



ENERGY AND ENVIRONMENT CABINET

Steven L. Beshear
Governor

DEPARTMENT FOR ENVIRONMENTAL PROTECTION
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Leonard K. Peters
Secretary

November 22, 2011

Environmental Management Support, Inc.
Attn: Mr. Don West
8601 Georgia Avenue, Suite 500
Silver Spring, MD 20910

Re: Commonwealth of Kentucky, **US EPA Brownfield Revolving Loan Fund Application**

Dear Mr. West:

Thank you for the opportunity to submit a grant application. This application is for a revolving loan fund for hazardous substances and petroleum.

The following information is provided per the application guidelines:

- a. Applicant Identification:** Kentucky Department for Environmental Protection, 300 Fair Oaks Lane, Frankfort, KY 40601.
- b. DUNS Number:** 927324749
- c. Funding Requested:**
 - i) Grant type:** RLF
 - ii) Federal Funds Requested:** \$1,000,000 A waiver is not being requested.
 - iii) Contamination:** Hazardous Substances and Petroleum,
\$ 800,000 Hazardous Substance, \$ 200,000 Petroleum
- d. Location:** The Commonwealth of Kentucky
- e. Contacts:**
 - i) Project Director:** Herb Petitjean, 502-564-0323 voice / 502-564-9720 fax, herb.petitjean@ky.gov, Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, KY 40601
 - ii) Chief Executive/Highest Ranking Elected Official:** Governor Steve Beshear, (502) 564-2611 voice / (502) 564-2517 fax, e-mails to governor are handled through his website: <http://www.governor.ky.gov/contact/contact.htm>, 700 Capitol Avenue, Suite 100, Frankfort, KY. 40601
- f. Date Submitted:** November 22, 2011
- g. Project Period:** October 1, 2012 – September 30, 2017.

h. **Population:** 4,339,367 (2010 U.S. Census data, available at www.census.gov)

i. **Special Considerations** – Six of the ten special considerations apply to the universe of brownfields found within the Commonwealth of Kentucky. Kentucky has:

- communities with populations of 10,000 or less,
- brownfield sites impacted by mine-scarred land,
- brownfield sites contaminated with controlled substances,
- communities impacted by recent natural disasters,
- communities experiencing plant closures (or other significant economic disruptions) and
- recipients of HUD/DOT/EPA Partnership for Sustainable Communities grants.

(See the attachment for documentation of these considerations.) A Revolving Loan Fund would be a great assistance for Kentucky as we attempt to address these issues and build upon resources, such as the Partnership for Sustainable Communities grants.

Sincerely,



R. Bruce Scott
Commissioner
Kentucky Department for Environmental Protection

HCP:hcp

cc: Phil Vorsatz
EPA Region 4
Atlanta Federal Center
61 Forsyth Street, S.W. 10TH FL
Atlanta, GA 30303-8960

1. Community Need

a. Health, Welfare, and Environment – From the mountains in the east, to the wetlands in the west and to the Ohio River snaking along its northern border, Kentucky's landscape is as diverse as the 8,000 brownfield sites (Kentucky Brownfield Redevelopment Program, 2004) that can be found across the commonwealth. The state that produced Abraham Lincoln and Maker's Mark Bourbon also produced abandoned aluminum plants, mine-scarred lands and former hospitals that dot the landscape and bring with them blight, health issues and numerous environmental impacts.

Much of Kentucky's heavy manufacturing is concentrated along its 300-mile border with the Ohio River, which provides water for manufacturing processes and transportation for raw materials and finished products. Traveling down the river from West Virginia, current and past economic ventures can be seen – steel and chemical manufacturing near Ashland, chemical plants of the "Rubbertown" section of Louisville, aluminum plants of Hancock County, an abandoned power plant at Henderson and uranium processing plant at Paducah. Interspersed among these plants are coal-burning power plants along both sides of the river. A 15-mile side excursion up the Tennessee River would lead you to Calvert City, home to numerous chemical plants. The neighbors of most of these facilities are low-income, often minority groups, exposed to high levels of pollution.

Kentucky has large coal fields in the eastern and western parts of the state that have vast areas of mine-scarred lands from underground and surface mining operations. The estimated area of abandoned mine land in Kentucky is over 1,000 sq. mi. The extraction of coal, if not managed properly, can adversely affect the quality of surface water and groundwater. It may contribute to an increase in the frequency and severity of flooding. There can be additional contamination associated with fueling and maintaining the equipment. The boom and bust nature of the coal industry has contributed to other brownfields not directly related to mining. As these small communities struggle, businesses fold and hospitals and schools are close due to consolidation. Plans to close smaller post offices will create additional abandoned buildings.

In addition to former dry cleaners, abandoned gas stations and other typical brownfields, Kentucky has a serious methamphetamine (meth) lab problem. According to the U.S. Drug Enforcement Administration, in 2010, Kentucky ranked 4th highest with 1,070 meth clandestine laboratory incidents. These labs take a toll on Kentuckians' health and not just on those who make or use the drug. The toxic chemicals involved poses a health risk to the children who are present where the drugs are being manufactured and used, emergency responders, health care workers and anyone who stumbles upon discarded waste from the operations.

Due to the variety of brownfields and their dispersion, Kentuckians young and old experience a wide range of health issues. America's Health Rankings® 2010 (www.americashealthrankings.org/) lists Kentucky's health as 44th, down from 41st the previous year.

America's Health Rankings® 2010 (americashealthrankings.org/) (High rank denotes higher incidents)		
	Value	Rank
Cancer Deaths (Deaths per 100,000 population)	227.0	50
Cardiovascular Deaths (Deaths per 100,000 population)	322.3	43
Poor Mental Health Days (Days in the previous 30 days)	4.6	50
Poor Physical Health Days (Days in the previous 30 days)	5.2	50
Prevalence of Obesity (Percent of population)	32.3	47
Prevalence of Smoking (Percent of population)	25.6	50
Stroke (Percent of adult population)	3.6	45
High Cholesterol (Percent of adult population)	41.6	49

High Blood Pressure (Percent of adult population)	36.3	47
Heart Attack (Percent of adult population)	5.9	49
Cardiac Heart Disease (Percent of adult population)	5.9	49
Diabetes (Percent of adult population)	11.5	47
Low Birthweight (Percent of births under 2500 grams weight)	9.3	42
Preterm Birth (Percent of births under 37 week's gestation)	15.2	46

America's Health Rankings also notes that Kentucky's air quality is poor. It ranks the state's air quality as 43rd based on the concentration of fine particulates in the air. The "Kids Count" initiative by the Annie E. Casey Foundation list has Kentucky tied with four other states for the highest percentage of children affected by asthma at 12% (2007, the most recent data listed). A 2009 EPA report found that residents of the Ohio Valley had nearly a triple risk of cancer due to air emissions compared to the national average.

Kentucky has an abundance of waterways that provide economic, recreational and social benefits. However, close to 7,000 miles of waterways and 90,000 acres of water bodies have been designated as impaired by the Kentucky Division of Water. Identified sources for this impairment include loss of habitat, mining activities, urban runoff and land development. All the waters of Kentucky are under an advisory for mercury. Women of childbearing age and children 6 years of age or younger should eat no more than one meal per week of freshwater fish.

In addition to pollution, undeveloped brownfields also contribute to sprawl in Kentucky. "Kentucky loses on average 136 acres of forest and 100 acres of farmland each day (Commonwealth Div. of Forestry). The fastest conversions are occurring in the Bluegrass and Pennyroyal regions, which are characterized by prime farmland with high-quality soils, moisture and good growing seasons important for future crop production and for rural land preservation." - *Report of the Land Stewardship and Conservation Task Force*, January 22, 2008. Kentucky's vanishing green spaces can be linked to poor nutrition, obesity related illnesses, declining school performance and detachment from the natural world. Communities are becoming less walkable and residents increasingly rely on cars. Throughout the state, there are "food deserts" where access to affordable, quality fruits and vegetables is limited. Brownfields redevelopment not only saves these greenfields, but also presents the opportunity to create new green spaces, including community gardens.

b. Financial Need Kentucky ranked 44th in the nation in per capita income in 2010 according to figures released by the U.S. Bureau of Economic Analysis. Though Kentucky is a "Commonwealth," the wealth is not uniformly distributed. Pockets of extreme poverty are scattered around the state, especially near concentrated brownfield areas, such as the Appalachian coal fields and the "Rubbertown" section of Louisville.

	State	National
Population	4,339,367 ¹	308,745,538 ¹
Unemployment (Sept. 2010)	10.2% ²	9.6% ²
Poverty Rate	18.4% ³ (The poverty rate reaches up to 45% in select Appalachian counties and up to 35% in the Rubbertown neighborhood of Louisville)	14.3% ³
Percent Minority	12.2% ¹ (Select census tracts in "Rubbertown" area of Louisville are up to 98% African American.)	26.7% ¹

Children in Poverty	26% ⁶ (Ranking 48 th among the states) ⁶	20% ⁶
Children in Extreme Poverty (family income < 50% of federal poverty level)	12% ⁶ (Ranking 47 th among the states, 3-way tie) ⁶	9% ⁶
¹ 2010 U.S. Census census.gov ; ² Bureau of Labor Statistics bls.gov ; ³ 2009 American Community Survey census.gov/newsroom/releases/archives/income_wealth/cb10-144.html ; ⁴ U.S. Census/Kentucky State Data Center http://ksdc.louisville.edu/ ; ⁵ U.S. Census 2005-2009 American Community Survey census.gov ; ⁶ Census Bureau (2009 data), summarized by Annie E. Casey Foundation kidscount.org		

Most of Kentucky is rural and small communities. Of the state's 422 cities, 385 have populations of less than 10,000. Of the state's 120 counties, 20 have populations of less than 10,000. These small towns and counties could benefit greatly from the remediation and redevelopment of brownfields in their communities, but the local governments don't have the resources to address these sites. Businesses often choose to develop greenfields on the outskirts of towns rather than clean up brownfields within the city limits. The communities are left with blighted properties at their town centers. With additional funding, the communities could address these brownfields, attract businesses to locate within their communities (rather than on the fringes) and revitalize the affected neighborhoods.

Kentucky is also facing a tough transition from a manufacturing-based economy to service and technical industries. Many businesses locate in the state because of low energy costs, but forecasts show increasing prices that may push those employers elsewhere, leaving many Kentuckians without a job and the skills to find work elsewhere. Manufacturers are unable to compete with foreign competitors, leaving behind legacies of their operations across the commonwealth.

Due to current economic conditions, Kentucky, along with many states, faces challenges in terms of resource allocation to support core government programs, such as education, healthcare and social assistance. Given this shift, the addition of a state revolving loan fund is crucial to support economic revitalization in Kentucky.

The Kentucky Brownfield Redevelopment Program through its assessment and community engagement activities has created a solid foundation to support a revolving loan fund. The state of Kentucky has received 128(a) brownfield grants and has used them very effectively to facilitate community visioning sessions and help communities apply for grants. We also use 128(a) funds to provide free environmental site assessments (ESAs) for local governments and non-profits – in our most recent state fiscal year, we completed 6 Phase I ESAs, 8 Phase II ESAs and began ESAs at 4 additional brownfields. Unfortunately, the communities are often unable to follow up on the assessments due to a lack of cleanup funds. Having a Revolving Loan Fund would provide a necessary complement to the services the program currently provides.

2. Program Description and Feasibility of Success

a. Program Description

i) The Kentucky Brownfield Redevelopment Program plans to enhance its current services through the Revolving Loan Fund (RLF) grant. The existing program supports brownfield redevelopment through assessment services to public entities, grant application assistance, technical assistance, visioning, education and sustainability programming. The program also works with the private sector by helping them navigate state-approved cleanups and the brownfield tax incentive application process. Staff also participates in Kentucky's Brownfield Advisory Council, composed of economic development officials, community leaders, environmental professionals and community representatives. The program has also

greatly enhanced its outreach and education, which has increased interest in redevelopment. However, the limiting factor continues to be access to cleanup funding.

The RLF will be a vital addition to the current program. Currently, the state lacks dedicated brownfield cleanup funds, and this will serve as the foundation for the development of wider range of economic incentives to promote revitalization. The intent is to foster cleanup projects from initial identification through assessment and remediation to productive end use.

With the revolving loan fund, Kentucky will offer subgrants to local governments and nonprofits and loans to private entities, local governments and nonprofits. The administration of the RLF will utilize reasonable and prudent lending practices to ensure that borrowers selected have the highest probability of success and repayment of loans, therefore, ensuring long-term sustainability of the fund. To ensure that cleanups are conducted in a way that is protective of human health and the environment, subgrantees and loan recipients will enter into one of the state's voluntary cleanup program tracks.

The main loan product offered is fixed low-interest loans (between 1-5%). The loan agreements are comprehensive and structured to balance the needs of the borrower, as well as ensure the sustainability of the RLF program. Therefore, loan terms, interest rates and duration will be based on the borrower's ability to service the debt and no loan term will be longer than 10 years. This will allow the initial funds to revolve so that subsequent loans can be partially or wholly financed through loan repayments. Borrower repayments are scheduled on a semiannual basis, however, flexibility on repayments, including deferments, will be offered to those borrowers with less access to capital. Deferments will be for a maximum of two years, and loan balances will be re-amortized within the remaining term of the loan. Also, a portion of the loan may be discounted as a work completion incentive. This instrument will only be available to public or nonprofit borrowers. The condition will be underwritten in the loan agreement that the sale of the project property will trigger the immediate payment of outstanding principal as determined by KY DEP. No pre-payment penalty is associated with this program. Subgrants may be awarded to public or nonprofit borrowers after consideration of their fiscal solvency and nature of the project. KY DEP is targeting the subgrants to high poverty areas with little access to public capital for brownfield activities. KY DEP plans on closing 1-2 loans along with 1 subgrant per year over the 5 year grant term. KY DEP intends to allocate up to 95% of the RLF grant toward loans and subgrants and the remainder to programmatic costs. KY DEP expects to allocate 20% of non-programmatic costs to subgrants and the remaining 80% for loan products. However, KY DEP reserves the right to subgrant up to 50% of non-programmatic costs. KY DEP is dedicated to developing a sustainable program while facilitating a market for brownfield investment in Kentucky. Repayments will begin to flow to KY DEP in 2015, enabling the program to move toward a true revolving fund with an adequate capital base to support loans in the range of \$200,000-\$500,000 by 2017.

Successful applicants will demonstrate that the proposed project will address the following criteria:

- Eligibility- Applicants must meet threshold state and federal threshold criteria. An eligible entity is any private or public entity that has control over (ownership or purchase option) or access to an eligible site, is exempt from CERCLA liability authorized to incur debt and enter into legally binding agreements. Preference for private entities may be given to those who team with a public entity.
- Community Need- The project must address a documented economic, health and/or environmental need in the community.
- Project Description- The budget must be prudent for the proposed activities with adequate financial resources identified to ensure the success of the project. Applicants must demonstrate that they can leverage additional funds, including a 20% match.

- Community Engagement & Partnerships- Applicants must document community involvement and support for the proposed project. Applicants will be asked to demonstrate outreach and partnerships that are representative of their community's demographics, such as low-income, disabled, minority and ethnic populations.
- Project Benefits- Projects will be evaluated on how they directly and indirectly benefit the larger community. Applicants must demonstrate health, environmental and economic benefits including, but not limited to, access to affordable housing, increased transportation choices, job creation, green space creation, infrastructure and land reuse, green infrastructure development, promotion of smart growth and addressing environmental justice issues.
- Assessment and Cleanup Plan- The applicants will demonstrate that they have adequately assessed the site and developed a cleanup plan that is consistent with the proposed end use of the property and is protective of human health and the environment.
- Financial and credit records of the borrower.

The committee will reserve the right to refrain from offering any financial assistance in a cycle if they do not consider any of the applications to be suitable.

In order for applicants to successfully redevelop a brownfield, other funding sources must be leveraged to complete projects. The Kentucky Brownfield Redevelopment Program will assist applicants in putting together project-specific site funding packages. This assistance would include specific assessments, economic development incentives, energy tax credits, state and federal brownfield incentives, Appalachian Regional Commission funding and other sources. These packages will vary based on the type of applicant and proposed end use of the property.

ii) The RLF's primary borrower will consist of local government entities, non-profits and private sector businesses. Historically, Kentucky has worked closely with local governments and nonprofits on brownfields. Our program has provided 65 environmental site assessments for these entities through our Targeted Brownfield Assessment Program. However, the communities and nonprofits often have trouble moving to the next step in the process due to the lack of cleanup funds, even in situations where remediation is simple, such as lead paint, tank removal or asbestos. In the current economic situation, these entities often don't have their own funds to conduct the remediation and are hesitant to take on additional debt in the form of loans.

Over the past year, the brownfield program has seen almost double the amount of inquiries from the private sector. Banks have become very risk-averse and reluctant to loan on properties with environmental issues. Last year, the program conducted a survey of brownfield stakeholders on perceived impediments to greater brownfield redevelopment in Kentucky. On a scale of 1- 5 (with 5 being the most significant), 71% of respondents listed "concerns about securing affordable loans on contaminated property" as 4 or 5. Only remediation costs ranked higher.

The marketing strategy for the RLF will be based on established lines of communication with agencies that deal with governments, nonprofits and businesses. For local governments and nonprofits, the Kentucky Brownfield Redevelopment Program will market the availability of grants in conjunction with our site assessment services. The program will also work with recipients of EPA Brownfield Assessment Grants to identify suitable projects that might be suitable for subgrants. The program will continue its long-time collaboration with the Kentucky League of Cities, Kentucky Association of Area Development Districts, Department for Local Government and Kentucky Association of Counties, promoting our program

resources in their publications, on websites, in social media and at their conferences. (See Letters of Support in the Appendices.)

For the private sector, the program will work closely with the Kentucky Cabinet for Economic Development (KCED) to market the program and to ensure that their field staff are knowledgeable about the revolving loan fund and other services. The Kentucky Association for Economic Development (KAED) will distribute information to their staff to ensure that local economic development agencies know about program services. (See Letters of Support in the Appendices.) Program staff will also provide educational session at conferences, webinars and workshops held by these and similar organizations. The program will also take out ads in local business magazines, such as *Business Lexington* and the *Lane Report* to advertise the availability of funds.

Those lines of communication will complement our existing outreach and educational strategy. Webinars and informational materials guiding entities through the RLF process will also be developed so potential applicants can understand the required steps and paperwork. The program will also develop half-day workshops that will take interested parties through the redevelopment process from site identification to property redevelopment. Agency social media tools, such as Facebook, Twitter, e-newsletters and the DEP Blog, will be utilized to spread the information to other audiences. The Kentucky Brownfield Advisory Council, a diverse stakeholder group, will also help identify lines of communication and information distribution.

iii) The RLF Team will consist of KY DEP personnel from the Division of Compliance Assistance (DCA), Superfund Branch (SFB), Program Planning and Administration (PPA) and Office of Legal Services (OLS). Each will ensure that sound financial and environmental practices are followed. The staff will be responsible for drafting application forms and scoring criteria; marketing the program; conducting eligibility and completeness review of applications; coordinating the application, review and reimbursement processes; and providing regular reports to the EPA. DCA will serve as the primary contact for applicants and selected recipients throughout the RLF process. The SFB staff will be responsible for conducting technical review of applicants' assessments and cleanup proposals to assure their protectiveness, reviewing applicant's proposed budgets to assure they are adequate to complete the work and overseeing the progress of the remedial activities. PPA staff will be in charge of issuing disbursements of the funds and processing and tracking repayment of loans. The OLS will be preparing legal documents, which shall set forth the rights and responsibilities of the parties with respect to the subgrants and loans. They will play an important roles in ensuring all legal documents meet state and federal standards that help borrowers and subgrantees maintain compliance with guidelines.

RLF Team: Finalizing application forms and scoring criteria (based on Brownfield Redevelopment Program drafts) and evaluating applications. The scoring of applications will include representatives from DEP's core RLF team, as well as parties from other agencies, such as, but not limited to, Economic Development, the Kentucky League of Cities and Department for Energy Development and Independence.

b. Budget for EPA Funding, Tracking and Measuring Progress, and Leveraging Other Resources

i) The budget for Kentucky's RLF is based primarily on 95% of requested funds designated for loans and subgrants (80% loan, 20% subgrant). Five percent of requested funds will be used for programmatic activities, including oversight and marketing, and will be divided between petroleum and hazardous waste. Of the money allocated for loans and subgrants, 80% will be used for hazardous waste and the remaining 20% for petroleum. A match of \$200,000 will be provided through staff time funded by the state's Hazardous Waste Management Fund.

Hazardous Waste Budget

Budget Categories	Project Tasks for Loans (at least 50 percent of amount requested)		
(programmatic costs only)	Fund Capitalization	Program Development & Oversight	Marketing
Personnel		7,500	7,500
Fringe Benefits		2,500	2,500
Loans	608,000		
Subtotal (loans)	608,000	10,000	10,000
Cost Share		80,000	
Budget Categories	Project Tasks for Subgrants (no more than 50 percent of amount requested)		
(programmatic costs only)	Fund Capitalization	Program Development & Oversight	Marketing
Personnel		7,500	7,500
Fringe Benefits		2,500	2,500
Subgrants	152,000		
Subtotal (grants)	152,000	10,000	10,000
Cost Share		80,000	
Total	760,000	20,000	20,000
Total Cost Share		160,000	

Petroleum Budget

Budget Categories	Project Tasks for Loans (at least 50 percent of amount requested)		
(programmatic costs only)	Loan Capitalization	Program Development & Oversight	Marketing
Personnel		1,875	1,875
Fringe Benefits		625	625
Loans	152,000		
Subtotal (Loans)	152,000	2,500	2,500
Cost Share		20,000	
Budget Categories	Project Tasks for Subgrants (no more than 50 percent of amount requested)		
(programmatic costs only)	Loan Capitalization	Program Development & Oversight	Marketing
Personnel		1,875	1,875
Fringe Benefits		625	625
Subgrants	38,000		
Subtotal (Grants)	38,000	2,500	2,500
Cost Share		20,000	
Total	190,000	5,000	5,000
Total Cost Share		40,000	

Tasks- Loan Capitalization- Funds under the loan capitalization category will be used to make loans and subgrants for selected brownfield cleanup projects. Due to Kentucky's ability to leverage the Hazardous Waste Management Fund for programmatic activities, a majority of the money received through this grant will be allocated to the loan and subgrant portion of the budget. Kentucky's goal is to make at least six loans and four subgrants. This is based on Kentucky's average cleanup costs of \$150,000 for hazardous waste sites. Through this RLF Kentucky would request a 20% match from the recipients. This ensures greater sustainability of the fund and increases the number of potential projects that can be funded while gaining greater buy-in and commitment from applicants.

Program Development and Oversight- Activities in this category fall under four categories: process, legal, technical and financial. Process activities, mainly handled through DCA, include the development of loan applications and scoring criteria, coordinating the application review process, compiling data and submitting progress reports. Legal activities include development and review of loan agreements and finalizing loan documents. The technical aspects of the project include review of assessments and cleanup proposals to ensure protection of human health and the environment, review of invoices and review of documents for environmental closure. Financial responsibilities under this grant will include credit analysis, determination of loan terms and tracking disbursements and payments. The entire cost share for this grant falls under this category to pay for the programmatic activities required in carrying out this grant. This helps maximize availability of funds for brownfield cleanup. In addition to the \$200,000 in cost share dedicated to this category, KY DEP recognizes the need for additional funds to account for additional workload. Therefore 2.5% of the requested funds has been allocated to this category with the other 2.5% going to marketing. In total 5%, or approximately 0.25 FTE (full time employee) is requested in addition to existing program staff. Existing program staff (DCA, DWM and OLS) encompasses approximately 8 FTEs.

Marketing- Marketing activities include RLF educational material development, coordination of workshops, webinars, speaking engagements, press releases, social media management and working with partner agencies to distribute information through their existing lines of communication.

ii) The Kentucky Brownfield Redevelopment Program will track outputs and outcomes from the project. Outputs will include the number of publications developed, workshops and webinars conducted, website hits, applications submitted and reviewed, funds dispersed and number of loans and grants given.

Short- and long-term outcomes will include, but are not limited to, acres ready for redevelopment, amounts of contamination removed (where applicable), funding leveraged for projects, jobs created, greenspace creation, housing developed, improvements in health and reductions in exposure to hazardous substances.

Program staff will be using the U.S. EPA database ACRES for tracking their required indicators. All other outputs and outcomes will be tracked internally and made available in quarterly reports. The brownfield staff will include updates in its existing weekly program report sent to the EPA.

iii) Leveraging – Leveraging program support - A majority of the funding for programmatic costs will be provided through the Hazardous Waste Management Fund. The existing brownfield program utilizes 128(a) brownfield funding from the U.S. EPA to provide education, outreach and free assessment services to communities, nonprofits and quasi-governmental agencies. This will complement the RLF program. For example, marketing and outreach of the RLF Program will be incorporated into existing efforts to educate stakeholders about brownfield resources. The subgrants will build upon these free environmental assessments and provide a funding source for those who have had properties assessed through the program.

A 20% match from recipients is required for both loans and subgrants. This will ensure the sustainability of the fund in years to come and ensures that they will have to leverage additional funds for their project.

Leveraging for Public Sector Projects – Kentucky currently works very closely with the public sector, assisting them with grant writing and providing them with free environmental site assessments under our Targeted Brownfield Assessment Program. The program will continue these services and anticipates that many of the subgrant recipients will have previously received assessments conducted by the state.

In addition, DEP will work closely with the Kentucky Department for Local Governments to secure additional resources. Funds they administer include Appalachian Regional Commission grants, Renaissance on Main Grants, Community Development Block Grants, General House Bill Line-Items, and

the Neighborhood Stabilization Program. They also disperse funds collected under a coal severance tax on mining companies. Most of these grants have been available on an annual basis. A letter of support from the department is included in the appendix.

Federal resources are also available for communities to help drive their cleanup projects. The U.S. EPA CARE grant is available to help communities identify and find solutions for environmental issues. The U.S. EPA also has environmental justice grants that are applicable to community projects. Other agencies such as Housing and Urban Development have brownfield grants. The United States Department of Agriculture has grants for rural development that could be used in a majority of Kentucky's communities. The Kentucky Brownfield Program routinely helps identify funding sources for communities and helps in the development of grant applications.

This RLF will help Kentucky gain support for its Brownfield Redevelopment Fund that was established by the state legislature in 2009. Because of the worsening economy, money has not been set aside by the legislature for this fund. The successes of this RLF will be a selling point for brownfield redevelopment and will help demonstrate the significant return on investment that can come from land revitalization activities.

Leveraging for Private Sector Projects – The Kentucky Cabinet for Economic Development provides financial support through an array of financial assistance and tax credit programs. As noted in the letter of support in the appendix, the Cabinet for Economic Development will work with us to help identify additional assistance for projects receiving loans from the RLF. A letter of support from the Cabinet is included in the appendix.

Many private sector projects should qualify for state brownfield tax incentives. These provide tax credits of up to \$150,000 dollars. They also eliminate local property taxes for 3 years and reduce state property taxes by 95% for the same period.

Tax increment financing is available for redevelopment projects in some communities in the state.

Three of the state's major electrical utilities provide reduced electrical rates for five years for qualified customers who locate on an abandoned brownfield. (The utilities make use of existing infrastructure.) For a large energy user, this can be a very valuable incentive, particularly during the startup years of the business.

The Kentucky Brownfield Program is a strong supporter of "RE-Powering America's Land," EPA's initiative to site renewable energy on potentially contaminated land and mine sites. Western Kentucky is in the Tennessee Valley Authority service area (TVA). TVA has programs to purchase renewable energy from all sizes of generating facilities. There are abundant opportunities to develop electrical generating facilities utilizing the rich biomass production capability of that area of the state.

c. Programmatic Capability and Past Performance

i) Programmatic Capability – The RLF Team will be comprised of the Brownfield Redevelopment Program Staff (DCA and SFB), Program Planning and Administration Branch Staff and Office Of Legal Services, all housed within KY DEP.

The Brownfield Redevelopment Program staff includes:

Herb Petitjean is the Brownfield Coordinator within the Brownfield Redevelopment Program. He has approximately 14 years of experience working on brownfield issues in Kentucky. Earlier responsibilities within the Kentucky Department for Environmental Protection included conducting CERCLA (Superfund) site assessments and managing the Toxic Release Inventory. Prior to joining the department, he taught math and sciences at the high school and college levels.

Amanda LeFevre is the Outreach Coordinator for the Kentucky Redevelopment Brownfield Program. Since she joined the program six years ago, she has crisscrossed the state making outreach visits to local officials. Prior to working for the state, Amanda served as the director for marketing and communications for the United Way of the Ohio Valley. (Note: Both **Mr. Petitjean** and **Ms. LeFevre** have received EPA National Notable Achievement Awards for their contributions to organizing the "Sustainable Redevelopment in the Ohio River Valley" Conference that was held in Louisville in 2007.)

Shawn Cecil is the Branch Manager for the Superfund Branch within the Kentucky Division of Waste Management. He is a Kentucky-licensed professional geologist and has more than 12 years of experience in site assessment and remediation (both as a consultant and regulator) in Kentucky and other states. Prior to working in his current role with the Division of Waste Management, Shawn worked as a project manager for a consulting firm, managing financial and technical aspects of site assessment and remediation efforts, serving several large petroleum and transportation clients.

Wesley Turner is the Federal Section Supervisor in the Superfund Branch. His section is responsible for the technical aspects of the 128(a) program, as well as dealing with federal facilities. Mr. Turner has 15 years of experience in the environmental industry ranging from Superfund and Underground Storage Tank site reviews and investigations to working in the drinking water program providing regulatory oversight and technical assistance.

Program Planning and Administration Branch

Steve Starkweather is the Administrative Section Supervisor for the Program Planning Branch in the Division of Waste Management. In his daily activities, he is responsible for grants, contracts and procurement for DWM. Mr. Starkweather has a B.S. in Accounting and five years of experience in federal grants management. Currently, the branch is managing \$26,000,000 in federal grant assets. He supervises staff that reviews and issues payment for state grantees and claimants in excess of \$30,000,000 annually. Previously, Mr. Starkweather managed the Drinking Water State Revolving Loan Fund.

Office of Legal Services – Our in-house staff will be able to prepare the necessary legal documents to execute the loans.

The agencies that make up the RLF Team have multiple individuals with the experience in their respective areas of expertise. This will ensure continuity in the event of any employee turnover.

Contracting for outside services is not anticipated. Kentucky has gathered documents from other RLF Grant recipients outlining how they operate their programs and has a close working relationship with Metro Louisville, which has a successful RLF program. Metro has offered to serve as a mentor in setting up KY DEP's program. (See Appendix for Louisville's Letter of Support.)

ii) **Adverse Audits**- The Kentucky Brownfield Redevelopment Program has successfully fulfilled its cooperative agreements and the reporting requirements throughout the existence of our program. Kentucky has received no adverse audits.

iii) **Past Performance**- The Kentucky Brownfield Redevelopment Program has not received any prior Assessment, Cleanup or Revolving Loan Fund Grants under the 104(k) program. However, it is funded through the Section 128a Brownfield Cooperative Agreement and thus has reporting requirements similar to the EPA competitive grants.

The Kentucky Brownfield Redevelopment Program has been in existence since 1997. It was initially funded through an EPA Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA) Preliminary Assessment/Site Investigation Grant. When CERCLA was revised in 2002, Section 128(a) provided a designated funding source for state and tribal brownfield programs. Since then, the Kentucky Brownfield Redevelopment Program has been funded through a Section 128(a) Brownfield Cooperative Agreement.

- Funds Expenditure: the program received an allocation of \$791,460 under 128(a) on October 1, 2011. The allocation from the previous year has been expended.
- Compliance with grant requirements - The Kentucky Brownfield Program has successfully fulfilled our cooperative agreements and the reporting requirements throughout the existence of its program. This includes its semiannual reports and data entry into ACRES. Kentucky consistently receives favorable evaluations during its annual reviews. The program has progressed to the point that it has initiated negotiations with the EPA to enter into a Memorandum of Agreement (MOA) for our Voluntary Cleanup Program. The MOA would recognize that Kentucky's Brownfield Redevelopment Program has all of the required elements in place and that qualifying voluntary cleanups that are approved by Kentucky's program will also receive federal liability protection.

- Accomplishments:

In the past 14 years, Kentucky has made tremendous strides in raising awareness of brownfields both inside and outside of state government. Since its inception, the program has conducted brownfield assessments at 65 properties. The program staff has worked extensively with communities, increasing both the quantity and quality of brownfield grant applications submitted from Kentucky entities. (In 2008, EPA Assistant Administrator Susan Bodine made the national brownfield grant awards announcement from Kentucky, partially in recognition of the great strides the state has made in recent years.)

Besides assisting communities with grants, Kentucky is educating local officials and community leader in other aspects of successful redevelopment. The state hosted Army Corps of Engineers "Vision-to-Action" sessions in Covington and Flemingsburg to help the communities create a cohesive vision for their futures, and Kentucky has since conducted community visioning sessions of its own. With funding from an EPA Environmental Education Grant, the Kentucky Brownfield Redevelopment Program (along with the Kentucky League of Cities and Kentucky Association of Counties) has conducted a series of workshops on sustainable development across the state.

In November 2010, Kentucky held an interstate, interregional conference, "Exploring Community Revitalization in Central Appalachia."

The Kentucky Brownfield Program continues to explore new ways to promote the cleanup and redevelopment of brownfields in the Commonwealth. Its most recent initiative is to actively market mine-scarred lands and other brownfields for sustainable energy, particularly the production and processing of biofuels. Kentucky will soon start a new initiative to use brownfields to provide medical facilities in underserved communities.

3. Community Engagement and Partnerships

a) Each potential loan or subgrant recipient will be required to perform community outreach as part of the application process and again upon acceptance into the program. Those with a well-developed plan will score higher. The community outreach must be appropriate for the community. Since less than 5% of Kentuckians speak a language other than English at home, the majority of the outreach will be in English. However, the outreach must be sensitive to local demographics, such as the significant number of Hispanics working in the horse industry of Central Kentucky or the cluster of deaf individuals in Danville, home to the Kentucky School for the Deaf.

Since local radio is a major news outlet in many communities, applicants will be encouraged to use that in addition to local newspapers to reach the residents. This will also ensure that individuals with limited literacy are also reached.

Cleanups will be conducted under a cabinet-approved remediation plan. There are multiple site closure options in Kentucky's Voluntary Cleanup Program, and the closure track will be based on the entity and the desired liability protection. Thus, all documents associated with the cleanup will be available to the general public. The brownfield redevelopment program staff will also participate in public meetings and are always available via phone or email to respond to questions from citizens.

In addition to any outreach that grant and loan recipients conduct, the Kentucky Brownfield Redevelopment Program will supplement with some of its own outreach measures. The program will issue a press release and create an RLF webpage that will house information on each of the RLF projects that is funded. The program will also feature projects in the Energy and Environment Cabinet magazine, *Land, Air & Water*. Social media will also be utilized where applicable. The Division of Compliance Assistance will make Go-to-Meeting and Go-to-Webinar available for information dissemination. The program can also offer to conduct community visioning sessions for communities that are engaged in cleanup activity. This allows the citizens to have their say in the redevelopment process.

b) The RLF Program will be housed in the Kentucky Department for Environmental Protection. The program will work closely with other state agencies, particularly the Cabinet for Economic Development and the Department for Local Government, to ensure the success of the redevelopment project. The program already has relationships with these agencies and they will assist in the distribution of information and project identification. The program will engage the Cabinet for Health and Family Services as it is the primary point of contact on lead issues. Other groups that will play a key role in our success are the Kentucky Association for Economic Development, Kentucky League of Cities, Kentucky Association of Counties and the Kentucky Council of Area Development Districts and its 15-member districts. These agencies will help with external communications about available funding to both the public and private sectors.

Training programs for entry-level environmental remediation jobs in Kentucky are rather limited. The Bluegrass Community and Technical College – Lexington Campus offers Associate Degrees in Environmental Science Technology and certificates in Environmental Technology. The Kentucky Brownfield Redevelopment Program has promoted the Environmental Workforce Development and Job Training Grants among potential providers. In 2010, the Northern Kentucky Area Development District paired with Gateway Community and Technical College to submit an application. That attempt was unsuccessful, but they have indicated that they would submit again in the future. The awarding of the RLF grant will improve the environmental remediation job market. As the market develops, the program will work with the training institutions to provide more training opportunities and help their graduates secure work locally.

c) We have had good experience working with community-based organizations in the past and will look for small groups within the individual communities as projects emerge. Statewide-based organizations we will work with include the Kentucky Association of Manufactures and Brownfield Advisory Council. Many community-based organizations can help gather stakeholders for community meetings and they can also provide other types of support. Bluegrass Pride has partnered with one of the state's cleanup grantees to help redevelop a property in the middle of town that will serve an on open air market for farmers and the local Amish populations.

4. Program Benefits

a. Welfare and/or Public Health – Specific projects will be driven by the demands of the individual needs of the communities and businesses that apply for funding from the RLF. As noted in the program description (Section 2a), each loan and subgrant application will be scored based on a number of criteria, including welfare and public health. We will use the criteria to select among competing grants, but we will also reserve the right to reject applications that do not provide a significant public benefit.

The projects being assisted through Kentucky's revolving loan fund will address public health by removing a portion of the environmental contamination to which Kentuckians are exposed. In addition to the health threat from contamination, there are other additional health and safety concerns associated with these abandoned properties. Mine-scarred lands may contribute to the frequency and severity of flooding and mudslides in Appalachian Kentucky. Abandoned buildings are "attractive nuisances" that attract youth to trespass, thus exposing themselves to the numerous dangers present in older, unmaintained buildings. Vacant properties provide habitat for rats, mosquitoes and other disease-spreading vermin. "Vacant Properties – The True Costs to Communities," a report by Smart Growth America (<http://www.smartgrowthamerica.org/2005/08/01/vacant-properties-the-true-cost-to-communities/>), cites a study in Austin, Texas that found crime rates on blocks with open abandoned buildings were twice as high as matched blocks without abandoned buildings. In addition, "83 percent [of the abandoned buildings] showed evidence of illegal use by prostitutes, drug dealers, property criminals and others." The Smart Growth America report also noted that an estimated 12,000 fires in vacant structures occur each year in the U.S., resulting in \$73 million of property damage.

The new uses of the properties are expected to make communities more active by providing recreational parks and making neighborhoods more compact and walkable.

These funds will be available to address the legacy of meth-contaminated structures. According to the Kentucky Methamphetamine Lab Cleanup Program, the average cost to clean up a meth house to make it safe to occupy is \$5,000, but some cost up to \$100,000 or more to remediate.

All cleanups funded through the RLF will be required to have a state-approved Corrective Action Plan. There will be state oversight to assure that the process and final outcome of the cleanup are protective of human health and the environment. Kentucky's target risk level is cancer risk of one in one million for carcinogens and a hazard index of 1.0 for non-carcinogenic effects. Kentucky's target risk level is cancer risk of one in one million for carcinogens and a hazard index of 1.0 for non-carcinogenic effects. Kentucky law allows for responsible parties to address environmental cleanup by removal of the contaminants, management of contaminants in place or a combination of these approaches. Wastes left in place are required to be managed through use of an environmental covenant (and management plan) which applies to the property appropriate restrictions that are required to protect human health and the environment. Examples of restrictions may include prohibiting residential use of the property, use of groundwater for domestic purposes or specific requirements that must be met before excavation on the site. The Voluntary Remediation Program, under which these cleanups will be conducted, is currently finalizing a Memorandum of Agreement between Kentucky and the EPA that would recognize that the state's program meets all the requirements of CERCLA §128(a).

As part of the loan/subgrant application, applicants must describe their community engagement plan and their partnerships. These items will be reviewed to ensure community involvement that integrates equitable development principles into the reuse of the site and avoids displaces residents historically affected by brownfields.

b. Economic Benefits and/or Greenspace

i) Economic benefits - Redevelopment of a brownfield has a two-fold economic benefit.

The obvious benefit is the opportunity to replace the abandoned properties with thriving businesses, housing or other beneficial reuse. Based on EPA figures through fiscal year 2010, \$17.39 is leveraged for each EPA Brownfields dollar expended at a brownfield. Thus, the potential exists for this loan fund to leverage over \$17 million during its first round of loans and subgrants. The same evaluation found that 7.45 jobs are leveraged per \$100,000 of funding. Deductively, the loan fund should generate nearly 75 jobs for each "revolution."

Historically, brownfield redevelopment in Kentucky has had positive impacts on the communities in which it occurs. The Carnation Factory in Maysville, Kentucky, churned out cans of Carnation Condensed Milk for many years. The property suffered from lead contamination that stemmed from the canning process. The city performed site remediation and transferred the property to the Ripley Corporation, a specialty metal fabrication business at cost. The site cleanup has not only protected residents from environmental concerns, it has created 75 jobs in a low-income neighborhood (City of Maysville).

The 72 acres that Louisville's Waterfront Park resides on used to be referred to as "Junk City". The site was historically used for industrial and transportation-related activities. The list of pollutants at this site was vast. Post-remediation, the site has been transformed into a thriving urban park and baseball stadium on the edge of Louisville's downtown. An estimated 1.25 million people visit the park annually for concerts, fireworks shows, festivals and general recreation uses. Slugger Field, which calls the park home, hosts an estimated 668,000 visitors a year. Since creation of the park, more than \$360 million in development has sprung up in the waterfront corridor and surrounding areas (Louisville Metro Economic Development).

The Kentucky Brownfield Redevelopment Program actively works to encourage business creation on brownfields. Program staff promote renewable energy production on brownfields, especially promoting discussions of the potential of utilizing mine-scarred lands for biomass production. Preparations are also underway to start another initiative to develop clinics and other health-care facilities on brownfields, with a special focus on the impoverished, underserved communities where brownfields are often found.

A second economic benefit to the community is removing vacant or abandoned properties. Such properties impose costs on the local government while generating little or no tax revenue. As noted above, they strain the resources of local police and fire departments. They provide a habitat for vermin, creating a health hazard beyond the chemical contamination and burdening the local health department. City resources are often required to control weeds, address dumping and keep the building boarded up. A study conducted in Philadelphia by Temple University found that "all else being equal, houses on blocks with abandonment sold for \$6,715 less than houses on blocks with no abandonment." This can easily lead to a downward spiral for a neighborhood. If the neighborhood is already one of low-income, the residents may feel trapped, without the resources to leave. However, by revitalizing these properties, we can provide both a psychological and economic boost.

ii) Other noneconomic benefits associated with sites to be reused for greenspace or other not-for-profit activities. Though the specific projects will be driven by the loan/subgrant applicants, the Kentucky Brownfield Redevelopment Program has experience collaborating with stakeholders on a wide-variety of brownfield projects that involved greenspace or not-for-profit activities. Three examples of such collaborations include:

- The new "green" fire station in Russellville, built on a former car dealership,
- The Louisville Waterfront Park, which received a Phoenix Award, and

- Habitat for Humanity, for which we conducted soil screenings and help oversee remediation of building sites.

The program will be able to complete more such projects if it is able to provide loans and subgrants.

The Kentucky Brownfield Redevelopment Program is currently promoting the use of vacant, urban properties through a Safe Urban Gardening Initiative. In this initiative, the value of urban gardening is emphasized while educating citizens regarding best practices to reduce contaminant exposure when growing plants in an urban setting. The program plans to collaborate with the Office of Urban Agriculture, which James Comer, the newly elected Commissioner of the Department of Agriculture, plans to establish. A goal of this office will be to "start community gardens in impoverished neighborhoods on abandoned property, privately owned permissible property, church property, government-owned land and park areas."

c. Environmental Benefits from Infrastructure Reuse/Sustainable Reuse

Infrastructure Reuse /Sustainable Reuse will be one of the considerations in ranking competing applications for loans.

One of the chief goals of KY DEP is to assist, educate and encourage Kentucky's citizens, communities and businesses so they make informed choices that value Kentucky's environment and create healthier, stronger communities. In partnership with the NewCities Institute and Kentucky League of Cities, the Kentucky Brownfield Redevelopment Program established the Kentucky Sustainability Institute, created a "toolbox" of sustainable resources and held a series of training sessions for local officials across the state. Assisting brownfield redevelopers in incorporating sustainable design and practices is a natural part of our mandate.

There is a very uneven playing field between greenfields and brownfields in Kentucky – one that strongly favors greenfield development in the state. As noted earlier, "Kentucky loses on average 136 acres of forest and 100 acres of farmland each day (Commonwealth Div. of Forestry" - *Report of the Land Stewardship and Conservation Task Force*, January 22, 2008. That means that an acre of greenspace is destroyed for development every six minutes. The availability of low-interest and no-interest loans for brownfield redevelopment would reduce the imbalance. Besides helping preserve forest and farmlands, greater brownfield redevelopment would reduce sprawl, diminishing the vehicle miles traveled (and the associated air pollution) and the need for creating new, costly infrastructure.

The brownfield redevelopment program will also promote the use of these loans in conjunction with a special brownfield electrical tariff offered by three major utilities in Kentucky. These companies are offering discount electrical rates to encourage major energy users to locate on abandoned properties with existing electrical infrastructure. The newly elected Agriculture Commissioner, James Comer, has pledged to "expand Kentucky's fledgling bio-fuels industry." The Kentucky Brownfield Redevelopment Program will work with the Kentucky Department of Agriculture and Kentucky Department for Energy Development and Independence to promote the use of brownfields for biomass production and processing. In particular, the Brownfield Redevelopment Program will promote research and development to utilized mine-scarred lands for biomass production. This would increase Kentucky's renewable energy production and create a new industry in a traditionally impoverished area.

Brownfield redevelopment in Kentucky has faced many challenges, from readily available greenspace, to funding constraints. However, the successes the state has achieved show reliable return on investment and environmental benefit. This RLF grant would assist the state in evening the playing field for development and enable Kentucky's communities to redevelop contaminated properties, helping them sustain themselves and the state's heritage well into the future.

Threshold Criteria

1. Applicant Eligibility The Commonwealth of Kentucky is an eligible entity as a state. The Commonwealth of Kentucky does not currently have an existing Brownfields RLF cooperative agreement.
2. Description of Jurisdiction The jurisdiction for the grant is the boundaries of the Commonwealth of Kentucky.
3. Letter from the State or Tribal Environmental Authority Not applicable.
4. Oversight Structure and Legal Authority to Manage a Revolving Loan Fund
 - a. Describe how you will oversee cleanup at sites. To ensure that cleanups are conducted in a way that is protective of human health and the environment, sub-grantees and loan recipients will enter into one of the state's Voluntary Cleanup Program tracks. The cleanups will be conducted under state-approved remediation plans.
 - b. Provide a legal opinion from your counsel that demonstrates:
 - (1) you have legal authority to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant; and
 - (2) you have legal authority to perform the actions necessary to manage a revolving loan fund. At a minimum, legal authority must include the ability to hold funds, make loans, enter into loan agreements, and collect repayments.See two following letters from C. Michael Haines, General Council for the Energy and Environment Cabinet.
5. Cost Share

A match of \$200,000 will be provided through staff time funded by the state's Hazardous Waste Management Fund. In addition, both loan and subgrant recipients will be required to provide their own 20% match (which could be in-kind) for any cleanup project funded through the RLF.



ENERGY AND ENVIRONMENT CABINET

Steven L. Beshear
Governor

Office of General Counsel

Leonard K. Peters
Secretary

C. MICHAEL HAINES
GENERAL COUNSEL
2 Hudson Hollow Road
Frankfort, Kentucky 40601
Phone (502) 564-2356
Fax (502) 564-9212
November 17, 2011

Phil Vorsatz
Atlanta Federal Center
61 Forsyth St., S.W.
10th floor
Atlanta, GA 30303-8960

RE: Commonwealth of Kentucky United States Environmental Protection Agency Revolving
Loan Fund Grant – Opinion as to Legal Authority of the Commonwealth of Kentucky to
Access and Secure Project Sites

Dear Mr. Vorsatz:

As General Counsel for the Commonwealth of Kentucky, Energy and Environment Cabinet, I am offering this opinion as part of the Commonwealth of Kentucky's application for continued and additional funding through the United States Environmental Protection Agency's Revolving Loan Fund Program.

The Commonwealth of Kentucky and the Commonwealth's Energy and Environment Cabinet possess the legal authority to access and secure sites in the event of an emergency or default of a loan agreement or nonperformance under a subgrant. The Kentucky Energy and Environment Cabinet's legal authority under Kentucky Revised Statutes, Chapter 224, includes the actions listed above.

It is my opinion that the assistance requested through the Revolving Loan Fund Program is fully authorized pursuant to Chapter 224 of the Kentucky Revised Statutes.

Sincerely,

C. Michael Haines
General Counsel
Energy and Environment Cabinet



ENERGY AND ENVIRONMENT CABINET

Steven L. Beshear
Governor

Office of General Counsel

Leonard K. Peters
Secretary

C. MICHAEL HAINES
GENERAL COUNSEL
2 Hudson Hollow Road
Frankfort, Kentucky 40601
Phone (502) 564-2356
Fax (502) 564-9212

November 17, 2011

Phil Vorsatz
Atlanta Federal Center
61 Forsyth St., S.W.
10th floor
Atlanta, GA 30303-8960

Re: Commonwealth of Kentucky, United States Environmental Protection Agency Revolving Loan Fund Grant – Opinion as to Legal Authority of the Commonwealth of Kentucky to Manage a Revolving Loan Fund and Brownfield Cleanup Projects

Dear Mr. Vorsatz:

As General Counsel for the Commonwealth of Kentucky, Energy and Environment Cabinet, I am offering this opinion as part of the Commonwealth of Kentucky's application for funding through the United States Environmental Protection Agency's Revolving Loan Fund Program.

I have reviewed the applicable Kentucky law as well as the requirements of the Revolving Loan Fund Program and find that Chapter 224 of the Kentucky Revised Statutes grants the Kentucky Energy and Environment Cabinet, Department for Environmental Protection, the legal authority to apply for, receive, accept, and hold grant funds and other contributions. This Chapter of the Kentucky Revised Statutes also grants the Kentucky Energy and Environment Cabinet, Department for Environmental Protection, the legal authority to design and implement programs to use such funds, including programs to make loans which require the execution of loan agreements and the collection of repayments and grants which require the execution of a grant agreement, for economic and community development purposes.

It is my opinion that the assistance requested through the Revolving Loan Fund Program is fully authorized pursuant to Chapter 224 of the Kentucky Revised Statutes.

Sincerely,

C. Michael Haines
General Counsel,
Energy and Environment Cabinet



City of Owensboro Kentucky

P.O. BOX 10003
OWENSBORO, KENTUCKY 42302-9003

Mayor
RON PAYNE
Mayor Pro Tem
PAMELA L. SMITH-WRIGHT
Commissioners
ROGER STACY
DAVID L. JOHNSON
JEFF SANFORD



October 26, 2011

Mr. Aaron Keatley
Division of Compliance Assistance
300 Fair Oaks Lane
Frankfort, KY 40601

The city of Owensboro offers its support and commitment to the Kentucky Department for Environmental Protection in its application for a federal U.S. EPA Brownfield Revolving Loan Fund Grant. The Kentucky Brownfield Redevelopment Program, housed within KY DEP, has been instrumental in the development of Owensboro's brownfield program and we see this as an opportunity to work jointly to continue to further brownfield redevelopment here in Owensboro and other communities in the state.

Owensboro has worked with both the state and the federal brownfield programs to identify, assess and remediate brownfield properties in our city and especially along our waterfront. We are working to reconnect our city with the beautiful Ohio River and create a recreational area with economic development potential. Our waterfront project is still in development and the addition of low interest loans and potential grants is an exciting prospect that could help us draw more development to the area. We will work with the state to spread the word about the availability of funds and aid in project identification.

We appreciate your time and consideration in the important matter.

Sincerely,

Ron Payne
Mayor

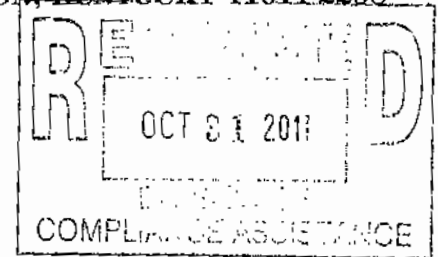
c: Abby Shelton

CITY OF COVINGTON

638 MADISON AVENUE • COVINGTON, KENTUCKY 41011-2298

October 24, 2011

Mr. Aaron Keatley
Division of Compliance Assistance
300 Fair Oaks Lane
Frankfort, KY 40601



Re: FY 2012 U.S. EPA Brownfield Revolving Loan Fund Grant Application

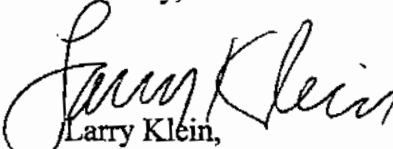
The City of Covington is very pleased to support the Kentucky Department for Environmental Protection's application for an U.S. EPA Brownfield Revolving Loan Fund Grant through the U.S. Environmental Protection Agency. The City of Covington has been a recipient of both assessment and cleanup grants from the U.S. EPA Brownfield Program (totaling \$1,000,000 since 2000). We know that the grants serve as important tools for redevelopment and believe that the addition of a state RLF can only increase brownfield redevelopment activity here and around the state.

The City of Covington will assist the KY DEP and the Kentucky Brownfield Redevelopment Program by helping identify possible projects that can take advantage of the loan fund and disseminating information pertaining the state's RLF program. The City will also be active in helping entities that take advantage of the brownfield revolving loan fund as they progress through cleanup and redevelopment.

Covington has one of the richest historic building stocks in the Commonwealth. As such, and with the assistance of EPA assessment grants received by the City over the years, we have been able to identify several properties that are in need of remediation and the removal of contaminated materials, such as asbestos. The availability of the RLF would assist interested developers, in a time when financing is difficult to obtain, in putting these vacant and underutilized buildings and properties back into productive use, and stimulating the local economy. As you know, blighting influences such as vacant lots and abandoned industrial buildings attract trash, graffiti, and crime; reduce property values; discourage homeownership; and otherwise delay neighborhood revitalization. Finally, brownfield redevelopment promotes the reuse of land in the urban core of Covington, bringing additional employment opportunities, tax revenue, and economic vitality to our City.

We believe that the addition of this important incentive can have positive economic and social impacts on our community and we will support the state in its efforts. We thank you for your consideration of this grant.

Sincerely,


Larry Klein,
City Manager
Covington, Kentucky

An Affirmative Action / Equal Opportunity Employer
Phone: 859-292-2160 • Fax: 859-292-2137
TTY: 859-292-2333
www.covingtonky.gov

COMMISSIONERS' ORDER/RESOLUTION NO. O/R-275-11

AN ORDER/RESOLUTION SUPPORTING THE KENTUCKY DEPARTMENT FOR ENVIRONMENTAL PROTECTION'S APPLICATION FOR A U.S. EPA BROWNFIELD REVOLVING LOAN FUND GRANT THROUGH THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

* * * *

NOW THEREFORE,
BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

That the City of Covington Board of Commissioners hereby expresses its support for the Kentucky Department for Environmental Protection's application for a U.S. EPA Brownfield Revolving Loan Fund Grant through the U.S. Environmental Protection Agency.

Section 2

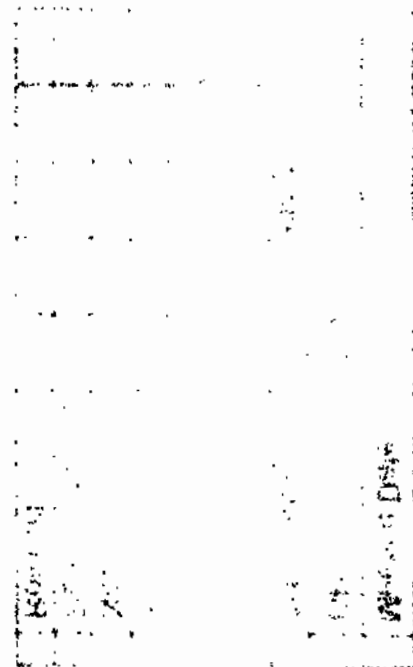
That this order/resolution shall take effect and be in full force when passed and recorded according to law.

Chuck Selig
MAYOR

ATTEST:

Margaret M. Kypan
CITY CLERK

Passed: 11-1-11





Lexington-Fayette Urban County Government
DEPARTMENT OF ENVIRONMENTAL QUALITY AND PUBLIC WORKS

Jim Gray
Mayor

Cheryl Taylor
Commissioner

Oct. 25, 2011

Mr. Aaron Keatley, Director
Division of Compliance Assistance
300 Fair Oaks Lane
Frankfort, KY 40601

Re: FY 2012 Community Wide U.S. EPA Brownfield Assessment Grant

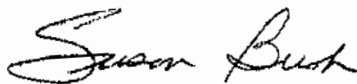
- We are submitting this letter in support of Kentucky Department for Environmental Protection (KY DEP) efforts to obtain an EPA Brownfield Revolving Loan Fund Grant for the state of Kentucky. The City of Lexington fully supports this application and will work with the KY DEP to identify both public and private entities within Fayette County that could use this mechanism to return undeveloped properties to productive use.

Lexington has been working closely with the Kentucky Brownfield Redevelopment Program for the past several years and the city has successfully obtained two EPA Brownfield Program Assessment Grants with their support. These are community-wide grants totaling \$400,000. We are currently in the process of identifying properties for assessment activities and have even hosted a Vision-To-Action Lexington community visioning session to get input on how citizens would like to see these properties redeveloped.

The opportunity for redevelopment has never been better in Lexington. Lexington is positioned at a tipping point of innovative "inward bound" growth. Having access to a Revolving Loan Fund will help provide the resources needed to address underutilized properties and allow us to take our local brownfield program to the next level. The RLF will also help Lexington realize our infill and redevelopment public policy objectives to preserve the distinctive Bluegrass landscape, to more efficiently use available infrastructure, to create dynamic pedestrian-oriented districts and to preserve existing residential neighborhoods from over-development by steering new development into appropriate locations.

We ask for your support and consideration of this proposal. Please feel free to contact me if you would like to discuss our support for the DEP proposal in more detail.

Sincerely,



Susan Bush, Director
LFUCG Division of Environmental Policy

Cc: file

**OFFICERS**

President: Mayor William Paxton, City of Paducah
First Vice President: Mayor Susan Barta, City of Lyndon
Second Vice President: Mayor Tom Bazarth, City of Midway

EXECUTIVE STAFF

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Chief Insurance Services Officer: Doug Gofarth
Chief Operating Officer/General Counsel: Temple Juett
Chief Member Services Officer: Robin Cooper
Chief Financial Officer: Debra Gabbard
Chief Governmental Affairs Officer: J.D. Chaney

October 25, 2011

Mr. Aaron Keatley
Division of Compliance Assistance
KY Dept. for Environmental Protection
300 Fair Oaks Lane
Frankfort, KY 40601

Re: FY2012 U.S. EPA Brownfield Revolving Loan Fund Grant

Dear Mr. Keatley:

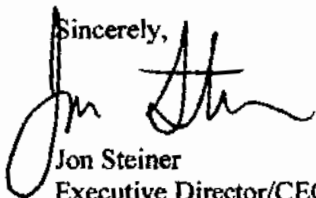
I am writing you in support of the Kentucky Department for Environmental Protection (KY DEP) and its application for a FY2012 EPA Brownfield Revolving Loan Fund Grant. As an organization that represents more than 375 Kentucky cities, the Kentucky League of Cities understands the issues related to brownfields. In an economic downturn, we know that good projects often go by the wayside because of lack of grant money or the ability of entities to obtain low-interest loans for redevelopment projects. Brownfields have a proven track record of positive return on investment and we want to make sure that our cities have the tools and resources to turn contaminated properties into opportunities for socially and economically beneficial activities.

We will assist KY DEP by providing access to our information distribution channels. Our newsletter and e-blasts are an important informational resources, and we routinely highlight resources, programs and education that can assist our cities. We also hold an annual conference for our membership where we provide education sessions. The Kentucky Brownfield Redevelopment Program has presented in the past, and we would welcome them back to speak about the most recent addition to their redevelopment toolkit. Of course, as we come across projects through our other functions we can also put people in contact with the appropriate parties.

We have partnered with KY DEP on numerous projects over the past few years. Its staff seeks out innovative ways to connect with communities and provide proactive education and assistance. We hope to continue this partnership with a Brownfield Revolving Loan Fund.

We thank you for your time and consideration.

Sincerely,

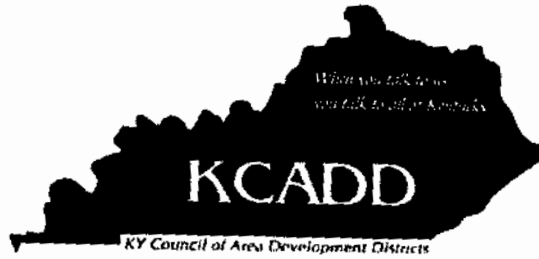


Jon Steiner
Executive Director/CEO

www.klc.org

100 East Vine Street, Suite 800, Lexington, Kentucky 40507 Tel. 859.977.3700 or 800.876.4552 Fax 859.977.3703





501 Capital Avenue • Frankfort, Kentucky 40601 • Office 502.875.2515 • Fax 502.875.0946

October 31, 2011

Aaron Keatley
Division of Compliance Assistance
KY Dept. for Environmental Protection
300 Fair Oaks Lane
Frankfort, KY 40601

Re: FY2012 U.S. EPA Brownfield Revolving Loan Fund Grant

The Kentucky Council of Area Development Districts (KCADD) proudly offers its support to the Kentucky Department for Environmental Protection (KY DEP) as it seeks an EPA Brownfield Revolving Loan Fund Grant. Area Development Districts in Kentucky have been in existence over forty years. They grew out of the efforts of local elected officials and citizens in the Commonwealth to try and find collaborative means with which to deal with problems that beset their communities. ADDs provide systematic linkage between local leadership, the Governor's office, state and federal agencies, and private organizations. The fifteen ADDs provide a system of complete coverage to all 120 counties.

The KCADD will aid the Kentucky Brownfield Program in distributing information regarding the loan and grant program and when possible assist in project identification. Area Development District staff from across the state will be made aware of the funding and will be asked to distribute their information through their established lines of communication. The Brownfield Program staff will be welcome to give presentations at each of the fifteen regional offices at their regular board meetings. These meetings include ADD staff, mayors, county judge executives, citizen members and other elected officials. A few of our ADDs have been recipients of assessment grants in the past and they will likely have projects that could benefit from this funding. This money could greatly benefit the communities that we serve. Thank you for your consideration.

Sincerely,

B. Russell Harper
Executive Director

When you talk to us, you talk to all of Kentucky
KY Council of Area Development Districts
www.kcadd.org



November 4, 2011

Mr. Aaron Keatley
Division of Compliance Assistance
KY Department for Environmental Protection
300 Fair Oaks Lane
Frankfort, KY 40601

***Re: Letter of Support
Brownfield RLF Grant***

As Chair of the Kentucky Brownfield Advisory Council (KBAC), I am writing this letter in support of the Department for Environmental Protection and its application for an EPA Brownfield Revolving Loan Fund Grant. The KBAC is a stakeholder organization that meets periodically to discuss issues related to brownfields, find ways to encourage brownfield redevelopment in the state of Kentucky and bridge the private-public sector gap. The Kentucky Brownfield Redevelopment Program has worked to improve the climate for brownfield redevelopment and this grant is the next logical step.

Currently, there is good access to funding when it comes to assessment, but funding a cleanup can be more difficult. Grants for communities don't always match timelines and they can miss out on good opportunities. Loans in the private sector can be almost impossible to obtain at the moment, allowing good projects to go by the wayside. The council sees this fund as a way to spur increased investment in the commonwealth's communities.

In support of this grant, the KBAC will help market the program and help identify potential projects for the funding. Our membership is comprised of consultants, community leaders, non-profits and other stakeholders that are often aware of projects that could benefit from the RLF. We will also help the Kentucky Brownfield Redevelopment Program provide educational sessions about the RLF if asked. We thank you for your time and consideration.

Sincerely,

Roy V. Funkhouser, P.G.
Principal
Linebach Funkhouser, Inc.

November 2, 2011

Mr. Aaron Keatley
Division of Compliance Assistance
KY Dept. for Environmental Protection
300 Fair Oaks Lane
Frankfort, KY 40601

Dear Mr. Keatley:

The Kentucky Association for Economic Development, KAED, works to promote economic development in Kentucky. KAED supports the Kentucky Department for Environmental Protection in its application for an U.S. EPA Brownfields Revolving Loan Fund Grant as it would be a beneficial tool for our membership. Economic development is about more than just the retention and expansion of manufacturing. It's about improving the business environment and quality of life for every citizen in Kentucky.

Our members represent diverse cross-sections of professionals throughout the Commonwealth, and beyond, who share a common interest in Kentucky's continued success. We strive to give our members the educational training, networking, and advocacy opportunities they need to grow Kentucky stronger. The revolving loan fund grant offers a new avenue for funding redevelopment projects in Kentucky. Because of the economic downturn, loans have been increasingly difficult to get for traditional economic development projects, let alone transactions that involve contaminated property. The addition of this fund will be very beneficial for economic development professionals as they find funding for projects in their communities. We will work with the Department for Environmental Protection to advertise the availability of this funding. We have well established lines of communication with our membership and also have conferences where we can highlight the fund. We thank you for taking the time to consider this grant and its potential positive impacts on the Commonwealth of Kentucky.

Sincerely,


Mike Mangeot
President & CEO



CABINET FOR ECONOMIC DEVELOPMENT

Steven L. Beshear
Governor

Old Capitol Annex
300 West Broadway
Frankfort, Kentucky 40601
ThinkKentucky.com

Larry M. Hayes
Secretary

November 1, 2011

Aaron Keatley
Division of Compliance Assistance
KY Dept. for Environmental Protection
300 Fair Oaks Lane
Frankfort, Kentucky 40601

The Kentucky Cabinet for Economic Development (CED) supports the Kentucky Department for Environmental Protection's application for a Brownfield Revolving Loan Fund Grant. CED is the primary state agency in Kentucky responsible for creating new jobs and investment in the state. Programs administered by the Cabinet are designed to support and promote economic development within the state, primarily by attracting new industries to the state, assisting in the development of existing industries, and assisting communities in preparing for economic development opportunities. The CED sees the addition of a brownfield revolving loan fund grant as another opportunity to help attract and retain businesses here in the commonwealth.

The Cabinet for Economic Development will aid the Kentucky Brownfield Redevelopment Program in promoting the revolving loan fund and assist in the identification of projects that may be eligible for those monies. Financing for projects can be difficult given the current economic climate. A source of funding for dealing with environmentally compromised properties would be welcomed. Once again we offer our support for this application.

Sincerely,



Erik Dunnigan
Commissioner



PRIDE- Personal Responsibility in a Desirable Environment

P.O. Box 910384
Lexington, KY 40591
(859) 266-1572
toll free: 866-222-1648
fax: (859) 266-0264

Nov. 4, 2011

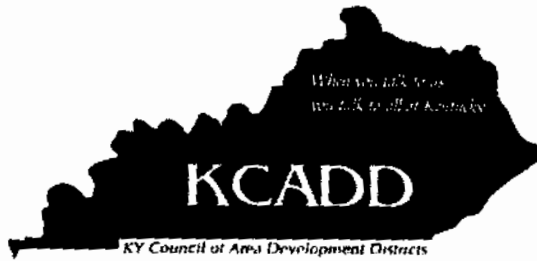
Aaron Keatley
Division of Compliance Assistance
KY Dept. for Environmental Protection
300 Fair Oaks Lane
Frankfort, KY 40601

Bluegrass PRIDE would like to express its support for the Department for Environmental Protection's (KY DEP) application for an EPA Brownfield Revolving Loan Fund Grant. Bluegrass PRIDE is a 501(c)3 organization dedicated to providing environmental resources and information to schools, community groups, local governments and citizens in Central Kentucky. Since the organization was founded in 2001, it has continually pursued its mission by providing outreach programs that focus on household hazardous waste, rain barrels, environmentally-friendly lawn care, waste reduction, rain gardens, energy efficiency and more.

Sustainability has been a priority for both KY DEP and Bluegrass PRIDE. In an effort to support this grant and the brownfield redevelopment program, we will offer sustainability education to businesses that redevelop properties and locate in the Central Kentucky region. Our education will not only help them save money, but will aid them in becoming better environmental stewards and possibly prevent brownfields in the future. Since we also work with communities and non-profit organizations, we will highlight the Kentucky Brownfield Programs services and RLF funding on our website and throughout our e-news and all of our social media efforts including Facebook and Twitter, after all, land revitalization is the ultimate in recycling. We appreciate your time and consideration of this grant application.

Sincerely,

Amy Sohner
Executive Director



501 Capital Avenue • Frankfort, Kentucky 40601 • Office 502.875.2515 • Fax 502.875.0946

October 31, 2011

Aaron Keatley
Division of Compliance Assistance
KY Dept. for Environmental Protection
300 Fair Oaks Lane
Frankfort, KY 40601

Re: FY2012 U.S. EPA Brownfield Revolving Loan Fund Grant

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The KCADD will aid the Kentucky Brownfield Program in distributing information regarding the loan and grant program and when possible assist in project identification. Area Development District staff from across the state will be made aware of the funding and will be asked to distribute their information through their established lines of communication. The Brownfield Program staff will be welcome to give presentations at each of the fifteen regional offices at their regular board meetings. These meetings include ADD staff, mayors, county judge executives, citizen members and other elected officials. A few of our ADDs have been recipients of assessment grants in the past and they will likely have projects that could benefit from this funding. This money could greatly benefit the communities that we serve. Thank you for your consideration.

Sincerely,

B. Russell Harper
Executive Director

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www.kcadd.org

Appendix 3 – Special Considerations Checklist

Please identify (with an **X**) if any of the below items apply to your community or your project as described in your proposal. The EPA will verify these disclosures prior to selection of the grant.

X Community population is 10,000 or less

Federally recognized Indian tribe

United States territory

Applicant assisting a Tribe or territory

X Targeted brownfield sites are impacted by mine-scarred land

X Targeted brownfield sites are contaminated with controlled substances

X Community is impacted by recent natural disaster(s)

Community demonstrates firm leveraging commitments for facilitating brownfield project completion by identifying amounts and contributors of funding in the proposal and have included documentation

X Community experiencing plant closures (or other significant economic disruptions), including communities experiencing auto plant closures due to bankruptcy

X Applicant is a recipient of a HUD/DOT/EPA Partnership for Sustainable Communities grant

SEE FOLLOWING PAGES FOR DOCUMENTATION OF THE ITEMS FOR SPECIAL CONSIDERATION.

Special Considerations Documentation

This application is for a Revolving Loan Fund, which would be available for brownfield projects statewide. Six of the special considerations can be found in areas within Kentucky, which would be eligible for loans or subgrants if this application were approved. The specific projects to be funded will be determined largely by the proposals by parties seeking loans or subgrants. However, in marketing the availability of funds, we will emphasize that project proposals fitting these criteria are encouraged. A Revolving Loan Fund would be a great assistance for Kentucky as we attempt to address these issues and build upon resources, such as the Partnership for Sustainable Communities grants.

X Community population is 10,000 or less

Kentucky is a very rural state.

- Of the state's 422 cities, 385 have populations of less than 10,000.
- Of the state's 120 counties, 20 have populations of less than 10,000.

Reference: 2010 U.S. Census data, as reported by Kentucky State Data Center
<http://ksdc.louisville.edu/1census.htm>

X Targeted brownfield sites are impacted by mine-scarred land

Kentucky was the third biggest coal producer in 2010.

Reference: U.S. Energy Information Administration, *Quarterly Coal Report* (May 2011)
<http://205.254.135.24/coal/>

Estimated area of abandoned mine land in Kentucky: 0.3 Mha (over 1,000 sq. mi.)

Reference: "Life cycle assessment of native plants and marginal lands for bioenergy agriculture in Kentucky as a model for southeastern USA"; Seth DeBolt, J. Elliott Campbell, Ray Smith Jr., Michael Montross and Jozsef Stork; *GCB Bioenergy* (2009) 1, 308-316, doi: 10.1111/j.1757-1707.2009.01023.x.

*Many have theorized that the frequency and severity of flooding and mudslide disasters in Kentucky in recent years are related to deforested mine-scarred lands and/or inadequate runoff control measures at mine sites. A research study by Jonathan Phillips of the University of Kentucky concluded "there is a clear risk of increased flooding (greater runoff production and less surface flow detention) following MTR/VF [mountaintop removal/valley fill] operations." Reference: "Impacts of surface mine valley fills on headwater floods in eastern Kentucky," *Environmental Geology*, 2004, vol. 45, n°3, pp. 367-380.*

*** See list of natural disasters below.***

X Targeted brownfield sites are contaminated with controlled substances

Kentucky ranked 4th in calendar year 2010, with 1,070 meth clandestine laboratory incidents, including labs, dumpsites, chem/glass/equipment.

Reference: U.S. Drug Enforcement Administration
http://www.justice.gov/dea/concern/map_lab_seizures.html

X Community is impacted by recent natural disaster(s)

Kentucky has had four declared Federal Disasters since 2010.

<u>Number</u>	<u>Declared</u>	<u>Description</u>
4008	07/25/2011	Severe Storms, Tornadoes, and Flooding
1976	05/04/2011	Severe Storms, Tornadoes, And Flooding
1925	07/23/2010	Severe Storms, Flooding, and Mudslides
1912	05/11/2010	Severe Storms, Flooding, Mudslides, and Tornadoes

Reference: FEMA <http://www.fema.gov/news/disasters.fema>

As noted above, mine-scarred lands that have been deforested and/or have inadequate runoff control measures may contribute to the number and severity of flooding and mudslides that Kentucky has experienced.

X Community experiencing plant closures (or other significant economic disruptions), including communities experiencing auto plant closures due to bankruptcy

Initial Claimants (An initial claim is defined as the initial notice of unemployment a person files with the State Unemployment Insurance Agency to initiate a request either for a determination of entitlement to and eligibility for compensation, or for a subsequent period of unemployment within a benefit year or period of eligibility.)

<u>Year</u>	<u>Annual</u>
2008	89,953
2009	87,321
2010	46,854
2011 (Jan through Aug)	32,926

Mass Layoff Events (A mass layoff occurs when at least 50 initial claims are filed against an establishment during a consecutive 5-week period.)

<u>Year</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Annual</u>
2008	28	24	26	21	39	26	63	34	24	46	78	131	540
2009	80	78	72	83	85	49	97	22	32	36	41	44	719
2010	76	32	25	40	28	15	50	18	10	20	21	38	373
2011	47	13	20	56	33	22	54	13					

Reference: Bureau of Labor Statistics – “Economy at a Glance – Kentucky”
<http://www.bls.gov/eag/eag.ky.htm>

X Applicant is a recipient of a HUD/DOT/EPA Partnership for Sustainable Communities grant

- Louisville – Smart Growth Implementation Assistance
- Milton-Madison Bridge Replacement – TIGER I
- Ken-Tenn Regional Planning Initiative – Sustainable Communities Regional Planning Grant Program

- Appalachian Regional Short Line Rail Project – TIGER I
- LKLP Community Action Council, Inc. Revitalize Downtown with Transit Hub Project – Sustainability Grants – Livability Awards

Partnership for Sustainable Communities

<http://www.sustainablecommunities.gov/community.html>

- Murray Calloway Transit Authority Improvements in Bikeways and Sidewalks
Department of Transportation – Federal Transit Administration
Announcement – October 17, 2011

http://fta.dot.gov/documents/Bus_Livability_Descriptions_Final_Selections.pdf