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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 Grant Recipients with Insufficient Capacity

FROM: David R. Lloyd 
Director, Office of Brownfields & Land Revitalization

TO: Superfund Division Directors
Brownfields Regional Coordinators
Grants Management Officers

This memorandum describes an approach for Project Officers who manage Brownfields Revolving Loan Fund (RLF) grants awarded under Section 104(k) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) with insufficient capacity to terminate their grant and join an existing RLF coalition. Some RLF grantees have experienced difficulty implementing their grant and issuing loans and subgrants. In some cases, these grantees have insufficient capacity to manage an RLF grant and are unable to make loans and subgrants in a timely manner. Currently, EPA policy is to terminate the grants for failure to make adequate progress and deobligate the funding for such grants.

Beginning March 1, 2012, on a case-by-case basis, I may approve requests from EPA Regional Brownfields Coordinators to proceed with termination and deobligation of funds for these grants by mutual agreement between EPA and the grantee. Please note that only an authorized Regional Award Official may terminate an RLF grant and deobligate the funds. Consequently, in order for me to consider these requests, the Regional Brownfields Coordinator must first consult with Regional Grants Management personnel.

Under this new approach, the grantee, who has agreed to termination, may then join an existing RLF coalition or a jurisdiction-wide State or Tribal RLF as a new member, provided all parties, including the coalition members, agree. The deobligated funds, with the exception of 25 percent, would be awarded to the coalition as supplemental funding on a noncompetitive basis as authorized by Section 104(k)(4)(A)(ii) of CERCLA and consistent with Sections 6(b) and 13(c) of EPA Order 5700.5A1, Policy for Competition of Assistance Agreements (1/11/05) ("the EPA Competition Policy"). The scope of work for the coalition grant would be expanded to include the community that would have been served under the terminated grant. The excepted 25 percent of funds would be returned to the Brownfields National Pool.

In February 2012, the Office of Grants and Debarment granted the Office of Brownfields and Land Revitalization (OBLR) a class waiver from *Grants Policy Issuance* 08-02 that covers all Brownfields RLF grants. This class waiver allows EPA to terminate agreements with RLF grantees who are not making adequate progress by mutual agreement and award the de-obligated funds to a "lead" coalition grantee without competition even if the geographic boundaries of the coalition grant do not include the jurisdiction of the terminated grantee. For example, a community within a county could join a high-performing county coalition even if that particular community's jurisdiction was not a part of the original county coalition work plan. From time to time, additional scenarios and special circumstances for applying the Insufficient Capacity policy may arise. OBLR will work with regions to address these scenarios on a case-by-case basis.

It is anticipated that this approach will facilitate more timely loans and subgrants for brownfields cleanup. As indicated above, this option is available only to those RLF grants awarded under CERCLA Section 104(k). It does not apply to RLF pilots awarded under CERCLA Section 104(d), nor to pilots awarded under CERCLA Section 104(d) that have transitioned to Section 104(k) as provided in Section 104(k)(3)(D). This distinction is made because these recipients have already had an additional opportunity (transitioning to the new law) to implement their grant in a timely manner. Further, the State/Tribe or coalition RLF that the grantee is joining must have been awarded under CERCLA Section 104(k) or awarded under CERCLA Section 104(d) and transitioned to Section 104(k) as provided in Section 104(k)(3)(D).

Regions should consider requesting the use of this approach on a limited basis. When submitting such requests, Regions should include:

- A standard supplemental funding request letter from the existing RLF coalition or State/Tribal RLF grant which the terminated grantee will join. (To be eligible, the existing RLF coalition or State/Tribal RLF grant must have made at least one loan or subgrant). If a coalition, the letter must affirm that all coalition members agree the terminated grantee may join.
- A memo from the region that briefly details: the history of the grant to be terminated (including a demonstration of insufficient capacity), the success of the RLF coalition or State/Tribal RLF, how use of this approach will help achieve environmental goals and an affirmation that Regional Grants Management personnel have been consulted. (For both grants, include the grant number, the amount awarded, the date awarded, all past supplemental funding and the date of expiration).
- A description of the revised scope of work for the coalition grant.

All requests should be addressed and submitted to David R. Lloyd, Director, Office of Brownfields and Land Revitalization.