

Codification through the 2002 legislative session.
Board adoption - March 1, 2002
Gubernatorial approval - April 18, 2002
Legislative approval and final adoption - May 3, 2002
Effective date - June 13, 2002

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 220. BROWNFIELDS**

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SUBCHAPTER 1. GENERAL PROVISIONS

Section

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252:220-1-1. Purpose, authority and applicability

(a) **Authority.** The rules in this Chapter implement the Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 *et seq.*

(b) **Promulgation.** 252:220 was promulgated and adopted pursuant to the Act, specifically 27A O.S. § 2-15-104.

(c) **Qualification.** Any person who qualifies under § 2-15-103 of the Act may apply for a Certificate of Completion or a Certificate of No Action Necessary.

252:220-1-2. Methodology

All analytical and sampling methods used to comply with 252:220 shall be approved ASTM or EPA procedures or procedures approved by the DEQ. Any reference to an ASTM or EPA Method refers to the latest published procedure.

252:220-1-3. Definitions

The following words or terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"**Act**" means The Oklahoma Brownfields Voluntary Redevelopment Act, 27A O.S. § 2-15-101 *et seq.* as amended.

"**ASTM**" means the American Society for Testing and Materials.

"**Certificate**", as used in these rules, shall mean Certificate of Completion and Certificate of No Action Necessary.

"**DEQ**" means the Oklahoma Department of Environmental Quality.

"**Draft cleanup plan**" means "draft permit" as used in the Oklahoma Environmental Permitting Act.

"**Final cleanup plan**" means "final permit" as used in the Oklahoma Environmental Permitting Act.

"**Regulated substance**", for purposes of this Act only, means any substance regulated under the Environmental Quality Code or rules promulgated pursuant thereto.

"**Tier I**" [See 252:2-15.]

"**Tier II**" [See 252:2-15.]

252:220-1-4. Terms not defined by Code or rule

Any term not defined in the Oklahoma Environmental Quality Code or 252 (Oklahoma Administrative Code, Department of Environmental Quality), shall be defined by:

- (1) The Dictionary of Geological Terms, Latest Revised Edition, American Geological Institute,
- (2) EPA Guidance Documents,
- (3) Its generally accepted scientific meaning, or
- (4) Its standard dictionary meaning.

252:220-1-5. Consideration of other laws

The owner or operator of a Brownfield must comply with all applicable state and federal laws and rules.

SUBCHAPTER 3. APPLICATIONS

Section

252:220-3-1.	Application process
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252:220-3-2.	Application content
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252:220-3-1. Application process

The application process for a Certificate, including notice and public participation, shall be in accordance with the Uniform Environmental Permitting Act and 252:002.

252:220-3-2. Application content

(a) **Eligibility.** The applicant must provide sufficient information to the DEQ for the DEQ to determine whether the applicant is eligible under the law to apply for liability protection under Brownfields.

(b) **Information.** The applicant shall provide the DEQ with the information specified in the Oklahoma Brownfields Voluntary Redevelopment Act and Subchapter 5, Rules 5-1 through 5-4, inclusive. [See 27A O.S. § 2-15-105.]

SUBCHAPTER 5. PROCEDURE

Section

252:220-5-1.	Site characterization
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252:220-5-4.	Remediation plan for preferred option
252:220-5-5.	Draft site cleanup plan
252:220-5-6.	Final site cleanup plan
252:220-5-7.	Consent Order
252:220-5-8.	Workplan
252:220-5-9.	Final report

252:220-5-1. Site characterization

(a) **Memorandum of Agreement.** The applicant and the DEQ shall execute a Memorandum of Agreement (MOA) for site characterization, including a provision for reasonable oversight costs.

(b) **Required plans.** The applicant shall submit a work plan, a quality assurance project plan (QAPP), a sampling and analysis plan (SAP) and a health and safety plan (HSP) for site characterization.

(c) **Report.** The applicant shall submit the following necessary data in a site characterization report:

- (1) Summary of a title search document;
- (2) Complete operational history of the site;
- (3) Information about the current use(s) of the property;
- (4) Documentation which identifies all potential receptors, human and ecological, and potential contamination migration pathways;
- (5) Delineation of all sources of contamination associated with the site, including contaminated soil, and the location, size, constituents and concentrations of each source;
- (6) Delineation of the nature and extent of contamination; and
- (7) Any site specific information requested by the DEQ.

(d) **Previously prepared plans.** If the applicant has already performed an environmental assessment or investigation of the proposed Brownfield site prior to contacting the DEQ, that information may be presented as part of the required site characterization. DEQ may consider this information in determining the appropriateness of further investigation of the site. DEQ may require verification sampling to validate the information submitted. If the information submitted does not fully address the requirements of the program, DEQ may also require the applicant to collect additional data.

252:220-5-2. Risk assessment

(a) **Land use disclosure.** The applicant shall identify the future use of the contaminated property.

(b) **Risk-based cleanup levels.** Using risk assessment methodology approved by the DEQ, the applicant shall:

- (1) Calculate a default risk-based cleanup level; or
- (2) Conduct a risk assessment of the contaminated property to produce site-specific risk-based cleanup levels.

252:220-5-3. Remedial option evaluation

(a) **Remedial options.** The applicant shall identify remedial option(s) and shall submit narrative information which discusses risk-based cleanup levels, economic feasibility, technical feasibility, and reliability of each remedial option considered, including a discussion of institutional controls needed for each option to maintain future use of the site.

(b) **Preferred option.** The applicant shall identify the preferred option.

252:220-5-4. Remediation plan for preferred option

(a) **Statutory requirements.** The applicant shall submit information required by the Act in the remediation plan for the preferred option.

(b) **Other requirements.** The applicant shall also identify:

- (1) The remedial action objectives (RAOs);
- (2) All applicable state and federal laws, rules, standards, limitations, criteria and requirements;
- (3) Methods to verify how risk-based cleanup levels will be achieved; and
- (4) Future monitoring and maintenance requirements.

252:220-5-5. Draft site cleanup plan

The DEQ shall compile from documents submitted a draft site cleanup plan for public review.

252:220-5-6. Final site cleanup plan

The DEQ shall issue a final site cleanup plan in accordance with the Uniform Permitting Procedures, 252:002-15.

252:220-5-7. Consent Order

If a final site cleanup plan is issued, the applicant and the DEQ shall execute a Consent Order for site remediation.

252:220-5-8. Workplan

The applicant shall submit the workplan to the DEQ for approval, including but not limited to the following:

- (1) The design requirements to obtain the RAOs;
- (2) Project and construction management plans; and
- (3) A remediation schedule.

252:220-5-9. Final report

The applicant shall submit a final report which summarizes all remedial work, including the verification sampling results.

SUBCHAPTER 7. CERTIFICATES

Section

252:220-7-1.	No action determination
252:220-7-2.	Completion of Remediation Project
252:220-7-3.	Filing

252:220-7-1. No action determination

Upon a determination that no action is necessary, the DEQ shall issue a Certificate of No Action Necessary to the

applicant in accordance with the Act.

252:220-7-2. Completion of Remediation Project

Upon final inspection and approval of work, the DEQ shall issue a Certificate of Completion to the applicant in accordance with the Act.

252:220-7-3. Filing

The applicant shall file the Certificate and submit a file-stamped copy to the DEQ in accordance with the Act. [27A O.S. § 2-15-107.]

SUBCHAPTER 9. VERIFICATION OF BROWNFIELDS PROJECTS

Section

252:220-9-1.	Applicability
252:220-9-2.	Verification of projects

252:220-9-1. Applicability

This Subchapter applies to Brownfields projects eligible for funds from the Wastewater Facility Construction Revolving Loan Account pursuant to 82 O.S. §1084.1 *et seq.* and other state or federal funding sources.

252:220-9-2. Verification of projects

The DEQ shall verify eligibility of Brownfields projects to the Oklahoma Water Resources Board or other appropriate state or federal funding entities. Additionally, the DEQ shall cooperate with appropriate funding entities in identifying water quality benefits under the federal Clean Water Act by providing the following information upon request of the funding entity:

- (1) verification of eligibility as a Brownfields project;
- (2) verification that runoff from the project potentially impacts water quality; and
- (3) documentation of potential water quality benefits.

SUBCHAPTER 11. BROWNFIELDS CLEANUP REVOLVING LOAN FUNDS (BCRLF)

Section

252:220-11-1.	Purpose, authority and applicability
252:220-11-2.	Definitions
252:220-11-3.	Borrower eligibility
252:220-11-4.	Ineligible fund uses
252:220-11-5.	Environmental response requirements
252:220-11-6.	Project selection criteria
252:220-11-7.	Protocol for demonstrating eligibility
252:220-11-8.	Special terms and conditions
252:220-11-9.	Loan discount
252:220-11-10.	Insurance

252:220-11-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Subchapter is to implement Executive Order 98-37, mandating state agencies to establish criteria for local project funding contracts, and to comply with the provisions of Superfund Brownfields Revolving Loan Fund Assistance Agreement #BL-988684801-0 (*Cooperative Agreement*).

(b) **Authority.** This subchapter is adopted pursuant to 27A O.S. § 2-2-101 *et seq.* and § 2-15-101 *et seq.*, 75 O.S. § 302 and Executive Order 98-37.

(c) **Applicability.** The rules in this Subchapter apply to any private entity, political subdivision or unit of local government, including municipal and county governments and school districts, and federally recognized Indian tribes seeking to use Brownfields Cleanup Revolving Loan Funds (BCRLF) for non-time critical removal activities as defined

in the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA, 42 United States Code § 9601 (23)] and described in the National Oil and Hazardous Substances Pollution Contingency Plan [NCP, 40 CFR § 300.415].

(d) **Other requirements.**

(1) **Oklahoma Department of Commerce.** The Oklahoma Department of Commerce (ODOC), may be the BCRLF Fund Manager responsible for ensuring that the BCRLF applicants meet all financial requirements. Applicants are on notice that the ODOC may have specific rules governing loan applications and eligibility requirements.

(2) **Federal "cross cutting" requirements.** "Cross-cutting requirements" are those federal requirements in addition to CERCLA and associated administrative authorities which are applicable to the BCRLF by operation of federal statutes, President's Executive Orders and federal regulations. These cross cutting federal authorities apply by their own terms to projects and activities receiving federal financial assistance regardless of whether the statute authorizing the assistance mentions them specifically. BCRLF cross cutters include but are not limited to social and economic policy authorities such as equal employment opportunities (President's Executive Order 11246) and government wide debarment and suspension rules (President's Executive Order 12549), the Demonstration Cities and Metropolitan Development Act, procurement prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, Anti-lobbying provisions of 40 CFR Part 30, Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, the Contract Work Hours and Safety Standards Act, Anti-kickback Acts, the Women and Minority Business Enterprise Act, Section 13 of the Federal Water Pollution Act amendments, the Drugfree Workplace Act of 1988, Section 504 of the Rehabilitation Act of 1973 and Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988.

252:220-11-2. Definitions

In addition to the definitions found in OAC 252:220-1-3, the following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"**BCRLF response**" means the same as non-time critical removal action as defined in CERCLA, 42 U.S.C. § 9601(23).

"**Borrower**" means a public or private entity that uses BCRLF funds for cleanup and cleanup-related activities and agrees to the terms of a loan agreement between itself and the DEQ and ODOC.

"**Governmental borrower**" means states, tribes and political subdivisions as defined at 40 CFR 35.6015.

"**Loan discount**" means a decision by the DEQ and ODOC to allow a borrower to repay less than the full amount of a loan, subject to certain restrictions.

"**Nonprofit borrower**" means organizations which meet the definition of a nonprofit entity in Paragraph 4 of OMB Circular A-122.

252:220-11-3. Borrower eligibility

(a) An owner/operator (o/o) who was the generator or transporter of contamination at that site is not eligible for a BCRLF pilot loan for that same site.

(b) An owner/operator of a brownfields site is an eligible borrower for a BCRLF pilot loan for that same site only if

(1) the DEQ determines that the o/o would fall under a statutory exemption from liability; or

(2) the EPA could use its enforcement discretion to not pursue the party under CERCLA, as described by EPA guidance; and

(3) the o/o of contaminated brownfields property acquired the property after the time of disposal or placement of hazardous substances and the DEQ determines that the o/o has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on, or emanating from that property.

252:220-11-4. Ineligible fund uses

(a) **Ineligible activities.** BCRLF funds shall not be used for any of the following activities, including but not limited to:

(1) Pre-cleanup environmental response activities, such as site assessment, identification, and characterization;

(2) Cleanup of a naturally occurring substance; cleanup of products that are part of the structure of and result in exposure within residential buildings or business or community structures (e.g. interior lead-based paint contamination or asbestos which results in indoor exposure); or cleanup of public or private drinking water supplies that have deteriorated through ordinary use;

(3) Monitoring and data collection necessary to apply for, or comply with, environmental permits under other state and Federal laws, unless such a permit is required as a component of the cleanup action;

(4) Development activities that are not removal actions (e.g., construction of a new facility or marketing of property); or

(5) To support job training.

(b) **Ineligible sites.** BCRLF funds shall not be used at any sites:

(1) Listed, or proposed for listing, on the National Priorities List;

(2) At which a removal action must be taken within six months (i.e., time critical removal action);

(3) Where a federal or state agency is planning or conducting a response or enforcement action; or

(4) Contaminated by petroleum products except to address a non-petroleum hazardous substance.

252:220-11-5. Environmental response requirements

(a) BCRLF funds shall only be used to conduct non-time critical response actions at brownfields sites.

(b) All environmental response activities carried out using BCRLF funds shall be conducted in accordance with CERCLA and consistent with the NCP.

(c) All activities shall be conducted consistent with the community relations and public involvement requirements in the NCP.

252:220-11-6. Project selection criteria

(a) **Compliance with state and federal laws and rules.** The applicant must comply with the Oklahoma Brownfields Voluntary Redevelopment Act (27A O.S. § 2-15-101 *et seq.*), the rules in this Chapter, and applicable provisions of CERCLA and the NCP.

(b) **Contribution to local community revitalization.** The applicant shall submit documentation to support its position that the cleanup of a particular site will significantly contribute to local community revitalization.

(c) **Environmental compliance history.** A borrower must submit information regarding its overall environmental compliance history. The DEQ will strongly consider this

history in its analysis of the borrower as a cleanup and business risk. Each borrower must certify that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan. An entity that has been suspended, debarred or otherwise declared ineligible, as those terms are defined in 40 CFR Part 32, cannot be a borrower.

252:220-11-7. Protocol for demonstrating eligibility

The borrower shall provide the following documentation to the DEQ:

- (1) Description of project to be funded;
- (2) How loan monies will be used;
- (3) Explanation of how the project, if selected, would be consistent with BCRLF program objectives; and
- (4) Environmental compliance history.

252:220-11-8. Special terms and conditions

The following terms and conditions are incorporated by reference into each borrower's loan agreement:

- (1) Borrower shall use funds only for eligible activities.
- (2) Borrowers shall document all funds used.
- (3) Borrower shall maintain documentation for a minimum of ten (10) years after the completion of the cleanup activity supported by the loan or for the length of the loan, whichever is longer. Borrowers shall obtain written approval from the DEQ prior to disposing of records.
- (4) Borrowers shall use no more than ten percent (10%) of the loan for allowable non-cleanup activities.
- (5) Borrowers shall conduct BCRLF response activities in accordance with the cooperative agreement and CERCLA and consistent with the NCP.
- (6) Borrowers shall modify response activities as required by the DEQ.
- (7) Borrowers shall comply with CERCLA § 104(g) [42 USC § 9604(g)] by requiring that laborers and mechanics employed by the borrower or its contractors or subcontractors in the performance of construction, alteration, or repair work are paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Department of Labor in accordance with the Davis Bacon Act.
- (8) Borrowers must comply with the Uniform Relocation Act and other applicable federal "cross cutting" requirements.
- (9) Borrowers shall use loan funds promptly for costs incurred in connection with the cleanup. Interest accumulating on schedule disbursements shall be applied to the cleanup.

252:220-11-9. Loan discount

- (a) **Nonprofit borrowers.** Nonprofit borrowers may forgo repayment of up to 30% of the loan amount on a site specific basis upon approval by the DEQ and ODOC.
- (b) **Governmental borrowers.** Governmental borrowers may forgo repayment of up to 20% of the loan amount on a site specific basis upon approval by the DEQ and ODOC.
- (c) **Allowable use.** The loan repayment amount that has been discounted may only be used by the borrower to carry out allowable cleanup activities in compliance with terms of loan agreement such as compliance with CERCLA, the NCP, the Davis-Bacon Act, and cross-cutting requirements applicable to the loan.
- (d) **Same conditions.** The discounted amount must be expended under the same conditions as the loan itself (including compliance with CERCLA, the NCP, and other statutory obligations).

252:220-11-10. Insurance

- (a) Borrowers may purchase insurance, including environmental insurance, if the expense is incidental to and associated with BCRLF costs they incur for site-specific cleanup activities (e.g. workers compensation). Incidental insurance purchased by a borrower is not counted against the borrower's ten percent limit on administrative costs.
- (b) With U.S.EPA approval, BCRLF funds may be used to purchase environmental insurance as a non-administrative cost if the purchase of such insurance is necessary to carry out other removal activities. Removal activities associated with BCRLF funded insurance must be carried out in accordance with the terms and conditions of the cooperative agreement, CERCLA and the NCP.