



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

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OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Clarification of Site Manager (On-scene coordinator) Role, Allending to Yourself, and Obligation Requirements Under the Brownfields Cleanup Revolving Loan Fund Program

**FROM: Linda Garczynski, Director /s/
Outreach and Special Projects Staff**

TO: Regional National Superfund Policy Manager, Regions 1-10

On November 4th, 1999, Assistant Administrator Fields testified before the U.S. House of Representatives, Committee on Commerce, Subcommittee on Oversight and Investigations, on U.S. EPA's Brownfields Cleanup Revolving Loan Fund (BCRLF) program. Mr. Fields was asked numerous questions about the various requirements imposed on program recipients. As a result of his testimony, Assistant Administrator Fields made a commitment to Congress that U.S. EPA would clarify requirements of the BCRLF program and identify possible ways to streamline program implementation. This memorandum seeks to clarify three important program issues under the Brownfields Cleanup Revolving Loan Fund (BCRLF) program: (1) the role of the Site Manager (On-scene coordinator -OSC); (2) clarification of the Allending to yourself policy; and (3) elimination of the eighteen month obligation requirement currently required in the BCRLF Administrative Manual (EPA 500-B-98-001, May 1998).

1. Role of the Site Manager (OSC) Under the BCRLF Program

BCRLF award recipients (the State, tribe, or political subdivision) are the lead agency responsible for managing BCRLF response actions. As the lead agency, the award recipient is responsible for ensuring that BCRLF response actions are conducted in accordance with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The lead agency must identify a government employee as its OSC (hereinafter referred to as site manager). The lead agency's site manager helps the lead agency carry out its responsibilities on a site-specific basis. The site manager works on behalf of the lead agency. Thus, the lead agency remains legally responsible to EPA for ensuring BCRLF response actions are conducted in accordance with CERCLA and consistent with the NCP.

Typically, the site manager is an employee of the lead agency (i.e., award recipient). The following are other options an award recipient has for choosing a site manager:

- (2) Political subdivision, state, or federal employee of a government other than the award recipient serves as site manager. For example, a political subdivision award recipient may utilize a state employee as its site manager. Other examples of intragovernmental site managers include U.S. Army Corps of Engineers or Bureau of Reclamation employees. Under this option, award recipients need to ensure that the intragovernmental employee will work on behalf of the award recipient.
- (3) Political subdivision uses a city ordinance(s) that permits the temporary hire of city personnel. For example, a city hired a licensed site professional (LSP), on a temporary part-time basis, to be the site manager for the BCRLF pilot via a city ordinance. Although LSPs are not usually government employees, under this ordinance the temporary part-time hire gains status of government employee.
- (4) The lead agency designates an employee as site manager and utilizes technical support from EPA regional staff. For example, an EPA Region provides technical support to BCRLF pilot site managers.
- (5) The lead agency designates an employee as site manager and contracts for technical support. For example, the local government contracts with an LSP to provide technical assistance.

Any site manager utilized by a lead agency must have experience with on-site coordination, direction, and review of environmental response activities and experience with or knowledge of the non-time critical removal requirements in the NCP (40 CFR ' 300.415). Ultimately, the lead agency must be comfortable with the knowledge, experience, and background of the government employee serving as site manager, even if the site manager will be utilizing technical support.

2. Lending to Yourself and the BCRLF Program

Generally, there are two levels of redevelopment potential for brownfields sites. The first level includes contaminated properties located in areas with strong economies. These properties, once assessed, are more easily redeveloped as result of the economic benefits of the surrounding community. The benefits of redeveloping on the location outweigh the costs of cleanup. The second level of contaminated properties do not have as high a redevelopment potential. These are properties at which the cost of cleanup outweighs the benefits of redevelopment. Generally, these properties that must be cleaned up before a redeveloper will consider locating on the site. Quite often, these marginal properties are owned by local governments as a result of tax foreclosure or condemnation. As a result, BCRLF recipients have asked EPA to consider the concept of Lending to yourself, a scenario in which the pilot recipient lends BCRLF monies to, e.g.,

another branch of its government to clean up the property. The theory is that once the property is cleaned up, the recipient will be able to raise the property to the first level of redevelopment potential.

The BCRLF Administrative Manual states that a cooperative agreement recipient may not lend to itself ...unless a state or local law establishes that the agency may borrow money from the political jurisdiction of the cooperative agreement recipient and raise funds to pay the loan back. The policy stated in the manual recognizes that there may be circumstances in which two public agencies, that are administratively part of the same governmental unit, may enter into a loan agreement. This memorandum sets out the requirements that must be met in order for a pilot to lend to itself.

To lend to itself, the pilot must demonstrate the following:

- (3) that the borrowing entity has the **legal authority** to enter into a **legally binding obligation to repay**. For example, a memorandum from the city's legal counsel citing the statutory authority or a city council resolution that obligates the repayment from a particular funding source. The obligation to repay must be more than a Amoral obligation to repay or a simple Apromise to do so.
- (4) that there is an **identifiable source of income/repayment**. For example, PILOT (payment in lieu of taxes) funds, proceeds from a TIF (tax increment financing), or funding from the sale of the property.
- (5) that there is an **enforcement entity** who can ensure that the loan does not turn into a grant. For example, the comptroller's office of the cooperative agreement recipient. This entity will help avoid potential conflicts of interest.

If a recipient chooses to lend to itself, borrower eligibility requirements would apply and the substantive terms of the agreement must be reviewed by EPA.

3. Restructuring of the Obligation Requirements

In light of experience gained since publishing the BCRLF Administrative Manual, this memorandum will act as a change to the current obligation requirements imposed on the BCRLF cooperative agreement recipient. The current policy requires the cooperative agreement recipient to obligate all funds awarded within three years. The manual established a schedule of obligation, requiring no less than 50% of the amount awarded [be obligated] within 18 months; 80% within two years; and 100% within three years.

Recognizing the administrative and procedural requirements of establishing and implementing the BCRLF program may require more time than originally anticipated, EPA is changing the obligation schedule to the following:

"The recipient must provide evidence that it is making significant progress towards loaning the amount available under this agreement through its quarterly reports. If the loan funds are not used by the end of this agreement, and the term is not extended by EPA, the funds will be withdrawn."

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