

OREGON COALITION BROWNFIELDS CLEANUP FUND

The program's primary purpose is to assist private persons and local governments to cleanup and therefore redevelop brownfields.

OVERVIEW

The Oregon Coalition Brownfields Cleanup Fund offers a low-interest and grant financing option for projects on properties impacted by the existence of hazardous substances and for which cleanup of the contaminants is necessary before development or redevelopment can occur. The Oregon Economic and Community Development Department (OECDD) administers the program on behalf of a coalition of partners: the city of Coos Bay, the Tri-County Metropolitan area of Portland (TriMet), the city of Portland and the state of Oregon.

The program is funded through a Cooperative Agreement between the U.S. Environmental Protection Agency (US EPA) and OECDD and its primary purpose is to assist private persons and local governments to cleanup and therefore redevelop brownfields. A brownfield is real property where expansion or redevelopment is complicated by actual or perceived environmental contamination. The benefits of redeveloping brownfields include: promoting economic development; enabling efficient land use; minimizing the construction of new service infrastructure; facilitating the resolution of environmental justice issues; and protecting environmental and human health.

ELIGIBLE APPLICANTS

Any individual, business, non-profit organization, prospective purchaser, municipality, special district, port or tribe may make application to the Brownfields Cleanup Fund. However, an applicant is **not** eligible for funding if any of the following general restrictions are true:

1. Funding would be used to pay for clean up costs at a brownfields site where the loan or grant applicant is potentially liable for having caused or contributed to the contamination under CERCLA Section 107 or in ORS 465.255.
2. The applicant is currently suspended, debarred or otherwise declared ineligible for federal or state funding.
3. The site is proposed to be, or is listed on, the US EPA National Priorities List (NPL) (i.e., Superfund Sites).

ELIGIBLE PROJECTS

Loans are targeted to economic or community development projects showing the greatest need, exhibiting long-term project viability and demonstrating the capacity of repayment. A limited amount of funding is available in grants for projects on properties owned by municipalities or non-profit organizations. These grants, however, also will be targeted to economic development or community development projects showing the greatest need, exhibiting long-term project viability but for which a financial analysis indicates a lack of debt repayment capacity.

Examples of eligible redevelopment projects the program will support include business development projects, industrial lands capacity projects, community facility projects and downtown or mixed use center revitalization projects. Of importance the cleanup project must be associated with redevelopment of the property.

References:

ORS 285A.190, 285A.192
[www.leg.state.or.us/ors/home.htm]

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ELIGIBLE AND INELIGIBLE PROJECT COSTS

Activities eligible for reimbursement from the Brownfields Cleanup Fund are limited to environmental cleanup activities. Eligible activities include but are not limited to:

1. Documentation of the Analysis of Brownfields Cleanup Alternatives (Feasibility Study);
2. state (OECD or ODEQ) oversight of cleanup activities;
3. installation of fences, warning signs or other security or site control precautions;
4. installation of drainage controls;
5. stabilization of berms, dikes or impoundments; or drainage or closing of lagoons;
6. capping of contaminated soils;
7. excavation, consolidation or removal of contaminated soils;
8. removal of drums, barrels, tanks or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants, including petroleum;
9. removal of source materials, including free product recovery; and
10. containment, treatment or disposal of hazardous materials and petroleum contamination.
11. Site monitoring activities, including sampling and analysis, that are reasonable and necessary during the cleanup process, including determining the effectiveness of a cleanup and confirmation sampling;
12. costs associated with meeting public participation, worker health and safety, and programmatic management requirements.

Ineligible activities for funding with loan funds include:

1. Cleanup costs at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA Section 107;
2. monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such permit is required as a component of the cleanup action;
3. construction, demolition and development activities that are not cleanup actions (i.e., marketing of property or construction of a new non-cleanup facility;

4. cost sharing or matching requirement of another federal grant (absent statutory authorization);
5. administrative costs (such as indirect costs).

FUNDING

The Brownfields Cleanup Fund provides both grant and loan funding, but is primarily a loan program. Grants can be awarded to eligible municipal and non-profit organizations, up to program limits, on a case-by-case basis depending on a financial analysis of the applicant's debt capacity and the public benefits of the redevelopment project. Financial analysis of an applicant's ability to repay a loan is the primary method the department uses to manage and allocate limited grant and loan resources. Examples of public benefits that factor into the funding decision include family wage job creation, assistance to rural or economically distressed communities or addressing an urgent need of a local population.

OECD will require a twenty (20) percent cost share on all grants and loans made with the fund. The cost shares will be in the form of a contribution of money, labor, materials or services required as part of cleanup from a non-federal source of funds. OECD will assure that the cost share is incurred for an eligible and allowable cost under the cooperative agreement. Administrative and other prohibited costs as listed above will not be allowed as a cost share.

OECD envisions that the majority of the cost shares will come as match from the applicants as a condition of the grant or loan award. However, if the applicant is able to show that the cost share will be a financial hardship then OECD may look for other funds to provide the cost share to the grant or loan. Other sources of funds for the twenty (20) percent cost share may include federal funds from the state Community Development Block Grant or from other state funds. The state's Brownfields Redevelopment Fund and Special Public Works Fund can be used to remediate brownfields properties and can be used as a cost share.

LOW INTEREST LOANS

The department is able to offer very attractive interest rates that typically reflect low market rates. The annual interest rate for non-municipal loan recipients is generally based on the equivalent Bond Buyers Index published in *The Bond Buyer*. For municipal loan recipients, interest rates are based on market conditions for similar debt and are set at the time of the award. Loans are generally made for 20-year terms, but the department has the authority to negotiate different terms depending on the details and needs of the project and applicant.

GRANTS

Grants are subject to applicant need, availability of funds and other restrictions. It is not possible to determine how much, if any, grant funds might be awarded prior to an analysis of the application and financial information. Moreover, the department may require conditions in the grant award contract that trigger grant repayment. Such conditions may include but are not limited to: resale of the property; cost recovery from responsible parties; revenue generation from the redevelopment; or other private activities.

LIABILITY

All forms of assistance through the program are subject to the requirements of Section 104(k) of CERCLA, 42 U.S.C. Section 9604(k) as amended by the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (Federal Brownfields Law), and OECDD's program rules.

Please note: The Federal Brownfields Law provides for three exceptions to potential liability under CERCLA Section 107 that OECDD must consider when determining whether an applicant is eligible for funding assistance. Specifically the categories of liability protections are:

- Bona fide prospective purchaser
- Contiguous property owner
- Innocent landowner

REGULATORY OVERSIGHT

All environmental cleanup activities funded by the Brownfields Cleanup Fund must receive review oversight by the Department of Environmental Quality. Indication of how oversight will be performed must be included in the funding application. Oregon's voluntary cleanup program and underground storage tanks program are examples of acceptable oversight.

COMMUNITY PARTICIPATION REQUIREMENT

The cleanup and redevelopment of brownfields properties does not occur in isolation. Local communities have a vested economic and social interest in brownfields redevelopment. Federal and state environmental statute encourages community relations and provides for community involvement in decisions surrounding cleanup of contaminated properties. Fostering an open process and opportunities for public involvement in each funded project is required. An completed application must demonstrate a process detailing how the community may be involved in the cleanup and redevelopment project decision making from the outset such that the cleanup and redevelopment addresses community needs and has community support.