

Windham Regional Commission's Brownfields Cleanup Revolving Loan Fund

Fund Implementation Plan

May 2013



LOAN/GRANT APPLICATION AND APPROVAL PROCESS

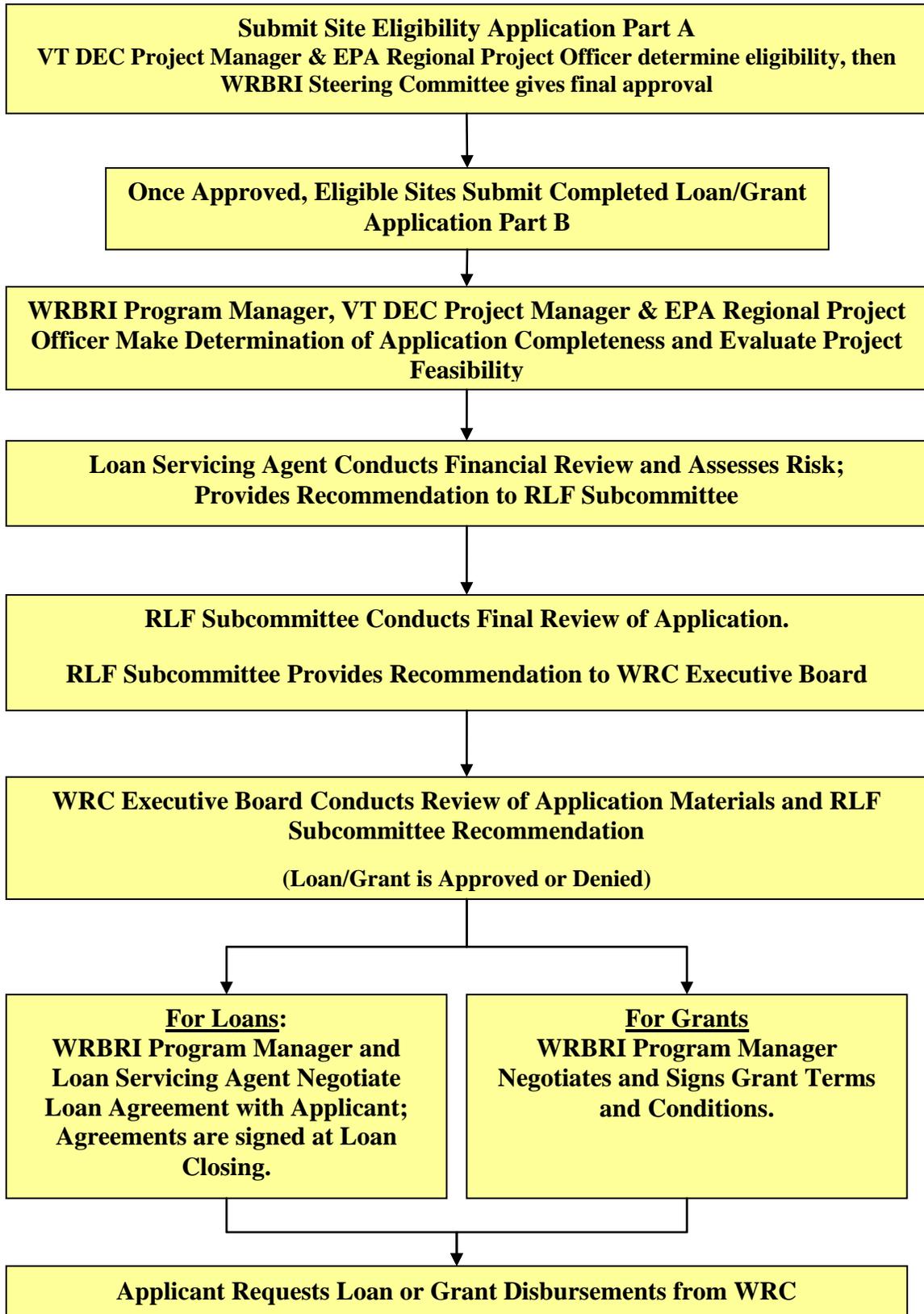


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EXECUTIVE SUMMARY

Overview

In June of 2011, the Environmental Protection Agency (EPA) awarded the Windham Regional Commission (WRC) \$1 million to establish the Windham Region Brownfields Reuse Initiative - Cleanup Revolving Loan Fund (WRBRI-RLF).

The WRBRI-RLF will provide loans and grants to fund the cleanup of Brownfield properties. It is intended that these loans and grants will fill funding gaps needed for the successful cleanup and ultimate redevelopment of Brownfields. The WRBRI-RLF will give priority to parcels in the Windham Region Commission service area¹ but could be used throughout the State of Vermont. Approximately \$465,000 will be available for loans and \$460,000 for cleanup grants (available to municipalities and nonprofits). The remaining funds will be used for programmatic expenses.

Administration of the Program

The Windham Region Brownfields Reuse Initiative (WRBRI) Steering Committee is a subcommittee of the WRC Community Development Committee and for this document it will be referred to as WRBRI Steering Committee. WRBRI Steering Committee oversees the implementation of the WRBRI-RLF program. A three (3) member with one (1) alternate member RLF Subcommittee consisting of WRBRI Steering Committee members reviews all loan and grant applications and recommends approval or disapproval to the WRC Executive Board. The WRC Executive Board has final authority over making loans or grants with RLF funds.

WRC staff manages the WRBRI-RLF Program under the oversight of the WRBRI Steering Committee and the WRC Executive Director. A selected bank will assist with WRBRI-RLF fund management. Vermont Department of Environmental Conservation's (VT DEC) Brownfields Response Project Managers will work with staff to ensure that brownfield cleanup activities funded by the WRBRI-RLF are completed in accordance with applicable local, state and federal requirements and are protective of public health and the environment.

Application Process and Eligibility

The WRBRI-RLF consists of a two part application process. Part A (WRBRI-RLF-A) determines whether the applicant and parcel are eligible for the program, including meeting the definition of a Brownfield, having liability protection under CERCLA and eligibility for enrollment in the Brownfields Reuse and Environmental Liability Limitation Act (BRELLA) or other State program, and demonstrating project viability and conformance with the program's goals and objectives, amongst other criteria. Part B (WRBRI-RLF-B) includes credit analysis and review of relevant environmental documents, redevelopment plan and business plan.

Making a Loan or Grant

Following recommendation of approval of a loan or grant application by the WRBRI RLF Subcommittee and then approval by the WRC Executive Board, staff will work with the legal counsel to draft a loan or grant agreement. Loan agreements shall dictate the terms and conditions and control the promissory note, and such other documents as may be necessary to

¹ Includes the 23 towns of Windham County, VT; three towns in Bennington County, VT (Readsboro, Searsburg, and Winhall); and one town in Windsor County, VT (Weston).

complete the particular loan. Once the Loan Agreement has been negotiated and agreed upon, a Closing Date will be scheduled.

Specifications for Loan Agreements

Eligible Entities: Private, municipal and non-profit organizations

Loan Amount: There is no minimum or maximum loan amount.

Interest Rates: The WRBRI-RLF is intended to be a flexible financing tool and therefore interest rates will be variable, dependent upon the loan term and other project characteristics.

Terms: Loans for environmental remediation may have terms up to ten years. The actual term is negotiable, but the project must justify the maximum term.

Security: WRC will utilize prudent lending practices to evaluate whether sufficient and adequate collateral is available to secure all WRBRI-RLF loans. WRC's preference is to have first mortgage on property. If asked to subordinate then WRC will seek additional collateral including liens on real or personal property.

Promissory Note: A promissory note is required. The borrower shall promise to pay the full extent required by the Loan Agreement, including all costs and expenses of collection incurred in connection with any default by the borrower, and all other payments required to be made by the borrower pursuant to the Loan Agreement.

Cost Share Requirement: Evidence of a cost share of at least 20% of the loan amount will be required of all borrowers. Cost share may be in the form of a contribution of money, labor, materials, or services from a non-federal source.

Completion Date: All WRBRI-RLF projects shall be completed in a timely fashion with maximum remediation project duration to be negotiated at the time of the loan agreement. A remediation project is considered "complete" once an as-built report has been submitted and approved by the VT DEC Project Manager.

Specifications for Grant Agreements

Eligible Entities: Municipal and non-profit organizations

Grant Amount: A maximum grant award of \$200,000 per parcel may be available to municipalities and nonprofit corporations.

Cost Share Requirement: Evidence of a cost share of at least 20% of the grant amount may be required of all grantees. Cost share may be in the form of a contribution of money, labor, materials, or services from a non-federal source². Grantees can request to have the cost share waived. The WRBRI Steering Committee will decide on this request on a case by case basis.

Disbursing Funds

Loan/Grant disbursements for approved WRBRI-RLF projects may be made after WRC has signed and executed agreements with the selected applicants. WRC may choose to disburse funds to the borrower by means of "actual expense" or "schedule," depending on the project.

Delinquent and Default Procedures

In the event that a loan payment is more than thirty (30) days late, a loan shall be declared delinquent and the WRBRI Program Manager shall contact the borrower to determine the cause of loan delinquency and refer the borrower to other appropriate sources of technical and management assistance.

² In certain instances federal funds can be used as part of the 20 % cost share (match). HUD (U.S. Department of Housing and Urban Development) and USDA (U.S. Department of Agriculture) funds, if part of the project, may be available to use as match..

In the event loan payments are more than ninety (90) days late, a loan shall be declared in default. Action will be taken to remedy default, which may include legal action to enforce guarantees and security agreements, a total or partial write-off, a moratorium on payments and/or a renegotiation of the terms of payment.

D) INTRODUCTION

In June of 2011, the Environmental Protection Agency (EPA) awarded the Windham Regional Commission (WRC) \$1 million to establish the Windham Region Brownfields Reuse Initiative - Cleanup Revolving Loan Fund (WRBRI-RLF). The program is being carried out under the statutes and regulations of the United States Environmental Protection Agency (EPA). The Windham Region Brownfields Reuse Initiative (WRBRI) Steering Committee oversees the implementation of the WRBRI-RLF by serving as an advisory committee to the WRC Executive Board. Approximately \$465,000 will be available for loans and \$460,000 for cleanup grants (available to municipalities and nonprofits). The remaining funds will be used for programmatic expenses.

WRC staff manages the WRBRI-RLF Program under the oversight of the WRBRI Steering Committee and the WRC Executive Director. A selected bank will assist with the WRBRI-RLF fund management. Vermont Department of Environmental Conservation's (VT DEC) Brownfields Response Project Managers will work with staff to ensure that brownfield cleanup activities funded by the WRBRI-RLF are completed in accordance with applicable local, state and federal requirements and are protective of public health and the environment.

A 3 member, with one alternate member, RLF Subcommittee consisting of WRBRI Steering Committee members reviews all loan and grant applications and recommends approval or disapproval to the WRC Executive Board. The WRC Executive Board has final authority over making loans or grants with RLF funds. Assisting the RLF Subcommittee will be the WRBRI Project Manager/Fund Manager and the Loan Servicing Agent.

The WRBRI-RLF will provide loans and grants to fund the cleanup of Brownfield properties. It is intended that these loans and grants will fill funding gaps needed for the successful cleanup and ultimate redevelopment of Brownfields.

The Goals and Objectives of the WRBRI-RLF are as follows:

Goals

- 1) Clean up, revitalize, and return to productive use brownfield parcels located in Vermont with priority given to parcels in the Region.
- 2) Improve the quality of life in neighborhoods that surround brownfield parcels, and empower communities to participate in redevelopment planning

Objectives

- 1) Leverage private and public funds to redevelop parcels and revitalize neighborhoods;
- 2) Involve community organizations, neighborhood residents, and other stakeholders in decision-making processes through the WRBRI Steering Committee; and
- 3) Provide appropriate protection of public waters and public health from further environmental degradation.

II) TARGET AREA

The WRBRI-RLF will give priority to parcels in the Windham Region Commission service area³ but could be used throughout the State of Vermont.

III) ROLES

A) WRBRI Steering Committee and RLF Subcommittee

The Windham Region Brownfields Reuse Initiative (WRBRI) Steering Committee is a subcommittee of the WRC Community Development Committee and for this document it will be referred to as WRBRI Steering Committee. WRBRI Steering Committee oversees the implementation of the WRBRI-RLF program. A three (3) member, with one (1) alternate, RLF Subcommittee consisting of WRBRI Steering Committee members reviews all loan and grant applications and recommends approval or disapproval to the WRC Executive Board. The WRC Executive Board has final authority over making loans or grants with RLF funds.

WRBRI Steering Committee members shall appoint three (3) of their members to serve on an RLF Subcommittee for all loans or grant applications. One (1) member shall also be appointed to serve on the RLF Subcommittee as an alternate. The purpose of the alternate member is to serve on the RLF Subcommittee in the event that the Subcommittee cannot meet a quorum to make a decision on the loan or grant application. Assisting the RLF Subcommittee will be the WRBRI Program Manager/Fund Manager and the Loan Servicing Agent. The RLF Subcommittee shall review a loan or grant application according to this Implementation Plan and make a recommendation to the WRC Executive Board on approval or disapproval. See also Section VI Application Review.

B) WRBRI Program Manager

WRC will designate staff to fulfill the responsibilities of the WRBRI Program Manager for the WRBRI-RLF Program. The WRBRI Program Manager will administer all aspects of the WRBRI-RLF under the oversight of the WRBRI Steering Committee. Activities of the **WRBRI Program Manager** include the following:

- 1) Comply with the programmatic terms and conditions of WRC's RLF grant contract with EPA (BF-96151501-0), including ensuring that all work done by borrowers and recipients complies with these terms and conditions.
- 2) Coordinate with the WRBRI Steering Committee or an RLF Subcommittee, as appropriate, on all aspects of WRBRI-RLF oversight.
- 3) Coordinate initial screening of applications, with assistance from the VT DEC Project Manager & EPA Regional Project Officer, to determine whether proposed cleanup activities are authorized by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- 4) Work with the VT DEC Project Manager & EPA Regional Project Officer to determine the eligibility of borrowers/grantees in accordance with CERCLA.

³ Includes the 23 towns of Windham County, VT; three towns in Bennington County, VT (Readsboro, Searsburg, and Somerset); and one town in Windsor County, VT (Weston).

- 5) Hire legal counsel to assist with review of loan agreements and supporting documents.
- 6) Work with the VT DEC Project Manager to ensure that the Vermont Department of Environmental Conservation approves each cleanup plan, including confirmation sampling (development of the Quality Assurance Project Plan (QAPP) and actual sampling).
- 7) Hire a Qualified Environmental Professional (QEP) to act as Site Manager as needed
- 8) Coordinate with Loan Servicing Agent.
- 9) Provide quarterly/annual financial statements for the WRBRI-RLF consisting of balance sheets, income statements, and statements of cash flow, in accordance with Generally Accepted Accounting Principles.
- 10) Establish an administrative record for each parcel.
- 11) Ensure that a Community Relations Plan (CRP) has been prepared and is being implemented for each parcel.

C) Fund Management

WRC may contract with a bank to assist with Fund Management. Should the WRC choose not contract with a bank, WRC itself may act as the Fund Manager. Should the WRC act as the Fund Manager it may procure a qualified financial professional to assist it in performing any of the Loan Servicing Agent activities listed below. Activities of the **Fund Manager** will include the following:

- 1) Maintain duplicate project files of all loan applications and related documents and transactions.
- 2) Conduct a credit analysis and review financial information for each eligible applicant and make recommendations to the WRBRI-RLF Subcommittee regarding the credit worthiness of proposed projects.
- 3) Make recommendations to WRC regarding the advisability of approving a loan and loan structuring.
- 4) Provide loan agreements for borrowers and close loans after review by WRBRI-RLF Subcommittee, WRC Executive Committee and legal counsel.
- 5) Collect loan repayments from borrowers and deposit them in the WRBRI-RLF account.
- 6) Contact borrowers regarding late fees or delinquencies.
- 7) Provide monthly and annual financial statements regarding the WRBRI-RLF account.
- 8) Attend WRBRI-RLF Subcommittee meetings to provide financial advice.
- 9) Comply with all applicable federal regulations regarding the WRBRI-RLF program, as identified in EPA RLF Grant Agreement Number BF-96151501-0 with the WRC.

D) VT DEC Project Manager and QEP Site Manager

The WRC may designate the assigned Project Manager from the Vermont Department of Environmental Conservation's Brownfields Response Program to perform the actions of the Site Manager. WRC may also choose to procure a Qualified Environmental Professional (QEP) to act as a Site Manager in instances where the WRBRI-Steering Committee deems it necessary and appropriate. The VT DEC Project Manager/QEP Site Manager's main role is to ensure that brownfield cleanup activities funded by the WRBRI-RLF are completed in accordance with applicable local, state and federal requirements and are protective of public health and the

environment. The VT DEC Project Manager/QEP Site Manager must have experience with on-site coordination, direction, and review of environmental response activities. Activities of the **VT DEC Project Manager/QEP Site Manager** will include the following:

- 1) Assist the WRBRI Program Manager with determining the eligibility of the parcel and if proposed cleanup activities are eligible under the EPA-RLF program. If evaluation of application materials is not enough, conduct parcel evaluation and assess current parcel conditions.
- 2) Ensure that WRBRI-RLF cleanup meets applicable requirements under Federal and State laws.
- 3) Review loan and grant agreements to ensure that they meet all environmental response requirements and that WRBRI-RLF funds are used only for authorized activities.
- 4) Ensure the adequacy of each WRBRI-RLF cleanup as it is implemented, including confirmation sampling (development of the Quality Assurance Project Plan (QAPP) and actual sampling).
- 5) Ensure that a parcel is secure and that it poses no immediate threat to human health or the environment, if a Borrower or Grantee is unable or unwilling to complete a WRBRI-RLF cleanup.
- 6) Approve an analysis of brownfield cleanup alternatives (usually included within the Corrective Action Plan) which will include information about the parcel and contamination issues (i.e. exposure pathways, identification of contamination, sources, etc.); cleanup standards; applicable laws, alternatives considered, and proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives, including no action.
- 7) Assist with verification that the clean up work at the parcel matches the submitted invoice and Federal and State rules are followed.

IV) APPLICANT AND PARCEL ELIGIBILITY

A) Borrower or Grantee Eligibility.

Eligible loan fund borrowers are any municipal, non-profit or private entities that meet the following criteria; eligible grantees are any municipal or nonprofit entities that meet the following criteria:

- 1) Borrower/Grantee is an owner who acquired property after the time of disposal, and who the lead agency (with the help of the EPA Regional Project Officer and/or the VT DEC Project Manager) has determined has not caused, contributed to, permitted or exacerbated the release of hazardous substances on or emanating from the property;
- 2) Borrower/Grantee has liability protection under CERCLA;
- 3) Borrower/Grantee is authorized to incur debt and enter into legally binding agreements;
- 4) Borrower/Grantee is financially sound; and

- 5) Borrower/Grantee has an economically viable redevelopment plan that is in conformance with the local and regional plan.

If a Borrower or Grantee does not meet the eligibility criteria above at the time of application to the WRBRI-RLF, they will be deemed ineligible. Entities that have been suspended, debarred or declared ineligible for Federal financial assistance programs are also ineligible for the WRBRI-RLF. A party that WRC determines to be a generator and/or transporter of wastes contributing to parcel contamination is ineligible for a WRBRI-RLF loan for the same parcel.

B) Eligible Parcels.

- 1) Eligible Brownfield parcels for WRBRI-RLF loans and grants are:
 - a) Parcels which meet the definition of a brownfield parcel provided in CERCLA §101(39)(A) – real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant - or for eligible properties which have been granted a property specific determination; and
 - b) Parcels at which Phase I and II Site Assessments have been completed in accordance with ASTM standards; and
 - c) Parcels enrolled in the Brownfields Reuse and Environmental Liability Limitation Act (BRELLA) or other appropriate State program.
- 2) Eligible petroleum-contaminated brownfield parcels are:
 - a) Parcels that the State has determined are of relatively low risk as compared to other petroleum-only parcels in the state;
 - b) Parcels for which the State has determined there is “no viable responsible party;”
 - c) Parcels for which the State has determined that the person assessing, investigating, or cleaning up the parcel is a person who is not potentially liable for cleaning up the parcel; and
 - d) Parcels that are not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

Ineligible Brownfields parcels are:

- 1) Facilities listed or proposed for listing on the National Priorities List;
- 2) Facilities subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decree issued to or entered by parties under CERCLA;
- 3) Facilities that are subject to the jurisdiction, custody of the United States government except land held in trust by the United States Government for an Indian tribe; or
- 4) A parcel excluded from the definition of a brownfields parcel for which EPA has not made a property-specific funding determination.

V) APPLICATION REQUIREMENTS.

The WRBRI-RLF consists of a two part application process; there are no application fees for the Eligibility Application Part A. Application fees will be assessed for the 2nd part of the

application process, the Loan/Grant Application Part B. Part A (WRBRI-RLF-A) determines whether the applicant and parcel are eligible for the program, including meeting the definition of a Brownfield, having liability protection under CERCLA and eligibility for enrollment in the Brownfields Reuse and Environmental Liability Limitation Act (BRELLA) or other State program, and demonstrating project viability and conformance with the program's goals and objectives, amongst other criteria. Part B (WRBRI-RLF-B) includes credit analysis and review of relevant environmental documents, redevelopment plan and business plan.

VI) APPLICATION REVIEW.

A) Initial Review

The WRBRI Program Manager will work with the VT DEC Project Manager and the EPA Regional Project Officer to review WRBRI-RLF-A application packages and to confirm that the applicant and the parcel comply with program eligibility requirements. There will be no fee associated with the initial application (WRBRI- RLF –A). The WRBRI Program Manager and/or the VT DEC Project Manager may conduct a site evaluation to assess current parcel conditions.

The WRBRI Steering Committee will meet as soon as feasibly possible after receipt of a complete WRBRI-RLF-A Application for a loan or grant. The WRBRI Steering Committee will assess whether the application furthers the program's goals and objectives and make a determination on whether it should proceed to the next application phase (VT DEC and EPA eligibility approval is also required). Once eligibility is confirmed, the applicant will be directed to complete WRBRI-RLF-B.

B) Financial Risk Evaluation.

Applicants completing WRBRI-RLF-B will be required to submit a complete application with application fee.⁴ When WRBRI-RLF-B applications have been deemed complete by the WRBRI Program Manager, the application will undergo a financial risk evaluation. For grants, the financial risk evaluation is completed by the WRBRI Program Manager, with assistance from the VT DEC Project Manager. For loans or grant/loan combinations, the application materials will be forwarded to the Loan Servicing Agent. The WRBRI Project Manager may also submit a grant application to the Loan Servicing Agent to determine if the applicant is financially stable and/or capable of accepting some portion in loan. The application fee will be assessed if it is determined that the applicant is capable of accepting a loan.

1) Grant Applications. With assistance from the VT DEC Project Manager, the WRBRI Program Manager will request and review financial records to assess the following criteria:

- Cleanup response action budget is reasonable and cleanup is achievable within the budget provided;

⁴ A fee will be established by the WRBRI Steering Committee. Applicants can request to have the application fee waived. The WRBRI Steering Committee will decide on this request on a case by case basis.

- Applicant shows at least 20% cost share from sources other than the WRBRI-RLF loan fund for cleanup;⁵
- Budget demonstrates that cleanup will be fully funded by grant in combination with all other sources of funding;
- Compliance with Federal and State regulations, requirements and conditions.

2) **Loan Applications.** The Loan Servicing Agent will conduct a financial risk evaluation for loan applications, which will involve reviewing credit reports and financial documents, as well as the feasibility analysis provided by the VT DEC Project Manager, in order to assess the eligible applicant as a cleanup and/or business risk. The Loan Servicing Agent will provide a recommendation to the RLF Subcommittee on whether to approve or disapprove a loan and if approved, a recommendation on how to structure the loan, within 30 days of receiving a complete application package.

The financial risk evaluation will include the following criteria:

- The legal structure of the applicant (corporation, partnership, limited liability partnership or sole proprietor), its ownership and its Board of Directors if applicable; business name, location, principal owners/stockholders, type of business and products/services, date established;
- The adequacy, timeliness and completeness of the applicant's financial statements (audited or un-audited);
- The applicant's financial overview: the historical financial condition of the applicant and its comparison to industry norms;
- The applicant's record of earnings and cash flow;
- The applicant's history of borrowing and adherence to the terms and conditions of past loans;
- The integrity and ability of the applicant's management and Board of Directors if applicable;
- The applicant's credit references: financial institutions and other creditors;
- Applicant's equity and additional collateral to make the loan more financially feasible;
- Matching funds, credit lines and other potential sources of funding;
- Maximum Loan Amount in any related program;
- Type of financial assistance requested;
- Applicant shows at least 20% cost share from sources other than the WRBRI-RLF loan fund for cleanup (see VII(A)(6) below); and
- Compliance with Federal and State regulations, requirements and conditions.

C) Approval by the RLF Subcommittee

The RLF Subcommittee will conduct a review of WRBRI-RLF-B application materials, recommendations of the VT DEC Project Manager, WRBRI Program Manager and Loan

⁵Grantees can request to have the cost share waived. The WRBRI Steering Committee will decide on this request on a case by case basis.

Servicing Agent, and will consider loan or grant terms requested by the applicant. For loan applications, staff may wait to schedule an RLF Subcommittee meeting until after the Loan Servicing Agent has submitted a recommendation or may hold a preliminary meeting, depending on the project. The RLF Subcommittee will make a recommendation to approve or disapprove a loan or grant and will forward this decision, along with recommended grant or loan amounts and terms, to the WRC Executive Board for review at their next regular meeting.

VII) MAKING A LOAN/AWARDING A GRANT.

A) Loan Agreement.

The Loan Agreement shall dictate the loan terms and conditions and control the promissory note, and such other documents as may be necessary to complete the particular loan. Final lending decisions and loan negotiations will be conducted by WRC with the advice of legal counsel. Once the Loan Agreement has been negotiated and agreed upon, a Closing Date will be scheduled.

The WRBRI Program Manager shall work with Legal Counsel and the Loan Servicing Agent to prepare draft loan documents for review by the RLF Subcommittee, EPA Regional Project Officer and the Borrower.

- 1) **Loan Amount.** There is no minimum or maximum loan amount at this time.
- 2) **Interest Rates.** The WRBRI-RLF is intended to be a flexible financing tool. The interest rate is variable and will be dependent upon the loan term and other project characteristics. Special circumstances such as exceptional collateral or development challenges to the parcel may be used to justify the lower interest rate.
- 3) **Terms.** Loans for environmental remediation typically have terms up to ten 10 years. The actual term is negotiable, but the project must justify the maximum term.
- 4) **Security.** WRC will utilize prudent lending practices to evaluate whether sufficient and adequate collateral is available to secure all WRBRI-RLF loans. It will usually be in the form of liens on the assets financed, including fixed assets such as machinery and real estate, account receivable, inventory and lease assignments. Liens upon other non-project assets of the Borrower or personal guarantees may also be used to secure the loan. If asked to subordinate then WRC will seek additional collateral including liens on real or personal property.
- 5) **Promissory Note.** WRBRI-RLF programs are to provide for the recapture of WRBRI-RLF funds to be returned for future loan awards. The loan principal and interest of a WRBRI-RLF loan shall be paid in accordance with any and all applicable loan documents. The entire amount of principal outstanding shall be due and payable in full together with any applicable accrued interest no later than on the expiration of the loan term. Loan agreements are to provide for equity participation on behalf of the Borrower if deemed possible.

- 6) **Cost Share Requirement.** Evidence of a cost share of at least 20% of the loan amount will be required of all borrowers. Cost share may be in the form of a contribution of money, labor, materials, or services from a non-federal source⁶. The cost share contribution must be for costs that are eligible and allowable under the Cooperative Agreement between WRC and the EPA, and must be supported by adequate documentation.
- 7) **Completion Date.** All WRBRI-RLF projects shall be completed in a timely fashion with maximum remediation project duration to be negotiated as part of the loan agreement and based on clean up requirements of appropriate state or federal agency. A remediation project is considered “complete” once an as-built report has been submitted and approved by the VT DEC Project Manager. If circumstances require additional time for completion, a memorandum shall be written and placed in the loan file explaining the reasons for the delay and coordinate with appropriate state or federal agency. If the WRBRI-RLF funds are not expended within the allocated time, amounts of the loan not expended may be reallocated to the WRBRI-RLF.
- 8) **Closing the Loan.** The closing date will be scheduled at the convenience of all parties. A list of items necessary for closing will be provided to the Borrower prior to closing.

B) Grant Agreement.

- 1) **Grant Amount.** A maximum grant award of \$200,000 per parcel may be available to municipalities and nonprofit corporations.
- 2) **Cost Share Requirement.** Evidence of a cost share of at least 20% of the grant amount may be required of all grantees. Cost share may be in the form of a contribution of money, labor, materials, or services from a non-federal source⁷. The cost share contribution must be for costs that are eligible and allowable under the Cooperative Agreement between WRC and the EPA, and must be supported by adequate documentation. Grantees can request to have the cost share waived. The WRBRI Steering Committee will decide on this request on a case by case basis.
- 3) **Completion Date.** All WRBRI-RLF projects shall be completed in a timely fashion with maximum remediation project duration to be negotiated as part of the grant agreement and based on clean up requirements of appropriate state or federal agency. A remediation project is considered “complete” once an as-built report has been submitted and approved by the VT DEC Project Manager. If circumstances require additional time for completion, a memorandum shall be written and placed in the grant file explaining the reasons for the delay and coordinated with appropriate state or federal agency. If the

⁶ In certain instances federal funds can be used as part of the 20 % cost share (match). HUD (U.S. Department of Housing and Urban Development) and USDA (U.S. Department of Agriculture) funds, if part of the project, may be available to use as match.

⁷ In certain instances federal funds can be used as part of the 20 % cost share (match). HUD (U.S. Department of Housing and Urban Development) and USDA (U.S. Department of Agriculture) funds, if part of the project, may be available to use as match.

WRBRI-RLF funds are not expended within the allocated time, amounts of the loan not expended may be reallocated to the WRBRI-RLF if needed to loan to other applicants

C) Borrower/Grantee Certifications

All loan and grant agreements shall include the following certifications:

- 1) Borrowers or Grantees shall certify that they are not currently, nor have they previously been, subject to any penalties resulting from environmental non-compliance at the parcel subject to the loan or grant;
- 2) The Borrower or Grantee shall certify that they are not a generator and/or transporter of wastes contributing to the contamination at a brownfields parcel;
- 3) The Borrower or Grantee must certify that they will submit Quarterly Progress Reports documenting clean-up activities and use of loan or grant proceeds. Documentation of the cleanup activity shall be maintained by the Borrower or Grantee for a period of ten years after the completion of cleanup activities or the length of the loan, whichever is longer. Prior to disposal of any records, the Borrower or Grantee shall obtain written permission of the WRC;
- 4) The Borrower or Grantee shall certify that all solicitations and contracts contain the clauses required by the Davis Bacon Act (29 CFR 5.5) and will submit payroll information and “Statement of Compliance” regarding payment of Davis-Bacon wages on a weekly basis to the recipient.
- 5) Borrowers or Grantees shall conduct WRBRI-RLF response activities in accordance with the cooperative agreement and the State Cleanup Program
- 6) Borrowers or Grantees must certify that they will provide written notification of shipments in accordance with CERCLA; and
- 7) If a Borrower or Grantee is currently the owner of the parcel, the Borrower or Grantee must provide evidence of statutory liability protection; or indicate that EPA intends to use enforcement discretion and not pursue the party as a responsible party under CERCLA.

VIII) COMMUNITY INVOLVEMENT AND ANALYSIS OF BROWNFIELD CLEANUP ALTERNATIVES.

Loan and grant agreements require the borrower or grantee to complete several tasks prior to cleanup, which are all eligible uses of loan or grant funds. Requirements for community involvement and analysis of brownfield cleanup alternatives are summarized below. Refer also to the EPA’s Brownfield Cleanup Grants Major Tasks checklist found in Appendix A and located online at http://www.epa.gov/reg3hwmd/bf-lr/granteereporting/BF_Cleanup_Grant_Checklist_10.08.pdf.

A) Community Involvement and Public Participation

- The borrower or grantee must designate a community relations spokesperson.

- The borrower or grantee must prepare and have approved a community relations plan, which outlines steps to provide notice of proposed cleanup, opportunity for involvement, response to comments, and administrative records that are available to the public.
- The borrower or grantee must maintain an information repository and administrative record for the parcel.

B) Analysis of Brownfield Cleanup Alternatives and Corrective Action Plan

- A VT DEC approved Corrective Action Plan (CAP) is required for all cleanup response actions funded by the WRBRI-RLF, except for lead and asbestos abatement.
- An Analysis of Brownfield Cleanup Alternatives (ABCA) is required for all cleanup response actions, including lead and asbestos abatement.
- The CAP and ABCA may be completed as one document providing they satisfy the requirements of the VT DEC and the EPA, or as separate documents.

C) Public Comment Period

- Once a public review draft of the ABCA is complete, a 30 day public comment period and at least one public meeting (minimum 15 days public notice) is required. Documents and administrative records should be available for public review for the duration of the public comment period. If the CAP is a separate document, public comment shall be solicited as dictated by the VT DEC. The community relations spokesperson shall respond to all public comment in writing.

IX) LOAN/GRANT SERVICING

A) Disbursement Requests

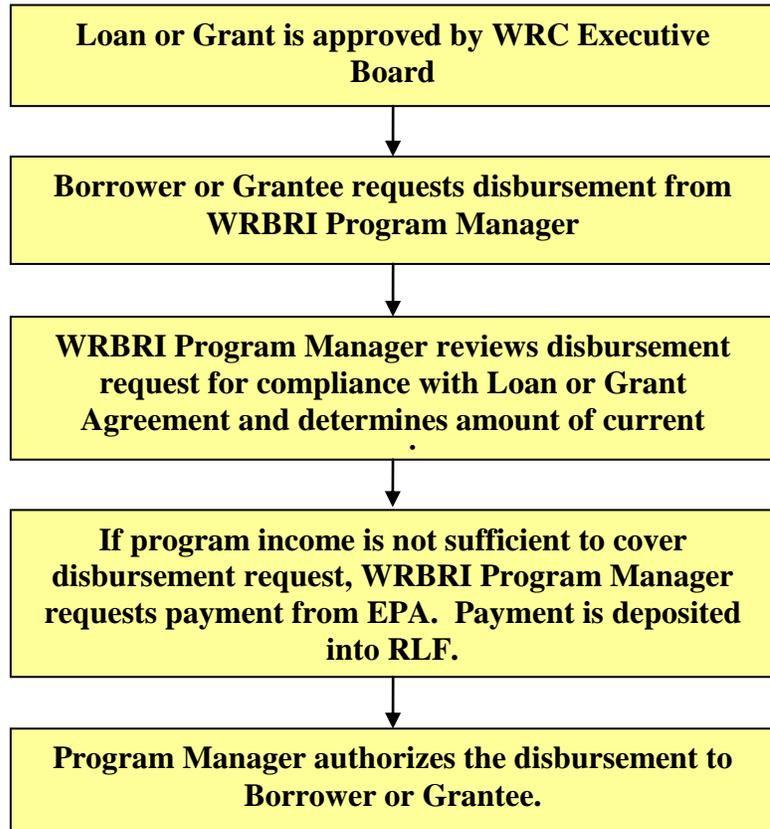
Loan/Grant disbursements for approved WRBRI-RLF projects may be made after WRC has signed and executed agreements with the selected applicants. WRC may choose to disburse funds to the borrower by means of “actual expense” or “schedule,” depending on the project.

- 1) Actual Expense Disbursements.** An “actual expense” disbursement requires the borrower/grantee to submit documentation of the borrower’s/grantees expenditures to WRC in order for WRC to request payment from EPA. Upon invoice approval, the WRBRI Program Manager will request that the WRC Finance Manager process the disbursement. Disbursement requests may be made on a monthly basis.

2) Schedule Disbursements.

A “schedule” disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower on the basis of an agreed upon schedule (progress payments) or, in unusual circumstances, upon the execution of the loan or grant. The disbursement schedule is approved by WRC as part of the loan or grant agreement. The WRBRI Program Manager, in consultation with the VT DEC Project Manager and/or the QEP Site Manager, will review and approve disbursement requests according to the amount of work completed and the degree to which work completed matches the amount budgeted and the schedule of disbursement. The budget may include a contingency amount for change orders.

LOAN/SUB-GRANT DISBURSEMENT PROCESS



A disbursement schedule that calls for the entire amount of the loan or grant upon execution must be demonstrated as necessary for cleaning up the parcel. The loan agreement shall ensure that the borrower/grantee uses funds promptly for costs incurred in connection with the cleanup and for loans, that interest accumulated on scheduled disbursements is applied to the cleanup.

B) Delinquent Loan Procedures.

In the event that a loan payment is fifteen (15) days late, a late notice is sent to the customer and a late fee shall be assessed on the next bill (if payment is due on the 1st of the month, a late fee shall be assessed on the 16th). A late fee shall only be assessed once per loan payment sixteen (16) days following the due date. For example, on a bill that includes a late payment and fee, a new late fee shall only be assessed if the current payment is fifteen (15) days late. In the event that a loan payment is more than thirty (30) days late, the WRBRI Program Manager shall contact the borrower to determine the cause of loan delinquency and refer the borrower to other appropriate sources of technical and management assistance.

C) Default Provisions

The Borrower shall be deemed to be in default of a loan agreement upon the occurrence of any or more of the following events (“Event of Default”):

- 1) the Borrower fails to comply with any non-payment term, condition or covenant of this Agreement, the Mortgage, the Note or any other document relating to the loan following thirty (30) days written notice of delinquency to Borrower;
- c) the Borrower assigns this Agreement or any Project Loan Funds advanced hereunder or any interest herein to a third party or if the Property or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Lender;
- d) any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect;
- e) any proceeding involving the Borrower or the Property, commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless the Lender either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within sixty (60) days;
- f) an order, judgment or decree is entered, without the application, approval or consent of the Lender, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Borrower of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of sixty (60) days; or
- g) if the Borrower is declared bankrupt or insolvent according to law.

If an **Event of Default** shall occur, all indebtedness of the Borrower to the Lender pursuant to this Agreement shall become immediately due and payable without the necessity of demand from Lender, and the Lender may elect to terminate this Agreement without being prejudiced to any remedies which may be available to it for a breach of contract. The Lender will take action to remedy default, which may include legal action to enforce guarantees and security agreements, a total or partial write-off, a moratorium on payments and/or a renegotiation of the terms of payment. The Lender shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from the Borrower to the extent allowed by law. If the Lender initiates judicial proceedings in accordance with this Section, the Borrower shall pay the Lender’s legal fees and costs. Upon the occurrence of any one or more of the Events of Default enumerated herein, all amounts of Project Loan Funds disbursed to Borrower by Lender pursuant to this Agreement shall become due and payable, without presentment, demand, protest or notice of any kind to the Borrower, all of which are hereby expressly waived by the Borrower.

D) Liability against Default.

Under no circumstances shall the WRC become responsible for owning or operating a project or for completing a CAP or cleanup actions when the grant or loan recipient defaults on a loan obligation, abandons the project parcel, or fails to complete a CAP to the satisfaction of the Secretary of the Agency of Natural Resources.

X) LOAN ACCOUNTING AND FINANCIAL REPORTING.

The WRBRI-RLF will be held in an account at the home bank of the Fund Manager. The Fund Manager, with assistance from the Loan Servicing Agent, will be responsible for keeping track of each Borrower's Loan Terms, Loan Disbursements, Loan Outstanding, Repayment Terms (principal and interest); calculating accrued interest and other loan fees; generating invoices for Payments; and processing Loan Payments. The Fund Manager, with assistance from the Loan Servicing Agent, will provide monthly reports on the status of each Borrower and the portfolio of loans showing Loans Outstanding, Un-disbursed Loan Amounts if any, interest and loan fee accruals, payment due dates and any delinquencies. These reports will be furnished to the EPA under the terms and conditions of the Cooperative Agreement.

XI) FINANCIAL GUARANTEES.

At any stage of the process established under this section, the WRC may require an eligible person or successor to provide such financial guarantees as the WRC deems appropriate, including letters of credit or performance bonds, for the purpose of ensuring completion of all activities approved or directed by the Secretary of the Agency of Natural Resources, and ensuring fulfillment of all obligations assumed under this section.

XII) AMENDMENTS

The Fund Implementation Plan may be amended by a majority vote of the WRC Executive Board at any regular meeting, provided a minimum fifteen (15) day notice of the amendments proposed have been included with the notice of the meeting.

*Adopted the 8th day of November, 2011, by Windham Regional Commission Executive Board.
Amended on 14th of February, 2012, by Windham Regional Commission Executive Board.
Amended on 15th of May, 2013, by Windham Regional Commission Executive Board.*