

CHAPTER 47. Loan Programs**Article 1. Cleanup Loans and Environmental Assistance to Neighborhoods Revolving Loan Fund****§68200. Purpose.**

The purpose of the Cleanup Loans and Environmental Assistance to Neighborhoods Revolving Loan Fund is to finance the performance of actions necessary to Respond to the release or threatened release of a Hazardous Material on a Brownfield, as defined, or Eligible Underutilized Property. The Program supports two programs: the Investigating Site Contamination Program (ISCP) and the Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Loan Program.

NOTE: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012 Health and Safety Code. Reference: Sections 25395.21 and 25395.22, Health and Safety Code.

HISTORY

1. New chapter 47 (articles 1-2), article 1 (sections 68200-68213 and appendix 1) and section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
2. New chapter 47 (articles 1-2), article 1 (sections 68200-68213 and appendix 1) and section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New chapter 47 (articles 1-2), article 1 (sections 68200-68213 and appendix 1) and section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including amendment of section, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).

§68201. Overview; Administering Agency.

- (a) The Department will be the Administering Agency for all Properties that are the subject of an ISCP Loan.
- (b) As provided under section 68207, the Department, the State Board, a Regional Board, or a Local Oversight Program Agency under contract with the State Board will be the Administering Agency for a site that is the subject of a Loan from the CLEAN Loan Program.
- (c) An Applicant for a Loan may not request that a different agency be designated as the Administering Agency by the Site Designation Committee created by section 25260 of the Health and Safety Code.
- (d) Investigating Site Contamination Program (ISCP):
 - (1) The ISCP provides Loans to Eligible Applicants for the purpose of conducting Preliminary Endangerment Assessments (PEAs) of Brownfields, as defined, or Eligible Underutilized Properties;
 - (2) Loan funds will not be disbursed until execution of an ISCP Environmental Oversight Agreement under section 68211;
 - (3) Loan recipients shall agree to provide any and all PEA site assessment results to the Department if the Loan recipient does not proceed with the Project under section 68211; and
 - (4) Loans from the ISCP may not be used to pay for Ineligible Costs as defined in section 68202(r).
- (e) Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Program:
 - (1) The CLEAN Loan Program provides Loans to Eligible Applicants for the purpose of performing actions necessary to Respond to the release or threatened release of a Hazardous Material including, but not limited to, site characterization, preparation of feasibility studies, public participation, preparation of remedy selection documents, actual construction and other cleanup activities on an Eligible Property. The CLEAN Loan Program does not include activities deemed Operation and Maintenance as determined by the Administering Agency;
 - (2) As a condition of obtaining a Loan, Loan recipients who are responsible parties as defined in section 25323.5 of the Health and Safety Code or are Persons subject to regulation under chapter 6.7 (commencing with section 25280) or chapter 6.75 (commencing with section 25299.10 of the Health and Safety Code) are required to complete all actions necessary to Respond to releases or threatened releases of a Hazardous Material on the Property as approved by the Administering Agency even if the Loan amount does not finance the full cost of such actions;
 - (3) Work undertaken using funds from the CLEAN Loan Program must be conducted by a qualified Project Coordinator with expertise in Hazardous Materials site investigation and cleanup. All engineering and geological work must be conducted in conformance with applicable State laws including, but not limited to, Business and Professions Code sections 6735 and 7835;
 - (4) Loan funds shall not be disbursed until execution of a CLEAN Loan Program Response Action Agreement with the Department or other enforceable agreement with another Administering Agency under section 68211; and

(5) Loans from the CLEAN Loan Program may not be used to pay for Ineligible Costs under section 68202(r).

Note: Authority cited: Sections 25150, 25260, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including amendment of section heading, section and Note, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).
6. Change without regulatory effect amending subsection (d)(4) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68202. Definitions.

Unless the context indicates otherwise and except as provided in this section, the definitions set forth in chapter 6.8 of division 20 of the Health and Safety Code govern interpretation of this article. For the purposes of this article, the following definitions apply:

- (a) "Account" means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b) of section 25395.20 of the Health and Safety Code.
- (b) "Administering Agency" means either the Department, a Regional Board, the State Board, or a Local Oversight Program Agency that oversees all aspects of a site investigation and Response Action conducted on a Property that is the subject of a CLEAN Loan Program Loan. Under section 25395.27 of the Health and Safety Code, the Administering Agency has jurisdiction over all activities required to carry out a site investigation and Response Action necessary to Respond to the Hazardous Materials release at the Property;
- (c) "Applicant" means a Person, as defined in subdivision (ff) that is applying for a Loan under section 68206;
- (d) "Application" means the information an Applicant provides to the Department when seeking a Loan under section 68206;
- (e) "Borrower" means an Applicant whose Application has been approved and who has executed a Loan Agreement under section 68210;
- (f) "Brownfield" means a Property that meets all of the following conditions:
 - (1) It is located in an Urban Area;
 - (2) It was previously the site of an Economic Activity that is No Longer In Operation at that location;
 - (3) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of Application for a Loan pursuant to this article.
- (g) "CLEAN Loan Program Response Action Agreement" means the agreement executed under section 68211 authorizing the Department's oversight of the actions necessary to Respond to the release or threatened release of a Hazardous Material on an Eligible Property for the CLEAN Loan Program;
- (h) "Cleanup and Abatement Order" means an order issued by a Regional Board pursuant to section 13304 of the Water Code;
- (i) "Cleanup Loans and Environmental Assistance to Neighborhoods Loan Program" or "CLEAN Loan Program" means the program established by the Department under section 25395.22 of the Health and Safety Code to provide Loans to finance the performance of any action necessary to respond to a release or threatened release at an Eligible Property.
- (j) "Department" means the Department of Toxic Substances Control;
- (k) "Director" means the Director of the Department of Toxic Substances Control;
- (l) "Economic Activity" means a governmental activity, or a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern;
- (m) "Eligible Applicant" means an Applicant that has an interest in or Economic Activity within the boundaries of an Eligible Property and that is not an Ineligible Applicant as defined under subdivision (q);

- (n) "Eligible Contiguous Expansion" means the expansion onto contiguous property of an operating industrial or commercial facility owned or operated by one of the following:
- (1) A Small Business;
 - (2) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (part 2 (commencing with section 5110) of division 2 of title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (part 4 (commencing with section 9110) of division 2 of title 1 of the Corporations Code); or
 - (3) A Small Business Incubator.
- (o) "Eligible Property" means a Property that is any of the following:
- (1) A Brownfield;
 - (2) An Underutilized Property, as defined in subdivision (rr) of this section, that is any of the following:
 - (A) A Property described in subparagraph (E) of paragraph (4) of subdivision (rr) of this section;
 - (B) A Property located in an Enterprise Zone established pursuant to the Enterprise Zone Act (chapter 12.8 (commencing with section 7070) of division 7 of title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to article 4 (commencing with section 33300) of chapter 4 of part 1 of division 24 of the Health and Safety Code, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of section 7072 of the Government Code;
 - (C) A Property, the redevelopment of which will result in any of the following:
 1. An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the Economic Activity located on the Property before redevelopment occurred;
 2. An increase in Property taxes paid to the local government that is at least 100 percent greater than the Property taxes paid by the Property owner before redevelopment occurred;
 3. Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the Property after the redevelopment occurs;
 4. Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of section 65589.5 of the Government Code; or
 5. The construction of new or expanded school facilities, public day care centers, parks, open space and habitat area, or community recreational facilities.
 - (3) A Brownfield or an Underutilized Property described in subparagraph (B) of paragraph (2) that will be the site of an Eligible Contiguous Expansion.
- (p) "Hazardous Material" means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. Hazardous Material includes, but is not limited to, all of the following:
- (1) A hazardous substance, as defined in section 25281 or section 25316 of the Health and Safety Code, including the substances specified in section 25317 of the Health and Safety Code;
 - (2) A hazardous waste, as defined in section 25117 of the Health and Safety Code;
 - (3) A waste, as defined in section 101075 of the Health and Safety Code, or as defined in section 13050 of the Water Code.
- (q) "Ineligible Applicant" means any of the following:
- (1) A Person who has been convicted of a felony or misdemeanor involving Hazardous Materials, including, but not limited to, a conviction of a felony or misdemeanor under section 25395.13 of the Health and Safety Code;
 - (2) A Person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering;
 - (3) A Person who the Department determines is in violation of an administrative order or agreement that:
 - (A) Is issued by or entered into with any federal, State, or Local Agency and
 - (B) Requires Response Action;
 - (4) A Person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an Application submitted under this article; and
 - (5) Any Person determined to be ineligible by the Department under section 68206.
- (r) "Ineligible Costs" means any of the following:
- (1) Costs of Phase I Environmental Site Assessments;
 - (2) Costs of Operation and Maintenance as defined in subdivision (dd);
 - (3) Costs associated with oversight by the Department of the preparation and approval of a PEA, or oversight by the Administering Agency of the response action on the Property; and
 - (4) Costs to conduct a PEA for CLEAN Loan Program Loans only.
- (s) "Ineligible Property" means any of the following:
- (1) Property currently listed or proposed for listing on the National Priorities List pursuant to subparagraph (B) of paragraph (8) of subdivision (a) of section 9605 of the Comprehensive Environmental Response Compensation and Liability Act, as amended (42 U.S.C. § 9605(a)(8)(B));
 - (2) Property that is, or has ever been, owned or operated by a department, agency, or instrumentality of the United States;
 - (3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the Property is a Brownfield or Underutilized Property described in subparagraph (B) of paragraph (2) of subdivision (o) that will be the site of an Eligible Contiguous Expansion as defined in subdivision (n); or

- (4) Any Property determined to be ineligible by the Department under section 68206.
- (t) "Infrastructure" means basic service systems such as sewer, water, transportation, and utilities;
- (u) "Investigating Site Contamination Program" or "ISCP" means the program established by the Department under section 25395.21 of the Health and Safety Code to provide Loans to conduct PEAs of Eligible Properties;
- (v) "ISCP Environmental Oversight Agreement" means the agreement executed under section 68211 that governs the preparation of a PEA for an Eligible Property under the ISCP Loan program;
- (w) "Leaking Underground Fuel Tank" means a leaking underground fuel tank that is a "tank" as defined in section 25299.24 of the Health and Safety Code;
- (x) "Loan" means a Loan from the Account that is either an ISCP Loan or a CLEAN Loan Program Loan;
- (y) "Loan Agreement" means the written agreement between a Borrower and the Department made in accordance with section 68210;
- (z) "Loan Committee" means representatives of those agencies specified under subdivision (a) of section 25395.23 of the Health and Safety Code: the Department after consultation with the Secretary of the California Environmental Protection Agency, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research or their appointed representatives, and up to three other members selected by the Department who have public or private sector experience or expertise in commercial lending, environmental, or economic development issues;
- (aa) "Local Government Agency" or "Local Agency" means a county, city, city and county, redevelopment agency or district of any type including a school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing;
- (bb) "Local Oversight Program Agency" means a Local Agency that is under contract with the State Board in accordance with chapter 6.7 (commencing with section 25280 of the Health and Safety Code) and chapter 6.75 (commencing with section 25299.10 of the Health and Safety Code) as specified in section 25395.28(a)(1) of the Health and Safety Code;
- (cc) "No Longer In Operation" describes an Economic Activity that has ceased to function or to conduct operations of the type usually associated with the Economic Activity on the Property;
- (dd) "Operation and Maintenance" means those activities initiated or continued at a site following completion of a Response Action that are deemed necessary by the Administering Agency in order to protect public health or safety or the environment, to maintain the effectiveness of the Response Action at the site, or to achieve or maintain the Response Action standards and objectives established by the approved remedial action plan or approved removal action work plan applicable to the site;
- (ee) "PEA-equivalent" means an environmental assessment submitted with a CLEAN Loan application that provides basic information to determine if there is or has been a release or threatened release of a Hazardous Material at the Property at concentrations that may pose a risk to public health and safety and the environment, and that includes all of the activities specified in subdivision (hh)-(1-3);
- (ff) "Person" means an individual, trust, firm, joint stock company, business concern, corporation, partnership, limited liability company, association, redevelopment agency, sole proprietorship, joint venture, non-profit organization, or any Local Government Agency or Local Agency;
- (gg) "Phase I Environmental Site Assessment" or "Phase I" means an assessment of a Property to determine whether there has been, or may have been, a release of a Hazardous Material based on reasonably available information about the Property and general vicinity. A Phase I may include, but is not limited to, a review of public and private records, current and historical land uses, prior releases of a Hazardous Material, database searches, reviews of relevant files of federal, State, and Local Agencies, visual and other surveys of the Property and general vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of a Phase I Environmental Site Assessment. A Phase I shall be performed in compliance with the licensing and educational requirements in subdivision (d) of section 68205;
- (hh) "Preliminary Endangerment Assessment" or "PEA" means an activity that is performed to determine if there is or has been a release or threatened release of a Hazardous Material that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the Department entitled "Preliminary Endangerment Assessment: Guidance Manual" (June 1999, or as later amended by the Department, which is incorporated by reference). A Preliminary Endangerment Assessment includes all of the following activities:
- (1) Sampling of a Property, and laboratory analysis of those samples;
 - (2) A preliminary determination of the type and extent of Hazardous Material contamination of a Property;
 - (3) A preliminary evaluation of the risks of Hazardous Material contamination that a Property may pose to public health or the environment.
- (ii) "Project" means any Response Action and the planned future development of the Property included in an Application;
- (jj) "Project Coordinator" means the Person or Persons that possess the requisite qualifications to manage the Response Action at the Property and who have been identified as intended to manage the Response Action;
- (kk) "Property" means the Property within the boundaries described as the Property boundaries in the Application submitted under section 68206. A Property may be all or a portion of a site where there is a known or suspected release or threatened release of a Hazardous Material;
- (ll) "Regional Board" means a California Regional Water Quality Control Board;

(mm) "Response," "Respond," or "Response Action" have the same meanings as defined in section 9601(25) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601(25)). The enforcement and oversight activities of the Administering Agency are included within the meaning of "Response," "Respond," or "Response Action";

(nn) "Secured Creditor Insurance" has the same meaning as defined in subdivision (k) of section 25395.40 of the Health and Safety Code;

(oo) "Small Business" means an independently owned or operated business, that is not dominant in its field of operation that together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in section 14837 of the Government Code, with 100 or fewer employees;

(pp) "Small Business Incubator" means a Small Business Incubator that is undertaking a contiguous expansion of an operating industrial or commercial facility with the assistance of a grant authorized by section 15339.3 of the Government Code or a loan guarantee provided pursuant to section 14090 of the Corporations Code;

(qq) "State Board" means the State Water Resources Control Board;

(rr) "Underutilized Property" means Property that meets all of the following conditions:

- (1) It is located in an Urban Area;
- (2) An Economic Activity is conducted on the Property;
- (3) It is the subject of a proposal for development pursuant to this article; and
- (4) At least one of the following applies:
 - (A) The Economic Activity on the Property is irregular or intermittent in nature and uses the Property for productive purposes less than four months in any calendar year;
 - (B) The Economic Activity on the Property employs less than 25 percent of the area of the Property (as measured in square feet) for productive purposes;
 - (C) The structures, Infrastructure, and other facilities on the Property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal;
 - (D) The Economic Activity conducted on the Property is a parking facility or another activity that offers a similar marginal economic service and the facility or activity will be replaced when the Property is redeveloped; or
 - (E) The Property is adjacent to one or more Brownfields that are the subject of a Project under this article and its inclusion in the Project is necessary in order to ensure that the redevelopment of the Brownfield or Brownfields occurs.

(ss) "Urban Area" means either of the following:

- (A) A central city or a group of contiguous cities with a combined population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile; or
- (B) An urbanized area. "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202 and 15203, and as periodically updated. Urbanized areas are listed in Appendix 1.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.20, 25395.21, 25395.22, 25395.27, 25395.28 and 25395.40, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including amendment of section and Note, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).
6. Change without regulatory effect amending subsections (o)(2)(B), (z), (hh), (hh)(3), (pp) and (ss)(B) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68203. Loan Amounts; Interest.

- (a) Investigating Site Contamination Program Loans: An ISCP Loan may not be for more than \$100,000;
- (b) Cleanup Loans and Environmental Assistance to Neighborhoods Loan Program Loans: A CLEAN Loan Program Loan may not be for more than \$2,500,000;
- (c) The interest rate for ISCP and CLEAN Loan Program Loans shall be the same rate as earned on investments in the State's Surplus Money Investment Fund (Government Code section 16475). The rate earned on investments in the Surplus Money Investment Fund in effect on the date of Loan approval shall be retained for the life of the Loan;
- (d) If a Borrower defaults on a Loan, the rate of interest from the date of default will be either 10 percent or the default interest rate specified in the Loan Agreement executed under section 68210, whichever is greater;
- (e) A Loan shall not be used to pay for Ineligible Costs as defined under subdivision (r) of section 68202;
- (f) Interest on the Loan amount for an ISCP Loan shall accrue from the date of each disbursement of ISCP Loan funds by the Department; and
- (g) Interest on the Loan amount of a CLEAN Loan Program Loan shall accrue from the date of each disbursement of CLEAN Loan Program funds by the Department.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.24 and 25395.31, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
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5. Certificate of Compliance as to 3-31-2002 order, including amendment of section, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).

§ 68204. ISCP Waivers of Loan Repayment.

- (a) A recipient of an ISCP Loan may request, in writing, a partial waiver of Loan repayment under the following conditions:
 - (1) If after completion of the PEA, a Borrower who is not the owner of the Property believes that the sum of the cost of the Response Action and the current appraised fair market value of the Property is greater than the projected fair market value of the Property after all necessary Response Actions have been completed and thus renders the redevelopment Project not economically feasible, the Borrower may request a waiver of Loan repayment of up to 75 percent of the Loan amount;
 - (2) In support of a written waiver request, the Borrower shall submit the following to the Department:
 - (A) A report that estimates the cost of the Response Action prepared for the Property by any of the following who are licensed or registered to practice in California and who have demonstrated expertise in Hazardous Material remediation and cost estimation: Class II environmental assessor, engineering geologist, licensed hazardous substance contractor, or licensed professional engineer. An affidavit may be submitted in lieu of the report if the affidavit is signed by a person who is authorized under this subparagraph to prepare a cost estimation report;
 - (B) A real estate appraisal that provides an appraised value based on the estimated value of the Property after all necessary Response Actions have been taken, and performed by a licensed Real Estate appraiser appropriately and currently certified by the State of California Office of Real Estate Appraisers. The appraisal shall include a copy of the appraiser's current certificate; and
 - (C) An affidavit in support of the written waiver request that sets forth the information and documentation required under this section.
- (b) The Department will present the written waiver request to the Loan Committee for its determination to approve or deny;
- (c) The amount of repayment waived shall be deemed a grant to the Borrower. The Borrower shall repay the remaining portion of the Loan within one year of the approval date of the waiver; and
- (d) A Borrower who has received a partial waiver of Loan repayment under subdivision (a) may not apply for a CLEAN Loan Program Loan for the same Property until the full amount of the ISCP Loan initially disbursed has been

repaid.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.20, 25395.21, 25395.22, 25395.24 and 25395.31 Health and Safety Code.

HISTORY

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5. Certificate of Compliance as to 3-31-2002 order, including amendment of section, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).

§ 68205. Loan Application Content.

- (a) An Applicant shall submit an ISCP Loan Application, (DTSC Form 1290, dated 5/09, which is incorporated by reference), or a CLEAN Loan Program Loan Application, (DTSC Form 1291, dated 5/09, which is incorporated by reference), as applicable, to the Department;
- (b) The Application shall contain, at a minimum, all of the following:
 - (1) Description of the Property that is the subject of the Loan and upon which a PEA or Response Action will be performed. The description shall include a legal description of the Property boundaries, Assessor's Parcel Number, or other identification sufficient to identify the areal extent of the Property. If the Property is a portion of a larger site where there is known or suspected release or threatened release of a Hazardous Material, the Application shall include a description of the entire site, including the boundaries of the known or suspected release or threatened release of a Hazardous Material;
 - (2) Documentation that demonstrates the Property is an Eligible Property;
 - (3) Documentation of appropriate security interest in the Property and source of Loan repayment;
 - (4) Documentation of the Applicant's credit-worthiness, including a description of the Applicant's bank relationships, to include but not limited to existing bank loans and other debts;
 - (5) If the Department has made a determination under subdivision (g) of section 68206 that sufficient funding to meet the demand for Loans will not be available, sufficient information to enable the Department to determine the priority ranking of the Property under subdivision (g) of section 68206;
 - (6) For a CLEAN Loan Program Loan, description of the intended redevelopment Project and its projected benefits, if known, and the name, address, and resume of the project coordinator;
 - (7) Documentation that the Applicant has control of the Property or the right to enter the Property and conduct a PEA or Response Actions as necessary;
 - (8) For a CLEAN Loan Program Loan for a Property that is part of a larger site, documentation that the planned future development of the Property is consistent with the current and reasonably foreseeable future land uses of the larger site;
 - (9) For a CLEAN Loan Program Loan, general description of the Response Action to be performed on the Property;
 - (10) For a CLEAN Loan Program Loan for a Property that is part of a larger site, description of any Response Action that is currently being performed or that will be performed on the larger site;
 - (11) For a CLEAN Loan Program Loan, description of all past and current administrative orders, agreements, judicial orders, and consent decrees that
 - (A) Relate to any of the following:
 1. the Property,
 2. the Applicant,
 3. the Applicant under any previous name or names, or
 4. if the Applicant is a business concern, any officer, director, or partner of the business concern and any previous names of the business concern;
 - (B) were issued by or entered into with any federal, State, or local agency including the State Board, or a Regional Board; and
 - (C) require Response Action at a site.
 - (12) For a CLEAN Loan Program Loan, documentation of the total debt against the Property on which the Response Action will be taken;

(13) For a CLEAN Loan Program Loan, estimated value of the Property after all necessary Response Actions are complete;

(14) Disclosure of any and all information demonstrating that the Applicant is an Ineligible Applicant under paragraphs (1)-(5) of subdivision (q) of section 68202;

(15) Certification Statement and signature of the Applicant; and

(16) Any other information the Department deems necessary to evaluate whether the Application meets the intent of the ISCP or the CLEAN Loan Program.

(c) For ISCP and CLEAN Loan Program Loans, if the Applicant is not the owner of the Property, the Application shall also contain one of the following:

(1) For an ISCP Loan, documentation that demonstrates that the owner consents to the performance of the PEA of the Property;

(2) A copy of an agreement between the Property owner and the Applicant that gives the Applicant an option to purchase the Property;

(3) For a CLEAN Loan Program Loan, documentation that the owner of the Property agrees to use the Property as a security interest for the Loan to finance necessary Response Action at the Property, or agrees to provide another form of security that the Department determines will adequately protect the State's interest. The Department will obtain an appropriate security interest in the Property or other alternative form of security approved by the Department;

(4) If the Applicant is a Local Government Agency, or a developer or prospective purchaser acting together with a Local Government Agency pursuant to an enforceable agreement, a demonstration to the Department that the Local Government Agency, or developer or prospective purchaser acting together with the Local Government Agency pursuant to an enforceable agreement, has legal access to perform the PEA or Response Action as determined by the Department at the Property, or will have legal access, prior to receiving Loan funds.

(d) An ISCP Application shall include a Phase I that has been completed within three (3) years, provided that the information is current and accurate. An addendum may be submitted with the Phase I to provide current information.

(1) The Phase I shall be performed by, or under the supervision of, any of the following:

(A) A Class II environmental assessor registered pursuant to chapter 6.98 (commencing with section 25570) of division 20 of the Health and Safety Code;

(B) A professional engineer registered in California;

(C) A geologist registered in California;

(D) A certified engineering geologist registered in California; or

(E) A licensed hazardous substance contractor certified pursuant to chapter 9 (commencing with section 7000) of division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field.

(2) Any Person who conducts or supervises a Phase I under paragraph (1) shall have at least two years experience in the preparation of those assessments;

(3) The Phase I shall be performed in accordance with the "American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process", ASTM Standard E-1527-05, approved November 1, 2005; available from American Society for Testing and Materials, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959, (610) 832-9585; website <http://www.astm.org>, which is incorporated by reference.

(e) A CLEAN Loan Program Loan Application shall include a PEA, or PEA-equivalent as determined by the Department.

(1) The PEA or PEA-equivalent shall be performed by, or under the supervision of, any of the following:

(A) A Class II environmental assessor registered pursuant to chapter 6.98 (commencing with section 25570) of division 20 of the Health and Safety Code;

(B) A professional engineer registered in California;

(C) A geologist registered in California;

(D) A certified engineering geologist registered in California; or

(E) A licensed hazardous substance contractor certified pursuant to chapter 9 (commencing with section 7000) of division 3 of the Business and Professions Code. A licensed hazardous substance contractor that conducts or supervises a PEA under paragraph (1), shall hold the equivalent of a degree from an accredited public or private college or university or a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field.

(2) Any Person who conducts or supervises a PEA or PEA-equivalent under subdivision (1) shall have at least three (3) years experience in conducting those assessments; and

(3)(A) The PEA or PEA-equivalent shall demonstrate the presence of any known or suspected release or threatened release of a Hazardous Material at the Property at concentrations that may pose a risk to public health and safety and the environment.

(B) The Department will review the PEA or PEA-equivalent to determine whether it is adequate.

(f) An Applicant shall provide any further information or documentation deemed necessary by the Department to determine the creditworthiness of the Applicant or the Applicant's ability to secure and repay the Loan, or the eligibility of the Property;

(g) An Application from a Local Government Agency or Local Agency, or from a Joint Powers Authority formed pursuant to chapter 5 of division 7 of title 1 of the Government Code (commencing with section 6500) or pursuant to other California statutory authority, shall also contain the following additional information:

(1) A description of the activities and responsibilities of the Local Government Agency or Local Agency or the Joint Powers Authority;

(2) The annual financial operating statements for the previous three years of the Local Government Agency or Local Agency or the Joint Powers Authority;

(3) A governing body resolution, or other documentation granting the Applicant authority to apply to the Department for a Loan; and

(4) For a Joint Powers Authority, documentation that the Applicant is authorized to act on the behalf of the Joint Powers Authority.

(h) If the Department determines that any document submitted in the Application, including a PEA, PEA-equivalent, or Phase I, is not adequate, the Application shall be deemed incomplete.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21 and 25395.22, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).

4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 3-31-2002 order, including amendment of section, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).

6. Change without regulatory effect amending subsections (a), (b)(11)(C) and (d)(3) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68206. Loan Application Process.

(a) An Application may be submitted to the Department at any time;

(b) Upon receipt of an Application, the Department will review the Application for completeness and eligibility. Upon receipt of an Application, the Department will determine whether the Application is complete, whether the Applicant is an Eligible Applicant, and whether the Property is an Eligible Property. The Applicant will be notified by certified letter of one of the following:

(1) The Application is incomplete, with identification of the information to be included for a complete Application; or

(2) The Applicant is ineligible or the Applicant's Property is an Ineligible Property, with identification of the steps to take to correct identified deficiencies; or

(3) The Applicant and Applicant's Property are eligible for a Loan, and the Application is complete.

(c) The Department may request additional information from the Applicant in order to determine whether the Applicant or the Property is eligible;

(d) Upon determination that an Application is complete and the Applicant and Applicant's Property are eligible, Department staff will prepare an evaluation of the Application. An Application that meets all the following criteria will be recommended for approval to the Loan Committee:

(1) The Applicant is found creditworthy, as determined by considering the following elements:

(A) Character - the complex mental and ethical traits marking and often individualizing a Person or group; includes history of the business, work experience of key managers, and credit reports;

(B) Capacity - the ability of the Applicant to operate the business successfully and generate the cash needed to repay obligations as they come due;

(C) Capital - Applicant's other assets on which to rely if the primary source of income is interrupted or reduced;

(D) Collateral - appropriate security interest in the Property pledged by the Applicant; and

(E) Conditions - economic and environmental influences on the Applicant's financial condition and performance. Includes the general economy, business climate, business environment, and the legal and regulatory situation.

(2) The collateral and the source of repayment are appropriate for the Loan amount;

(3) For a CLEAN Loan Program Loan, the Applicant has adequately demonstrated that the Response Action to be performed on the Property is necessary to address a release or threatened release of a Hazardous Material on the Property;

(4) For a CLEAN Loan Program Loan, the Applicant has adequately demonstrated the need of the requested Loan amount for use in the project; and

(5) For a CLEAN Loan Program Loan, the Applicant has adequately demonstrated that the total debt against the Property on which the Response Action will be taken, including the requested CLEAN Loan Program Loan, does not exceed 80 percent of the estimated value of the Property after all necessary Response Actions are complete.

(e) If prior to making a recommendation to the Loan Committee, the Department determines that the Application does not meet the criteria in subsection (d) above, the Department may disapprove the Application and notify the Applicant in writing of the Department's determination;

(f) An Applicant may request the Loan Committee's review of the Department's determination under subsection (e);

(g) If the Department determines that sufficient funding to meet the demand for CLEAN Loan Program Loans and ISCP Loans will not be available in a given fiscal year, the Department shall calculate a priority score to rank each Loan Application using scales that measure the following factors:

(1) Twenty-five (25) percent of the priority score is based on the potential for the proposed Project to provide additional protection of public health and safety and the environment;

(2) Twenty-five (25) percent of the priority score is based on the potential for proposed Project to enhance strategic community development including:

(A) Creation of new jobs;

(B) Generation of additional tax revenue;

(C) Likelihood that the proposed Project will stimulate additional redevelopment in adjacent areas as measured by improvement of local property values;

(D) Degree to which implementation of the proposed Project will result in the development of new parks;

(E) Degree to which implementation of the proposed Project will result in the development of new schools;

(F) Degree to which implementation of the proposed Project will result in the development of affordable inner city housing and regional Infrastructure or projected regional Infrastructure needs, or otherwise promote infill development;

(G) Economic viability of the proposed Project, including, but not limited to an analysis of the current value of the Property as compared to its projected value after all necessary Response Actions have been completed;

(H) Ability of the Loan Applicant to successfully perform the proposed Project;

(I) Ability of the Loan Applicant to repay the Loan;

(J) Consideration of the number and amounts of Loans approved for the Projects located in the same area;

(K) Likelihood that the proposed Project would be completed if the CLEAN Loan Program Loan is not made;

(L) Ability to obtain conventional financing absent a Loan under this program.

(3) Twenty-five (25) percent of the priority score is based on community support as demonstrated by letters of support from city, county, or other Local Agencies, residents or citizen groups, state or local elected officials, the general public, or other community groups;

(4) Twenty-five (25) percent of the priority score is based on financial support as demonstrated by approved loans, letters of commitments from other financial sources, and commitments for in-kind support from Local Agencies and citizen groups, or funding as set forth in paragraph (2) of subdivision (c) of section 25395.23 of the Health and Safety Code.

(h) The Department staff may recommend that the amount of Loan funding requested in an Application be approved in whole or in part.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.23, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including amendment of section and Note, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).
6. Change without regulatory effect amending subsection (g)(1) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68207. Administering Agency.

- (a) The Department will be the Administering Agency for all Properties that are the subject of an ISCP Loan. For Properties that are the subject of a CLEAN Loan Program Loan Application, the following apply:
- (1) For Applications for CLEAN Loan Program Loans, the Department will provide written notice of the receipt of the Application to the State Board for any Application that indicates the Property contains a Leaking Underground Fuel Tank and to the Regional Board for any Property within the Regional Board's jurisdiction;
 - (2) For an Application for a CLEAN Loan Program Loan for a Property that is subject to a release from a Leaking Underground Fuel Tank and the release is the principal threat at that Property as determined by the Department, the State Board and the Regional Board, the Department will be the Administering Agency unless one of the following occurs:
 - (A) The State Board responds in writing to the Department within 20 working days of receipt of the notice under paragraph (1) and indicates that a Local Oversight Program Agency intends to oversee the Response Action on the Property because the site was subject to oversight by the Local Oversight Program Agency prior to the date the Application was submitted or;
 - (B) The Regional Board responds in writing to the Department within 20 working days of receipt of the notice under paragraph (1) and indicates that the Regional Board intends to oversee the Response Action on the Property because the site was not subject to oversight by a Local Oversight Program Agency prior to the date the Application was submitted.
 - (3) For an Application for a CLEAN Loan Program Loan for a Property that is subject to one or more of the orders or agreements specified in subdivision (b)(1) of section 25395.28 of the Health and Safety Code prior to the date the Application was submitted, the Department will be the Administering Agency unless the Regional Board responds in writing to the Department within 20 working days of receipt of the notice under paragraph (2) and indicates that the Regional Board intends to oversee the Response Action on the Property because the site is subject to one or more of the orders or agreements specified in subdivision (b)(1) of section 25395.28 of the Health and Safety Code.
- (b) The State Board and a Regional Board, in consultation together with the Department, may request the Department to be the Administering Agency for a Property subject to section 25395.28 of the Health and Safety Code;
- (c) Notwithstanding paragraph (3) of subdivision (a), if a Regional Board has issued a Cleanup and Abatement Order or other cleanup order or has entered into a written voluntary agreement for a site and the Department has issued an order or entered into an enforceable agreement under chapter 6.5 (commencing with section 25100) of the Health and Safety Code or chapter 6.8 (commencing with section 25300) of the Health and Safety Code) for the same site, the Regional Board and the Department will determine whether the Regional Board or the Department will be the Administering Agency.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.23, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a

Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.

5. Renumbering of former section 68207 to section 68208 and new section filed 8-5-2002; operative 8-5-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 32).

6. Change without regulatory effect amending subsections (a)(1), (a)(2)(B) and (b) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68208. Loan Committee Review Process.

(a) The Loan Committee will meet monthly or as needed to act on Applications submitted under section 68206 and requests submitted under subdivision (f) of section 68206;

(b) The Loan Committee will recommend approval or disapproval of the Application based on:

(1) The Applicant's financial soundness; and

(2) The Applicant's ability to meet the criteria of subdivision (d) of section 68206.

(c) The Loan Committee may recommend that the amount of Loan funding requested in an Application be approved in whole or in part;

(d) The Loan Committee will forward its recommendation to the Director for a final determination under section 68209; and

(e) The Loan Committee will review a written request for partial waiver of ISCP Loan repayment under section 68204 and will make a recommendation to the Director or the Director's designated representative to approve or disapprove the request for waiver. Program staff will notify the Borrower submitting the request for waiver whether the request for waiver is approved or disapproved.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22 and 25395.23, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).

4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 3-31-2002 order, including renumbering of former section 68208 to section 68209 and renumbering and amendment of former section 68207 to section 68208, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).

6. Change without regulatory effect amending subsection (e) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68209. Approval of Loan Applications.

(a) The Loan Committee will submit its recommendation for approval or disapproval of the Application to the Director or the Director's designated representative. The Director or the Director's designated representative may:

(1) Approve the Application for the full or partial amount of funding, or

(2) Disapprove the Application if the Director, or the Director's designated representative, determines that the Application does not meet one or more of the requirements of this article or article 8.5 of chapter 6.8 of division 20 of the Health and Safety Code.

(b) Upon final approval, the Department and the Applicant shall enter into a Loan Agreement meeting the requirements of section 68210. The amount of funds disbursed and the schedule for disbursement shall be specified in the Loan Agreement. Loan funds shall not be disbursed until a Loan Agreement with the Department is executed in accordance with section 68210 and the appropriate oversight agreement with the Administering Agency is executed; and

(c) Upon the initial disbursement of funds, the Department will notify the Site Designation Committee which agency is the Administering Agency for a Property that is the subject of a CLEAN Loan Program Loan;

(d) The Department's approval of a Loan Application under subdivision (a) will be in effect for a period of 90 days. The Department may extend the Loan approval period for good cause for an additional 90 days or for a different time period as agreed in writing by the Department and the Applicant.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.23, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including renumbering of former section 68209 to section 68210 and renumbering of former section 68208 to section 68209 with amendment of section heading, section and Note, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).
6. Change without regulatory effect amending subsections (a) and (a)(2) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68210. Loan Agreement.

(a) The Department and Applicant shall execute a Loan Agreement upon final approval of the Loan Application and before fund disbursement;

(b) Each Loan Agreement shall include, at a minimum, the following:

- (1) The amount of the Loan;
- (2) Payment and prepayment information;
- (3) The interest rate and default rate of the Loan as specified in section 68203;
- (4) The terms of repayment as specified in subdivision (e);
- (5) For a CLEAN Loan Program Loan, a description of the Eligible Property securing the Loan or alternative form of security approved by the Department;
- (6) Verification that an ISCP Environmental Oversight Agreement or a CLEAN Loan Program Response Action Agreement or other enforceable agreement with the State Board or a Regional Board, as appropriate, has been fully executed in accordance with section 68211 before fund disbursement;
- (7) For a CLEAN Loan Program Loan, agreement regarding completion of Response Actions in accordance with subdivision (f);
- (8) For an ISCP Loan, agreement that the Borrower shall provide any and all PEA results to the Department;
- (9) Timeframes for complying with the conditions of the Loan Agreement and any special conditions that must be satisfied prior to, or covenants that must be complied with after, the disbursement of funds;
- (10) Provision that any remaining unpaid amount of the Loan, with accrued interest, shall be immediately due and payable upon determination by the Department that:
 - (A) There has been a default, including that the Borrower has failed to comply with the Loan Agreement or other condition of default;
 - (B) Any information provided by the Borrower is found to be untrue. The Department may agree to a schedule for repayment under this paragraph (10);
- (11) Provision that the Borrower agrees to waive any claims against, and to indemnify and hold harmless, the State of California, including the Department, the State Board or a Regional Board, from and against any and all claims, costs, and expenses stemming from Operation and Maintenance or environmental degradation at the Property;
- (12) Proof of adequate liability insurance for the Borrower, including coverage for personal injury and property damage, naming the Department as loss payee, and when appropriate, naming the Department as additional insured, up to the amount of the Loan;
- (13) Proof of secured creditor insurance as required under subdivision (c) of section 25395.25 of the Health and Safety Code;

(14) Provision that if the Borrower is not the owner of the Property, but intends to purchase the Property before the Loan is satisfied, the purchase price of the Property shall not exceed its estimated current fair market value, which is based on the estimated value of the Property in a cleaned up state, not taking into consideration any necessary Response Action that may be conducted on the Property;

(15) For a CLEAN Loan Program Loan, provision that the Loan is secured by the Property, or is secured by an alternative form of security approved by the Department, and in accordance with the provisions of section 25395.26 of the Health and Safety Code;

(16) Provision that if the Borrower recovers from a responsible party any costs incurred in taking a Response Action at the Property, any money so recovered shall be used first to repay the ISCP and CLEAN Loan Program Loans and to repay monies waived under subdivision (c) of section 68204. A Borrower is not required to first use the money recovered to repay the Loan if the Borrower can demonstrate to the satisfaction of the Department that the recovered money is necessary to, and is being applied to, the total environmental remediation of the Property, and that the total of the recovered money and the Loan amount does not exceed the cost of remediation;

(17) Identification of the Property owner and any options to purchase the Property held by any party;

(18) For a CLEAN Loan Program Loan, if the Borrower uses Loan funds to pay the premium for environmental insurance products approved by the Department to facilitate development of the site, provision describing the type and limits of insurance coverage and demonstration that the insurance products meet the requirements of subdivision (a) of section 25395.22 of the Health and Safety Code;

(19) Provision that the Loan shall not be used to pay Ineligible Costs; and

(20) Any other provision to which the parties agree.

(c) The Department may foreclose on Property or on the alternative to a security interest. Any funds received through a foreclosure or through the enforcement of any other security interest shall be deposited in the Account;

(d) Except as specified in section 25395.28 of the Health and Safety Code, any Response Action carried out at a Property under the CLEAN Loan Program shall be conducted in accordance with the requirements of chapters 6.65 and 6.8 of division 20 of the Health and Safety Code;

(e) The terms of Loan repayment are as follows:

(1) The repayment period for an ISCP Loan shall begin six (6) months after disbursement of the ISCP Loan funds. The repayment period shall not exceed three (3) years;

(2) The repayment period for a CLEAN Loan Program Loan shall begin upon certification or completion of the Response Action or two (2) years after initial disbursement of the CLEAN Loan Program Loan funds, whichever comes first. The repayment period shall not exceed seven (7) years;

(3) If the Loan is to a Local Government Agency or Local Agency, or to a developer or prospective purchaser acting together with a Local Government Agency or Local Agency pursuant to an enforceable agreement, the Department may delay the beginning of the Loan repayment period for not more than the maximum allowable length of the Loan;

(4) If the Administering Agency, or Department if the Department is not the Administering Agency, determines that the Borrower is not making sufficient progress in completing the PEA or Response Action, as appropriate, the Department may require Loan repayment to begin immediately or may determine that the Borrower is in default;

(5) If the Borrower of an ISCP Loan decides not to complete the PEA, the Borrower shall notify the Department in writing of that decision and shall submit to the Department all data, documents, reports, and other information regarding the PEA performed prior to the notification. Repayment of the disbursed Loan amount shall begin immediately. A Borrower that does not complete a PEA is not eligible for a partial waiver of Loan repayment under section 68204.

(f) For CLEAN Loan Program Loans, the Loan Agreement provision regarding completion of Response Actions shall include the following:

(1) For a Borrower of a CLEAN Loan Program Loan that is a responsible party as defined in section 25323.5 of the Health and Safety Code or a Person subject to regulation under chapter 6.7 (commencing with section 25280) or chapter 6.75 (commencing with section 25299.10) of the Health and Safety Code, agreement to complete all Response Actions as approved by the Administering Agency, even if the Loan amount does not cover the full cost of the Response Action;

(2) For a Borrower of a CLEAN Loan Program Loan that is not a responsible party as defined in section 25323.5 of the Health and Safety Code, agreement to immediately notify the Administering Agency and the Department, if the Department is not the Administering Agency, if:

(A) New information shows that the cost of completing the Response Action will exceed the cost originally projected by the Borrower, and

(B) The Borrower has determined that the Project is no longer economically feasible because the sum of the cost of the Response Action and the current appraised fair market value of the Property is greater than the projected fair market value of the Property after all necessary Response Actions have been completed.

(3) If the Borrower notifies the Administering Agency and the Department under paragraph (2), the Borrower shall:

(A) Provide to the Administering Agency documentation of the cost of Response Action and the current and projected appraised fair market values under paragraph (2);

(B) Begin repayment of the Loan or the Loan amount disbursed to date immediately;

(C) Submit to the Administering Agency all data, documents, reports and other information regarding the Response Action activities on the Property; and

(D) Perform those actions required by the Administering Agency to ensure that the Property will pose no immediate public health or environmental risks and that the Property will not remain in a condition that is visually less attractive than its original condition.

(4) Documentation of the cost of the Response Action submitted by a Borrower under subparagraph (3)(A) shall be prepared by any of the following who are licensed or registered to practice in California and who have demonstrated expertise in Hazardous Material remediation and cost estimation: Class II environmental assessor, engineering geologist, licensed hazardous substance contractor, or licensed professional engineer. An affidavit may be submitted in lieu of a cost documentation report if the affidavit is signed by a person authorized under this subparagraph to prepare a cost documentation report.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.20, 25395.21, 25395.22, 25395.25, 25395.28 and 25395.31, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including renumbering of former section 68210 to section 68211 and renumbering of former section 68209 to section 68210 with amendment of section and Note, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).
6. Change without regulatory effect amending subsections (b)(4), (b)(8), (b)(13), (b)(18) and (c)-(d) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68211. ISCP Environmental Oversight Agreements; CLEAN Loan Program Response Action Agreements or Equivalent Agreements.

(a) ISCP Environmental Oversight Agreements, CLEAN Loan Program Response Action Agreements, and enforceable agreements with the State Board or a Regional Board under subdivision (h) of section 25395.28 of the Health and Safety Code, shall contain, at a minimum, the following:

- (1) Identification of parties entering into the agreement;
- (2) Description of the Property subject to the agreement, and description of any environmental assessment or other Response Action activities previously performed on the Property;
- (3) If the Property is part of a larger site where there is known or suspected release or threatened release of a Hazardous Material, description of the site and nature and extent of any known or suspected release or threatened release of a Hazardous Material on the site;
- (4) Description of the work that will be performed using Loan funds, including a detailed scope of work, schedules, public participation activities, quality assurance/quality control plans, and health and safety plans;
- (5) Provision that the Borrower shall reimburse the Administering Agency's costs for oversight of the preparation and approval of a PEA or PEA-equivalent site assessment, or Response Action, as appropriate and as specified under section 25395.28 of the Health and Safety Code, on any portion of the Property where the work that is performed is not funded by Loan funds;
- (6)(A) For ISCP Loans, provision for the Department's approval of the PEA, and any reports, plans, schedules, or other documents submitted under the agreement, including provisions regarding any Department-required modifications to submittals;
- (B) For CLEAN Loan Program Loans, provision for the Administering Agency's approval of any Response Actions and any reports, plans, schedules, or other documents submitted under the agreement, including provisions regarding any modifications to submittals required by the Administering Agency;
- (7) Provision regarding actions to be taken in the event of endangerment during implementation of work on the Property;
- (8) Provision regarding Administering Agency and Department, if the Department is not the Administering Agency, access to the Property;

- (9) Provision regarding sampling, data, and document availability and preservation;
- (10) Provision regarding notifications of field activities and any condition posing an immediate threat to public health or safety or the environment on the Property;
- (11) Provision regarding the Borrower's liability related to activities on the Property;
- (12) For ISCP Loans, provision regarding the Department's oversight costs for the preparation and approval of a PEA on the Property required by the Department, and for CLEAN Loan Program Loans, provision regarding the Administering Agency's costs for oversight of any Response Action on the Property:
- (A) A Borrower is liable for paying the Administering Agency's oversight costs pursuant to section 25395.28 of the Health and Safety Code, associated with the oversight of the preparation and approval of the PEA or the Response Action unless the Department determines there are sufficient funds in the Account to reimburse the Administering Agency for that oversight;
- (B) If the Department determines that the Account has insufficient funds to pay for the oversight costs associated with the oversight of the preparation and approval of the PEA or the Response Action, the Borrower shall pay the Administering Agency's costs as specified under section 25395.28 of the Health and Safety Code. If the Department makes a determination that the Account has insufficient funds to pay for the oversight costs after a Loan Agreement has been executed, the Department will notify the Borrower that the Borrower will be billed for the Administering Agency's oversight costs as specified under section 25395.28 of the Health and Safety Code, that are not reimbursed from the Account;
- (C) The Department shall reimburse the State Board or Regional Board only if the conditions in 25395.28(g) are met; and
- (13) Any other provisions as agreed by the parties determined to be necessary by the Administering Agency.
- (b) An ISCP Environmental Oversight Agreement shall also include, at a minimum, the following:
- (1) Requirement to conduct the PEA in accordance with the Department's guidelines as specified in paragraphs (1)-(3) of subdivision (d) of section 68205;
- (2) Requirement that the Borrower shall complete the PEA for the Property even if the Loan amount does not finance the complete cost of the PEA or shall meet the requirements of paragraph (5) of subdivision (e) of section 68210 if the Borrower decides not to complete the PEA;
- (3) Agreement by the Borrower to provide any and all PEA results to the Department if the Borrower does not proceed with the Project.
- (c) A CLEAN Loan Program Response Action Agreement shall also include, at a minimum, the following:
- (1) Identification of the Project Coordinator and description of the Project Coordinator's qualifications;
- (2) Scope of work that includes tasks needed to complete all Response Actions for the Property including Operation and Maintenance and land use restrictions, if applicable;
- (3) Requirement that work undertaken on the Property shall be conducted by a qualified Project Coordinator with expertise in Hazardous Materials site investigation and cleanup and that all engineering and geological work shall be conducted in conformance with applicable State laws including, but not limited to, Business and Professions Code sections 6735 and 7835;
- (4) In order to provide for the possibility that the Loan amount may not cover the full cost of the Response Action:
- (A) For a Borrower that is a responsible party as defined in section 25323.5 of the Health and Safety Code, a requirement to complete all Response Actions for the Property even if the Loan amount does not finance the complete cost of the Response Action; or
- (B) For a Borrower that is not a responsible party as defined in section 25323.5 of the Health and Safety Code or a Person subject to regulation under chapter 6.7 (commencing with section 25280) or chapter 6.75 (commencing with section 25299.10) of the Health and Safety Code, a provision regarding the requirements of paragraph (2) of subdivision (f) of section 68210 if the Borrower notifies the Administering Agency and the Department the Borrower has determined the Project is no longer economically feasible;
- (5) Provision for all removal actions, remedial actions, California Environmental Quality Act documentation, remedial design and implementation, and any other activities necessary for the Administering Agency's approval of the Response Action.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.25, 25395.27, 25395.28 and 25395.31, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).

4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including renumbering of former section 68211 to section 68212 and renumbering of former section 68210 to section 68211 with amendment of section heading, section and Note, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).
6. Change without regulatory effect amending subsection (a)(12) filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).

§ 68212. Compliance.

- (a) The Borrower shall comply with all federal, State, and local laws, ordinances, regulations and permits that apply to the procurement and management of consultant services and contracts related to correcting existing or possible non-compliance problems;
- (b) Administering Agency and Department, if the Department is not the Administering Agency, staff may conduct field inspections during the Project to verify compliance with the approved plans, specifications, and terms of the Loan Agreement, the ISCP Environmental Oversight Agreement, the CLEAN Loan Program Response Action Agreement, or other enforceable agreements with the State Board or a Regional Board;
- (c) The Borrower shall provide quarterly site reports indicating work completed on the Property, work in process, and Project expenditures;
- (d) The Borrower shall maintain records in accordance with generally accepted accounting standards and with the CLEAN Loan Program Response Action Agreement and ISCP Environmental Oversight Agreement, including all Project expenditures and disbursements; and
- (e) The Borrower shall comply with all terms and conditions of the CLEAN Loan Program Response Action Agreement and ISCP Environmental Oversight Agreement or other enforceable agreement with the State Board or a Regional Board.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.23, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. New section filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including renumbering of former section 68212 to section 68213 and renumbering of former section 68211 to section 68212 with amendment of section and Note, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).

§ 68213. Program Administration.

Condition of the Loan, Loan Processes, Repayment, and Loan Closing Functions will be governed and administered by the Department.

Note: Authority cited: Sections 25150, 25351.5, 25295.29 and 58012, Health and Safety Code. Reference: Sections 25395.21 and 25395.22, Health and Safety Code.

HISTORY

1. New section and appendix 1 filed 1-18-2001 as an emergency; operative 1-18-2001 (Register 2001, No. 3). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 7-17-2001 or emergency language will be repealed by operation of law on the following day.

2. New section and appendix 1 refiled 7-6-2001 as an emergency; operative 7-18-2001 (Register 2001, No. 27). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 1-14-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-6-2001 order transmitted to OAL 1-14-2002; Certificate of Compliance withdrawn from review 2-27-2002. Repealed by operation of Government Code section 11346.1(g) (Register 2002, No. 9).
4. New section and appendix 1 filed 3-1-2002 as an emergency; operative 3-1-2002 (Register 2002, No. 9). Pursuant to Health and Safety Code section 25395.29, a Certificate of Compliance must be transmitted to OAL by 8-28-2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 3-31-2002 order, including renumbering of former section 68213 and Appendix 1 to section 68214 and renumbering and amendment of former section 68212 to section 68213, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).

§ 68214. Auditing of Expenditure of Loan Proceeds.

- (a) The Department, Department of Finance, State Controller or State Auditor, or their designated representatives, may audit the expenditure of the proceeds of any Loan disbursed under this article; and
- (b) The Borrower shall allow the Administering Agency and the Department, if the Department is not the Administering Agency, and other State agencies, including the State Controller and the State Auditor, or their designated representatives, absolute right of access to all of the Borrower's records pertaining to the Loan Agreement. Any portion of the Borrower's records requested shall be made available to the designated auditors upon request. The Borrower shall retain all relevant financial records for at least three (3) years after termination of the Loan Agreement, or until completion of actions and resolution of all issues that may arise as a result of any litigation, claim, negotiation or audit concerning the Loan Agreement, ISCP Environmental Oversight Agreement, or CLEAN Loan Program Response Action Agreement or other enforceable agreement required by the Administering Agency, whichever is later.

Note: Authority cited: Sections 25150, 25351.5, 25395.29 and 58012, Health and Safety Code. Reference: Sections 25395.21, 25395.22, 25395.27 and 25395.28, Health and Safety Code.

HISTORY

1. Certificate of Compliance as to 3-31-2002 order, including renumbering and amendment of former section 68213 and Appendix 1 to section 68214, transmitted to OAL 6-21-2002 and filed 8-5-2002 (Register 2002, No. 32).
2. Change without regulatory effect amending first paragraph of Appendix 1 filed 7-20-2009 pursuant to section 100, title 1, California Code of Regulations (Register 2009, No. 30).