

# KENTUCKY BROWNFIELD PROGRAM

## ***Cleaner Commonwealth Fund Loan Guide***



Kentucky Department for Environmental Protection  
Kentucky Brownfield Program  
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## **KENTUCKY BROWNFIELD PROGRAM**

Brownfield sites are vacant and/or underutilized properties where environmental concerns hinder their redevelopment and reuse. The goal of the Kentucky Brownfield Program is to help address these concerns, including supporting environmental cleanups of these sites to facilitate their reuse. To achieve this goal, the Program offers subgrants and loans through the Cleaner Commonwealth Fund to clean up contaminated properties.

This *Cleaner Commonwealth Fund Loan Guide* focuses on loans and is intended to help applicants with the loan process from start to finish. The *Guide* is to be used for general guidance only and may be revised from time-to-time to reflect a dynamic revolving loan program. Potential applicants are encouraged to contact the Kentucky Brownfield Program staff to discuss the specifics of their project. Contact information is provided below:

### **CONTACT**

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## INDEX

CCF BACKGROUND AND OVERVIEW .....	4
ELIGIBLE SITES, ENTITIES, AND SCORING .....	5
ALLOWABLE USE OF FUNDING .....	7
TERMS AND CONDITIONS .....	8
REPORTING REQUIREMENTS .....	9
COMMUNITY INVOLVEMENT PLAN .....	10
LOAN APPLICATION AND APPROVAL PROCESS .....	11
LOAN ANALYSIS CRITERIA .....	12
LOAN UNDERWRITING .....	13
LOAN APPLICANT CHECKLIST .....	14

## BACKGROUND AND OVERVIEW

The Kentucky Cleaner Commonwealth Fund (CCF) was established from a U.S. Environmental Protection Agency (USEPA) Brownfield Revolving Loan Fund Grant. The CCF is used to provide qualified applicants with the necessary capital to clean up contaminated properties. Grants and loans from the CCF are set up on a reimbursement structure. This guidance document primarily covers the loan program as summarized below.

<b>ELIGIBILITY:</b>	<ul style="list-style-type: none"> <li>• Loans are available to local governments, quasi-governmental agencies and nonprofits undertaking clean-up of contaminated properties.</li> <li>• Properties must be considered brownfields (underutilized or abandoned because of real or perceived contamination).</li> <li>• Applicants must own the property (may include partner organization).</li> <li>• Applicants must not be a responsible party for the contamination.</li> <li>• Applicants must have conducted an All Appropriate Inquiry (AAI) in accordance with EPA AAI Final Rule or ASTM E1527-21. AAI must be completed <b>at least 6 months prior</b> to property acquisition.</li> </ul>
<b>TIMELINE:</b>	<ul style="list-style-type: none"> <li>• Applications are accepted on an ongoing, first-come, first-served basis.</li> </ul>
<b>USE OF FUNDS:</b>	<ul style="list-style-type: none"> <li>• Reimbursement for Analysis of Brownfield Cleanup Alternatives (ABCA), Corrective Action Plan (CAP) and/or a Property Management Plan (PMP).</li> <li>• Containment, treatment, and disposal of hazardous materials (including asbestos and lead-based paint).</li> <li>• Excavation, consolidation, or removal of contaminated soils.</li> <li>• Removal of drums, tanks, or other bulk containers that contain or once contained hazardous substances.</li> <li>• Site monitoring, including sampling and analysis if needed during cleanup.</li> </ul>
<b>FUNDING LIMITS:</b>	<ul style="list-style-type: none"> <li>• Funding limits depend on availability of funds through CCF.</li> <li>• Discounted loan (forgivable portion) is 25% of total loan.</li> <li>• Financial records and collateral required for loan.</li> </ul>
<b>LOAN RATE:</b>	<ul style="list-style-type: none"> <li>• 0% interest loan may be given to local governments, 501(c)3 nonprofits, and quasi-governmental agencies.</li> </ul>
<b>LOAN TERM:</b>	<ul style="list-style-type: none"> <li>• 10 to 15 years depending on the needs of the applicant.</li> </ul>
<b>REPAYMENT:</b>	<ul style="list-style-type: none"> <li>• Loan repayments begin upon completion of project; payments are made two times per year in February and August.</li> </ul>

## ELIGIBLE SITES, ENTITIES, AND SCORING

CCF applicants must meet all the following eligibility criteria. Meeting the criteria does not guarantee the approval of a loan. Consideration and approval of the loan application depends partly on the probability that the applicant can repay the loan and the availability of CCF reserves.

### Eligible Sites

To be eligible for a CCF loan, the site selected for cleanup (as identified in the Site Cleanup Plan) must meet the definition of a brownfield site. Brownfield sites are properties that are abandoned or underutilized due to real or perceived contamination. They can include former factories, abandoned schools and hospitals, mine-scarred lands, former service stations, dry cleaners and other properties with potential environmental issues.

CCF loans can be used on properties that are:

- Located within the Commonwealth of Kentucky.
- Owned by a public entity (defined as a state agency or body, county or local government or housing authority), either directly or by a municipality or indirectly through a quasi-public entity such as a public development authority.
- Owned by a nonprofit group such as a community development corporation.
- Owned by a private entity, either currently or as a prospective owner such as banks and developers, provided that they did not cause or contribute to the contamination.

CCF loans may *not* be used on properties that are:

- Listed or proposed for listing on the National Priorities List (a Federal Superfund site); where a cleanup action must be taken within six months; or where an enforcement action is planned or taken.
- Facilities subject to an administrative or judicial order or consent decree, facilities with permits issued under the authorities of RCRA, Toxic Substances and Control Act (TSCA), and the Safe Drinking Water Act (SDWA), as well as facilities with permits issued under section 1321 of the Clean Water Act are excluded from the definition of brownfield site. Some sites are excluded from the definition of a brownfield site unless the EPA makes a “property-specific funding determination” and allows grant funds to be used at the site.

Program staff can help you determine if a site meets the eligibility criteria. For a property-specific funding determination, the following information is required:

- Basic site information, including findings from environmental site assessments.
- Eligible entity identification information.
- The specific circumstances that require the request for a property-specific determination.
- A short explanation of why the site falls within the identified circumstances requiring the property-specific funding determination.
- The degree to which other funding is not available.

## **Eligible Entities**

Eligible borrowers can include nonprofits, local governments, and quasi-governmental agencies. Privately-owned sites are also eligible for CCF loans; however, private entities are not eligible for 0% interest or discounted loans. A borrower must be a bona fide prospective purchaser (BFPP), or an innocent landowner (ILO) that has performed an “All Appropriate Inquiry” (AAI) on or before acquiring the property and is not liable for cleanup costs. A government entity that has acquired the property through eminent domain, tax foreclosure or similar method may also be eligible.

Borrowers will work directly with the Kentucky Brownfield Program staff to complete the application and implement the project. Eligible borrowers must meet the following criteria:

- Own or have access to the site to carry out activities as required for remediation.
- Must not have caused or contributed to the contamination at the site.
- Must have conducted an All Appropriate Inquiry (AAI) at least 6 months prior to property acquisition if claiming protection from liability. *\*An AAI is an environmental due diligence requirement met through assessment of the site by an environmental professional.*
- Must not be or have been subject to any penalties for lack of compliance with environmental laws and regulations at the site.
- Must be authorized to incur debt and enter into legally binding agreements.

## **Scoring**

As with traditional loans, an analysis and evaluation may be made of each loan application to make certain that applicants have the resources or future capability to repay the loan. This evaluation will be based upon, but not limited to, the following criteria:

- Projected cost estimate of the cleanup.
- Description of community benefit, job creation or retention or economic revitalization that would result from the property being cleaned up.
- Certification that the applicant has no penalties resulting from environmental noncompliance at the site subject to the loan at the time of submitting the loan application.
- Ability to repay the loan.

Eligible loan applications will also be given a score by a committee of staff members from the Department for Environmental Protection based on the criteria below:

- Remediation plan..... 20 points
- Project description and feasibility of success ..... 20 points
- Documented economic/health/environmental needs in the community ..... 20 points
- Community Involvement Goals ..... 20 points
- Project benefits..... 20 points

In cases where there are multiple applicants and not enough funding for projects, this score will serve as a mechanism to determine where the money will be directed.

## ALLOWABLE USE OF FUNDING

CCF loans are to be used for cleanup only. This includes the following types of activities associated with cleaning up a brownfield site:

- Reimbursement for the development of an Analysis of Brownfield Cleanup Alternative (ABCA) or Corrective Action Plan (CAP).
- Reimbursement for the development of a Site Cleanup Plan or Property Management Plan.
- Installation of fences, warning signs or other security or site control precautions that prevent trespassers on-site.
- Drainage controls, stabilization of berms, dikes, impoundments or closing lagoons.
- Capping of contaminated soil.
- Chemicals and other materials to retard the spread of the release or mitigate its effects.
- Excavation, consolidation, or removal of contaminated soil from drainage or other areas.
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants.
- Removal of source materials.
- Oversight of cleanup activities.
- Environmental insurance.
- Monitoring the health of populations exposed to hazardous substances from the site.
- Costs associated with meeting public participation, worker health and safety and interagency coordination requirements.
- Contamination, treatment, disposal, or incineration of hazardous materials.
- Site-monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of the effectiveness of a cleanup.
- Travel, training, equipment, supplies, reference materials and contractual support if those costs are reasonable and can be allocated to tasks specific in an approved scope of work.
- Department oversight fees.
- Operations and maintenance activities.
- Asbestos removal and lead-based paint removal.
- Other activities approved by program staff.

The following are NOT allowable costs:

- Pre-cleanup site assessment and characterization.
- Monitoring and data collection for environmental permits under other federal and state laws unless it is a required component of the cleanup.
- Support of lobbying efforts of the recipient.
- Support for job training.
- Certain administrative costs, supplies, or data-processing charges.
- Cost-sharing or matching requirement for another federal grant unless authorized by statute.
- Development activities that are not cleanup actions (i.e., construction of a new facility or marketing of property).
- Any other expense not specifically related to environmental cleanup.

## TERMS AND CONDITIONS

The goal of the CCF is to fund the cleanup of brownfield properties to protect human health and the environment, promote reinvestment and to retain or create new jobs. Loan funds can be used to supplement other sources of funding, such as municipal or community development funds, other brownfields funds, investor funds or as gap funding to attract additional lending institutions for redevelopment.

### **Loan Terms**

Loans will be structured to encourage borrowers to put properties back into productive reuse. Basic loan terms include the following:

- There are no minimums or maximums for loan amounts. However, loan amounts are restricted by the availability of funds.
- The maximum loan term is 15 years. *\*Full repayment is required if the property is sold.*
- Scheduled repayment is required during the term of the loan.
- All loans require collateral, which may include reasonable business or personal assets. Collateral will be considered on a case-by-case basis.

### **Interest Rate**

Interest rates for public entities currently offered at 0%. Further clarification is provided below:

- Public entities and nonprofits may be eligible for a discounted loan, also referred to as the practice of forgiving a portion of the loan principal. The amount of principal discounted may be any percentage of the total amount up to 25% of total loan.
- Nonprofit organizations are defined as any 501(c)(3) corporation as defined in Title 26 of the United States Code, may include Community Development Corporations [CDCs], Redevelopment Authorities, churches, etc.).



## REPORTING REQUIREMENTS

During the cleanup, the borrower will complete and submit the following documents to the Kentucky Brownfield Program staff:

- A Community Involvement Plan (if not supplied at the time of application).
- Documentation of sampling and analysis (if required).
- Documentation showing sufficient monitoring of sub-recipients, contractors, etc.
- Documentation that federal and state worker health/safety requirements are met.
- Documentation showing compliance with environmental covenants (if applicable).
- Documentation of the use of funding for eligible cleanup activities as agreed in the contract.
- Monthly **Cleaner Commonwealth Fund (CCF) Monthly Status Report.**
- Monthly **Cleaner Commonwealth Fund (CCF) Reimbursement/Cost Share Form.**
- Monthly **Subrecipient Report of Compliance with Davis-Bacon Labor Standards.**

In addition, borrowers will be required to:

- Keep records of compliance with the terms and conditions of the loan, including applicable federal and state requirements.
- Notify the Kentucky Brownfield Program staff during the times when Davis-Bacon wage verification is needed. Borrowers must verify wages through interviews.
- Adhere to all federal and state regulations such as Historic Preservation Reviews, Endangered Species Act, etc. as described in the loan contract.
- Obtain Notification of Completion letter or No Further Remediation letter from the Kentucky Department for Environmental Protection (for hazardous substance remediation).
- Provide verification of removal from a certified contractor (for lead or asbestos abatement).
- Provide a final report detailing activities and deliverables completed during the agreement period. The final report is due 30 days after the end of the project.

## COMMUNITY INVOLVEMENT PLAN

Local communities have a vested economic and social interest in brownfield redevelopment. Involving the public in making decisions from the onset will help ensure that the cleanup and redevelopment addresses community needs. As part of participating in the CCF loan program, borrowers must prepare a site-specific Community Involvement Plan (CIP). Preparation of the CIP is an allowable cost under the CCF. The purpose of the CIP is to provide environmental information on the project to the public. The CIP also indicates how the borrower will involve the community and solicit input into the project.

The Community Involvement Plan include the following components:

- I. Site Location and Description
  - a. address and current use of the site
- II. Site/Facility History
  - a. historic land use and/or activities known to have occurred at the site
- III. Summary of Environmental Investigations and Findings including:
  - a. known or suspected contaminants and media affected (soil, groundwater, etc.)
  - b. exposed populations and/or environmental risks (if known)
  - c. an Analysis of Brownfield Cleanup Alternatives (ABCA) (if known)
  - d. preferred remedial action (if known)
  - e. schedule/timeline for cleanup
- IV. Community Background
  - a. demographic background on the community
  - b. affected/interested community groups
  - c. past community involvement
  - d. key community issues or concerns
- V. Location of Project Information
  - a. location where documents and progress reports may be reviewed by the public

The CIP should be made available to the public for public comment. A copy of the plan, any advertisements, comments, community meeting sign-ins, etc. should be included in a final report to the Kentucky Brownfield Program staff.

## APPLICATION AND APPROVAL PROCESS

All loan application forms, along with a checklist, is available on the Kentucky Brownfield Program website. Interested applicants are encouraged to discuss their proposed project with the Kentucky Brownfield Program staff before application to determine site and applicant eligibility as well as the amount of funding available from the program. Applications are accepted on a rolling basis depending on availability of funding. At the end of each month, the Kentucky Brownfield Program staff will initiate a review process with other Brownfield staff from the Environmental Assistance Branch and Superfund Branch. The review includes credit worthiness of the borrower and technical aspects of the proposed cleanup. The review will determine an overall score as noted on page 6.

The application process consists of several steps. The first step involves determining the eligibility of the site and the applicant. The second phase focuses on the best way to clean up and redevelop the site. The third phase includes gathering all the documents necessary to make a loan decision and to draft a loan agreement. The fourth phase results in an approved contract between the Department for Environmental Protection and the Borrower. The final phases involve selecting a contractor through a competitive bid process, submitting a Site Cleanup Plan for Cabinet approval and implementing the cleanup according to the Plan.

The following chart represents the loan application process:



## LOAN ANALYSIS CRITERIA

The analysis and evaluation of the applicant and the project will include a review of the financial and environmental risks associated with the cleanup and redevelopment of the property. The Program will also issue a score using the five criteria listed in the Eligible Sites, Entities and Scoring portion of this document.

### **Financial Risks and Analysis**

The following considerations will be used to evaluate the applicant's financial soundness:

- CHARACTER: The legal structure and historical financial condition of the applicant.
- CAPACITY: Prior success with comparable projects.
- CONDITIONS: Any known risk that may negate the project.
- COLLATERAL: To be determined by the Program.
- DEBT COVERAGE: Ability to explain how future debt service will be met.

The following types of documentation and historical data will be used to evaluate financial risks:

- Previous three years of fiscal year-end balance sheets and income statements.
- Previous three years of credit/borrowing transactions of the applicant.
- Previous three years of audited financials.
- Any other documentation that shows the financial ability and resources of the applicant to complete the cleanup project.

### **Site and Environmental Risks and Analysis**

Risks under this category to be considered will include, but are not limited to:

- The applicant's environmental compliance history.
- The applicant's ability to manage the cleanup project.
- Whether or not the proposed project meets site eligibility and financial feasibility.
- The readiness of the project to proceed upon acceptance of the application.

### **Redevelopment Considerations:**

The following considerations will be used to evaluate projects with respect to redevelopment potential. While these measures are important, their consideration will not disqualify a project.

- The property has a site reuse/redevelopment plan with near-term economic viability or positive human health and environmental impacts.
- The property will result in job creation/retention or provide community benefits that will make an area more attractive to potential employers.
- The property will demonstrate that it improves the existing environmental conditions.
- The project must provide a realistic plan for cleanup and redevelopment.

## LOAN UNDERWRITING

The evaluation of underwriting criteria will assist with the assessment of the risks involved in funding the loan request. As a result of this assessment, terms and conditions will be determined and specified in the loan agreement and other loan documents that will provide financial security to the CCF loan. Underwriting the requests to the program using the guidelines below will allow for proper “weighting” of the risks involved with each proposed project. Even though the CCF Program is not a traditional lender, all partners will adhere to generally accepted prudent lending practices. Because the purpose of the Brownfield Program is to return brownfield properties to productive use and benefit to the community, underwriting criteria for CCF loans may be more flexible than those used by a traditional lender.

Loan underwriting will be completed by the Kentucky Department for Environmental Protection (KY DEP) based on the approval of the CCF loan. As the CCF Fund Manager, along with review by the EPA, KY DEP has the ultimate responsibility to approve or deny any loan requests, as well as to produce and execute all loan documents.

The primary criteria for underwriting loan requests to the CCF Program include:

- Ability to repay the loan.
- Adequate collateral and future revenue streams.
- Commitment by borrower.
- Balance sheet analysis.
- Favorable credit history.

### **Ability to Repay the Loan**

The primary source of repayment by applicants to the CCF will usually be cash flow from business operations. The ability to repay through cash flow is expressed as the Debt Coverage Ratio (DCR), defined as follows:  $DCR = \text{Cash Flow Available for Debt Service} / \text{Debt Service}$ .

### **Adequate Collateral**

KY DEP, on behalf of the CCF Program, will not make any unsecured loans and may take a security interest in the brownfield site to be cleaned up to ensure a means of recouping the loan. A security interest in all reasonable business (or personal) assets will be required. Security interests in business and personal assets may include:

- Accounts Receivable
- Inventory
- Other business-related real estate
- Equity in Guarantors Personal Real Estate
- Potential liens on property

Liquidation of the collateral and ability to repay the loan is measured by the Loan-to-Value Ratio (LVR) and expressed as follows:  $LVR = \text{Loan Amount} / \text{Fair Market Value of the Collateral}$ .

### **Commitment by Borrower (Loan Guarantees)**

Cash flow and collateral are the two sources of repayment. However, normal lending practice usually includes a third or tertiary source, that of guarantees by the owners. Depending on the overall strength of the loan application, the personal guarantees may require a security interest in personal assets to “back up” the guarantee. Where a substantial personal asset is ownership of another business, that business may also be required to guarantee the debt.

### **Balance Sheet Analysis**

The balance sheet of the applicant business must indicate the business has the ability and resources to repay the loan and start and complete the project. The applicant should present the last three years’ fiscal balance sheets.

### **Favorable Credit History**

The applicant business and owner(s) should have favorable credit histories during the past five years.

### **Exceptions**

If the applicant is a startup or newly established organization, the Kentucky Brownfield Program reserves the right to make underwriting decisions based on additional factors that fit within the risk tolerance of the program. The program will be flexible in the consideration of underwriting where applicants are deficient in one area but are stronger in others. The program may also take into consideration the overall economic benefits the project can provide to the community.

## **LOAN APPLICANT CHECKLIST**

CCF Loan applicants should use the following checklist to ensure that their applications is complete and reporting requirements are met. Incomplete application packages and missing documentation will result in delays in processing and may result in the denial of credit request.

### **ITEMS REQUIRED TO BE SUBMITTED WITH APPLICATION**

- 1) CCF Loan Application (filled out completely and signed)
- 2) CCF Loan Application Attachments:
  - a) Appendix A – Borrower/Applicant Certification Form
  - b) Appendix B – Projected Budget for Remediation
  - c) Appendix C – Consent to Publication Form
  - d) Appendix D – Credit Request and Release Form
  - e) Appendix E – Financial Information (see details below)
    - Three fiscal years’ balance sheets
    - Three fiscal years’ income statements
    - Last three years’ business tax returns (private entities only)
    - Current business license, if applicable
    - Pro Forma Statements, if applicable
    - Statement of sources and uses of funds for entire project
- 3) Copy of Phase I and Phase II Environmental Site Assessments (for cleanup of hazardous substances)
- 4) Copy of Hazardous Building Materials Survey (for cleanup of asbestos and/or lead-based paint)
- 5) An Analysis of Brownfield Cleanup Alternatives or Cleanup Action Plan and projected costs

### **ITEMS THAT CAN BE SUBMITTED AFTER APPLICATION**

- 1) Newspaper Procurement Request
- 2) Prime contractor/consultant bid documents and signed contract documents
- 3) Cleanup subcontractor bid documents and signed contract documents
- 4) Remediation Plan / Site Cleanup Plan (to be reviewed and approved by the Cabinet)
- 5) Redevelopment Plan, with supporting documentation that addresses the site’s development potential, job retention/creation potential, community benefits and implementation
- 6) Community Involvement Plan (or Community Relations Plan) and attachments, including project fact sheet, public notice, meetings, and comments.
- 7) Quality Assurance Project Plan (QAPP)
- 8) Health and Safety Plan (HASP)
- 9) Endangered Species Act (ESA) Analysis
- 10) State Historic Preservation Office (SHPO) Review - Section 106 compliance letter