

DEPARTMENT OF ENVIRONMENTAL QUALITY

SITE RECLAMATION GRANT/LOAN PROGRAM

(By authority conferred on the commission of natural resources, department of natural resources, by sections 9 and 13 of Act No. 328 of the Public Acts of 1988, being SS299.679 and 299.683 of the Michigan Compiled Laws)

R 299.5051 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means Act No. 328 of the Public Acts of 1988, being S299.671 et seq. of the Michigan Compiled Laws.

(b) "Act 307" means Act No. 307 of the Public Acts of 1982, as amended, being S299.601 et seq. of the Michigan Compiled Laws.

(c) "Agreement" means the agreement between the department and the applicant.

(d) "Applicant" means a county, city, village, or township that applies for a loan or grant pursuant to the act.

(e) "Application" means an application for a loan or grant from the fund as specified on a form provided by the department.

(f) "Commission" means the commission of natural resources created pursuant to chapter 11 of Act No. 380 of the Public Acts of 1965, as amended, being S16.350 et seq. of the Michigan Compiled Laws, and known as the executive reorganization act of 1965.

(g) "Community growth alliance area development office" means that component of the community growth alliance organization, or similar economic development organization designated by the department of commerce pursuant to the provisions of Act No. 409 of the Public Acts of 1988, being S125.2401 et seq. of the Michigan Compiled Laws, that is responsible for providing business development assistance in all of the following areas:

(i) Site selection service.

(ii) Financial packaging.

(iii) Coordination of local retention efforts focused on economic-base industries.

(iv) Local and state regulations.

(v) Other similar activities.

(h) "Department" means the Michigan department of natural resources.

(i) "Department of commerce" means the Michigan department of commerce.

(j) "Department of public health" means the Michigan department of public health.

(k) "Department of treasury" means the Michigan department of treasury.

(l) "Director" means the director of the department or his or her designee.

(m) "Economic development implementation" means that portion of the project which results in measurable economic benefit.

(n) "Fund" or "funds" means the environmental protection bond fund created pursuant to the provisions of section 6 of the act.

(o) "Infrastructure" means sewer and water, roads, and utilities that are necessary for economic development implementation.

(p) "Measurable economic benefit" means the permanent jobs that are created or retained, the private capital invested, and the increased tax base to the county, city, village, or township where the project is located.

(q) "Measurable environmental benefit" means the decrease of the act 307 site score or removal from the act 307 site list that would occur as a result of the response activities undertaken and funded pursuant to section 8(1)(a)(i) and (ii) of the act. This also includes environmental characterization and remedial investigation of a property.

(r) "Mixed funding" means the utilization of local, state, or federal funds in conjunction with private funds.

(s) "Near term" means 0 to 24 months.

(t) "Potentially responsible parties" means a person whose action or negligence may have caused a condition that requires response activity or who may be otherwise responsible for response activity under state or federal law.

(u) "Program income" means any and all monies that are returned to the fund. In the case of loans and grants, program income is the total, or a portion of, funds that are generated from the use of site reclamation funds as received by the applicant, including any of the following:

(i) Loan principal payments.

(ii) Interest payments.

(iii) Eligible special assessments.

(iv) Proceeds from the disposition of property that is improved with these funds.

(v) Potential responsible party cost recovery.

(vi) Other monies that are appropriated by the legislature.

(vii) Any funds specified in terms or conditions of a formal agreement entered into under these rules.

(v) "Project" means the entire project to be undertaken, including the actual site remediation and its resulting economic development.

(w) "Rate" means the cost set by the department for money that is loaned from the fund.

(x) "Recipient" means an applicant who has received a grant or loan pursuant to the provisions of these rules.

(y) "Regional planning agency" means a state planning and development region which is organized pursuant to the provisions of Act No. 281 of the Public Acts of 1945, as amended, being S125.11 et seq. of the Michigan Compiled Laws, and which conforms to the boundaries established by Executive Directives Nos. 68-1, 70-4, and 73-1 and subsequent executive directives that affect the boundaries of state planning and development regions.

(z) "Term" means the time set by the department for repayment of the money that is loaned from the fund.

(2) Terms defined in the act and act 307 have the same meanings when used in these rules.

History: 1991 AACS.

R 299.5052 Applications.

Rule 2. (1) An application for a loan or grant that is authorized pursuant to the provisions of the act shall be made on a form prescribed by the department.

(2) The department shall annually provide all of the following information to all counties, cities, townships, and villages in Michigan:

(a) The availability of the fund for response activity leading to economic development.

(b) Eligible uses of the funds as set forth in R 299.5053.

(c) The availability of the act 307 list of sites of environmental contamination.

(d) Procedures to obtain application materials.

(3) Applications for loans or grants from the site reclamation loan and grant program will be accepted at any time throughout the year.

(4) Counties, cities, townships, and villages may request funding assistance as follows:

(a) A grant may be requested to fund all or part of the eligible response activity costs that are necessary for the project if any 1 of the following conditions is established:

(i) Program income is not identified in the 2 years after economic development implementation.

(ii) The total program income that is generated from these funds is insufficient to repay the funds requested.

(iii) The total program income that is generated from these funds is necessary to maximize the use of other public and private funds.

(iv) On a project-specific basis, review and consideration of the use of program income, documented financial need, and project impact has been made to demonstrate that the financial integrity of the project is dependent on grant funds instead of a loan.

(b) A loan may be requested to fund all or part of the eligible response activity costs that are necessary for the project if any 1 of the following conditions is established:

(i) Program income is identified in the first 2 years after economic development implementation.

(ii) The total, or a portion of, program income that is generated from these funds is sufficient to repay all or part of the funds requested without jeopardizing the use of other public and private funds.

(iii) On a project-specific basis, review and consideration of the use of program income, documented financial need, and project impact has been made to demonstrate that the financial integrity of the project is maintained notwithstanding loan repayment.

(5) The loan rate and term will be set based on the specifics of a project, documented financial need, project impact, and capacity to repay.

(6) The loan rate, term, and security requirements for approved projects will be set by the department after applications have been reviewed and comments and recommendations have been received from agencies that have provided review and comment.

(7) Applications will be valid for 12 months from receipt, by the department, of a complete application as set forth in subrule (8) of this rule.

(8) On or enclosed with the application form, an applicant shall provide all information that is necessary to determine whether the application is in compliance with the eligibility requirements set forth in R 299.5053 and information that is necessary to evaluate the project under the criteria set forth in R 299.5054 and R 299.5057, including all of the following information:

(a) A description of the proposed response activity for which the funds are being sought, and how the response activity will comply with the requirements of act 307, the administrative rules promulgated thereunder, and other applicable federal and state laws and regulations.

(b) All available information that is related to the known or suspected release or threat of release at the site, including all of the following information or documents:

(i) Site use history.

(ii) Current ownership, including current title search.

(iii) Any technical reports, studies, or other background information concerning the property.

(iv) Any identified potentially responsible parties.

(c) A description of the project.

(d) The location of the project, including a legal description.

(e) A map of the project area.

(f) Projected sources and uses of all public and private project financing.

(g) Project time schedule.

(h) Data needed to review the economic development implementation feasibility. Specific information requirements will be specified on the application form, but shall include information pertaining to all of the following:

(i) Ownership and management.

(ii) Current and projected financial statements.

(iii) Marketing and capacity.

(iv) Projected employment.

(v) Related information.

(i) A description of how the use of these funds will result in measurable environmental and economic benefits to the community, the region, and the state as a result of project implementation.

(j) A plan for the proposed economic development implementation, supported by the need to undertake response activities.

(k) A summary of significant administrative, civil, or criminal enforcement action by any federal, state, or local agency that resulted in an administrative or judicial agreement, compliance schedule, civil penalty or criminal conviction within the last 5 years that is related to environmental violations of each appropriate entity directly implementing the measurable economic benefit. This includes all appropriate entities that may be involved in decisions regarding the treatment, handling, storage, or disposal of hazardous substances related to the proposed economic development implementation and includes information that demonstrates how the entities that are involved in the proposed economic development implementation will prevent environmental harm and comply with state and federal environmental law and regulations. This information will be used to evaluate the application. Prior environmental violations by any of the implementing entities will not automatically result in ruling the application ineligible.

(l) The assessed valuation for each parcel of land as it appears on the most recent assessment roll, the parcel code number, and the date of the assessment roll.

(m) Endorsements and commitments of other participants, lenders, or financing sources, including all terms and conditions.

(n) A resolution that is adopted by the governing body of the applicant.

The resolution shall include all of the following:

(i) A provision that the proposal will be undertaken if a loan or grant is awarded.

(ii) Designation of an authorized project representative.

(iii) A provision that the proposed economic development implementation is consistent with the local development or redevelopment plans, zoning ordinances, or master plan.

(iv) Certification, by the authorized project representative, that all statements on the application form are true, complete, and accurate to the best of the representative's knowledge.

(9) An applicant shall notify all of the following entities where the project is located of the application submittal:

(a) The regional planning agency.

(b) The local health department.

(c) The community growth alliance area development office.

(d) The county.

(e) The city, township, or village. A copy of the notice and to whom it was sent shall be provided in the application.

History: 1991 AACS.

R 299.5053 Eligibility requirements.

Rule 3. The department shall consider an application for funding if it meets all of the following conditions:

(a) The applicant is a county, city, township, or village.

(b) The proposed project is within the applicant's jurisdiction.

(c) The applicant has submitted a completed application as set forth in R 299.5052(8).

(d) The response activity for which funding is being sought is consistent with the provisions of act 307 and the administrative rules promulgated thereunder.

(e) In the case of a site that is listed pursuant to the provisions of act 307, the site is not expected to be funded for response activities in the next fiscal year.

(f) In the case of a site that is not listed pursuant to the provisions of act 307, the project shall address a vacant manufacturing facility or abandoned industrial site.

(g) The total amount of funding a project is eligible to receive through this program is \$2,000,000.00. A city, township, or village is eligible to receive funding from this program for not more than 1 project per fiscal year.

(h) The local unit of government has submitted evidence to the department that private funding or other public funds are not available to implement all or part of the necessary response activities, thus supporting the need for state financial assistance.

(i) In the case of sites that are listed pursuant to the provisions of act 307, the applicant's loan or grant award will provide for at least 1 of the following activities, excluding drinking water supply replacements:

(i) Interim response activities described in R 299.5509.

(ii) Remedial investigation as described in R 299.5511.

(iii) A feasibility study as described in R 299.5513.

(iv) Remedial action as described in R 299.5515. Asbestos abatement is not considered a response activity that is eligible for funding under this program.

(j) In the case of sites that are not listed pursuant to the provisions of act 307, the applicant's loan or grant award will provide for at least 1 of the following activities, excluding drinking water supply replacements:

(i) Interim response activities described in R 299.5509.

(ii) Remedial investigation as described in R 299.5511.

(iii) Once a non-307 site has been identified as a site of environmental contamination pursuant to the act 307 scoring process, it becomes an act 307 site that is eligible for funding pursuant to paragraph (i) of this subdivision. Asbestos abatement is not considered a response activity that is eligible for funding under this program.

(k) That measurable economic benefit related to the proposed economic development implementation is identified.

(l) That measurable environmental benefit related to the proposed project is identified.

(m) That any funding that is received will not result in a net reduction or loss of proposed or existing measurable economic benefit, private investment, or measurable environmental benefit within the applicant community.

(n) That the funds requested do not relieve potentially responsible parties from their obligation or responsibility for response activities and do not permit potentially responsible parties to profit from the investment of public funds.

History: 1991 AACS.

R 299.5054 Department of commerce review and recommendations.

Rule 4. The department shall provide the department of commerce with a copy of the applications and shall afford the department of commerce the opportunity to make recommendations to the department on all of the following:

(a) The feasibility of development or redevelopment of the site and proposed economic development implementation.

(b) Whether the applicant has incorporated strategies for marketing redeveloped sites in underutilized infrastructure areas.

(c) The near-term likelihood that the project will create or retain permanent jobs.

(d) Measurable economic benefit that results from the economic development implementation, including consideration of any regional or state impacts.

(e) Whether the economic development implementation addresses the use of underutilized or existing infrastructure, and whether that existing infrastructure is suitable to provide the necessary services for the proposed economic development implementation.

(f) Whether the project discourages the development of open space or undeveloped lands.

(g) In the case of sites that are not listed pursuant to the provisions of act 307, a determination that the open space and undeveloped lands that may be preserved as a result of the proposed project were not zoned industrial as of December 1, 1988.

(h) The degree of support for the economic development implementation by public and private entities and the nature of the comments submitted by the agencies notified pursuant to the provisions of R 299.5052(9).

(i) Suggested rates and terms for loan projects.

(j) Mixed funding sources and other funding mechanisms and alternatives when required.

(k) The likelihood of recapturing program income.

(l) The consistency of the economic development implementation with the resolution adopted by the governing body of the applicant and submitted as part of its application.

History: 1991 AACS.

R 299.5055 Department of public health review and comment.

Rule 5. When an applicant's proposal involves water supply issues, or when the department determines that a review of radiological or worker health issues is necessary, the department shall notify the department of public health. The department of public health may provide its review and comments to the department for consideration.

History: 1991 AACS.

R 299.5056 Mixed funding proposals requiring department of treasury approval; rates and terms.

Rule 6. When an applicant's proposal includes mixed funding that requires the approval of the department of treasury, the department shall consider the rates and terms established by the department of treasury.

History: 1991 AACS.

R 299.5057 Evaluation criteria.

Rule 7. The department shall consider all of the following criteria in making its recommendation for funding applications to the natural resources commission:

- (a) Compliance with the provisions of act 307 and the administrative rules promulgated thereunder.
- (b) The degree to which the economic development implementation results in the reuse of a site.
- (c) Whether the economic development implementation results in the utilization of existing infrastructure.
- (d) In the case of sites that are not listed pursuant to the provisions of act 307, whether the proposal preserves open space and undeveloped lands that were not zoned industrial on or before December 1, 1988.
- (e) The extent to which the loan or grant, through environmental remediation activities, will result in measurable economic benefit.
- (f) The extent to which the loan or grant, through environmental remediation activities, will result in measurable environmental benefit.
- (g) The near-term creation of measurable economic development.
- (h) The documented endorsement of the economic development implementation by the county and city, township, or village where the project is located and by private business and financial institutions.
- (i) Comments provided on the economic development implementation by regional planning agencies and community growth alliance area development offices where the project is located.
- (j) Recommendations made by the commerce department and any comments received from state and local agencies.
- (k) The support by mixed funding sources.
- (l) The degree of legal impediments to project implementation.
- (m) The likelihood that the economic development implementation will or will not change or contribute to environmental contamination.
- (n) The extent to which entities that are involved in the economic development implementation demonstrate an environmental ethic through past and present compliance with state and federal laws and regulations, as demonstrated by information provided in the application pursuant to R 299.5052(8)(k).
- (o) The potential for recapturing program income.
- (p) The assurance that potentially responsible parties are not relieved of their obligation or responsibility for the response activities and that they will not profit from the investment of public funds.
- (q) The consistency of the proposed economic development implementation with the resolution that is adopted by the governing body and submitted with the application.
- (r) Priority shall be given to those applicants who show initiatives which benefit the environment, including growth management techniques that discourage development of open space and undeveloped lands through zoning ordinances, environmental ordinances, or other similar initiatives.

History: 1991 AACS.

R 299.5058 Department recommendations to commission.

Rule 8. (1) The department shall, on a quarterly basis, submit its recommendations to fund applicants to the commission.

(2) The award of a loan or grant by the commission shall not constitute the issuance of, or an intent to issue, any license or permit required by law during the implementation of the project.

History: 1991 AACS.

R 299.5059 Commission awards.

Rule 9. (1) The commission shall, each quarter, review the recommendations for funding site-specific projects submitted by the department utilizing the evaluation criteria specified in R 299.5057 and shall decide which applicants will be funded. The commission shall consider recommendations provided by the department of commerce in making its decision. The commission shall provide notice of its decisions to the house and senate appropriations committees.

(2) When a loan or grant is awarded, the department shall send a formal agreement that outlines the terms and conditions of the loan or grant to the recipient for execution by the recipient. Execution of the agreement by the recipient signifies approval and acceptance by the recipient of the terms and conditions of the loan or grant.

History: 1991 AACCS.

R 299.5060 Allocation of funds.

Rule 10. (1) The fund allocation is as follows:

(a) For sites that are listed pursuant to the provisions of act 307, the following provisions apply:

(i) For the first year, after the effective date of these rules, \$12,000,000.00.

(ii) For the second year, \$14,000,000.00.

(iii) For the third year, \$14,000,000.00.

(b) For sites that are not listed pursuant to the provisions of act 307, the following provisions apply:

(i) For the first year, after the effective date of these rules, \$1,500,000.00.

(ii) For the second year, \$1,750,000.00.

(iii) For the third year, \$1,750,000.00.

(2) The actual amount that is available to the program funds may vary from year to year based on legislative appropriations and recapture of funds from previous program income as defined by the provisions of R 299.5051(1)(u).

(3) In any program year, \$500,000.00 of the fund balance shall be made available to demonstrate the use of innovative cleanup technologies in relationship to the activities defined by the provisions of R 299.5053(i) and (j).

History: 1991 AACCS.

R 299.5061 Grant administration procedures and responsibilities.

Rule 11. (1) After an agreement has been entered into between a county, city, township, or village and the department, both of the following provisions shall be complied with:

(a) The recipient shall submit all of the documents that are necessary to comply with the agreement.

(b) The department shall review and approve all documents that are submitted by the recipient for adequacy and conformity to the applicable state laws and regulations.

(2) Payments to the recipient will be made in compliance with the following requirements:

(a) Funds will not be disbursed before execution of the agreement. Funds will be disbursed on a reimbursement basis upon receipt by the department of appropriate documentation of expenditures. Disbursements shall be made on not more than a monthly basis. Documentation requirements will be specified by the department on a form prescribed for requesting reimbursement.

(b) Upon the submittal of a request for reimbursement by a recipient, the department shall, before payment is made, review financial information, review the completed activities, and certify that the project is progressing or has been completed according to the project agreement.

(3) Upon the submittal of a request for final payment by the recipient, the department shall, before final payment and within 60 days of receipt of request, do all of the following:

(a) Conduct a review of project expenditures. Before the final review, the department will pay up to 90% of the specified grant amount; the final 10% will be withheld until the review is completed.

(b) Conduct an on-site inspection.

(c) Verify that funding assistance has been expended in a manner consistent with the agreement and that all documents that are required to be submitted in the agreement have been received and approved by the department.

(4) Any site, or portion thereof, that is developed with fund assistance shall not be sold, disposed of, or converted to a use other than that use specified in the project agreement without the express approval of the department. The denial of requests or the requirement for renegotiation shall be based on an evaluation of the effect of such action on the original intent for which the loan or grant was given.

(5) Failure to comply with the responsibilities specified in the agreement or to comply with provisions of any license or permit that is issued by the state for the purpose of implementing the project shall be considered cause for the department to take the following action or actions, as deemed appropriate by the department:

(a) Withhold future payments to the recipient on any or all current projects under this program until the compliance issue is resolved.

(b) Withhold action on all pending and future loan or grant applications of the recipient that have been submitted to the department until the compliance issue is resolved.

(6) To determine whether sites that are developed with fund assistance are being maintained for the use specified in the project agreement, these rules, and the act, the department shall conduct annual compliance inspections for 2 years after completion of the economic development project.

(7) A recipient shall comply with all of the conditions described in section 12 of the act.

History: 1991 AACS.