

# **PENNVEST BROWNFIELDS REMEDIATION LOAN PROGRAM GUIDELINES**

*Jointly Administered by the Pennsylvania Infrastructure Investment Authority and the  
Department of Environmental Protection  
Beginning in FY 2004*

Adopted:

PENNVEST Board of Directors March 24, 2004

Revised, PENNVEST Board of Directors April 17, 2007

## **PENNVEST BROWNFIELDS REMEDIATION LOAN PROGRAM**

### **PROGRAM DESCRIPTION, GOALS AND INTENT**

The Pennsylvania General Assembly in its 1988 session passed the Pennsylvania Infrastructure Investment Authority Act (March 1, 1988, P.L. 82, No. 16), which was subsequently amended in 1992 (December 18, 1992, P.L. 1137, No. 149) and is codified at 35 P.S. § 751.1 *et seq.* (the “Act”). This Act, among other things, created the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) and authorized PENNVEST to establish revolving funds and accounts to administer both Commonwealth and Federal funds available for certain infrastructure projects. Pursuant to this authority, PENNVEST created the Clean Water State Revolving Fund (“CWSRF”) to administer Federal funds available through the Section 601 of the Federal Water Pollution Control Act, 33 U.S.C. § 1381, to finance the construction of wastewater collection and treatment projects. These Federal funds can also be used to fund projects that control nonpoint sources of pollution identified in programs established pursuant to Section 319 of the Federal Water Pollution Control Act, 33 U.S.C. § 1329. The Pennsylvania Department of Environmental Protection (“DEP”) has developed such a program, which includes projects for the remediation of contamination at former industrial and commercial sites.

On March 24, 2004, PENNVEST expanded its use of CWSRF funds to include the remediation of sites that are contaminated by past industrial or commercial activity and pose a threat to local groundwater or surface water sources (“brownfields”). Through the expanded program, low-interest loan financing is available through PENNVEST for Applicants who intend to perform specific assessment and remediation activities on contaminated properties across the Commonwealth under Pennsylvania’s Land Recycling and Environmental Remediation Standards Act (“Act 2”), 35 P.S. § 6026.101 *et seq.*, administered under the DEP Land Recycling Program. The purpose of this brownfield’s remediation financing initiative is to encourage the cleanup and reuse of contaminated properties under the Act 2 process.

### **PROGRAM LONG-TERM OBJECTIVES AND BENEFITS**

By reducing or eliminating water quality threats to the health and welfare of Pennsylvania’s citizenry and to the environment, PENNVEST anticipates that the brownfields remediation low-interest loan program will help facilitate the sale and reuse of industrial and commercial properties in the Commonwealth. This is an important benefit to all Pennsylvania residents. As the potential

environmental liabilities of reusing or further developing existing commercial properties diminish, economic benefits are expected for both the buyer and seller. PENNVEST is optimistic that its brownfields remediation funding initiative will provide the following benefits:

- Improve local surface and groundwater quality;
- Encourage reuse of property in urban areas rather than suburban sprawl into surrounding rural areas;
- Help revitalize the economies of local communities;
- Create employment opportunities in areas of low income and/or high unemployment;
- Increase local tax bases;
- Facilitate the use or reuse of existing infrastructure and facilities located in the proximity of the sites; and
- Facilitate the creation, preservation, or addition to parks, greenways, open spaces and other recreational properties.

## PENNSYLVANIA'S LAND RECYCLING PROGRAM UNDER ACT 2

The Land Recycling and Environmental Remediation Standards Act provides a process for site owners to voluntarily clean up properties not mandated for remediation under existing environmental laws and encourages cleanup of hazardous substances, pollutants, and contaminants that might not otherwise take place. DEP has adopted regulations and issued guidance to assist with the Act 2 voluntary remediation process through its Land Recycling Program.

In order to qualify for funding under PENNVEST's brownfields funding program, an applicant must comply, to the extent applicable, with the remediation requirements set forth in Act 2 and DEP's implementing regulations. The Act 2 requirements vary depending on the cleanup standard selected for the remediation. PENNVEST funds will only be approved and thereafter disbursed for projects in which the applicant has complied with the applicable Act 2 requirements. An application for PENNVEST shall not be approved until the applicant has submitted a Notice of Intent to Remediate ("NIR") to DEP and the municipality in which the site is located and advertised the NIR in a local publication. Further if a site-specific cleanup standard will be used, a remedial investigation report, risk assessment report and cleanup plan must be submitted to and approved by DEP prior to application to PENNVEST for the remediation funds.

Upon completion of remediation work, a final report must be submitted to and approved by DEP. PENNVEST will holdback the release of 5% of the loan proceeds until such final report is approved by DEP. Failure to submit the required Act 2 notices or reports, or to promptly address deficiencies in such reports identified by DEP, would be an event of default under the terms of the PENNVEST financing.

DEP will also participate in the brownfields funding program in the following ways:

- Assist PENNVEST staff and others in planning consultations for each potential project in order to explain DEP requirements and explore project alternatives and funding sources;
- Review all applications to determine the water quality benefits and other technical aspects of each suggested project;
- Participate in regular coordination meetings with PENNVEST staff and Department of Community and Economic Development staff to identify appropriate mixes of funding for brownfields applications submitted to each department.

### FUNDING AVAILABILITY

No special appropriation has been budgeted for this funding initiative. Therefore, PENNVEST will make funding available from existing revenue through its CWSRF program. During the pilot stage or initial years of this funding initiative, PENNVEST will make funds available through a mechanism identified as a “goal-oriented” funding set-aside. Brownfield remediation applications will be solicited, received, evaluated, and considered for funding from this set-aside in conjunction with PENNVEST’s normal application process.

Qualifying brownfields remediation applicants will be considered and recognized for funding by the PENNVEST Board of Directors at its scheduled Board meetings. If the set-aside money is not fully utilized at any particular Board meeting, the funds remaining will be made available for other projects eligible for CWSRF funding (*e.g.*, wastewater or other eligible nonpoint source pollution control projects). This goal-oriented set-aside will be utilized in an attempt to provide funding to all qualifying brownfields remediation loan requests.

A new goal-oriented set-aside for brownfields remediation projects will be established in each subsequent year. This concept will assure a continued yearly source of loan money for certain remediation projects until a project prioritization system can be integrated to include and consider various brownfields remediation projects. Future goal-oriented set-aside percentages and amounts will be established based on PENNVEST’s analysis of potential loan demand in any future year, current program progress, marketing results, and other indicators as deemed appropriate.

If brownfields remediation applications exceed available funding, PENNVEST will either consider modifying its yearly set-aside goal or prioritize its potential brownfields recipients for funding in terms of water quality impact and readiness to proceed. Proposals that identify an impact to public health will receive a higher funding priority than other related water quality impacts on the environment. Other environmental water quality remediation needs may be deferred until the next funding cycle depending on available funds.

Potential applicants will be notified of PENNVEST’s yearly brownfields remediation goal-oriented set-aside during the yearly application solicitation process or other public notices.

## ELIGIBLE APPLICANTS

Applicants may be either public or private developers. Private developers must provide a letter of sponsorship to PENNVEST from the economic development arm designated by the local government unit responsible for the project site. This letter must advise PENNVEST that the project is endorsed by such entity on behalf of the local government unit.

Applicants must have a good and marketable ownership interest in the real property being remediated at the time of settlement. Please note that to the extent the acquisition of such property interest is being funded by PENNVEST, the property interest must be acquired under PENNVEST's Letter of No Prejudice or Pre-Closing Letter process, as applicable, prior to the date of acquisition, in order to be a project cost eligible for reimbursement.

## ELIGIBLE PROJECTS

Projects for brownfields remediation with a demonstrable water quality impact pursuing clean up efforts under Act 2.

## ELIGIBLE USE OF LOAN PROCEEDS

Loan proceeds can be used for the following eligible project costs:

- Site assessments consistent with Act 2 requirements, including costs associated with the development of site assessment plans.
- Site acquisition – PENNVEST may finance a portion of the cost of acquiring the brownfields site, including closing costs associated with the acquisition of the site, in an amount not to exceed the lesser of a) \$1 million dollars or b) 50% of the site remediation costs. Such acquisition and related costs must be necessary to achieve water quality benefits at the site. To the extent the acquisition of the site is being financed by PENNVEST and will occur prior to settlement on a PENNVEST funding offer, the site must be acquired under a Letter of No Prejudice or Pre-Closing Letter, as applicable, issued by PENNVEST prior to the date of acquisition.
- Remediation – Subject to PENNVEST's project funding limitations, PENNVEST may fund up to 100% of the costs associated with remediation of sites contaminated as a result of a hazardous substance, pollutant, or contaminant release including, but not limited to:
  - Excavation, removal and disposal of contaminated soil or sediments including tunnels and underground structures contributing to ground water contamination;
  - Grading to return property to its original topography required by remediation;
  - Construction of monitoring wells;
  - Abandonment and capping of polluted wells;
  - Excavation and disposal of underground storage tanks;
  - Other construction activities that are related to approved site remediation;
  - Engineering services needed to develop remediation plans;

- Legal fees related to remediation activities (e.g., deed notices);
- Repair or replace water, sewer and stormwater infrastructure to the extent necessary to complete the remediation;
- Fees related to the cost of obtaining necessary environmental permits; or
- Costs associated with the acquisition of the project site (e.g., title searches).

The following site remediation activities **do not** qualify for loan reimbursement under this funding initiative. Ineligible remediation activities include:

- Any construction activity not necessary for remediation of hazardous substances, pollutants, or contaminants released at the site;
- Improvements at the site to enhance real estate value but not related to site remediation efforts, including, but not limited to, any new structures or site reuse appurtenances (unless and only to the extent they provide a “cap” as part of the remediation);
- Construction of new water, sewer or stormwater infrastructure;
- Demolition or repair of buildings on or adjacent to the site, unless such demolition activity can be shown to be necessary for remediation of hazardous substances, pollutants or contaminants released at the site that create or contribute to the creation of water quality degradation;
- Relocation of residents;
- Testing not required for site remediation;
- Payment of any administrative or civil fines and associated legal fees; or
- Refinancing of existing debt including any otherwise eligible acquisition costs incurred without a Letter of No Prejudice or Pre-Closing Letter as warranted.

### LOAN INTEREST RATES, TERMS and OTHER CONDITIONS

The maximum term of loans under this initiative will be twenty years from the date of settlement, which term includes an interest only term for no longer than the first five years with the repayment of principal and interest (“amortization”) being paid over the balance of the fifteen year term. The loan amortization will normally be on a monthly basis beginning five years from the date of settlement. The term of any interest only or amortization period, and the frequency and amount of loan repayments, will be determined based on the nature of the remediation project, the proposed collateral being used to secure the loan and the Applicant’s source of repayment.

Interest rates on loans will be at the allowable county maximum rates, as defined in section 10(f) of the Act. Interest accrues from the date that funds are disbursed to the borrower. However, interest can be capitalized at the option of the applicant and included in loan principal at the time of amortization upon the applicant’s request.

Applicable maximum loan amounts are as described in Section 10(i) of the Act, which provides a maximum of \$11 million for a project that serves only one municipality, \$20 million for a project that serves two or more municipalities and via a special vote of the PENNVEST Board of Directors, amounts more than \$20 million for comprehensive projects that serve all or parts of four or more municipalities.

Collateral for the project shall be reviewed and determined prior to the meeting of the PENNVEST Board of Directors approving your application for funding. The collateral determination will require the review of the financial condition of the applicant as well as any other entity, such as a principal of the corporation that has an ownership interest in the property being remediated or will otherwise provide collateral to secure the loan. Such review will typically involve the entities' audited financial statements, if available, corporate income tax returns, as applicable and similar documents that will allow PENNVEST to assess the creditworthiness of the applicant and other parties involved in a project. The purpose of this review will be to establish sufficient collateral to secure the loan (*e.g.*, lien on revenues, assignment of lease and rents, bank letter of credit, third party guaranty, real estate mortgage) and to determine the sources for loan repayment (*e.g.*, proceeds from the sale of improved properties and future revenue streams).

### APPLICATION PROCEDURE

Applications should be limited to those projects which comply with the following criteria:

- Projects that are expected to commence construction or remediation within nine months of the date of approval of a funding offer by the PENNVEST Board of Directors;
- Projects with a collateral offer sufficient to secure PENNVEST financing and an adequate proposed method of repayment; and
- Projects being pursued through the Act 2 process with a demonstrable water quality impact.

PENNVEST brownfields applications can be completed at [www.pennvest.pa.gov](http://www.pennvest.pa.gov). Please be sure to include financial statements and other information demonstrating your ability to collateralize the loan and an adequate reserve source for repayment of the loan.

The PENNVEST Board of Directors currently takes action on applications four times each year in January, April, July and October. Applications are due 60 days prior to the date of the Board meeting. Upon approval of an application submitted pursuant to this policy **and prior to initiation of on-site remediation activities**, PENNVEST and the applicant will execute the loan agreement and additional documentation required specifically for your project (*e.g.*, a debt obligation and documents related to collateral). Projects can proceed prior to approval of a PENNVEST application and execution of the loan documents provided that the applicant has obtained PENNVEST's prior consent in the form of a Letter of No Prejudice or a Pre-Closing Letter as applicable.

### DISBURSEMENT OF LOAN FUNDS

Loan funds will be disbursed to the borrower on a reimbursement basis as the borrower incurs expenses for project costs. As the borrower incurs expenses and receives bills for loan eligible activities undertaken, the borrower will prepare and submit a payment request to PENNVEST in accordance with established policies and procedures for PENNVEST's funds disbursement process. Disbursement approval will generally be authorized and funds disbursed to the borrower

within 6 weeks from the date PENNVEST receives a complete payment request. The borrower is expected to establish an account with a financial institution that will accept electronic transfer of disbursement funds.

Upon verification by PENNVEST that costs claimed are eligible for reimbursement, PENNVEST will disburse funds for 100% of claimed and verified eligible costs until 95% of the total project costs have been disbursed. At that time, the remaining 5% of available loan proceeds will be withheld until all remaining eligible activities are complete and, if applicable, the final report required pursuant to Act 2, has been approved by DEP. Following receipt of this approval from DEP, and the completion of all other remaining activities, PENNVEST will immediately authorize the reimbursement of all remaining documented costs.