

Kentucky Brownfield Redevelopment Program

<http://dep.ky.gov/Pages/brownfields.aspx>

envhelp@ky.gov

Cleaner Commonwealth Fund Loan Guide



Index

CCF Background	3-4
Eligible Sites, Entities and Scoring	5-6
Allowable Costs	7-8
Terms and Conditions	9-10
Community Involvement Plan	11
Loan and Reporting Requirements	12
Loan Application and Approval Process	13
Loan Analysis Criteria	14
Loan Underwriting	15-16
Pre-Screening Checklist	17-18
Applicant Checklist	19
Contact Information	20



CCF Background and Overview

The Kentucky Cleaner Commonwealth (CCF) Fund was established from an \$850,000 U.S. Environmental Protection Agency (EPA) Brownfield Revolving Loan Fund Grant. This allows the Kentucky Brownfield Redevelopment Program to make subgrants and loans to eligible entities for cleanup-related activities at eligible brownfield sites. Grants and loans from the CCF are set up on a reimbursement structure. This document primarily covers the loan program, which is briefly outlined below.

Eligible Entities/Properties

- Loans are available to nonprofits, quasi-governmental agencies and local governments.
- Applicants must adhere to proper Bona Fide Prospective Purchaser guidelines to be eligible for cleanup loan funds.
- Properties must be considered brownfields.
- While in most cases the applicant must own the property, there are some cases where the property can be owned by a partner organization.

Loan Period

- Loans can be made for a period of 10-15 years, depending on the needs of the applicant.
- For public entities, nonprofits and quasi-governmental agencies, the program can deem a portion of the loan to be forgivable given proper adherence to the approved cleanup plan and institutional controls.

Loan Interest Rates

- The starting rate for any loan will always be at least one point below market. It will be determined by the applicant's organizational type and the potential environmental and economic impacts of the project. The program reserves the right to make very low interest loans and no interest loans for areas where there is extreme poverty and/or environmental justice concerns.
- Interest will start to accrue at project completion when the requirements of the cabinet-approved cleanup plan have been met (date DWM issues a NFR, Notice of Completion or equivalent depending on the case).
- Interest will only be accrued on the actual amount drawn by the entity for cleanup. Loans are approved up to a certain amount, and the applicant can seek reimbursement up to that amount.

Loan Repayment

- Loan repayments will be made two times per year, in February and August.
- Loan repayment will commence on the first repayment month (February or August) following the completion of the project.
- There is no penalty for early repayment.
- For qualified entities, the program reserves the right to provide "loan forgiveness" on a portion of a loan. This will depend on successful completion of the project and funding levels.
- Loan repayment and schedule will be determined after completion of the cleanup and will reflect the actual accrued cleanup costs and any forgivable portion granted.



Information and Financial Records Required for a Loan (in addition to existing environmental and project info for grant):

- Business plan if applicable
- Information on each owner/partner in the project
- Past three years of audited financial statements
- Most recent internally prepared financial statements
- Pro Forma statements

Collateral

- Collateral will be required and can come in the form of cash, bonds or reasonable business or personal assets. The form of collateral is negotiable in each case.

Eligible Sites, Entities and Scoring

In order to be eligible for CCF loans and subgrants, the site identified in the workplan or selected for cleanup by a borrower or subgrantee 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. The state program staff can help you determine if a site meets this definition.

Eligible Sites

The CCF grant and loans can be used on properties that are

- Located within the Commonwealth of Kentucky;
- Idled, underutilized or abandoned;
- Publicly owned, either directly 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; or
- Privately owned by current or prospective property owners, banks and developers, provided they did not cause or contribute to the contamination.

Funds **may not** be used on

- Sites 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; or
- 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 (the oil and hazardous substance liability provisions) are excluded from the definition of brownfield site. Some sites that 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.

If requesting a property-specific funding determination, the requirements are

- Basic site information and 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; and
- The degree to which other funding is not available.

Eligible Entities

Eligible borrowers can include nonprofits, local governments and quasi-governmental agencies. A borrower may be a bona fide prospective purchaser (BFPP), or an innocent landowner (ILO) that has performed “all appropriate inquiry” 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. It is advised that an entity speaks to program staff to determine eligibility in that situation.

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 and/or environmental needs in the community, especially in the neighborhood of the project | 20 points |
| • Community Involvement Plan | 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 Costs

Allowable costs under the CCF can include:

- Development of an Analysis of Brownfield Cleanup Alternatives (ABCA), corrective action plan and/or development of a 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 drainage 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 highly 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 a brownfield 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;
- Lead-based paint removal;
- Asbestos removal and
- Other activities approved by program staff.

The following are **NOT** allowable costs:

- Pre-cleanup site assessment and characterization;
- Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless the permit is required as a component of the cleanup action;
- Support of lobbying efforts of the recipient;
- Support for job training;



- Certain administrative costs;
- Supplies;
- Data-processing charges;
- Cost-sharing or matching requirement for another federal grant (absent statutory authorization);
- Development activities that are not cleanup actions (i.e., construction of a new facility or marketing of property) or
- Any other expense not specifically related to environmental cleanup.

If the applicant is unsure of any costs associated with the cleanup, contact the program staff for a determination.

Terms and Conditions

The goal of the CCF is to fund the cleanup of brownfield properties in order to protect human health and the environment, promote reinvestment and to retain or create new jobs. Loans will be structured to encourage borrowers to put properties back into productive reuse.

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 fees and interest rates are determined on a project by project basis. Lower interest rates may be offered to encourage short-term repayments. Nonprofits may be eligible for a zero percent interest rate.

All loan application forms are available on the Kentucky Brownfield Redevelopment Program website. A checklist is provided to ensure that your application is complete.

Loan Terms

- Interest rates are fixed at or below the prevailing prime interest rate charged by the money center banks as quoted in the *Wall Street Journal* at time of loan application.
- 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 Eligibility

Varying eligible parties may seek optimal interest rates based on their legal status and the nature of the development project.

Nonprofit: 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.).



These parties may be eligible for 0 percent interest rates, providing the project provides a public benefit, specifically:

- Affordable housing for low- to middle-income purchaser/renters;
- Provides employment or health benefits to an environmental justice area or a community with high rates of poverty.

These parties may be eligible for 1.0 percent interest rates for projects that do not meet the above criteria.

Public Entity: Defined as a state agency or body, county or local government or housing authority.

These parties may be eligible for 1.0 percent interest rates, providing the project provides a public benefit, specifically:

- Affordable housing for low- to middle-income purchaser/renters;
- Provides employment or health benefits to an environmental justice area or a community with high rates of poverty.

These parties may be eligible for 2.0 percent interest rates for projects that do not meet the above criteria.

The Kentucky Brownfield Redevelopment Program reserves the right to consider awarding a 0 percent interest rate in cases where the redevelopment will help alleviate extreme poverty and/or address environmental justice concerns.

Community Involvement Plan

The cleanup and redevelopment of brownfield properties does not occur in isolation. Local communities have a vested economic and social interest in brownfield redevelopment. Fostering an open process and opportunities for public involvement in each CCF project is required. A process involving the community in the decision making from the outset will help ensure that the cleanup and redevelopment addresses community needs and has community support.

As part of participating in the CCF loan program, each borrower must prepare a site-specific Community Involvement Plan (CIP). Preparation of the CIP is an allowable cost under the CCF.

The Community Involvement Plan must contain a

- Site description;
- Redevelopment plan with alternatives (Analysis of Brownfield Cleanup Alternatives or ABCA);
- Schedule for the cleanup; and
- Demographic background on the community, including its concerns and issues.

This plan 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 brownfield program.



Loan and Reporting Requirements

During the cleanup, the borrower will:

- Supply a quarterly report of activities.
- Submit a cleanup plan to the Kentucky Brownfield Redevelopment Program for approval if not supplied at the time of application.
- Supply documentation that all federal and state worker health and safety requirements are met.
- Document and use funds only for eligible activities at the eligible site.
- Comply with requirements of environmental covenants.
- Keep records of compliance with the terms and conditions of the loan, including applicable federal and state requirements.
- Provide a copy of a Community Involvement Plan as described in the application.
- Perform community outreach as described in the CIP.
- Notify the cabinet during the times when Davis Bacon wage verification is needed. The program must verify wages through interviews.
- Adherence to federal and state regulations such as Historic Preservation Reviews, Endangered Species Act, etc. as described in the loan contract.



Loan Application and Approval Process¹³

Interested applicants are encouraged to discuss their proposed project with the Kentucky Brownfield Redevelopment Program staff before application. This can help you determine site and applicant eligibility as well as the amount of funding available from the program.

As long as funding permits, the program will accept applications on a rolling basis. At the end of each month, the program will initiate the review process, which will include staff from the Division of Compliance Assistance, Division of Waste Management and Division of Environmental Program Support.

- The loan approval process will generally proceed as follows:
- The department will perform the review and qualification of the loan application to ensure that it is complete and meets the applicable criteria. The review includes credit worthiness of the borrower and technical aspects of the proposed cleanup. The review may involve consultation with the other partners. If the application is determined to be incomplete or ineligible, the applicant will be notified and provided an opportunity to provide additional information. Once an application is determined to be complete and eligible, the department will determine an overall score using the criteria on page 6 and analyze the financial components of the loan application. In the event there are more requests for money from qualified applicants than what funding will allow, the program will use the scoring criteria to determine where funds will be directed.
- Applicants that are accepted into the CCF program will receive a commitment letter from the program detailing the terms, conditions and collateral requirements.
- Applicants approved for CCF funding will be sent a CCF Loan Contract for review and a finalized copy for signatures. All recipients of CCF funds will be required to enter into a standard loan agreement with KY DEP.

The program reserves the right to not make loans based on financial or general project suitability.



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 and proposed project. 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

To evaluate the financial soundness of the applicant and project, the analysis will consider the following:

- The legal structure of the applicant.
- The historical financial condition of the applicant. The applicant's financial condition will be assessed and compared to industry standards.
- Three years of historical data which can include:
 - Fiscal year end balance sheets and income statements.
 - The history of credit/borrowing transactions of the applicant
 - The financial ability and resources of the applicant to complete the cleanup project.

Additionally, the proposed project and the applicant should adequately meet the following:

- Historical financial statements (previous three years audited financials).
- The entity must provide acceptable collateral (determined by program).
- The entity must be able to explain how future debt service will be met.

Site and Environmental Risks and Analysis

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

- Whether or not the proposed property is in compliance with the eligible site and project costs criteria,
- The applicant's environmental compliance history and
- The applicant's ability to manage the cleanup project.



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 redevelopment 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 KY DEP based on the approval of CCF funding. As 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 will include:

- Ability to repay the loan,
- Adequate collateral and future revenue streams,
- Commitment by borrower,
- Balance sheet analysis and
- 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:

$$\text{DCR} = \text{Cash Flow Available for Debt Service} / \text{Debt Service}$$

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 and
- 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:

$$\text{LVR} = \text{Loan Amount} / \text{Fair Market Value of the Collateral}$$

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

In the event that the applicant is a startup or newly established organization, the Kentucky Brownfield Redevelopment Program reserves the right to make underwriting decisions based on additional factors that fit within the risk tolerance of the program. The program will also 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.

Pre-Screening Checklist

Please review the following checklists for eligibility before completing the Loan Application forms.

Borrower Eligibility:

- The borrower is authorized to incur debt and enter into legally binding agreements.
- The borrower has access to and control of the site or has a written agreement that the property owner will cooperate with the cleanup activities.
- The borrower can demonstrate the financial ability to repay the loan in a timely fashion.
- The borrower has not caused or contributed to the contamination at the site.
- The borrower is not or has not been subject to any penalties for lack of compliance with environmental laws and regulations at the site subject to the loan.

Site Eligibility:

- The property is a brownfield as determined by program staff.
- The applicant did not cause or contribute to the contamination.
- The applicant is not or has not been subject to any penalties for lack of compliance with environmental laws and regulations.
- The property is located in the Commonwealth of Kentucky.



Redevelopment Criteria:

The following considerations will be used to evaluate projects. While this criteria is important, a negative answer will not automatically 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 (The number and type of jobs created and/or retained by each property will be an evaluation factor.) 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 extent of environmental improvement will be an evaluation factor.)
- The property will be ready to proceed upon acceptance of the application and must provide a realistic plan for cleanup and redevelopment.
- The borrower will submit quarterly progress report to the KY DEP until completion of the final cleanup report.
- Following completion of a cabinet-approved cleanup, the borrower will submit yearly reports documenting redevelopment for three years post-cleanup. Reports will be due one year after the first loan payment.

Applicant Checklist

Applicant: Please use the following checklist to ensure that your application to the BRLF is complete. Incomplete application packages and missing documentation will result in delays in processing your application and may result in your credit request being denied.

Application Forms (filled out completely and signed):

- CCF Loan Application
- Consent to Publication Form
- Borrower Certification Form
- Credit Request and Release Financial Information can include:
 - ⇒ Three fiscal years' balance sheets
 - ⇒ Three fiscal years' income statements
 - ⇒ Last three years' business tax returns
 - ⇒ Statement of Sources and Uses of Funds
 - ⇒ Current business license, if applicable
 - ⇒ Pro Forma Statements, if applicable

Environmental and Other Information:

- Copies of AAI or equivalent documents prepared by an environmental professional (as defined by DEP).
- Analysis of Brownfield Cleanup Alternatives and final plan of remedial action showing existing and proposed development plans, and projected cleanup costs, if available.
- A redevelopment plan, with supporting documentation that addresses the site's redevelopment potential, job retention/creation potential, community benefits and implementation.



Contact Information

Kentucky Brownfield Redevelopment Program

300 Sower Blvd.

Frankfort, KY 40601

envhelp@ky.gov

<http://dep.ky.gov/Pages/brownfields.aspx>

Herb Petitjean, 502-782-6432

Amanda LeFevre, 502-782-6398

