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

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OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Brownfields Revolving Loan Fund Cooperative Agreement Closeout Agreements

FROM: Mathy Stanislaus
Assistant Administrator

A handwritten signature in black ink, appearing to read "Mathy Stanislaus".

TO: Superfund National Policy Managers, Regions I-X
Brownfields Regional Coordinators
Grants Management Officers, Regions I-X

This memorandum provides guidance to Brownfields Revolving Loan Fund (RLF) cooperative agreement Project Officers regarding negotiating "Closeout Agreements" that will govern the use of program income generated both during the life of the cooperative agreement as well as after an agreement has closed. This guidance supersedes the guidance previously issued on February 14, 2007, on this issue. Note that only an authorized Award Official may close out a grant or cooperative agreement; therefore, Project Officers should work closely with Regional Grants Management personnel throughout the closeout process. This guidance applies to the following categories of cooperative agreements:

- Brownfields RLF cooperative agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 104(k);
- Brownfields RLF cooperative agreement pilots awarded under CERCLA Section 104(d); and
- Brownfields RLF cooperative agreement pilots awarded under CERCLA Section 104(d) that have transitioned to Section 104(k) as provided in Section 104(k)(3)(D).

Many Brownfields RLF cooperative agreements are ready to close out. Final payment has been made from EPA to the recipient and all cleanup activities funded by the agreement are complete. Brownfields RLF cooperative agreements generate program income through loan principal repayments, interest payments and program fees during the life of the agreement. In addition, principal repayments and interest payments may continue after cooperative agreement closeout. RLF cooperative agreement recipients decide how to structure loans, including interest rates and repayment schedules. As such, this guidance better aligns Brownfields program policies by removing disincentives to structuring loans with aggressive repayment schedules for fear of having to return accrued program income to the Agency at the time of closeout.

When closing out a Brownfields RLF cooperative agreement, Project Officers must negotiate a Closeout Agreement requiring that program income is used for continued operation of an RLF for brownfields cleanup, and/or other brownfields activities. Please note that the Agency prefers the continued operation of an RLF for brownfields cleanup, and strongly encourages the RLF Project Officers to insert language in the Closeout Agreements encouraging the continuation of public input regarding the priority of sites to be cleaned up. When possible, RLF grantees should solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, regarding the need for site specific loans and subgrants.

Regions must ensure that the Closeout Agreement provide that any assessments or cleanups financed with program income be consistent with certain terms and conditions of the RLF capitalization grant. These conditions include either the CERCLA Section 107 prohibitions (for Brownfields RLF cooperative agreements awarded under or transitioned to CERCLA Section 104(k)) or the Borrower Eligibility provisions (for Brownfields RLF cooperative agreements awarded under CERCLA Section 104(d)). The site eligibility limitations (for all Brownfields RLF cooperative agreements) contained in the terms and conditions of the cooperative agreement must be included as well. EPA has determined that other federal requirements will not be applicable to cleanups financed with accrued pre-closeout and post-closeout program income once the cooperative agreement has been closed out

Per 40 C.F.R. 31.25(h), federal requirements other than the ones specified above will not apply to the activities funded with program income and must not be included as requirements in Closeout Agreements. However, Closeout Agreements must require reporting to EPA on how the former Brownfields RLF recipient is using program income. Project Officers have discretion in establishing specific reporting frequency and content.

For those Brownfields RLF cooperative agreement recipients who have accrued pre-closeout program income that will not be used on other Brownfields grants, the EPA Regions will find it necessary to obtain an exception from the grant regulations in 40 C.F.R. 31.50(d)(2). This exception will allow the RLF recipients to retain and use the accrued program income that remains in their account at the time of closeout.

In certain circumstance where the recipient has both remaining EPA funding and accrued program income, the EPA Regions may also want to request an exception from the grant regulation in 40 C.F.R. 31.21(f)(2). This regulation requires accrued program income to be used prior to drawing down the unobligated balance of RLF cooperative agreement funds. This exception needs to be requested prior to the preparation of the Closeout Agreement to ensure that this exception is in place in a timely manner.

Exception requests will be considered on a case-by-case basis by the Director of the Grants and Interagency Management Division. Regions should coordinate their exception requests with their Grants Management Office and the Office of Brownfields and Land Revitalization.

If you have any questions regarding this memorandum, please contact Debi Morey with the Office of Brownfields and Land Revitalization at (202) 566-2735 or by email at morey.debi@epa.gov.

cc:

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