Plan.

(b) **Administrative record.** The Borrower/grantee must establish an administrative record for

this site and must make the administrative record available to the public for review for 30 calendar days during the public comment period for the ABCA. The administrative record must be placed at a convenient location that provides easy access ~~to~~for the public to review. The administrative record can be electronic and/or hard copy.

(c) **Public notice.** The Borrower/grantee must place a public notice in a newspaper of general circulation local to the site in accordance with 2-15-104(E)(3) and/or made available electronically, announcing the availability of the administrative record for public review and comment. The notice must include, at a minimum:

- (1) the name(s) and contact information of the participant(s);
- (2) the site name;
- (3) the location (street address and/or legal description) of the site
- ~~(4)~~ the proposed future use of the property;
- ~~(5)~~ (4) the proposed remedy;
- ~~(6)~~ (5) the location where the administrative record may be reviewed;
- ~~(7)~~ (6) the beginning and ending dates for the 30 calendar day review period; and
- ~~(8)~~ (7) the DEQ contact person and mailing address where public comments will be received.

(d) **Evaluation of public comments.** The DEQ will consider all relevant comments and prepare a responsiveness summary.

252:221-7-10. Final Decision Document

The DEQ will issue a Final Decision Document ~~prior to a loan being made~~following the 30 calendar day public comment period for the ABCA.

252:221-7-11. Special terms and conditions

~~The following terms and conditions are incorporated by reference into each Borrower/grantee's loan agreement:~~

- (1) Borrower/grantee shall use funds only for eligible activities.
- (2) Borrower/grantee shall document all funds used.
- (3) Borrower/grantee shall maintain documentation for a minimum of three (3) years after the completion of the cleanup activity supported by the loan or for the length of the loan, whichever is longer. Borrower/grantee shall obtain written approval from the DEQ prior to disposing of records.
- (4) Borrower/grantee shall conduct RLF response activities in accordance with this Subchapter, relevant and appropriate provisions of CERCLA, applicable State regulations, and EPA's Revolving Loan Fund Grant Programs Administrative Manual, December 2008, as updated.
- ~~(6)~~ (5) Borrower/grantees shall modify response activities as required by the DEQ.
- ~~(7)~~ (6) Borrower/grantees shall comply with CERCLA § 104(g) [42 USC § 9604(g)(1), 40 U.S.C. § 276(a)-276(a)-5, and 42 U.S.C. § 3212] by requiring that laborers and mechanics employed by the Borrower/grantee or its contractors or subcontractors in the performance of construction, alteration, or repair work are paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act. Borrower/grantees shall submit copies of all Davis Bacon forms to the DEQ.
- ~~(8)~~ (7) Borrower/grantees must comply with the Uniform Relocation Act and other applicable

federal "cross cutting" requirements.

~~(9)~~(8) Borrower/grantees shall use funds promptly for costs incurred in connection with the cleanup.

~~(10)~~(9) All distribution of funds will be as reimbursement for costs incurred.

(10) The Post-Closeout Program Income may have different requirements.

252:221-7-13. Insurance

~~(a)~~ Borrower/grantees may purchase insurance, including environmental insurance, if the expense is necessary to carry out cleanup activities and associated cleanup activities are carried out in accordance with the terms and conditions of DEQ's loan/grant.