

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

CHAPTER 155

RULES GOVERNING THE BROWNFIELDS CLEANUP REVOLVING LOAN FUND

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§15-155-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Brownfields Cleanup Revolving Loan Fund (BCRLF) authorized by Act 173, SLH 2002. Other requirements of the BCRLF are contained in federal regulations authorizing the program. The BCRLF is established under a Cooperative Agreement between the U.S. Environmental Protection Agency (EPA), the Department of Business, Economic Development & Tourism (DBEDT), the City & County of Honolulu and the County of Maui to encourage clean up and redevelopment of commercial and industrial properties that are idled, underutilized or abandoned as a result of real or perceived contamination. To encourage clean up and reuse of these properties, the BCRLF may offer low-cost loans to fund cleanup activities at properties that are accepted into the Department of Health's Voluntary Response Program (VRP). [Eff.] (Auth: SLH 2002, Act 173)

§15-155-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

“BCRLF” means Brownfields Cleanup Revolving Loan Fund;

“BCRLF Loan Committee” means a committee comprised of three voting members representing the State of Hawaii, County of Maui and City and County of Honolulu and up to two non-voting members with expertise in financing and property redevelopment;

“CERCLA” means Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended;

“Department” means the department of business, economic development, and tourism;

“Director” means the director of the department of business, economic development, and tourism;

“EPA” means the U.S. Environmental Protection Agency;

“Fund” means Brownfields Cleanup Revolving Loan Fund;

“HEER” means Hazard Evaluation and Emergency Response office;

“Loan” means a loan from the brownfields cleanup revolving loan fund;

“NCP” means National Oil and Hazardous Substances Pollution Contingency Plan;

“OP” means the Office of Planning;

“State” means the State of Hawaii; and

“VRP” means Voluntary Response Program created in 1997 as part of Hawaii’s Environmental Response Law, Chapter 128D, Part II, HRS.

§15-155-3 Fund established. (a) The BCRLF was established in the state treasury to hold the following:

(1) Funds from federal or private funding sources;

(2) Moneys received as repayment of loans and interest payments; and

(3) Any fees collected by the department from the activities of the BCRLF program.

(b) Moneys in the fund shall be used to provide low interest loans or other authorized financial assistance to eligible public, private and non-profit borrowers for cleanup activities of contaminated sites and the monitoring activities necessary to determine the effectiveness of a cleanup action. Moneys in the fund may be used to cover administrative and legal costs of fund management, project management and site management associated with site-specific cleanup actions, to include personnel, services, materials, equipment, and travel for the purposes of the BCRLF program; provided that the moneys used for these purposes shall not exceed the amounts allowed by EPA for the BCRLF Pilot Program.

(c) The fund shall be administered by the department through its project manager, the Office of Planning (OP).

(d) All interest earned on the deposit or investment of the moneys in the fund shall become a part of the fund. (Auth: SLH 2002, Act 173)

§15-155-4 Applications pickup. Any applicant for a loan may pick up a VRP application outline and a BCRLF application form at HEER at 919 Ala Moana Blvd., Room 206, Honolulu, Hawaii 96814. Loan applicants may call (808) 586-4249 for information about the VRP and (808) 587-2802 for information about the BCRLF. The VRP application outline is also available on HEER’s website:

<http://www.hawaii.gov/health/environmental/hazard/vrp.html>. The BCRLF application form is also available on the Hawaii Brownfields website:

<http://www.hawaii.gov/dbedt/gis/brownfields/bcrlf..html>. (Auth: SLH 2002, Act 173)

§15-155-5 Application submission. The applicant should send the completed VRP and BCRLF applications to HEER at 919 Ala Moana Blvd., Room 206, Honolulu, Hawaii 96814. BCRLF applications may be submitted concurrently with the VRP application or upon acceptance into the VRP. (Auth: SLH 2002, Act 173)

§15-155-6 Eligibility requirements. Brownfields loan eligibility criteria are determined by EPA Cooperative Agreement No. BL-97943301-0 dated September 20, 2002, which incorporates the eligibility criteria of §104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 40 C.F.R. Part 35, Subpart O (Cooperative Agreements for Superfund Response Actions), and 40 C.F.R. Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan), and any future amendments. (Auth: SLH 2002, Act 173)

§15-155-7 Review of applications. (a) HEER will perform the review of the VRP application and make a determination whether to accept the applicant into the program.

(b) Upon acceptance of a VRP application, the applicant may be offered the opportunity to apply for a BCRLF loan. Once OP deems the loan application to be complete and eligible, the department's Business Loan Officer will analyze the financial components of the completed loan.

(c) OP and the affected county government will jointly review the completed loan application to confirm that the project qualifies for the BCRLF program and will then jointly submit the application to the Hawaii BCRLF Loan Committee for review and approval.

(d) Applicants accepted into the BCRLF program will receive a letter of commitment from OP detailing the terms, conditions, and collateral requirements of the loan. The loan authorized by this commitment letter will be subject to final acceptance following completion of a technical review and public involvement process. (Auth: SLH 2002, Act 173)

§15-155-8 VRP and technical review. (a) Once an applicant is accepted into the VRP and the BCRLF program, OP, HEER and the applicant will complete an Approval Memo which will document that the proposed cleanup meets the criteria set forth in the CERCLA and will recommend whether to proceed with a Removal Action Report.

(b) The applicant in consultation with HEER shall prepare a draft Removal Action Report and submit it to HEER.

(c) The HEER site manager will review the draft Removal Action Report and recommend acceptance to DOH and OP. The applicant will be notified the Removal Action Report is ready for public comment. (Auth: SLH 2002, Act 173)

§15-155-9 Community involvement plan. (a) The affected county government or OP shall ensure that a site-specific community involvement plan is prepared by the loan recipient, designate a spokesperson for the proposed cleanup, and establish a public information repository.

(b) The affected county government or OP shall make the draft Removal Action Report available to the public for review and comment, including publishing a notice of the availability of the draft Removal Action Plan, providing a 30-day comment period and holding public meetings as appropriate. (Auth: SLH 2002, Act 173)

(c) Following the 30-day comment period, the applicant and HEER will finalize the Removal Action Plan and complete a Removal Action Decision Memo that documents a determination that a selected cleanup action should be taken at the site.

§15-155-10 Final loan approval, execution and repayment. (a) Following completion of the final Removal Action Report and the Removal Action Decision Memo, the applicant will update the loan application to include the selected remedy and any other new information.

(b) The Business Loan Officer will review the updated loan application and will prepare an updated credit memorandum to be forwarded to OP for final BCRLF Loan Committee approval.

(c) The applicant will be sent a BCRLF Loan Agreement for completion and signature and a list of any closing documents to be provided by the applicant. The department and the applicant will then execute the loan and the applicant shall commence repayment of the loan in accordance with the terms and conditions of the loan agreement. (Auth: SLH 2002, Act 173)

§15-155-11 Final cleanup report. The cleanup action may not exceed 12 months from the execution date of the loan. The borrower shall submit a final cleanup report no later than 60 days after completion of the cleanup. The borrower shall keep the loan documents and records for ten years or until the loan is repaid, whichever is shorter. (Auth: SLH 2002, Act 173)

§15-155-12 Default. In the event of default, OP shall initiate collection. (Auth: SLH 2002, Act 173)