

2009 Recovery Act Ready for Reuse Program

Hazardous Substance Cleanup Funds for Brownfields

PUB-RR-821

June, 2009

On February 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act (Recovery Act). In May 2009, the DNR's Remediation and Redevelopment (RR) Program received a \$2 million Brownfield Revolving Loan Fund (RLF) grant with Recovery Act funding, which will be administered through the Ready for Reuse Loan & Grant Program. These are hazardous substance (non-petroleum) cleanup funds for brownfields.

Required Criteria

In order to qualify for a Recovery Act Ready for Reuse grant or loan, the cleanup project must be ready to proceed, as defined below. Do not apply for this program unless you can meet all of the criteria listed below.

- 1. The site must meet the federal definition of an "eligible brownfield site."
- 2. **Grants: The applicant must be an eligible governmental entity, tribe (or other eligible tribal entity) or an eligible non-profit organization.**
Loans: The applicant must be an eligible governmental entity.
- 3. If applying for a grant, the applicant must own the site.
- 4. The applicant must have no CERCLA (i.e. Superfund) liability for the site.
- 5. Cleanup is for hazardous substance contamination only.
- 6. The ch. NR 716 Site Investigation, Wis. Admin. Code, for the site is complete, and has been at least submitted to the DNR, if not approved.
- 7. The cleanup action will begin no later than October 1, 2009, and be substantially complete by October 1, 2010.
- 8. The applicant has secured financing in place to complete the cleanup and redevelopment.
- 9. A municipal resolution authorizing the governmental entity to apply for and receive Ready for Reuse funding has been passed (not applicable to non-profits).
- 10. The project promotes economic development, including job retention and/or creation.
- 11. A borrower or grantee is prepared and able to complete monthly and/or quarterly tracking forms for the Recovery Act Ready for Reuse Program, in order to meet federal and state Recovery Act reporting requirements.



Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707
dnr.wi.gov/org/aw/rr



Apply Now!

The RR Program is accepting applications for this program starting **June 23, 2009**. To apply, read all program and eligibility requirements and if you qualify, fill out the **2009 Recovery Act Ready for Reuse Loan & Grant Application (Form 4400-251)**, which is available on-line at dnr.wi.gov/org/aw/rr/rlf.

In order to be considered for a first round of funding, your application must be postmarked, shipped or delivered to the DNR by **August 14, 2009**.

We highly recommended that you discuss your project with DNR staff prior to submitting an application for the program, in order to ensure that your project may be eligible. Contact Jessica Milz (608.267.6743; jessica.milz@wisconsin.gov) or Melissa Enoch (608.266.9263; melissa.enoch@wisconsin.gov) to discuss your project.

Eligible Sites

The site must meet the federal definition of an eligible brownfield, which is “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.” For more information on sites that need property-specific determinations, or sites that are never eligible for brownfields funding, visit our Recovery Act Ready for Reuse web page: dnr.wi.gov/org/aw/rr/rlf/recovery.htm#site.

Eligible Applicants

Grants

The following entities are eligible to apply for Reuse for Reuse grants:

- general purpose unit of local government, including the following:
 - county, city, town, or village;
 - redevelopment authority under s. 66.1333, Wis. Stats.;
 - community development authority under s. 66.1335, Wis. Stats.;
 - housing authority under s. 66.1201, Wis. Stats.; and
 - any local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government;
- tribe, or other eligible tribal entity under 40 CFR 31.3; and
- non-profit organization (for the purposes of the brownfields grant program, the term “nonprofit 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; nonprofit organizations exempt from taxation under Section 501(c)(4) of the Internal Revenue Code that lobby are not eligible for EPA grant funding).

Loans

Only a “municipality,” as defined in s. 67.01(5), Wis. Stats., may apply for a Ready for Reuse loan.

Applicant Liability

The applicant cannot have liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). For more information about CERCLA liability defenses, visit the Ready for Reuse Program web page at dnr.wi.gov/org/aw/rr/rlf.

- (1) The applicant may not have caused the contamination; and
- (2) The applicant must demonstrate that they have no CERCLA (i.e. Superfund) liability by making one or more of the following defenses.
 - **Bona Fide Prospective Purchaser Defense (BFPP)** – for property acquired after January 11, 2002, where proper environmental due diligence was conducted in accordance with the All Appropriate Inquiry (AAI) standard in effect at the time; there is no affiliation with the liable party; and the specified continuing obligations (e.g., compliance with a land use control) are met. See the following two RR Program web pages for additional information:
 - **BFPP:** dnr.wi.gov/org/aw/rr/liability/bfpp.htm; and
 - **AAI:** dnr.wi.gov/org/aw/rr/liability/aai.htm.
 - **Involuntary Acquisition or Transfer Defense** – for property involuntarily acquired by or transferred to a governmental agency, such as through tax delinquency, escheat, foreclosure, abandonment, condemnation, or slum clearance or blight determinations. This defense is generally available only to governmental entities. See the following RR Program web page for more information:
 - **Liability Tools for Local Governments:** dnr.wi.gov/org/aw/rr/lgu/liability.htm.
 - **Standard Practice for Due Diligence** – for property acquired prior to January 11, 2002. This defense is used when the applicant can demonstrate that the level of environmental due diligence conducted prior to acquisition was “standard practice” at that time. The standard for sites purchased in the last several years is a Phase 1 Environmental Site Assessment conducted in accordance with American Society for Testing and Materials (ASTM) guideline that was in effect at the time the assessment was conducted.

Eligible Activities

The following eligible costs can be paid for only during the DNR-approved loan or grant period.

- **Cleanup actions.** Includes actions associated with removing, mitigating or preventing the release or threat of a release of a hazardous substance, pollutant, contaminant or controlled substance into the environment (e.g. air, land or water).
- **Finalization of the Remedial Action Plan.**
- **Demolition or Site Preparation.** Only if necessary to implement a remedial action plan (RAP), and only if the demolition is required to access contaminated soils beneath a structure. Demolition must be pre-approved by the DNR and EPA.
- **Asbestos Abatement or Lead Mitigation Costs.** Only if a necessary component of a pre-approved demolition.
- **Short-term Site Monitoring.** Includes reasonable and necessary sampling and analysis during the cleanup process and determining the final effectiveness of the cleanup.
- **Environmental Consulting Fees.** Includes only those fees necessary to implement the cleanup.
- **Public Participation Costs.** Includes any costs associated with meeting community involvement requirements, worker health and safety activities and interagency coordination.

- **DNR Fees.** Includes fees for the review of cleanup plans and activities, including fees for the Voluntary Party Liability Exemption (VPLE), under chs. NR 749 or 750, Wis. Admin. Code.

Ineligible Activities

- Site Investigation and Phase I or II environmental assessments.
- Cleanup of petroleum contamination (unless commingled with hazardous substances).
- Demolition that is not necessary to access the contaminated area in order to conduct the cleanup activities.
- Administrative costs, such as appraisal costs, meals, meeting costs, application costs and contingencies.
- Acquisition or relocation costs.
- Development costs that are not remedial activities.
- Public improvements or infrastructure costs.
- Expenses imposed by other regulatory programs (e.g. site erosion control plans, stormwater management, etc.) that are not related to the cleanup.
- Cost of compliance with any federal law, excluding compliance with laws applicable to the cleanup.
- Legal fees.

Contact Information

Contact Jessica Milz (608.267.6743; jessica.milz@wisconsin.gov) or Melissa Enoch (608.266.9263; melissa.enoch@wisconsin.gov) with any questions about the 2009 Recovery Act Ready for Reuse Loan & Grant program, or the traditional Ready for Reuse Loan and Grant Program.

If your project does not fit the criteria for the Recovery Act Ready for Reuse Program, please consider other financial tools with the RR Program, which you can learn about on the following RR program web page: dnr.wi.gov/org/aw/rr/financial/index.htm.

This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240.

This publication is available in alternative format upon request. Please call 608-267-3543 for more information.