

Chapter Comm 110

BROWNFIELDS GRANT PROGRAM

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Note: Chapter Comm 110 was created as an emergency rule effective December 31, 1997.

Comm 110.01 Purpose. Pursuant to s. 560.13, Stats., the purpose of this chapter is to set forth the criteria for awarding grants for brownfields redevelopment or associated environmental remediation, including criteria for applying for and the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to the project and innovative proposals for remediation and redevelopment; contract requirements; use of grant funds; and reporting and auditing of the awarded grants.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

Comm 110.02 Definitions. In this chapter:

(1) "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(2) "Brownfields redevelopment" means any work or undertaking by a person to acquire a brownfields facility or site and to raze, demolish, remove, reconstruct, renovate, or rehabilitate the facility or existing buildings, structures, or other improvements at the site for the purpose of promoting the use of the facility or site for commercial, industrial, or other purposes. "Brownfields redevelopment" does not include construction of new facilities on the site for any purpose other than environmental remediation activities.

(3) "Department" means the department of commerce.

(4) "Environmental remediation activities" means investigation, analysis and monitoring of a brownfields facility or site to determine the existence and extent of actual or potential environmental pollution; abating, removing, or containing environmental pollution at a brownfields facility or site; or restoring soil or groundwater at a brownfields facility or site.

(5) "In-kind contribution" means actual remediation services performed by a person qualified to provide such services under federal, state and local laws. These services may include, but are not limited to:

- (a) Providing treatment services of contaminated groundwater;
- (b) Excavating or hauling soil or other materials;
- (c) Surveying;
- (d) Conducting demolition activities;
- (e) Providing site security or site maintenance; and
- (f) Performing investigation activities.

(6) "Person" means an individual, partnership, limited liability company, corporation, nonprofit organization, city, village, town, county, or trustee, including a trustee in bankruptcy.

(7) (a) "Phase 1 environmental assessment" means an assessment of a site to identify potential or known areas of environmental contamination. This assessment may include, but is not limited to, reviewing records, interviewing persons, and conducting physical inspections of the site.

(b) "Phase 2 environmental assessment" means an assessment of a site to physically confirm that contamination exists in potential or known areas of environmental contamination identified in the Phase 1 environmental assessment, but not to determine the nature, degree and extent of contamination. This assessment may include, but is not limited to, field sampling of media, laboratory analysis of samples and visual confirmation of environmental contamination at the site.

(8) "Project" means any brownfields redevelopment or environmental remediation activities undertaken on a brownfield facility or site by or at the direction of an eligible recipient under s. 560.13 (2) (a), Stats.

(9) "Recipient match" means the contribution required under s. 560.13 (2) (b), Stats.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98; CR 01-142: am. (2), r. (6) and (7), renum. (8) to (11) to be (6) to (9) and am. (6), Register June 2002 No. 558, eff. 7-1-02.

Comm 110.03 Application content. Applications shall be submitted to the department. Each application shall contain all of the following:

(1) The name, address, and designated contact person for the applicant.

(2) Supporting documentation to demonstrate that the party which caused the portion of the environmental contamination that is the basis for the grant request is unknown, cannot be located, or is financially unable to pay for the cost of the cleanup.

(3) A description of the proposed project and associated budget, including all of the following:

- (a) The location and duration of the project.
- (b) The brownfields redevelopment and environmental remediation activities for which the applicant is seeking grant funds.
- (c) An itemized estimate of the proposed cost of each project activity.
- (d) The amount and certainty of the applicant's financial contribution to the project, including in-kind service contributions.
- (e) A description of the proposed match, and the professional qualifications of the persons conducting any in-kind services.
- (f) A list of other federal, state, local, and private funding or financial sources the applicant may be seeking funding from, including the amount, timing, and certainty of the funding awards.
- (g) A project implementation schedule, including the brownfields redevelopment activities, environmental remediation activities, and site redevelopment.
- (h) A description of the infrastructure the project requires, and the source and certainty of financing for the needed infrastructure.
- (i) A map showing the location of the project within the municipality having jurisdiction, and an indication if this project is located in any specially designated federal, state, or local economic financing or taxation zone.

(4) A description of the potential for the project to promote economic development in the area.

(5) A summary of the environmental condition of the site, and the impact the project will have on the environment.

(6) The innovativeness of the applicant's proposal for remediation and redevelopment, including, but not limited to, innovative funding, remediation, or reuse.

(7) An explanation of why assistance under the brownfields grant program is necessary and what is likely to result if assistance is not granted, including certified statements addressing all of the following:

(a) That sufficient funding is not available at reasonable terms from any other source.

(b) That state funds received under this chapter will not replace funds from any other sources, such as agri-chemical, petroleum environmental cleanup fund act, and superfund.

(c) That the project is not likely to take place without the grant.

(8) A certified statement, including supporting documentation, that the applicant is financially sound and has the financial resources to complete the project in a timely manner, assuming the grant is awarded.

(9) A certified statement and plan for conducting a financial audit of the grant and for submitting program reports to the department on the results of the project, pursuant to s. Comm 110.08.

(10) A certified statement that the proposed project will not result in a net loss of permanent employees.

(11) Copies of phase 1 and phase 2 environmental assessments conducted in regard to the property.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98; CR 01-142: r. and recr. Register June 2002 No. 558 eff. 7-1-02.

Comm 110.04 Eligibility. The department may award a grant to any person if all of the following apply:

(1) The recipient will use the grant proceeds for brownfields redevelopment or associated environmental remediation activities.

(2) The recipient will not use the grant proceeds to pay lien claims of the department of natural resources or the federal environmental protection agency based on investigation or remediation activities of the department of natural resources or the federal environmental protection agency or to pay delinquent real estate taxes or interest or penalties that relate to those taxes.

(3) All of the following are unknown, cannot be located or are financially unable to pay the cost of brownfields redevelopment or associated environmental remediation activities.

(a) The party that caused the portion of the environmental contamination that is the basis for the grant request.

(b) Any person who possessed or controlled the environmental contaminant that is the basis for the grant request before the contaminant was released.

(4) The recipient will contribute a recipient match to the cost of the project in cash or in-kind.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98; CR 01-142: am. (intro.), renum. (2) and (3) to be (3) and (4), cr. (2), Register June 2002 No. 558, eff. 7-1-02.

Comm 110.05 Criteria for determining grant awards. The department shall use the following criteria in determining grant awards:

(1) The potential of the project to promote economic development in the surrounding area including; job creation, wages and benefits, impact on economic distress, local and private investment, increase in taxable property, impact on the community, and other factors the department considers relevant.

(2) Whether the project will have a positive effect on the environment.

(3) The amount and quality of the recipient's contribution to the project.

(4) The innovativeness of the recipient's proposal for remediation and redevelopment including; proposed reuse, public or private partnership and other factors the department considers relevant.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

Comm 110.06 Contracts. Each grant recipient shall enter into a contract with the department for the purpose of implementing the grant awarded under this chapter. Each contract shall be signed by the secretary of commerce and the chief executive officer of the eligible recipient, or by the authorized representative of the eligible recipient. The department may void a contract and seek a return of any funds released under the contract for failure by the grant recipient to perform its obligations under the contract.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

Comm 110.07 Use of grant funds. Grant proceeds may not be used for phase 1 and phase 2 environmental assessments.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98.

Comm 110.08 Reporting and auditing. A grant recipient awarded a grant under this chapter shall provide the department semi-annual program reports. A financial audit and final program report shall be submitted at the end of each contract. The financial audit and program reports become the property of the department and are open to public inspection.

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development grants, loans or tax credits; (2) submittal of statements for such grants and loans; and (3) penalties for submitting false or misleading information, or for failing to comply with the terms of a contract.

History: Cr. Register, July, 1998, No. 511, eff. 8-1-98; CR 01-142: am. Register June 2002 No. 558, eff. 7-1-02.