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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

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* THIS DOCUMENT IS CURRENT THROUGH REGISTER 2004, NO. 47, NOVEMBER 19, 2004 *

TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 1. GENERAL PROVISIONS

4 CCR 8001 (2004)

§ 8001. Objectives

The California Pollution Control Financing Authority shall act in such a manner as to achieve the objectives outlined in *Sections 44501 and 44502 of the Health and Safety Code*.

AUTHORITY:

Note: Authority cited: *Section 44525, Health and Safety Code*. Reference: Division 27, commencing with Sections 44500, et. seq., Health and Safety Code.

HISTORY:

1. New Chapter 11 (Sections 8001-8048, not consecutive) filed 8-21-73 as procedural and organizational; effective upon filing (Register 73, No. 34).
2. Amendment to section and NOTE filed 2-17-77; effective thirtieth day thereafter (Register 77, No. 8).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 2. DEFINITIONS

4 CCR 8020 (2004)

§ 8020. Terms/Definitions

The following terms and definitions shall be used in the manner described below, when used in this Chapter.

(a) "Act" means the California Pollution Control Financing Authority Act, Division 27, commencing with *Section 44500 of the Health and Safety Code*.

(b) "Applicant" means the person, company, corporation, partnership, entity or group of entities requesting financing pursuant to Section 8031 of these Regulations.

(c) "Authority" means the California Pollution Control Financing Authority.

(d) "Authority Fund" means the California Pollution Control Financing Authority Fund.

(e) "Bonds" means any negotiable bonds, notes, debentures, or other securities which the Authority is authorized to issue pursuant to the Act.

(f) "Chair" or "Chairman" means the Chairman of the California Pollution Control Financing Authority.

(g) "Conventional loan" means any loan agreement, note or other evidence of indebtedness entered into with or issued by an applicant to a bank, thrift or other financial institution or firm which is regularly in the business of extending credit, and which is not related to the applicant.

(h) "Effective Interest Rate" means the actual cost payable by an applicant to obtain financing. The cost includes the cost of issuing the bond or completing a conventional loan, cost of obtaining a letter of credit, surety, insurance policy or other credit enhancement, and the interest rate payable on the bond or conventional loan.

(i) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority.

(j) "Member" means a member of the California Pollution Control Financing Authority.

(k) "Request" means the application form and documents related thereto on which the Authority accepts requests for financing.

(l) "Small Business" means any person, company, corporation, partnership or entity that is classified as a small business pursuant to any of the size standards set forth in Title 13, Code of Federal Regulations, Part 121, Subpart A (1-1-94 Edition), which are incorporated herein by reference, or any person, company, corporation, partnership or entity that (together with affiliates) employs no more than 500 employees.

(m) "Small Business Assistance Fund" means the fund established by the Authority in Section 8041 pursuant to *Health and Safety Code Section 44548*.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Sections 44520, 44526 and 44548, Division 27, Health and Safety Code.

HISTORY:

1. Amendment of subsection (a) filed 3-8-74; effective thirtieth day thereafter (Register 74, No. 10).
2. Amendment filed 2-17-77; effective thirtieth day thereafter (Register 77, No. 8).
3. Amendment filed 2-21-80; effective thirtieth day thereafter (Register 80, No. 8).
4. Amendment filed 6-3-83; effective thirtieth day thereafter (Register 83, No. 23).
5. Amendment filed 7-3-86; effective upon filing pursuant to *Government Code section 11346.2(d)* (Register 86, No. 27).
6. Amendment of subsection (k) filed 3-19-92 as an emergency; operative 3-19-92 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 7-17-92 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 3-19-92 order transmitted to OAL 7-30-92 and filed 9-9-92 (Register 92, No. 37).
8. Amendment of subsection (k) filed 4-8-93 as an emergency; operative 4-8-93 (Register 93, No. 15). A Certificate of Compliance must be transmitted to OAL 10-5-93 pursuant to *Health and Safety Code section 44520* or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 4-8-93 order transmitted to OAL 8-10-93 and filed 9-7-93 (Register 93, No. 37).
10. Editorial correction of History 8 (Register 93, No. 37).
11. Amendment filed 1-31-94 as an emergency; operative 1-31-94 (Register 94, No. 5). A Certificate of Compliance must be transmitted to OAL by 7-30-94, pursuant to *Health and Safety Code section 44520*, or emergency language will be repealed by operation of law on the following day.
12. Amendment refiled 7-21-94 as an emergency, including additional amendment of subsection (l); operative 7-31-94 (Register 94, No. 29). A Certificate of Compliance must be transmitted to OAL by 1-27-95 pursuant to *Health and Safety Code section 44520* or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 7-21-94 order including amendment of subsection (l) transmitted to OAL 1-26-95 and filed 3-9-95 (Register 95, No. 10).

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4 CCR 8030 (2004)

§ 8030. Meetings

(a) Regular meetings of the Authority will be held on the third Wednesday of each month at Sacramento, California unless the Authority orders a change in meeting dates.

(b) The Chairman shall designate the location of the meeting in the notice calling such meeting.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Sections 44520 and 44534, Division 27, Health and Safety Code; and *Section 11125, Government Code*.

HISTORY:

1. Repealer of former Article 3 (Sections 8030-8032) and renumbering and amendment of former Article 4 (Sections 8040-8048, not consecutive) to Article 3 (Sections 8030-8038, not consecutive) filed 6-3-83; effective thirtieth day thereafter (Register 83, No. 23). For prior history, see Registers 82, No. 2; 80, No. 8; 77, No. 8; and 74, No. 10.

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4 CCR 8031 (2004)

§ 8031. Requests for Financing

The Authority will accept requests for financing in a form approved by the Executive Secretary. Requests for Financing forms may be obtained by writing to the Authority office located in either the City of Sacramento or Los Angeles.

AUTHORITY:

Note: Authority cited: *Sections 44526, Division 27, Health and Safety Code*. Reference: Sections 44520 and 44534, Division 27, Health and Safety Code.

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4 CCR 8032 (2004)

§ 8032. Acceptance of Requests

In determining its acceptance or denial of requests for financing, either in whole or in part, the Authority may take into consideration such factors as: (1) certification and recommendation of the appropriate environmental authority, (2) location of the proposed project, (3) nature of the proposed project, (4) time of receipt of request for financing, (5) any other factors the Authority may deem pertinent.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Sections 44520 and 44531-44539, Division 27, Health and Safety Code.

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4 CCR 8033 (2004)

§ 8033. Application Fees

A check drawn on a responsible bank or trust company in the amount of .0005 (one twentieth of one percent) of the amount of financing requested with a minimum of \$250.00 and a maximum of \$5,000.00, shall be made payable to "CPCFA Fund" and shall accompany each request for financing. Such fees provide for review and processing of the application and are nonrefundable. The application fees shall be applied to the payment of general fees if the project is financed.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Sections 44520, 44525 and 44526, Division 27, Health and Safety Code.

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4 CCR 8034 (2004)

§ 8034. General Fees

The Authority charges a fee for reasonable and necessary administrative and program expenses connected with the sale of bonds. The fee shall be two tenths of one percent (.002) of the face value of the bonds issued. The applicant shall also reimburse the Authority for all reasonable and necessary out of pocket expenses which the Authority may incur at the applicant's request and all other expenses direct or indirect, properly allocable to the proposed financing. Unless paid out of the proceeds of the bonds issued, all fees for a particular proposed financing shall be paid by the applicant and deposited in the Authority Fund. The Authority shall be authorized to use general fees deposited in the Authority Fund to support Authority programs, including, but not limited to, the Capital Access Loan Program authorized by Article 7 of this Division 11.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Sections 44520, 44525 and 44537.5, Division 27, Health and Safety Code.

HISTORY:

1. Amendment filed 9-15-94; operative 9-15-94 pursuant to *Government Code section 11346.2(d)* (Register 94, No. 37).
2. Amendment filed 9-10-96; operative 10-10-96 (Register 96, No. 37).
3. Amendment filed 12-18-2000 as an emergency pursuant to *Health and Safety Code section 44520*; operative 1-1-2001 (Register 2000, No. 51). A Certificate of Compliance must be transmitted to OAL by 7-2-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-18-2000 order transmitted to OAL 6-14-2001 and filed 7-26-2001 (Register 2001, No. 30).

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4 CCR 8035 (2004)

§ 8035. Small Business Assistance Fund Fees

(a) The Authority shall charge an applicant who is not a small business as defined in Section 8020 a fee in addition to the fees required by Sections 8033 and 8034. The additional fee shall fund the Small Business Assistance Fund (SBAF). The amount of the fee shall be one percent (.01) of the face value of any tax exempt bonds issued and three tenths of one percent (.003) of the face value of any taxable bonds issued; provided, that in connection with the issuance of taxable bonds for which the .003 fee is charged, if such taxable bonds are refinanced with or converted to tax exempt bonds, the applicant shall pay an additional fee for deposit into the Small Business Assistance Fund in the amount of seven tenths of one percent (.007) of the face value of such taxable bonds. In the case of refunding or conversion of bonds, the fee percentage applicable on the date the original bonds were issued will be used to determine if additional SBAF fees are collectable. If the company did not pay a SBAF fee originally, the current fee percentage will apply to refundings or conversions. If federal tax law or other legal provisions prevent the imposition of the above fees, each fee shall be the maximum that can legally be charged.

(b) The Authority shall refund a portion of the fee charged pursuant to subdivision (a) of this section if the occurrence of a subsequent event causes the original fee to exceed the amount allowed by federal tax law provisions, causing the bonds to lose their tax exempt status. The refund shall be the difference between the original fee charged and the maximum fee subsequently determined to be chargeable by bond counsel approved by the Authority.

(c) The Authority shall refund a portion of the fee charged if, in the judgment of the Authority, the amount in the Small Business Assistance Fund account exceeds the amount needed to operate the Small Business Assistance Fund program and to assist small businesses obtain financing. If the Authority makes a refund pursuant to this subdivision, the amount of the refund payable to each applicant shall be computed by multiplying the total amount to be refunded by the percentage each applicant contributed in fees to the total fees collected pursuant to this section.

(d) If an applicant refinances existing bonds with the issuance of new bonds, it shall receive a credit against the fee charged pursuant to this section in an amount equal to the net Small Business Assistance Fund fees paid on the earlier bonds.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: *Section 44548, Division 27, Health and Safety Code*.

HISTORY:

4 CCR 8035

1. New section filed 7-3-86; effective upon filing pursuant to *Government Code section 11346.2(d)* (Register 86, No. 27).
2. Amendment of subsection (a) filed 9-15-94; operative 9-15-94 pursuant to *Government Code section 11346.2(d)* (Register 94, No. 37).
3. Amendment of subsection (a) filed 9-10-96; operative 10-10-96 (Register 96, No. 37).
4. Amendment of subsection (a) filed 6-1-98 as an emergency; operative 6-1-98 (Register 98, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-29-98 or emergency language will be repealed by operation of law on the following day.
5. Reinstatement of section as it existed prior to 6-1-98 emergency amendment by operation of *Government Code section 11346.1(f)* (Register 98, No. 52).
6. Amendment of subsection (a) filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

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4 CCR 8036 (2004)

§ 8036. Notice of Fees

(a) The Authority shall mail notice to each applicant within thirty days of the effective date of this regulation setting out the fee chargeable pursuant to Section 8035. Thereafter, the Authority shall mail notice to each applicant when the Authority adopts its final resolution authorizing the sale of bonds for financing the applicant's project. If the applicant believes federal tax law provisions mandate a lower fee than that noticed by the Authority, it shall submit, no less than five days before the closing of the bond sale, an opinion of approved bond counsel setting out the maximum, allowable fee. The Authority shall charge the fee set out in the opinion.

(b) If bonds issued by the Authority bear a variable interest rate, the Authority may collect the fee in installments. The first installment shall be based on the maximum fee allowable under federal tax law provisions assuming the bonds bear the maximum interest rate provided for by the bonds. Further installments shall be payable at the discretion of the Authority when actual interest rates on the bonds can be determined.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: *Section 44548, Division 27, Health and Safety Code*.

HISTORY:

1. Change without; regulatory effect renumbering former Section 8036 to Section 8037 and new Section 8036 filed 7-3-86; effective upon filing pursuant to *Government Code Section 11346.2(d)* (Register 86, No. 27).
2. Amendment of subsection (b) filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

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4 CCR 8037 (2004)

§ 8037. Issuance of Bonds

The Authority will adopt all necessary resolutions to approve or deny any request for financing. Approval may be made contingent upon appropriate certification.

The form of bonds, any resolution or resolutions authorizing such bonds, any trust agreement securing such bonds and any agreement relating to the purchase, sale or lease of the facilities financed with such bonds, shall be agreed upon to the mutual satisfaction of the Authority and applicant.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Articles 4 and 5, Division 27, Health and Safety Code.

HISTORY:

1. Change without regulatory effect renumbering former Section 8037 to Section 8038, and renumbering former Section 8036 to Section 8037 filed 7-3-86; effective upon filing pursuant to *Government Code Section 11346.2(d)* (Register 86, No. 27).

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4 CCR 8038 (2004)

§ 8038. Certification

The applicant will obtain any and all appropriate certificates from affected environmental agencies and submit all such certificates to the Authority prior to adoption of a Final Resolution for the issuance of bonds. If appropriate, a statement should be submitted stating why any approval or certificate has not been obtained or is unnecessary.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Sections 44520 and 44533, Division 27, Health and Safety Code.

HISTORY:

1. Change without regulatory effect renumbering former Section 8038 to Section 8039 and renumbering former Section 8037 to Section 8038 filed 7-3-86; effective upon filing pursuant to *Government Code Section 11346.2(d)* (Register 86, No. 27).

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4 CCR 8039 (2004)

§ 8039. Public Purposes

The Authority is not organized for profit and no part of its net earnings shall inure to the benefit of any private person.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: *Section 44520, Division 27, Health and Safety Code*.

HISTORY:

1. Change without regulatory effect renumbering former Section 8038 to Section 8039 filed 7-3-86; effective upon filing pursuant to *Government Code Section 11346.2(d)* (Register 86, No. 27).

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4 CCR 8040 (2004)

§ 8040. Small Business Financing Program

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Sections 44520 and 44537.5, Division 27, Health and Safety Code.

HISTORY:

1. Renumbering of former Article 4 (Sections 8040-8048, not consecutive) to Article 3 (Sections 8030-8038, not consecutive), and renumbering of former Article 5 (Section 8050) to Article 4 (Section 8040) filed 6-3-83 (Register 83, No. 23). For prior history, see Registers 80, No. 26; 80, No. 8; 78, No. 6; 77, No. 8; and 74, No. 10.
2. Repealer filed 8-28-87; operative 9-27-87 (Register 87, No. 35).

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4 CCR 8041 (2004)

§ 8041. Small Business Assistance Fund Established

The Authority hereby establishes the Small Business Assistance Fund to assist small businesses to obtain pollution control or other financing as authorized by *Health and Safety Code Section 44548*.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: *Section 44548, Division 27, Health and Safety Code*.

HISTORY:

1. New section filed 7-3-86; effective upon filing pursuant to *Government Code section 11346.2(d)* (Register 86, No. 27).
2. Amendment filed 3-19-92 as an emergency; operative 3-19-92 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 7-17-92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-19-92 order transmitted to OAL 7-30-92 and filed 9-9-92 (Register 92, No. 37).
4. Amendment filed 1-31-94 as an emergency; operative 1-31-94 (Register 94, No. 5). A Certificate of Compliance must be transmitted to OAL by 7-30-94, pursuant to *Health and Safety Code section 44520*, or emergency language will be repealed by operation of law on the following day.
5. Amendment refiled 7-21-94 as an emergency; operative 7-31-94 (Register 94, No. 29). A Certificate of Compliance must be transmitted to OAL by 1-27-95 pursuant to *Health and Safety Code section 44520* or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-21-94 order including amendment of section transmitted to OAL 1-26-95 and filed 3-9-95 (Register 95, No. 10).

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4 CCR 8042 (2004)

§ 8042. Eligibility for Assistance

(a) An applicant, to be eligible for assistance, shall meet the following criteria:

(1) It shall be a small business as defined in Section 8020.

(2) It shall seek financing for a project that complies with the Act (commencing with *Health and Safety Code Section 44500*).

(3) In connection with assistance in accordance with Section 8043 of this article, it shall seek financing that is no less than \$ 500,000.

(4) It shall demonstrate a financial capability to make debt service payments and shall provide such collateral security (in the form of deeds of trust, security agreements, reserves, third party guarantees or other methods) as may be required by the holders of the bonds, the lender in a conventional loan, and the Authority as guarantor.

(b) An applicant shall receive assistance, provided sufficient funds are available, when the following conditions are satisfied:

(1) The Authority has accepted the applicant's request for financing pursuant to Section 8032.

(2) The Authority has determined that the applicant is eligible pursuant to subdivision (a) of this section.

(3) The Authority issues bonds to finance the applicant's project or the Authority approves a guarantee of a conventional loan which will finance the applicant's project.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: *Section 44548, Division 27, Health and Safety Code*.

HISTORY:

1. New section filed 7-3-86; effective upon filing pursuant to *Government Code section 11346.2(d)* (Register 86, No. 27).

2. Amendment of subsection (a)(3) filed 4-8-93 as an emergency; operative 4-8-93 (Register 93, No. 15). A Certificate of Compliance must be transmitted to OAL 10-5-93 pursuant to *Health and Safety Code section 44520* or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4-8-93 order transmitted to OAL 8-10-93 and filed 9-7-93 (Register 93, No. 37).
4. Editorial correction of History 2 (Register 93, No. 37).
5. Amendment of subsections (a)(4) and (b)(3) filed 1-31-94 as an emergency; operative 1-31-94 (Register 94, No. 5). A Certificate of Compliance must be transmitted to OAL by 7-30-94, pursuant to *Health and Safety Code section 44520*, or emergency language will be repealed by operation of law on the following day.
6. Amendment of subsections (a)(4) and (b)(3) refiled 7-21-94 as an emergency; operative 7-31-94 (Register 94, No. 29). A Certificate of Compliance must be transmitted to OAL by 1-27-95 pursuant to *Health and Safety Code section 44520* or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of History 6 (Register 95, No. 10).
8. Certificate of Compliance as to 7-21-94 order including amendment of subsection (a)(3) transmitted to OAL 1-26-95 and filed 3-9-95 (Register 95, No. 10).

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4 CCR 8043 (2004)

§ 8043. Assistance

In addition to other assistance which the Authority shall be authorized to provide in accordance with this division:

(a) The Authority shall be authorized to provide any part or combination of the assistance described below, but the Authority shall not be required to provide any particular form of assistance to any applicant. The Authority shall be authorized to provide the form or forms of assistance that, in its judgment, will most effectively assist the applicant to (i) achieve financing for the project; (ii) obtain a bond rating of "A" from a national bond rating service if bonds are issued publicly; and (iii) obtain an effective interest rate for all or a portion of the term of the financing which, in the Authority's judgment, is comparable at the time of financing to the prevailing market rates which would be paid by larger businesses for similar types of financing (but for any conventional loan not lower than the "prime rate" then prevailing):

(1) Pay for the reasonable costs of issuing bonds or obtaining conventional loans. For bond issues, these costs include bond counsel fees, underwriter or placement agent fees or discount and related expenses, printing fees, fees due to other state agencies, accounting fees, consultant's fees, and other expenses directly related to the issuance of bonds that are normally paid from the proceeds of a bond issued at the time of closing. For conventional loans, these costs include counsel fees, loan origination fees, consultant's fees, and other costs normally incurred in obtaining a commercial loan. The costs of issuing bonds or obtaining conventional loans shall not include expenses incurred by the applicant for other attorney fees, staff time, or other expenses related to the application for financing.

(2) Provide financial assistance to reduce the annual fees or premium for a letter of credit, surety bond, insurance policy, or other credit enhancement.

(3) Guarantee to the bond holder, conventional lender or provider of a letter of credit, surety, insurance policy, or other credit enhancement all or a portion of the indebtedness; provided, however, that in no event shall the aggregate amount of such guarantees outstanding at any time with respect to any applicant exceed \$ 2,000,000.

(4) Provide financial assistance to reduce the interest rate on conventional loans or bonds by not more than two percent (2%).

(b) The Authority shall waive the fees it charges pursuant to Section 8034 for all applicants meeting the conditions contained in Section 8042(b).

(c) The Authority alone is authorized to approve assistance. The commitment to provide assistance shall be valid only when it is included in a written contract executed by both the Authority and applicant or group of applicants.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: *Section 44548, Division 27, Health and Safety Code*.

HISTORY:

1. New section filed 7-3-86; effective upon filing pursuant to *Government Code section 11346.2(d)* (Register 86, No. 27).
2. Amendment of subsections (b)(2) and (b)(3), repealer of subsection (c) and subsection relettering, and new subsection (e) filed 4-8-93 as an emergency; operative 4-8-93 (Register 93, No. 15). A Certificate of Compliance must be transmitted to OAL 10-5-93 pursuant to *Health and Safety Code section 44520* or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4-8-93 order transmitted to OAL 8-10-93 and filed 9-7-93 (Register 93, No. 37).
4. Editorial correction of History 2 (Register 93, No. 37).
5. Amendment filed 1-31-94 as an emergency; operative 1-31-94 (Register 94, No. 5). A Certificate of Compliance must be transmitted to OAL by 7-30-94, pursuant to *Health and Safety Code section 44520*, or emergency language will be repealed by operation of law on the following day.
6. Amendment refiled 7-21-94 as an emergency; operative 7-31-94 (Register 94, No. 29). A Certificate of Compliance must be transmitted to OAL by 1-27-95 pursuant to *Health and Safety Code section 44520* or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-21-94 order including new first paragraph, amendment of subsections (a), (a)(1) and (a)(3) and repealer of subsection (d) transmitted to OAL 1-26-95 and filed 3-9-95 (Register 95, No. 10).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 4. PROVISIONS RELATING TO SMALL BUSINESS FINANCINGS

4 CCR 8044 (2004)

§ 8044. Small Business Loans

In connection with small business loans made in accordance with California Code of Regulations, Title 10, Chapter 6.81 (commencing with Section 4610) adopted by the California Department of Commerce pursuant to California *Health and Safety Code Section 44520(b)*, the Authority acknowledges said regulations and shall undertake to perform its obligations set forth therein. If any inconsistency exists between said regulations and this article, the provisions of said regulations shall apply. In addition, in connection with such small business loans, the following shall apply:

(a) Notwithstanding anything in Section 8043 to the contrary, the Authority shall be authorized to establish the loan guarantee percentage it deems necessary to facilitate the provision of such small business loans.

(b) The Authority shall be authorized to waive fees it charges pursuant to Section 8034 for all applicants approved for such small business loans.

AUTHORITY:

Note: Authority cited: *Section 44520(b), Health and Safety Code*. Reference: *Sections 44533(b) and 44548(c), Health and Safety Code; Section 15335, Government Code*.

HISTORY:

1. New section filed 3-19-92 as an emergency; operative 3-19-92 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 7-17-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-19-92 order including amendment of first paragraph transmitted to OAL 7-30-92 and filed 9-9-92 (Register 92, No. 37).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 4. PROVISIONS RELATING TO SMALL BUSINESS FINANCINGS

4 CCR 8050 (2004)

§ 8050. Definitions

The following definitions shall govern construction of Article 5 and Article 6.

(a) "Agency" means a public entity authorized under federal, state or local law to issue an Authorization in connection with Pollution Control Requirements.

(b) "Applicant" means an entity applying for a Loan.

(c) "Application" means the information referred to in Section 8054.

(d) "Assessment Report" means a report prepared by a Coordinator pursuant to Section 8053(c) of these regulations.

(e) "Authority" means the California Pollution Control Financing Authority, organized and existing under and by virtue of Division 27 (commencing with *Section 44500*) of the *California Health and Safety Code*.

(f) "Authorization" means a permit, order or other authority to construct or authority to construct and operate a Project.

(g) "Bonds" means any series of bonds, notes or other evidence of indebtedness issued by the Authority, a portion of the proceeds of which are used to fund Loans.

(h) "Borrower" means an Applicant whose Loan has been approved and who has executed a Loan Agreement.

(i) "Contractor" means an entity who has contracted with the Authority to undertake loan packaging, servicing and related activities pursuant to these regulations.

(j) "Coordinator" means an entity which receives and processes applications and disburse funds pursuant to these regulations. The Coordinator for any given Application shall be authorized to be either the Authority's staff or a Contractor, if one or more have contracted with the Authority, that receives the Applicant's complete and signed Application pursuant to Section 8053 of these regulations.

(k) "Eligible Costs" means reasonable and necessary Project costs associated with the following:

(1) Acquisition or construction of the Project, including labor installation and construction costs if such installation and construction are performed by a contractor (as defined in *Section 7026* of the *California Business and Professions Code*) licensed in accordance with *Sections 7065 through 7077* of the *California Business and Professions Code*.

(2) Design, engineering, architectural, consulting, real estate appraisal, legal and other related costs and fees necessary to the Environmental Audit and to the acquisition or construction of the Project.

4 CCR 8050

(3) Preparation costs, including obtaining acquisition or construction cost estimates, preliminary design and engineering work, planning costs and any other expense reasonably required in order to obtain an Authorization.

(4) The Loan fees and Environmental Audit.

(l) "Environmental Assessment" means an assessment of environmental conditions made pursuant to Title 14, Division 11, Article 6, Section 8060 of the California Code of Regulations.

(m) "Environmental Audit" means an investigation into the Applicant's production operations and its compliance with federal, state and local environmental laws, regulations and rulings.

(n) "Hazardous Material" means a hazardous waste, hazardous material, toxic substance, solid waste, water pollutant, air pollutant, air contaminant or related material, including any pesticide or petroleum products, waste, substance, pollutant or contaminant that is or becomes the subject of regulation by any federal, state or local governmental authority or agency with respect to air, water or soil quality.

(o) "Loan" means a loan made in accordance with the procedures set forth in Article 5 and Article 6.

(p) "Loan Agreement" means any agreement for a Loan entered into between a Borrower and the Coordinator.

(q) "Pollution Requirements" means any law, rule or regulation by an agency pertaining to Hazardous Material.

(r) "Project" means the equipment, control technology, production practice or facility for which a Loan is being sought and that is designed to either bring the Applicant into compliance with Pollution Requirements or to reduce Hazardous Material emission or generation.

(s) "Security" means any collateral pursuant to a Loan Agreement. No Loan Agreement shall include the following types of collateral:

(1) Raw land, or land with buildings that will require demolition in order to make use of the property;

(2) Land or buildings contaminated by Hazardous Materials;

(3) Real property located outside California; and

(4) Existing liens on real property exceeding seventy-five percent (75%) of the appraised value. Any appraisal submitted in connection with these regulations shall be no more than six months old at the time of submission.

(t) "Small Business" means that term as defined in Title 4, Division 11, Article 2, Section 8020 of the California Code of Regulations.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New article 5 and section filed 10-11-94; operative 11-10-94 (Register 94, No. 41). For prior history, see Register 94, No. 14.

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TITLE 4. BUSINESS REGULATIONS
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ARTICLE 5. CALIFORNIA LOANS FOR ENVIRONMENTAL ASSISTANCE NOW

4 CCR 8051 (2004)

§ 8051. Eligibility

An Applicant shall be eligible for a Loan when the Coordinator determines that:

- (a) the Applicant is a Small Business that has been operating and engaged in substantially the same activity for a minimum of three (3) years prior to the time the Application is submitted to the Coordinator;
- (b) The Applicant demonstrates the ability to repay the Loan from operational cash flow.
- (c) Adequate Security exists to secure the Loan on the terms and conditions required by these regulations and agreed to by the Applicant.
- (d) The Loan is requested to fund a Project located in California.
- (e) The Applicant has an after tax net income in at least two (2) of the last three (3) full years of operation.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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ARTICLE 5. CALIFORNIA LOANS FOR ENVIRONMENTAL ASSISTANCE NOW

4 CCR 8052 (2004)

§ 8052. Loan Terms

The terms and conditions of a Loan shall include all of the following:

(a) An interest rate not to exceed one percent (1%) greater than the net interest cost on the Bonds issued in connection with a Loan, or if no bonds are so issued, not to exceed five percent (5%) greater than the interest rate payable at the time of a Loan on moneys in the state's surplus money investment fund. As used in this subsection, "net interest cost" is determined by dividing the total interest payments for the Bonds (reduced by any premium or accrued interest and increased by any discount) by the product of the issue price (which is the par amount of the Bonds less any discount and increased by any premium) and the weighted maturity of the issue (which is the average maturity of the issue weighted to reflect the dollar amount of each particular maturity).

(b) A maximum Loan amount no greater than seven hundred and fifty thousand dollars (\$ 750,000).

(c) A minimum Loan amount no less than ten thousand dollars (\$ 10,000).

(d) A Loan term not to exceed eight (8) years; provided that no term shall exceed the final maturity of the Bonds.

(e) The Loan is fully amortized.

(f) A Loan fee of two percent (2%) of the amount of the Loan or five hundred dollars (\$ 500), whichever is greater, to be paid to the Authority.

(g) Late charges in the event of a default.

(h) Any other provision agreed to by the parties.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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ARTICLE 5. CALIFORNIA LOANS FOR ENVIRONMENTAL ASSISTANCE NOW

4 CCR 8053 (2004)

§ 8053. Application Availability, Submission and Coordinator Review

(a) Applications shall be available from the Authority's staff and from any Contractor. Applicants can obtain a list of Contractor(s) or a copy of the Application by contacting the Authority's staff at the following address: California Pollution Control Financing Authority, 915 Capital Mall, Room 466, Sacramento, California, 95814 Attention: CLEAN Program, or by phoning (916) 654-5610. The Application shall contain the information set forth in Section 8054. The Applicant shall submit one (1) complete and signed Application to a Coordinator.

(b) The Coordinator shall review each Application in accordance with Section 8051. If the Coordinator determines that the Application is incomplete, the Coordinator shall provide assistance to the Applicant in completing the Application. No later than sixty (60) days following receipt of a complete Application, the Coordinator shall either:

- (1) Notify the Applicant that the Application is ineligible; or
- (2) Notify the Applicant that the Application is eligible.

(c) When the Coordinator acts pursuant to (b)(2) of this Section, it shall ensure that the Application is complete, and, shall deliver or mail to the Authority the original Application and an Assessment Report. The Assessment Report shall consist of the following:

- (1) Name and address of Applicant and any guarantors of the Loan;
- (2) Loan amount;
- (3) Description of the Project;
- (4) Monthly payment, loan fee and estimated interest rate;
- (5) Primary and secondary repayment sources;
- (6) Security;
- (7) Description of Applicant's business (including location);
- (8) Discussions of Applicant's management structure and qualifications;
- (9) Financial analysis addressing Applicant's ability to repay the Loan;
- (10) Evidence that Applicant is a Small Business;
- (11) Discussion of potential environmental risks in connection with the Project; and
- (12) Loan conditions and requirements.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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4 CCR 8054 (2004)

§ 8054. Application Content

An Application shall include all of the following:

(a) The Applicant name, address, telephone number, federal tax identification number, type of business, Standard Industrial Classification Number as set forth in Standard Industrial Classification Manual, 1987, United States Office of Management and Budget, and the date the business was established.

(b) The Applicant owner(s), including the Applicant owner's spouse's name if such spouse is an owner, and guarantor name, if any, with the following information for each such owner and guarantor: business telephone number, home street address, employer's name and address, amount of time at current employment and position held. "Owner" for purposes of this section means any person holding a beneficial interest of ten percent (10%) or more of the stock issued by, or other ownership interest in, the Applicant.

(c) Information regarding the Project for which funding is being requested, including:

(1) A description of the Project including its useful economic life, the estimated construction period, components, costs and whether it is primarily intended to meet pending Pollution Requirements or to reduce Hazardous Material generally.

(2) The Project location.

(3) A copy of the Authorization, if available, and a copy of the application for the Authorization and any other materials submitted to an Agency in connection with the Authorization.

(d) Information the Applicant deems sufficient to demonstrate that the Applicant is able to provide adequate Security and to repay the Loan, including tax returns, history of any insolvency, status of any tax audits or lawsuits and the existence and solvency of any guarantors.

(e) The proposed Loan amount and term.

(f) The Applicant's financial statement for the most recent fiscal year and financial statements for the previous three (3) fiscal years.

(g) A financial certification form (Financial Statement Certification, 3/92 revision) signed by each person or entity furnishing any financial statement. The form consists of the following statement:

"The attached financial statement of the undersigned dated is hereby furnished to you for the purpose of procuring and establishing credit from time to time with you and is to be regarded as a complete and truthful statement of the undersigned's financial condition on the date indicated.

"The undersigned authorizes you (1) to make inquiries about the content of the attached financial statement, including contacting credit reporting agencies and (2) to provide credit information about the obligations of the undersigned to credit reporting agencies or in response to other inquiries.
Signed:... Date..."

(h) The signature of Applicant owner(s) to the Application, with the following statement:

"I represent and declare that the information provided in this application is true and a correct statement of my current financial condition. Any existing or threatened litigation, claim or circumstance which might reasonably be expected to affect my condition in the future is fully described below or in an attached statement.

"I will immediately notify you in writing if there is a material change in my financial condition. The absence of such notification shall constitute a new and continuing affirmation of my financial condition as described, upon which you may continue to fully rely.

"I agree that present and future obligations to you are authorized to be made immediately due and payable, at your sole discretion, if (1) I, or any guarantor of any of my obligations, at any time discontinues business, becomes insolvent, enters into bankruptcy or dies, (2) a writ of attachment, garnishment, execution or other similar legal process is issued against my property, (3) any act for the collection of delinquent taxes is taken against me, (4) any representation to you by me or a guarantor of my obligations proves to be misleading or untrue, (5) I fail to notify you of any material change in my financial condition or there is a materially adverse change in my financial condition, including any change in Security, (6) I sell or transfer any interest in my current business, or (7) any other action or condition for which present or further obligations shall be authorized to be made immediately due and payable and that has been agreed to or not objected to by me, occurs or is met.

You are authorized to verify the information contained in this application with any third party.

I understand that my spouse, if any, is not required to be a borrower or a guarantor unless he or she also is an owner of the business.

I have reviewed the above statement and understand the foregoing representations and covenants.
Date...Signature...."

(i) If Security includes real property, a legal description of such property, an appraisal of the property, a preliminary title report and if the property is other than residential, four (4) units or less, a fifty (50)-year recorded document guarantee. The title report must utilize the American Land Title Association ("ALTA") Loan Policy, revision 1987, or the California Land Title Association Standard Coverage Policy, revision 1988, and each must contain ALTA endorsements 100 and 101. The company issuing the title policy and document guarantee must be licensed by the California Department of Insurance to issue insurance in California. If the property is zoned and used as residential for four units or less, the appraiser must be licensed by either the American Institute as a Single Family Real Estate Appraiser or licensed by the California Office of Real Estate Appraisers. All other real property must be appraised by an individual licensed by the American Institute as a Member of the American Institute or certified by the California Office of Real Estate Appraisers.

(j) If Applicant leases the facility where the Project will be located, a copy of the lease for the facility.

(k) If Applicant has subsidiaries or affiliates whose financial statements are not otherwise consolidated with those of the Applicant, a current financial statement from each such subsidiary or affiliate for the most recent fiscal year.

(l) If the Loan amount exceeds two hundred and fifty thousand dollars (\$ 250,000), Applicant financial projects for the eighteen (18)-month period following Loan approval.

(m) If projected Project costs exceed the requested Loan amount, proposed sources of funding for such additional costs.

(n) A completed Environmental Assessment.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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4 CCR 8055 (2004)

§ 8055. Environmental Audit

The Coordinator shall be authorized to undertake or cause to be undertaken an Environmental Audit, including an Environmental Assessment, in connection with the Applicant and Applicant facilities where the Project is to be located and any other non-residential real property or other facility to be used as Security. The costs of such Environmental Audit shall be authorized to be paid by the Applicant or in such other manner as is agreed to by the Applicant.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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ARTICLE 5. CALIFORNIA LOANS FOR ENVIRONMENTAL ASSISTANCE NOW

4 CCR 8056 (2004)

§ 8056. Coordinator Recommendation

(a) The Coordinator shall prepare a loan summary which shall summarize the Application, Environmental Audit and Assessment Report and shall include a section stating whether the Application is eligible, and list the proposed terms, including proposed Security, and special conditions of the Loan. The summary also shall list the percentage of the Loan which will be used to fund a Project where the Agency is the South Coast Air Quality Management District.

(b) When the Coordinator has received a complete Application, has completed the Assessment Report pursuant to Section 8053(c), has prepared a loan summary pursuant to Section 8056(a), and has received an Environmental Audit described in Section 8055 (if authorized or undertaken by the Coordinator), then the Application File is complete.

(c) Within ten (10) days of when an Applicant's Application File becomes complete as described in Section 8056(b), the Coordinator shall deliver or mail a letter (i) to the Authority and (ii) to the Applicant, stating that either:

(1) The Coordinator determined that the Application was eligible for further Authority review, and that the Application has been forwarded to or is being reviewed by the Authority; or

(2) The Coordinator determined that the Application was ineligible for specified reasons, and that the Applicant can appeal the decision to the Authority, pursuant to Section 8057(b).

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 40448.6, 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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4 CCR 8057 (2004)

§ 8057. Authority Approval

(a) Upon receipt of a letter from the Coordinator pursuant to Section 8056, the Authority shall be authorized to approve the Application when:

(1) It received the recommendation to that effect from the Coordinator pursuant to Section 8056(c) or when it approves an appeal pursuant to Section 8057(b);

(2) The Environmental Audit supports or does not materially adversely affect the decision to make the Loan; and

(3) Funds are available.

(b) If the Coordinator has determined that an Application is not eligible, the Applicant may appeal by filing a written appeal with the Authority. The appeal must be received by the Authority not later than twenty (20) days from the date stated on the Section 8056(c)(2) letter and must address each of the issues set forth in the letter. The Authority shall review the appeal and deliver to the Coordinator a written decision within thirty (30) days following the Authority's first regularly scheduled meeting following receipt of the appeal. In making its determination, the Authority shall review the written appeal, Application, Environmental Audit, Assessment Report and Coordinator recommendation (which materials shall be supplied to the Authority by the Coordinator). There are no further administrative appeals following this decision.

(c) Where any of the conditions and requirements in subsection (a) have not been met, the Authority shall deny the Loan request and inform the Coordinator with respect to the specific actions, if any, the Applicant must take to reapply.

(d) No later than forty-five (45) days from the date upon which the Coordinator delivers or mails the letter pursuant to Section 8056(c), the Coordinator shall notify the Applicant of the decision, along with any explanation required by subsection (c); provided, however, that in the case of an appeal, the Applicant shall be notified not later than twenty (20) days following receipt by the Coordinator of the written decision of the Authority made pursuant to Section 8057(b). If the Loan is approved, the notification shall consist of a letter committing the Authority to provide Loan funds so long as the Applicant strictly complies with the terms and conditions contained therein.

(e) The commitment letter described in subsection (d) shall include the following:

(1) Borrower's and any guarantor's name(s).

(2) Loan amount and term.

(3) Interest rate and loan fee.

(4) Disbursement process, including a statement that Loan proceeds shall be disbursed on a reimbursement basis.

(5) Proposed Security, together with appropriate method for placing a lien on and insuring same.

(6) A requirement that the Applicant execute environmental indemnity agreements in favor of the Authority, the State of California, and the Contractor, if any, fully indemnifying against loss or damage due to Hazardous Material. Such indemnity shall not be secured by the deed of trust or other Loan documents.

(7) Insurance requirements.

(8) Conditions and covenants.

(9) Prepayment conditions, if any.

(10) The date when the commitment expires.

(11) A statement that the Authority, by and through the Coordinator, reserves the right to modify or cancel its commitment upon failure of the Applicant to execute a Loan Agreement that includes all of the terms and conditions set forth in the letter of commitment, or if it becomes aware of any matter which, if known at the time of Loan review or approval, would have resulted in the Application not being approved. Such matters include:

(A) A determination that the Application was prepared incorrectly, contains incorrect information or omits required information.

(B) Business circumstances that would negatively affect the Applicant's ability to rely or collateralize the Loan.

(f) If the Authority approves the Application, the Authority or the Coordinator shall be authorized to enter into a Loan Agreement that embodies the terms specified in the commitment letter described in subsection (e).

(g) If the Authority denies the Application, the Applicant shall have no right to administratively appeal the decision, but may reapply for a Loan at any time.

(h) The Authority shall be authorized to give priority to Applications for Loans for Projects intended to meet Pollution Control Requirements pending or enacted but not yet effective.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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4 CCR 8058 (2004)

§ 8058. Loan Disbursement

Following the execution of a Loan Agreement, compliance with all conditions precedent to disbursement contained in the Loan Agreement and the issuance of an Authorization, the Coordinator shall disburse funds as follows:

(a) The Borrower shall sign and submit to the Coordinator invoices from entities providing materials and services for Eligible Costs covered by the Loan Agreement.

(b) Upon receipt of the signed invoice, the Coordinator shall authorize the disbursement of Loan funds to the Borrower.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548(c), Health and Safety Code*.

HISTORY:

1. New section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 6. ENVIRONMENTAL

4 CCR 8060 (2004)

§ 8060. Environmental Assessment

An environmental assessment shall consist of completion of the following form (Revision 3/92):

Applicant:

Applicant's address:

Address of property for which this Environmental Assessment is being completed (property which shall be the security for loans, or if none, property where the project will be located) (the "Subject Property"):

List the street address, use & ownership interest in any other property owned by Applicant (e.g. 100 Main Street, Los Angeles, 3 year rental as warehouse space):

Name(s) of Individual(s) completing this questionnaire, their position(s) with the Applicant, the responsibilities and duties in this position(s), and their tenure with Applicant:

The following questions are necessary to provide the California Pollution Control Financing Authority (the "Authority"), its staff, and/or any entities contracting with the Authority in connection herewith (the "Coordinator") with information concerning the environmental condition of the Subject Property. The Authority or the Coordinator will require the person(s) completing this statement to certify that the statement is true and constitutes an accurate account of all known environmental matters related to the Subject Property and its vicinity. The Authority or the Coordinator will rely on these answers as knowing representations of the Subject Property's condition.

The questions should be answered by one or more persons who are most knowledgeable about the Subject Property. Such persons will be expected to conduct a "reasonable inquiry." The term "reasonable inquiry" shall include a thorough examination of the Subject Property and all property records in the Applicant's possession or reasonably available to the Applicant, as well as all matters into which Applicant has inquired for any purpose, or has had the right or duty to inquire into, supervise or monitor. "Reasonable inquiry" shall not require an environmental audit or the hiring of a consultant to respond to these questions or a title search of County property records.

The Authority or the Coordinator may conduct an independent investigation of the answers supplied in this statement at the Applicant's expense. If such an investigation reveals problem areas not disclosed in this statement, the loan decision may be delayed.

The Authority's or the Coordinator's provision of or reliance on this statement shall not constitute a commitment to lend funds, nor shall it limit the Authority's or the Coordinator's right to conduct a site investigation at the Applicant's expense prior to issuing a loan commitment.

The Applicant should disclose all known existing or potential environmental issues when answering the following questions. The Authority or the Coordinator is aware that businesses which will apply for the loan program generate Hazardous Material. When fully disclosed, the existence of Hazardous Material on the Subject Property will not necessarily result in an automatic loan denial. The Authority or the Coordinator, in its sole discretion, shall consider other factors as listed in the regulations when determining whether the proposed loan meets the program's goals and the Authority's or the Coordinator's acceptable liability risk.

Exhibit A contains definitions of the terms used in this statement which will aid the Applicant in determining the scope of each question.

If insufficient space is provided for your response, provide an attachment to the questionnaire and label the attachment with the number of the question you are continuing to answer.

A. SCOPE OF APPLICANT'S "REASONABLE INQUIRY"

1. Have you conducted an investigation of the Subject Property, including any records or employees' knowledge concerning the Subject Property in preparing your responses to these questions?

Yes

No

If yes, state how this inquiry was conducted and what issues and sources were examined:

B. PROPERTY INFORMATION

1. Current and Former Owners of and Uses on the Subject Property and Vicinity:

(a) Give the name of the present owner and state the current use of the Subject Property:

Year acquired:

(b) Do you know who has owned the Subject Property prior to the current owner?

Yes

No

If "yes," state the names of all such former owners, the approximate dates of their ownership and their uses of the Subject Property (note especially any manufacturing or industrial uses, and any uses which required the use, storage, or disposal of Hazardous Material):

(c) Are there or have there been tenants or easement holders on the Subject Property?

Yes

No

Do not know

If yes, state the names of present and former tenants, easement holders, etc. and their uses of the Subject Property (note especially any manufacturing or industrial uses, and any uses which required the use, storage, or disposal of Hazardous Material):

(d) Are there or have there been any manufacturing or industrial activities or any activities involving the use, storage, or disposal of Hazardous Material, pesticides or petroleum products within 1500 feet from the borders of the Subject Property?

Yes

No

Do not know

If yes, please describe:

(e) What is the current zoning for the Subject Property?

(f) Do you know any prior zonings of the Subject Property?

Yes

No

If yes, please list the prior zonings and the dates each such zoning was in effect.

(g) Are you aware of any previous environmental assessments, audits or inspections of the Subject Property by any government entity, consultant or other party?

Yes

No

If yes, please describe and attach as Attachment A any reports, studies, plans or other documents related thereto.

2. Current or Proposed Use of Subject Property

(a) Please describe all current and proposed activities which Applicant intends to conduct on the Subject Property:

(b) Is Hazardous Material handled, used, stored, manufactured, treated, released or disposed of in the course of these activities?

Yes

No

If yes, specify for each substance how it is used, stored, manufactured or treated (as applicable), and in what approximate quantity. Attach as Attachment B a list of such substances, copies of all applicable permits, safety data sheets, and copies of Hazardous Material manifests.

(c) Does the activity on the Subject Property require equipment cleaning or degreasing or removal of residues of Hazardous Material from equipment?

Yes

No

4 CCR 8060

If yes, list the substances and wastes, and describe how the substances and wastes of this cleaning or removal process are disposed of?

(d) Please briefly describe the process flow of Applicant's operations at the Subject Property (e.g. raw materials unloaded at rear loading dock, formed into widgets inside the main building, finished widgets transported off site by trucks at front loading dock, raw material scrap stored in bins & picked up by trucks transporting materials to recycling center). Identify all points at which Hazardous Material is handled, accumulated, stored, treated, transferred, released or disposed of. Attach as Attachment C a process flow diagram.

3. Physical Description of Property

(a) Please describe all structures on the Subject Property (including approximate age) and attach as Attachment D a facility map:

(b) Are there, or have there been any tanks, sumps, ponds, lagoons and other containments (whether under or above ground, inside or outside of any structure) on the Subject Property?

Yes

No

If yes, please attach as Attachment E a list describing such containments (including their size, age, and location) and, where possible, list all substances known to be (or have been) stored or deposited therein.

(c) How and how often are these containers and storage areas checked for leaks or spills? For those containments no longer in use, describe how the containment was closed and attach as Attachment E all supporting documentation.

(d) Have any barrels, cans, bags or other containers which have at any time contained Hazardous Material (whether empty or not) been stored or discarded on the Subject Property (whether outside, buried or within a structure)?

Yes

No

Do not know

If yes, please describe and list methods and location of storage and disposal:

(e) Are there any refuse, storage or other disposal areas on the Subject Property?

Yes

No

If yes, please describe and locate on the Attachment D facilities map such facilities and describe the procedures for storage, collection, and disposal of refuse utilized at the facility:

(f) How are empty containers and other garbage from activities on the Subject Property disposed of?

(g) Do any of the structures, paved areas and other work areas contain floor drains or other direct connections to drainage areas, sump, septic systems, or public sewer facilities?

- Yes
- No

If yes, please describe the drainage system, and the manner in which it is currently used in the Applicant's operation:

4. Building Materials & Components

(a) Were any of the structures on the Subject Property constructed, remodeled, or renovated between the years of 1920 and 1980?

- Yes
- No

If yes, please describe the construction, remodeling or renovation:

(b) Do any of the structures or improvements on the Subject Property contain asbestos materials (whether incorporated in structures or stored on site) such as ceiling tiles, flooring, insulation, furnace protection, fireproofing materials, duct tape, etc.?

- Yes
- No
- Do not know

If yes, please describe (including age, condition and location):

(c) Has an asbestos expert or industrial hygienist inspected the Subject Property?

- Yes
- No

If yes, attach the report as Attachment G.

(d) Are there any transformers, capacitors or other electrical equipment in use or stored on site?

- Yes
- No
- Do not know

If yes, please list:

C. Regulatory Information & History

1. Are there any permits or variances required for the waste or wastewater discharge arising from the current or proposed activities on the Subject Property?

- Yes

No
Do not know

If "yes" please list permit or variance number, agency, date of issuance, date of expiration, if any, and attach a copy as Attachment H:

2. Are there any permits or variances necessary for the air emissions caused by current or proposed activities on the Subject Property?

Yes
No
Do not know

If yes, please give permit number, agency and date of issuance, date of expiration, if any, and attach a copy as Attachment I:

3. Are there any permits or variances necessary for underground tanks, sumps or other containments on the Subject Property?

Yes
No
Do not know

If yes, please list permit or variance number, agency and date of issuance, date of expiration, if any, and attach a copy as Attachment J:

4. Are any permits or variances necessary for Hazardous Material treatment, storage or disposal activities undertaken at the Subject Property?

Yes
No
Do not know

If yes, please list permit number, agency and date of issuance, date of expiration, if any, and attach a copy as Attachment K:

5. Are any other permits or variances necessary relative to the use, storage, handling, transportation or disposal of chemicals or other substances on the Subject Property?

Yes
No
Do not know

If yes, please list permit number(s), agency(ies) and date(s) of issuance, date of expiration, if any, and attach a copy as Attachment L:

6. Has any government agency issued any letter, notice or verbal communication indicating that it intended to investigate or seek information concerning environmental matters relating to the Subject Property?

Yes
No
Do not know

If yes, please specify and attach a copy as Attachment M:

7. Has any Hazardous Material ever been spilled, deposited, leaked, leached, disposed of or otherwise placed on or in the Subject Property?

Yes

No

If yes, please specify, and detail response and cleanup activities undertaken including any governmental agencies contacted, and attach as Attachment N copies of any reports, studies, plans or other documents generated:

8. Is the Subject Property or any activity conducted thereon in violation of or subject to penalty under any law, ordinance, rule or regulation relating to Hazardous Material, or the protection of the environment?

Yes

No

If yes, please specify and explain:

9. Has the Subject Property been designated, listed or identified in any manner by the United States Environmental Protection Agency (the "EPA") or any other governmental agency as a Hazardous Material disposal or removal site, superfund or cleanup site or candidate for removal or closure pursuant to any federal, state, or local law?

Yes

No

If yes, please describe:

Attach as Attachment O copies of any warnings, citations, notices of violation, enforcement actions and administrative and judicial complaints or orders, and correspondence related to any Hazardous Material or environmental law or regulation.

10. Are you aware of any litigation or threatened litigation pertaining to the Subject Property?

Yes

No

If yes, please describe and attach as Attachment P a copy of any pleading:

E. Applicant Information:

For each Applicant, and each enterprise involved in operations on the Subject Property, list the following:

1. EPA identification numbers:

2. Ongoing or threatened environmental cleanup activities for which the Applicant is or may be subject to lawsuit, demand, liability, or responsibility for the conduct of cleanup or payment of cleanup costs:

(c) List all related businesses of the Applicant. As used herein, the term "related" means that the Applicant owns 51% of another business, or another business owns 51% of the Applicant.

As the present owner of the Subject Property or an interest therein, or as an officer or as a general partner of the present owner of the Subject Property (or the duly authorized representative of such owner), the undersigned, and each of them, individually certifies that he or she is familiar with the Subject Property and with all of the operations presently conducted on the Subject Property, has made a reasonable inquiry into the present and former uses and activities conducted on the Subject Property, the present and former uses and activities conducted within the vicinity of that property, and all other matters relevant to a full disclosure of all environmental concerns and issues relative to the Subject Property, and that, to the best of the knowledge, information and belief of the undersigned, the information disclosed above is complete, true and correct. The undersigned acknowledges that the Coordinator intends to rely upon the disclosure made above or attached hereto in determining whether and on what terms it will make a loan to Applicant.

.....
APPLICANT
By:
Title:
Date Signed:

Exhibit A

1. The term "Hazardous Material" shall have the meaning ascribed thereto to Title 10, Chapter 6.81, Section 8050(m) of the California Code of Regulations.

2. The term "permit" shall include any permit, registration, certification or other filing or action which must be obtained from, or filed with any government agency, or is otherwise required in order for the applicant for a loan to conduct operations, or own or operate any equipment or facility.

Exhibit B

The assessment asks for several attachments. Please clearly identify all attachments, and circle the below letters which correspond to the attachments enclosed. The descriptions are merely for reference, the full description of materials to be attached is listed in the assessment itself.

[See Table In Original]

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44533(b) and 44548, Health and Safety Code*.

HISTORY:

1. New article 6 and section filed 10-11-94; operative 11-10-94 (Register 94, No. 41).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 7. CAPITAL ACCESS PROGRAM FOR SMALL BUSINESSES

4 CCR 8070 (2004)

§ 8070. Definitions

In addition to the definitions in Section 8020, the following terms shall have the following definitions, unless the context requires otherwise:

(a) "Borrower" means a Qualified Business which obtains a Qualified Loan from a Participating Financial Institution.

(b) "Early Stage Loan" means each of the first \$ 500,000 of Qualified Loan made by a Participating Financial Institution.

(c) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority, or his or her designee from time to time.

(d) "Fees" means a non-refundable fee, agreed to by the Participating Financial Institution and the Borrower, of no less than 2 percent and no more than 3-1/2 percent of the principal amount of the Qualified Loan which the Borrower shall be required to pay to the Participating Financial Institution for deposit in the Loss Reserve Account, together with an equal, matching amount which the Participating Financial Institution shall deposit in the Loss Reserve Account. An Independent Contributor shall be authorized to pay any portion of the Fees payable by the Borrower and/or the Matching Contribution to be contributed by the Authority.

(e)(1) "Financial Institution" means a federal or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of the foregoing entities. A consortium of such entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(2) "Financial Institution" also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter 1 of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter 1 of Title 13 of the Code of Federal Regulations, and a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter 1 of Title 13 of the Code of Federal Regulations.

(3) A financial institution described in paragraph (2) shall be domiciled or have its principal office in the State of California.

(f) "Independent Contributor" means any individual, company, corporation, institution, foundation, utility, government agency or other entity, including any consortium of these persons or entities, whether public or private (but excluding any Borrower), that, pursuant to the provisions of the Law and this Article, pays to a Loss Reserve Account the Matching Contribution and/or the portion of the Fees payable by the Borrower.

4 CCR 8070

(g) "Individual" means a natural person, together, if applicable, with any of his or her spouse, parents, siblings or children or the parents or spouse of any of them.

(h) "Law" means Article 8 (commencing with *Section 44559*) of *Chapter 1 of Division 27 of the California Health and Safety Code*, as amended from time to time.

(i) "Loss Reserve Account" means an account held by a Program Trustee or by any Participating Financial Institution that is established and maintained by the Authority for the benefit of a Participating Financial Institution for the purposes set forth in Section 8073.

(j) "Matching Contribution" means a contribution to a Loss Reserve Account of an amount equal to

(A) 100 percent of the combined amount of the Fees, or

(B) 150 percent of the combined amount of the Fees for

(1) a Qualified Loan to a Borrower in a Severely Affected Community or

(2) an Early Stage Loan; provided, however, that such contribution shall not in any case exceed 150 percent of the combined amount of the Fees.

(k) "Money Market Fund" means an open-ended management investment company regulated under the Investment Company Act of 1940, as amended, which values its securities pursuant to *Section 270.2a-7 of Title 17 of the Code of Federal Regulations*.

(l) "Participating Financial Institution" means a Financial Institution that has been approved by the Authority to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in the Law and this Article and as may be required by any applicable federal law providing matching funding.

(m) "Passive Real Estate Ownership" means ownership of real estate for the purpose of deriving income from speculation, trade or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

For purposes of clause (1) above, the Borrower must be using or planning to use upon acquisition or construction of a building, at least 51 percent of the space in an existing building or at least 67 percent of the space in a newly constructed building. The requirements of clause (1) above will be deemed to be satisfied when a Participating Financial Institution makes a Qualified Loan to an Individual, or to a partnership or trust wholly owned or controlled by one or more Individuals, for the purpose of financing property that will be leased to a Qualified Business that is wholly owned by those same Individuals, and in such case the Qualified Loan will be deemed to be made also to such Qualified Business.

(n) "Primary business location in California" means that a business will be deemed to be located in California if either:

(1) a majority of the employees of the business are located in California; or

(2) the Executive Director determines that the Primary business location is in California by finding that the average of the "Payroll Factor" as defined in *Revenue and Taxation Code Section 25132*, the "Income Factor" as defined in *Revenue and Taxation Code Section 25128*, and the "Sales Factor" as defined in *Revenue and Taxation Code Section 25134* is greater than 50 percent.

(o) "Primary economic effect in California" means, as applied to a business activity, that either of the following conditions exists:

(1) At least 51 percent of the total revenues of the business activity are generated in California; or

(2) At least 51 percent of the total jobs of the business activity are created or retained in California.

(p) "Program" means the Capital Access Loan Program for Small Businesses established pursuant to the Law.

4 CCR 8070

(q) "Program Trustee" means a bank or trust company, or the State Treasurer, chosen by the Authority from time to time to hold or administer some or all of the Loss Reserve Accounts.

(r) "Qualified Business" means a Small Business Concern that meets both of the following criteria:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in California.

(2) It has its Primary business location in California.

(s) "Qualified Loan" means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary economic effect in California. A Qualified Loan may be made in the form of a line of credit, in which case the Participating Financial Institution shall specify the amount of the line of credit to be covered under the Program, which may be equal to the maximum commitment under the line of credit or an amount that is less than the maximum commitment. "Qualified Loan" does not include any of the following:

(1) A loan for the construction or purchase of residential housing.

(2) A loan to finance Passive Real Estate Ownership.

(3) A loan for the refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance.

(4) A loan, the proceeds of which will be used

(A) to provide any of the following facilities: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, racetrack, airplane, skybox (or other private luxury box), health club facility, facility primarily used for gambling or to facilitate gambling, or store whose principal business is the sale of alcoholic beverages for consumption off premises, a store or other facility whose principal business is the sale of firearms, a store or other facility whose principal business is the manufacture or sale of tobacco or tobacco products, any religious facility or organization, escort service, nudist camp, gun club, shooting range or gallery; or

(B) in any manner that could cause the interest on any bonds previously issued by the Authority to become subject to federal income tax, as specified in writing to all Participating Financial Institutions by the Executive Director.

(t) "Severely Affected Community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act, Chapter 12.8 (commencing at *Section 7070*) of *Division 7 of Title 1 of the California Government Code*; any area, as designated by the Executive Director, contiguous to the boundaries of a military base designated for closure pursuant to Public Law 101-150, as amended; and any other comparable economically distressed geographic area so designated by the Executive Director from time to time.

(u) "Small Business Assistance Fund" means a fund of that name created by the Authority.

(v) "Small Business Concern" means any person, company, corporation, partnership or entity that is classified as a small business pursuant to Section 3 of the Small Business Act (*15 U.S.C. Sec. 631 et seq.*) or any of the size standards set forth in Title 13, Code of Federal Regulations, Part 121, Subpart A, which are incorporated herein by reference, or any person, company, corporation, partnership or entity that (together with affiliates) employs no more than 500 employees.

(w) "Standards" means the criteria, limited to geographical area and/or type of business, to be used by an Independent Contributor in selecting businesses to assist through the Program.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.1, 44559.2, 44559.3, 44559.4, 44559.5 and 44559.7, Division 27, Health and Safety Code.

HISTORY:

4 CCR 8070

1. New article 7 and section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of subsections (n)(3) and (p) and Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).
3. Amendment of subsections (d) and (e), new subsections (f) and (g) and subsection relettering, amendment of newly designated subsection (i), new subsections (j)-(k)(2) and subsection relettering, amendment of newly designated subsections (l) and (m)(2), repealer of former subsections (m)(3)-(m)(3)(B), amendment of newly designated subsections (t)-(v), new subsection (w), and amendment of Note filed 2-6-96 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 2-6-96 (Register 96, No. 6). Pursuant to *Health and Safety Code section 44520(b)*, a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-96 order, including amendment of subsection (d), new subsection (k), subsection relettering, and amendment of newly designated subsection (r), transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).
5. Amendment of subsections (d), (f) and (l)(1) filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).
6. Amendment of subsections (e), (t) and (t)(4)(A) filed 2-24-2000 as an emergency pursuant to *Health and Safety Code section 44520*; operative 2-24-2000 (Register 2000, No. 8). A Certificate of Compliance must be transmitted to OAL by 8-22-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 2-24-2000 order transmitted to OAL 8-21-2000 and filed 10-2-2000 (Register 2000, No. 40).
8. Repealer of subsections (l)-(l)(2), subsection relettering and amendment of newly designated subsection (s)(4)(A) filed 12-18-2000 as an emergency pursuant to *Health and Safety Code section 44520*; operative 1-1-2001 (Register 2000, No. 51). A Certificate of Compliance must be transmitted to OAL by 7-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 12-18-2000 order transmitted to OAL 6-14-2001 and filed 7-26-2001 (Register 2001, No. 30).
10. Change without regulatory effect redesignating former section (e) as new subsection (e)(1) and adding subsections (e)(2)-(3) filed 10-29-2001 pursuant to *section 100, title 1, California Code of Regulations* (Register 2001, No. 44).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 7. CAPITAL ACCESS PROGRAM FOR SMALL BUSINESSES

4 CCR 8071 (2004)

§ 8071. Application by Financial Institution

(a) A Financial Institution seeking to participate in the Program will complete a registration application provided by the Authority.

The application shall include the following information:

(1) name of applicant Financial Institution.

(2) name, address and telephone number of contact person.

(3) combined capital and surplus as of the end of the Financial Institution's most recent fiscal year.

(4) number of lending branches.

(5) certification that the applicant Financial Institution is not subject to a cease and desist order or other regulatory sanction with the appropriate federal or state regulatory body, which would impair its ability to participate in the Program, and the name of that body.

(6) a full description of the board of directors, including number, race, ethnicity and gender of its members.

(7) the Financial Institution's rating from a nationally recognized credit rating agency which assesses the financial soundness and stability of financial institutions.

(8) the Financial Institution's agreement to follow the Program's procedures as set forth in the Law and this Article.

(9) the Financial Institution's agreement to permit an audit of any of its records relating to enrolled Qualified Loans, during normal business hours on bank premises, by the Authority or its agents, and to supply such other information concerning enrolled Qualified Loans as shall be requested by the Executive Director.

(10) acknowledgment by the Financial Institution that the Authority and the State will have no liability to the Participating Financial Institution under the Program except from funds deposited in the Loss Reserve Account for the Participating Financial Institution.

(b) Upon receipt of a completed application, the Executive Director will within 10 days review and determine whether additional information is required, or whether the application is sufficient to permit the applicant to be a Participating Financial Institution. The Executive Director's decision whether an application is sufficient shall be final.

(c) A Participating Financial Institution shall be authorized to request the Authority to establish two or more Loss Reserve Accounts for such institution, so that the institution shall be able to allocate any Qualified Loan enrolled under Section 8072 to whichever Loss Reserve Account it designates. In such case, the definition of Early Stage Loan and

Section 8074(f) shall be applied in the aggregate to all the Loss Reserve Accounts for each Participating Financial Institution.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: *Section 44559.2, Division 27, Health and Safety Code.*

HISTORY:

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).
3. Amendment of subsections (a)(2), (a)(5) and (b) filed 2-6-96 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 2-6-96 (Register 96, No. 6). Pursuant to *Health and Safety Code section 44520(b)*, a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-96 order transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 7. CAPITAL ACCESS PROGRAM FOR SMALL BUSINESSES

4 CCR 8072 (2004)

§ 8072. Loan Enrollment

(a) The terms and conditions of Qualified Loans, including interest rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower.

(b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan:

(1) by notifying the Authority in writing, within 10 days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Participating Financial Institution makes a Qualified Loan is the date on which the Participating Financial Institution first disburses proceeds of the Qualified Loan to the Borrower; and

(2) by transmitting to the Authority the Fees collected from the Participating Financial Institution and the Borrower, or from an Independent Contributor on behalf of the Borrower and/or the Authority, in connection with the Qualified Loan, and by providing written evidence that the Fees have been deposited in a Loss Reserve Account held by either the Participating Financial Institution or the Program Trustee.

(c) The notification to the Authority shall include at least the following information:

(1) Name, D/B/A (if any), address, telephone and fax number of the Borrower.

(2) Brief description of the Borrower's business and either the SIC Code(s) or the NAIC Code(s) applicable to such business.

(3) Brief description of the Borrower's regular activities and the amount of its annual revenues.

(4) Brief summary of the intended use of the proceeds of the Qualified Loan.

(5) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled).

(6) Type of the Qualified Loan (e.g., line of credit, term loan, equipment loan).

(7) Date of the Qualified Loan.

(8) Interest rate applicable to the Qualified Loan.

(9) Term of the Qualified Loan.

(10) Geographic location of the Qualified Business and the location of the facilities being financed if different.

(11) Whether the Qualified Business or the location of the facilities being financed is in a Severely Affected Community.

(12) Whether the loan is secured.

(13) Whether the loan is a refinancing, and if so, whether the prior loan was enrolled under the Program, and whether the amount of the loan was increased as part of the refinancing.

(14) Agreed amount of the Fees payable by each of the Borrower and the Participating Financial Institution.

(15) Whether any portion of the Fees payable by the Borrower or the Matching Contribution was or is to be paid by an Independent Contributor; the identity of such Independent Contributor; and a certification that the Independent Contributor has approved the use of its funds to pay such Fees or Matching Contribution in connection with the Qualified Loan.

(16) Number of persons currently employed by the Borrower, and number of jobs expected to be created, retained or affected by the Qualified Loan.

(17) Certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.

(18) Certification that the Qualified Loan is for a business activity that has its Primary economic effect in California.

(19) Certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.

(20) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has no legal, beneficial or equitable interest in the Fees or the Matching Contribution.

(21) Certification that the aggregate principal amount of the loan, together with all other Qualified Loans made by the Participating Financial Institution to the Borrower over the last three years (including all related entities among which a common enterprise exists), does not exceed \$ 2,500,000.

(22) Certification that the Participating Financial Institution has notified the Borrower if the Participating Financial Institution's share of the Fees for the Qualified Loan have been paid from loan proceeds.

(23) Acknowledgment that the lending activities of the Participating Financial Institution are subject to safety and soundness standards as set forth in applicable federal banking regulations.

The Participating Financial Institution shall be authorized to base the information requested by subsections (4), (16), (17) and (18) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.

(d) If a Borrower seeking a loan from a Participating Financial Institution has less than a majority of its employees in California, the Participating Financial Institution shall be authorized to submit information to, and seek a determination from, the Executive Director that such Borrower has its Primary business location in California. Such determination shall be made by the Executive Director within 10 days of receipt of a written request from a Participating Financial Institution containing information about the business activities of the proposed Borrower.

(e) The Authority shall, upon receipt of documentation and Fees from the Participating Financial Institution, enroll the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of the Law and this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within 10 days after receipt by the Authority of all documentation and Fees required by the Law and/or this Article. The Executive Director's determination whether a loan shall be enrolled in the Program shall be final. The Executive Director shall be authorized to review an application for enrollment submitted by a Participating Financial Institution in advance of the making of the loan, and notify the institution whether such loan meets the requirements of the Law and this Article.

(f) Upon enrollment of a Qualified Loan, the Matching Contribution shall be transferred for deposit in the Loss Reserve Account (1) by the Authority or (2) by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and of the source of funds from which the transfer was made.

4 CCR 8072

(g) The Participating Financial Institution shall notify the Authority within 60 days after any extension or renewal of any enrolled loan which does not increase the loan amount. If the amount is increased, a new loan enrollment form shall be submitted within such time, and Fees shall be transmitted or deposited pursuant to Section 8072(b)(2) based on the increased amount.

(h) The Participating Financial Institution shall notify the Authority of the work-out status on Qualified Loans for which extension/renewal or charge off status is not yet clear. The "Notification of Work-Out Status" form provided by the Authority shall be used to notify the Authority. The Participating Financial Institution shall have up to 240 days from such initial notification to inform the Authority of re-enrollment or charge off.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.2 and 44559.4, Division 27, Health and Safety Code.

HISTORY:

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of subsection (c)(20), new subsections (g) and (h) and amendment of Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).
3. Amendment of subsections (b)(1), (b)(2) and (c)(2), new subsections (c)(3) and (c)(4) and subsection renumbering, amendment of newly designated subsection (c)(6), new subsections (c)(8) and (c)(9), amendment of newly designated subsections (c)(11) and (c)(14), new subsection (c)(15), amendment of newly designated subsections (c)(16), (c)(17), (c)(19) and (c)(22), amendment of subsections (d) and (e), new subsection (f) and subsection relettering, and amendment of newly designated subsections (g) and (h) filed 2-6-96 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 2-6-96 (Register 96, No. 6). Pursuant to *Health and Safety Code section 44520(b)*, a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-96 order, including amendment of subsections (c)(4), (c)(15), (c)(17) and (c)(22), and new subsections (c)(23)-(24), transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).
5. Amendment of subsections (a), (b)(2), (c)(2), (c)(3), (c)(15), (c)(19), (c)(22), (d), (e), (h) and (i) filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).
6. Amendment of subsections (c)(1)-(3), (c)(19) and (c)(21) filed 2-24-2000 as an emergency pursuant to *Health and Safety Code section 44520*; operative 2-24-2000 (Register 2000, No. 8). A Certificate of Compliance must be transmitted to OAL by 8-22-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 2-24-2000 order transmitted to OAL 8-21-2000 and filed 10-2-2000 (Register 2000, No. 40).
8. Repealer of subsection (c)(19), subsection renumbering, amendment of newly designated subsection (c)(23) and subsection (d), repealer of subsection (f), subsection relettering and amendment of Note filed 12-18-2000 as an emergency pursuant to *Health and Safety Code section 44520*; operative 1-1-2001 (Register 2000, No. 51). A Certificate of Compliance must be transmitted to OAL by 7-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 12-18-2000 order transmitted to OAL 6-14-2001 and filed 7-26-2001 (Register 2001, No. 30).

10. Amendment of subsections (b)(1) and (g) filed 8-8-2002 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 8-8-2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 8-8-2002 order transmitted to OAL 2-3-2003 and filed 3-6-2003 (Register 2003, No. 10).

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TITLE 4. BUSINESS REGULATIONS
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4 CCR 8073 (2004)

§ 8073. Loss Reserve Accounts

(a) Upon the Executive Director's acceptance of an application under Section 8071, the Authority shall establish a Loss Reserve Account for that Participating Financial Institution for the following purposes:

- (1) to receive all Fees deposited by the Participating Financial Institution, Borrowers and/or Independent Contributors;
- (2) to receive Matching Contributions deposited by the Authority and/or Independent Contributors; and
- (3) to pay claims in accordance with Section 8074.

(b) The Loss Reserve Account shall, in the Authority's sole determination, be held by the Participating Financial Institution or by a Program Trustee.

(c) Any Loss Reserve Account held in a Participating Financial Institution shall be an interest-bearing demand account or deposit account at a banking institution, or a Money Market Fund approved by the Executive Director, or a combination thereof. The Loss Reserve Account shall be insured by the Federal Deposit Insurance Corporation or the Securities Investor Protection Corporation, as appropriate, to the extent permitted by law. The Authority shall not deposit any Loss Reserve Account with a Participating Financial Institution if:

- (1) there are any charges by the Participating Financial Institution for the establishment or maintenance of the Loss Reserve Account at such Financial Institution; or
- (2) at the time the Loss Reserve Account is established with the Participating Financial Institution, it has a rating below "75" from IDC Financial Publishing Inc.'s Bank Financial Quarterly, S&L-Savings Bank Financial Quarterly, or Credit Union Financial Profiles, or it has a rating below "11" from Sheshunoff Information Services Inc.'s Bank Quarterly or S&L Quarterly.

(d) All moneys in a Loss Reserve Account are property of the Authority (subject to the Participating Financial Institution's right to receive a portion of the remaining balance in the Loss Reserve Account upon its withdrawal from the Program pursuant to Section 8076 and subject to subsection (e) below). Interest or income earned on moneys credited to the Loss Reserve Account shall be deemed to be part of the Loss Reserve Account. The Executive Director shall be authorized to withdraw moneys from the Loss Reserve Account to offset administrative costs associated with the Program, provided that the Executive Director shall not be authorized to withdraw more than 50 percent of all interest or income credited to the Loss Reserve Account. The Executive Director shall be authorized to return to a Participating Financial Institution any fees improperly deposited in a Loss Reserve Account.

(e) Notwithstanding any other provision of this article, the Executive Director shall be authorized, with the approval of the applicable Participating Financial Institution, to assign, transfer, pledge or create security interests in all or a portion of any Loss Reserve Account to any other entity or entities (including a trustee of a securitization trust or trusts)

in connection with the securitization of all or a portion of the Participating Financial Institution's loans enrolled in the Program.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44559.3 and 44559.8, Division 27, Health and Safety Code.

HISTORY:

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of subsections (a) and (d) and Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).
3. Amendment of subsections (a)(1) and (2), (b) and (d) filed 2-6-96 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 2-6-96 (Register 96, No. 6). Pursuant to *Health and Safety Code section 44520(b)*, a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-96 order, including amendment of subsections (c)-(c)(1), transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).
5. Amendment of subsections (c) and (d) filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).
6. Amendment of subsection (d), new subsection (e) and amendment of Note filed 2-24-2000 as an emergency pursuant to *Health and Safety Code section 44520*; operative 2-24-2000 (Register 2000, No. 8). A Certificate of Compliance must be transmitted to OAL by 8-22-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 2-24-2000 order transmitted to OAL 8-21-2000 and filed 10-2-2000 (Register 2000, No. 40).

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TITLE 4. BUSINESS REGULATIONS
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4 CCR 8074 (2004)

§ 8074. Claim for Reimbursement

(a) A Participating Financial Institution shall notify the Authority within 30 days after it has charged off all or part of a Qualified Loan as a result of a default by the Borrower.

(b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed 180 days from the date of the charge off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge off status within 30 days.

(c) The Authority shall pay claims within 30 days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the representations and warranties provided by the Participating Financial Institution pursuant to Section 8072 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of claims up to an additional 30 days if the Authority requires more information in order to determine if the claim shall be paid.

(d) To make a claim, the Participating Financial Institution shall submit a claim form to the Authority which shall include the following information:

- (1) Name and number of the Participating Financial Institution.
- (2) Name, address and telephone number of contact person.
- (3) Name of the business receiving the defaulted Qualified Loan.
- (4) Amount and date of the Qualified Loan and the Authority's loan number.
- (5) Date of default.
- (6) Amount of default.
- (7) Amount of claim and breakdown of components of of the claim between principal, interest, and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.
- (8) Certification that notice was filed with the Authority as required by Section 8074(a) above within 30 days of the date the Participating Financial Institution charged the Qualified Loan off on its books, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.

(9) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.

4 CCR 8074

(10) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the Loss Reserve Account is not sufficient to pay all claims.

(11) Statement whether the Qualified Loan qualifies under Section 8074(f).

(12) Certification that the Participating Financial Institution has given notice to the Authority of the initial enrollment of the loan and certification that either (A) the Participating Financial Institution has given notice to the Authority of any renewals or extensions of the loan, or (B) the loan was continuously renewed or extended within the Participating Financial Institution since the date of its initial enrollment.

(e) Except as provided in Section 8074(f) below, if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.

(f) If a Qualified Loan (or any part of it) is among the first one million dollars of Qualified Loans made by a Participating Financial Institution and it suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed 75 percent of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.

(g) If subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: *Section 44559.5, Division 27, Health and Safety Code.*

HISTORY:

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of subsections (a), (b), (e)(8), (h) and Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).
3. Amendment of subsections (a)-(c), repealer of former subsection (d) and subsection relettering, amendment of newly designated subsection (d)(8), new subsection (e) and subsection relettering, amendment of newly designated subsection (f), repealer of subsection (g) and relettering, and amendment of newly designated subsection (g) filed 2-6-96 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 2-6-96 (Register 96, No. 6). Pursuant to *Health and Safety Code section 44520(b)*, a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 2-6-96 order, including amendment of subsection (c), transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).

5. Amendment of subsections (a), (c) and (d)(4) filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

6. New subsection (d)(12) filed 8-8-2002 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 8-8-2002 (Register 2002, No. 32). A Certificate of Compliance must be transmitted to OAL by 2-4-2003 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 8-8-2002 order, including further amendment of subsection (d)(12), transmitted to OAL 2-3-2003 and filed 3-6-2003 (Register 2003, No. 10).

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TITLE 4. BUSINESS REGULATIONS
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4 CCR 8075 (2004)

§ 8075. Subrogation

(a) The Authority will be subrogated to the rights of the Participating Financial Institution in collateral, personal guarantees and all other forms of security for the Qualified Loan that have not been realized upon by the Participating Financial Institution, when the Participating Financial Institution's loss has been fully covered by payment of a loss claim, or by a combination of payment of a loss claim and recovery from the Borrower, liquidation of collateral, or from other sources.

(b) At the time of subrogating its rights, the Participating Financial Institution shall provide the Authority with all original security agreements, any documents evidencing title to real property, certificates of title, guarantees, and any other documents representing security for the Qualified Loan, duly recorded and perfected, and accompanied by enforceable assignments and conveyances to the Authority, unless such security documents also secure indebtedness to the Participating Financial Institution which was not covered by the Qualified Loan. In such latter case, the Participating Financial Institution shall enter into an intercreditor agreement with the Authority, providing that the Participating Financial Institution shall be entitled to recover under such security documents, to the extent possible, the full amount of its loss on any indebtedness not covered by the Qualified Loan but secured by the same collateral as the Qualified Loan; the balance of any amounts recovered under such security documents shall be deposited in the Loss Reserve Account. The Participating Financial Institution shall provide regular reports, as requested by the Executive Director, concerning its activities in collecting moneys owed from a defaulted Borrower.

(c) The Executive Director shall be authorized to enter into agreements with any Participating Financial Institution to provide for such institution to act as the Authority's agent to secure recovery under any collateral or security documents to which the Authority has been subrogated.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: *Section 44559.2, Division 27, Health and Safety Code.*

HISTORY:

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of subsection (b) and Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).

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4 CCR 8076 (2004)

§ 8076. Termination and Withdrawal from Program

(a) A Participating Financial Institution shall be authorized to withdraw from the Program after giving written notice to the Authority. Such notice shall specify either:

(1) that the Participating Financial Institution waives any further interest in the Loss Reserve Account (including for the reason that all Qualified Loans covered by the Loss Reserve Account have been repaid); or

(2) that the Participating Financial Institution will not enroll any further loans under the Program but that the Loss Reserve Account shall continue in existence to secure all Qualified Loans enrolled prior to such notice.

(b) After receipt of a notice under subsection (a)(1) or receipt of a certificate from a Participating Financial Institution which has withdrawn from the Program pursuant to subsection (a)(2), certifying that all Qualified Loans secured by the Loss Reserve Account have been repaid and that there are no pending claims for reimbursement under Section 8074, the remaining balance in the Loss Reserve Account shall be distributed to the Authority; provided that with respect to moneys deposited in the Loss Reserve Account after January 1, 1999 (and assuming all claims made after January 1, 1999 are first allocated to moneys on deposit prior to that date), such moneys shall be distributed to the Authority and to the Participating Financial Institution in the amount of the Authority Share and the Participating Financial Institution Share, respectively. For purposes of this Section 8076, "Authority Share" means the ratio of the contributions made by the Authority (or any Independent Contributor on behalf of the Authority) to the Loss Reserve Account in question from January 1, 1999 to the date of calculation, to the total amount of contributions made to such Loss Reserve Account during that period, and "Participating Financial Institution Share" means 100 minus the Authority Share.

(c) The Executive Director shall be authorized to terminate participation of a Participating Financial Institution in the Program, by notice in writing, upon the occurrence of any of the following:

(1) entry of a cease and desist order or other regulatory sanction on the Financial Institution by its regulatory agency which impairs its ability to participate in the Program;

(2) failure of the Participating Financial Institution to abide by the Law or this Article; or

(3) failure of the Participating Financial Institution to enroll any Qualified Loans under the Program for a period of one year.

In the event of such termination, the Participating Financial Institution shall not be authorized to enroll any further Qualified Loans, but all previously enrolled Qualified Loans shall continue to be covered by the Loss Reserve Account until they are paid, claims are filed, or the Participating Financial Institution withdraws from the Program pursuant to Section 8076(a)(1).

(d) If for a consecutive 12-month period the amount in the Loss Reserve Account continuously exceeds the outstanding balance of all the Participating Financial Institution's Qualified Loans made since the beginning of the Program, the Executive Director shall be authorized to withdraw any such excess to bring the Loss Reserve Account down to an amount equal to 100 percent of the outstanding balance, in the following manner: (i) first, distributions shall be made to the Authority up to an amount allocable to the moneys on deposit in the Loss Reserve Account on January 1, 1999 (assuming all claims made after January 1, 1999 are first allocated to moneys on deposit prior to that date) and (ii) further distributions shall be made to the Authority and to the Participating Financial Institution based on the Authority Share and the Participating Financial Institution Share, respectively.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: *Section 44559.2, Division 27, Health and Safety Code.*

HISTORY:

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).
3. Amendment of subsection (d) filed 2-6-96 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 2-6-96 (Register 96, No. 6). Pursuant to *Health, and Safety Code section 44520(b)*, a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-96 order transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).
5. Amendment of subsections (b) and (d) filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

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4 CCR 8077 (2004)

§ 8077. Reports of Regulatory Agencies

The Executive Director shall be authorized to seek information directly from any federal or state regulatory agency concerning any Participating Financial Institution participating in the Program.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: *Section 44559.2, Division 27, Health and Safety Code.*

HISTORY:

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).

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4 CCR 8078 (2004)

§ 8078. Participation in the Program by Certain Public or Private Entities

(a) The Authority shall be authorized to permit any individual, company, corporation, institution, utility, government agency or other entity, including any consortium of these persons or entities, to become an Independent Contributor after such person or entity

(1) submits to the Authority its Standards; provided that the Authority shall not enforce compliance by the Independent Contributor with its Standards;

(2) represents to the Authority that it will not enter into an exclusive arrangement with a particular Participating Financial Institution, but that it is prepared to work with any Participating Financial Institution under the Program;

(3) agrees to indemnify the Authority against any loss, liability or claim arising from the use of the Independent Contributor's funds in the Program;

(4) represents to the Authority that it understands and intends to abide by the provisions of the Law and this Article with regard to its participation in the Program; and

(5) deposits with the Program Trustee an initial amount of at least \$ 15,000 to be used to pay Fees payable by Borrowers and/or Matching Contributions in connection with Qualified Loans, or receives a written waiver from the Executive Director of this requirement.

(b) An Independent Contributor shall advise the Authority at any time the Standards provided to the Authority pursuant to Section 8078(a)(1) above are changed.

(c) The Authority shall be authorized to terminate an Independent Contributor's participation in the Program at any time, upon written notice, for any cause, including, but not limited to, failure to maintain a minimum deposit of at least \$ 5,000 with the Program Trustee. An Independent Contributor shall be authorized to terminate its participation in the Program at any time, upon written notice.

(d) An Independent Contributor must pay all fees of the Program Trustee attributable to the funds that the Independent Contributor deposits with the Program Trustee.

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: Sections 44525, 44526 and 44559.3, Division 27, Health and Safety Code.

HISTORY:

4 CCR 8078

1. Renumbering of former section 8078 to section 8079 and new section 8078 filed 2-6-96 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 2-6-96 (Register 96, No. 6). Pursuant to *Health and Safety Code section 44520(b)*, a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 2-6-96 order, including amendment of subsections (a) and (d), new subsection (a)(3), subsection renumbering, and amendment of newly designated subsection (a)(5), transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).
3. Amendment of subsection (a)(5) filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 7. CAPITAL ACCESS PROGRAM FOR SMALL BUSINESSES

4 CCR 8079 (2004)

§ 8079. Codes for Qualified Businesses

AUTHORITY:

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code. Reference: *Section 44559.2, Division 27, Health and Safety Code.*

HISTORY:

1. New section filed 3-21-94 as an emergency; operative 3-21-94 (Register 94, No. 12). This filing was deemed an emergency by *Health and Safety Code section 44520(b)*. A Certificate of Compliance must be transmitted to OAL by 9-19-94 or the emergency regulation will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-21-94 order including amendment of Note transmitted to OAL 9-16-94 and filed 10-31-94 (Register 94, No. 44).
3. Renumbering and amendment of former section 8078 to section 8079 filed 2-6-96 as an emergency pursuant to *Health and Safety Code section 44520(b)*; operative 2-6-96 (Register 96, No. 6). Pursuant to *Health and Safety Code section 44520(b)*, a Certificate of Compliance must be transmitted to OAL by 8-5-96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-6-96 order transmitted to OAL 8-2-96 and filed 9-10-96 (Register 96, No. 37).
5. Amendment of first paragraph filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).
6. Repealer filed 12-18-2000 as an emergency pursuant to *Health and Safety Code section 44520*; operative 1-1-2001 (Register 2000, No. 51). A Certificate of Compliance must be transmitted to OAL by 7-2-2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-18-2000 order transmitted to OAL 6-14-2001 and filed 7-26-2001 (Register 2001, No. 30).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 8. DESIGNATION AND DISCLOSURE OF CONFIDENTIAL INFORMATION

4 CCR 8080 (2004)

§ 8080. Designation of Confidential Information

No confidential information, or information that is the subject of a pending application, shall be disclosed except as provided by Section 8082, unless disclosure is ordered by a court of competent jurisdiction.

(a) Any Applicant, Participating Financial Institution or Borrower as defined in Section 8070 giving custody or ownership of information to the Authority may request that such information be designated confidential information and not publicly disclosed, but failure to so indicate at the time the information is submitted to the Authority is not a waiver of the right to request confidentiality later. A request for confidential designation shall:

- (1) be on a sheet or sheets separate from but attached to the information;
- (2) specifically indicate those parts of the information which should be kept confidential;
- (3) state the length of time the information should be kept confidential, and provide justification for the length of time;
- (4) cite and discuss (i) the provisions of the Public Records Act (*California Government Code 6250 et seq.*) or other law that allows the Authority to keep the information confidential, and (ii) the public interest in nondisclosure of the information. If it is believed that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the request shall also state the specific nature of the advantage and how it would be lost, including the value of the information to the requesting party, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others;
- (5) state whether and how the information is kept confidential by the requesting party and whether it has ever been disclosed to a person other than an employee of the requesting party, and if so under what circumstances;
- (6) contain the following certification executed by the person primarily responsible for preparing the request: "I certify under penalty of perjury that the information contained in this request for confidential designation is true, correct, and complete to the best of my knowledge, and that I am authorized to make this request and certification on behalf of [name of entity]"; and
- (7) specify whether the person submitting the request wishes the information returned or disclosed upon a denial of confidential designation; information returned to requesting party shall not be considered or reviewed as part of any application for bonds, or other financial assistance or participation in the Capital Access Program.

(b) If the information contains information which the requesting party has received from another party who has demanded or requested that the requesting party maintain the confidentiality of the information, the requesting party shall address the items in Section 8080(a) to the greatest extent possible and shall explain the request made by the original party and the reasons expressed by the original party.

4 CCR 8080

(c) An incomplete request shall be returned to the requesting party with a statement of its defects. The information for which confidentiality was requested shall not be disclosed for thirty (30) days after return of the request to the requesting party to allow a new request to be submitted.

(d) If a requesting party's prior request for confidential designation of substantially similar information has been granted, a request for confidential designation shall be deemed granted if the request contains a certification that the information submitted is substantially similar and that all facts and circumstances relevant to the granting or approval of the prior request are unchanged.

(e) The Executive Director shall determine if a request for confidential designation should be granted. A request shall be granted unless the requesting party has failed to make any reasonable claim that the Public Records Act or other provision of law authorizes the Authority to keep the information confidential, and upon a finding by the Executive Director that there is a public interest in nondisclosure of the information. The Executive Director shall be authorized, within thirty (30) days after receipt of a request, to require the requesting party to submit any additional information necessary to rule on the request. If the additional information is not received by the Authority within fourteen (14) days after the date of the request for additional information, the Executive Director shall deny the request. The Executive Director's determination shall be in writing and shall be mailed no later than sixty (60) days after receipt of a request or thirty (30) days after receipt of additional information, whichever is later. There shall be no administrative appeal from the Executive Director's decision. The information sought to be designated confidential shall not be available for inspection or copying for a period of 30 days after the denial of a request, during which time the requesting party may appeal such denial to a court of competent jurisdiction.

AUTHORITY:

Note: Authority cited: *Section 44520, Division 27, Health and Safety Code*. Reference: Section 44537.5 and 44548, Division 27, Health and Safety Code.

HISTORY:

1. New article 8 (sections 8080-8083) and section filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 8. DESIGNATION AND DISCLOSURE OF CONFIDENTIAL INFORMATION

4 CCR 8081 (2004)

§ 8081. Disclosure of Confidential Information

(a) The Executive Director shall be authorized to disclose information determined confidential pursuant to Section 8080 to:

- (1) Agency employees whose agency work requires inspection of the information.
- (2) Persons under contract to the Authority whose work for the Authority requires inspection of the information and who agree to keep the information confidential.
- (3) Other governmental bodies which have a need for the information related to their official functions and which agree to keep the information confidential and to disclose the information only to those employees whose agency work requires inspection of the information. The Executive Director shall be permitted to request and agree on behalf of the Authority to maintain the confidentiality of other agencies' confidential information.
- (4) Any person, provided that either (i) the requesting party has consented in writing to the disclosure, or (ii) the Executive Director, after prior notice to the requesting party and opportunity for the requesting party to be heard, determines that such information is not exempt from disclosure under the Public Records Act and the public interest in disclosure of such information outweighs the public interest in nondisclosure.

(b) The Executive Director shall advise the requesting party of the disclosure to persons in subsections (a), (2), (3) and (4) of this Section 8081 of information determined confidential pursuant to Section 8080.

AUTHORITY:

Note: Authority cited: *Section 6253(a), Government Code*; and *Section 44520, Division 27, Health and Safety Code*.
Reference: *Section 44537.5 and 44548, Division 27, Health and Safety Code*.

HISTORY:

1. New section filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 8. DESIGNATION AND DISCLOSURE OF CONFIDENTIAL INFORMATION

4 CCR 8082 (2004)

§ 8082. Security of Confidential Information

The Executive Director is responsible for maintaining the security of confidential information.

AUTHORITY:

Note: Authority cited: *Section 6253(a), Government Code*; and *Section 44520, Division 27, Health and Safety Code*.
Reference: Section 44537.5 and 44548, Division 27, Health and Safety Code.

HISTORY:

1. New section filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 8. DESIGNATION AND DISCLOSURE OF CONFIDENTIAL INFORMATION

4 CCR 8083 (2004)

§ 8083. Delegation of Authority and Responsibilities

The Executive Director shall be authorized to delegate any authority, duties or responsibilities under this Article to any employee of the Authority.

AUTHORITY:

Note: Authority cited: *Section 6253(a), Government Code*; and *Section 44520, Division 27, Health and Safety Code*.
Reference: Section 44537.5 and 44548, Division 27, Health and Safety Code.

HISTORY:

1. New section filed 12-23-98; operative 12-23-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 52).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 9. CALIFORNIA RECYCLE UNDERUTILIZED SITES (CAL REUSE) PROGRAM

4 CCR 8090 (2004)

§ 8090. Definitions

The following definitions shall govern construction of Article 9.

(a) "Applicant" means any for-profit or not-for-profit organization, school district, participating party as defined in *California Health and Safety Code Section 44506*, or public agency as defined in *California Health and Safety Code Section 44509* applying for a Loan.

(b) "Application" means the information referred to in Section 8093.

(c) "Authority" means the California Pollution Control Financing Authority, organized and existing under and by virtue of Division 27 (commencing with *Section 44500*) of the *California Health and Safety Code*.

(d) "Borrower" means an Applicant whose Loan has been approved and who has executed a Loan Agreement.

(e) "Brownfield" means a real estate parcel, or improvements located on the parcel, or both that parcel and the improvements, which is abandoned, idled, or underused, due to real or perceived environmental contamination, including, but not limited to, soil or groundwater contamination, the presence of underground storage tanks, or the presence of asbestos or lead paint on the parcel or in the improvements located on the parcel.

(f) "Brownfield Project" means a project for the site assessment and characterization of, and/or Planning for Remediation of Hazardous Material at a Brownfield.

(g) "Census Designated Place" means a place designated as a census designated place by the Bureau of the Census.

(h) "Consultant" means any of the following:

(1) A Class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with *Section 25570*) of *Division 20 of the California Health and Safety Code*;

(2) A professional engineer registered in this State;

(3) A certified engineering geologist registered in this State; or

(4) A licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with *Section 7000*) of *Division 3 of the California 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.

In addition, a Consultant shall have at least three years experience in conducting site assessment and characterization.

(i) "Development Entity" means an entity engaged in the development of real estate.

(j) "Economically Struggling Community" means a community that the Applicant demonstrates to the satisfaction of the Strategic Partner is any one or more of the following:

(1) A community with an unemployment rate equal to or greater than 125% of the statewide average based on the California Employment Development Department's most recent annual average for sub-county areas.

(2) A community with median family income of less than 80% of the statewide average based on the most recent census data available for cities or Census Designated Places. (If no city or Census Designated Place level data is available, or if the Applicant chooses to identify an area that is smaller than a city or Census Designated Place, such as census tract or tracts, smaller areas will be used.)

(3) A community with a poverty rate equal to or greater than 110% of the statewide average based on the most recent census data available for cities or Census Designated Places. (If no city or Census Designated Place level data is available, or if the Applicant chooses to identify an area that is smaller than a city or Census Designated Place, such as census tract or tracts, smaller areas will be used.)

(4) A state designated Enterprise Zone (including a Local Agency Military Base Recovery Area, Manufacturing Enhancement Area or Targeted Tax Area).

(5) A federally designated Empowerment Zone or Enterprise Community.

(6) A redevelopment project area adopted pursuant to California *Health and Safety Code Sections 33000 et seq.*, where the Strategic Partner determines that the project area meets the definition of blighted area contained in California *Health and Safety Code Section 33030*.

(7) A city or county with a military base designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent closure approved by the President of the United State without objection by the Congress. The provision will apply to proposed projects within two miles of a military base closure in an urban setting and to proposed projects within five miles of a military base closure in a rural setting.

(k) "Eligible Costs" means reasonable and necessary Brownfield Project costs, including but not limited to costs associated with any of the following::

(1) Site assessment and characterization.

(2) Technical Assistance.

(3) Planning for Remediation of Hazardous Material.

(4) Obtaining access to a Brownfield to conduct a Brownfield Project.

(l) "Empowerment Zone" means any area that meets the standards for designation as an empowerment zone under *26 U.S.C. Section 1392*.

(m) "Enterprise Community" means any area that meets the standards for designation as an enterprise community under *26 U.S.C. Section 1392*.

(n) "Enterprise Zone" means any area within a city, county, or a city and county that is designated as an enterprise zone by the Trade and Commerce Agency in accordance with the provisions of *Section 7073 of the California Government Code*.

(o) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority.

(p) "Feasibility Study" means the identification and evaluation of technically feasible and effective Remedial Action alternatives to protect public health and the environment at a Brownfield for purposes of developing a Remedial Action Plan.

(q) "Final Report" means a written document prepared by an Independent Consultant; that describes the Independent Consultant's findings resulting from the site assessment and characterization, Planning for Remediation of

Hazardous Material, and/or technical assistance performed by the Independent Consultant in connection with a Brownfield.

(r) "Forgiven Loan" means a Loan for which repayment of all, or a portion, of the Loan is forgiven upon the conditions set forth in Section 8097.

(s) "Hazardous Material" means a hazardous material as defined in *Section 25260(d) of the California Health and Safety Code*.

(t) "Hazardous Waste Reporting Laws" means any and all state, federal and local laws, including, without limitation, statutes, rules, regulations, ordinances, administrative orders, judicial orders or consent decrees, requiring the reporting to any governmental, quasi-governmental or regulatory entity of any release, threatened release, presence or existence of a Hazardous Material or any similar substance or material into the environment.

(u) "Independent Consultant" means a Consultant who meets all of the following requirements:

(1) The Consultant is not an employee of, general or limited partner or a shareholder in, or have any other ownership or management interest in the Borrower, a known responsible party, or a prospective buyer of the Brownfield;

(2) The Consultant does not receive any source of income from the Borrower, a known responsible party, or a prospective buyer of the Brownfield, other than the payment of fees for professional services unless the Consultant is acting in his or her capacity as an employee of a governmental entity; and

(3) The Consultant does not accept, or agree to accept, any payment that is in any way contingent upon the outcome of a Final Report.

(v) "Loan" means a loan made in accordance with the procedures set forth in this Article 9.

(w) "Loan Agreement" means a written agreement for a Loan entered into between a Borrower and the Strategic Partner, or where the Strategic Partner is the Borrower, between the Borrower and the Authority.

(x) "Local Agency Military Base Recovery Area" means any military base or former military base or portion thereof that is designated as a local agency military base recovery area under the Local Agency Military Base Recovery Area Act (Cal. *Govt. C. Section 7105*, et seq.).

(y) "Manufacturing Enhancement Area" means an area designated as a manufacturing enhancement area by the Trade and Commerce Agency in accordance with the provisions of California *Government Code Section 7073.8*.

(z) "Match" means the Strategic Partner's financial contribution to the Brownfield Project in an amount equal to 25 percent (25%) of the Loan amount. Match also means a monetary contribution and/or related costs of overhead and staffing in amounts and percentages of each as set forth in the written agreement between the Strategic Partner and the Authority, by a Strategic Partner or other entity involved with the Brownfield Project.

(aa) "Oversight Agency" means any of the following:

(1) The applicable Regional Water Quality Control Board;

(2) The California Department of Toxic Substances Control;

(3) A local agency, if the Brownfield is an underground storage tank site subject to Chapter 6.7 (commencing with *section 25280*) of *Division 20 of the California Health and Safety Code* and if all of the requirements set forth in subdivision (d)(2) of *California Health and Safety Code Section 33459.1* are satisfied;

(4) An agency certified as a Certified Unified Program Agency or CUPA pursuant to Chapter 6.11 of *Division 20 of the California Health and Safety Code* (commencing with *Section 25404*); or

(5) The agency designated as the administering agency pursuant to *California Health and Safety Code Section 25262*.

(ab) "Planning for Remediation of Hazardous Material" means conducting a Feasibility Study, conducting a Remedial Investigation, and/or preparing a Remedial Action Plan.

(ac) "Public Infrastructure" means facilities accessible to the public that may include, but are not limited to, public roads, sewers, drainage, water, natural gas and/or electricity, telephone, and transportation services.

4 CCR 8090

(ad) "Remedial Action Plan" means a plan for performing a Remedy or taking a Remedial Action.

(ae) "Remedial Investigation" means those actions necessary to determine the full extent of a Hazardous Material at a Brownfield, identify the public health and environment threat posed by the Hazardous Material, collect data on possible remedies, and otherwise evaluate the Brownfield, for purposes of developing a Remedial Action Plan.

(af) "Remedy or Remedial Action" has the same meaning as that term is used in California *Health and Safety Code Section 25322*, except that, for purposes of this article, the references in Section 25322 to a "hazardous substance" shall be deemed to be references to a "Hazardous Material".

(ag) "Small Business" means that term as defined in Title 4, Division 11, Article 2, Section 8020 of the California Code of Regulations.

(ah) "Strategic Partner" means an entity chosen by the Authority in accordance with Section 8100 that receives and processes Applications, and/or provides Technical Assistance, and/or disburses funds, and/or provides administrative services to Borrowers for purposes of this Article 9 pursuant to a written agreement with the Authority. In the event the Authority does not contract with a Strategic Partner, Strategic Partner means the Authority. Under certain circumstances, the Strategic Partner may be the Applicant or the Borrower. In the event the Strategic Partner is an Applicant or a Borrower, the Authority shall be the Strategic Partner as to such Application and Loan.

(ai) "Targeted Tax Area" means an area designated as a targeted tax area by the California Trade and Commerce Agency in accordance with the provisions of California *Government Code Section 7079*.

(aj) "Technical Assistance" means information, education, training and assistance provided to an Applicant and/or Borrower by a Strategic Partner or its agent regarding Brownfield site assessment and characterization, Planning for Remediation of Hazardous Material and/or environmental regulation. Technical Assistance does not include any actions that would constitute participation in the management of property as defined in *Section 25548.1 of the California Health and Safety Code* or in *42 U.S.C. Section 9601(20)(F)*. Unless a Strategic Partner is a governmental entity that is exercising its regulatory authority under other applicable laws, regulations, inter-agency agreements, or governmental programs, a Strategic Partner shall not participate in, the management of property as defined in *Section 25548.1 of the California Health and Safety Code* or in *42 U.S.C. Section 9601(20)(F)*.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New article 9 (sections 8090-8101) and section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-13-2001 order, including amendment of subsections (u)(1) and (u)(2), transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 9. CALIFORNIA RECYCLE UNDERUTILIZED SITES (CAL REUSE) PROGRAM

4 CCR 8091 (2004)

§ 8091. Brownfield Project Loan Eligibility

An Applicant shall be eligible for a Loan when the Strategic Partner determines all of the following:

- (a) The Applicant submits an Application that meets the requirements of Section, 8092;
- (b) The Applicant proposes a Brownfield Project;
- (c) The Loan is requested to fund a portion of Eligible Costs associated with a Brownfield Project;
- (d) The Applicant demonstrates the ability to retain, or is, a Development Entity;
- (e) If the Loan and Match together does not finance all costs of the Brownfield Project, the Applicant identifies a funding source or financial means to finance the costs of the Brownfield Project not covered by the Loan;
- (f) The Applicant identifies a potential funding source or financial means to repay the Loan;
- (g) The Applicant demonstrates the ability to gather likely sources of capital to develop the Brownfield;
- (h) The Applicant has not been convicted of a felony or misdemeanor involving the regulation of Hazardous Materials, including, but not limited to, a conviction of a felony or misdemeanor under *California Health and Safety Code Section 25395.13*; and
 - (i) Any affirmative responses provided in Section 8092(m) do not materially impugn the integrity of the Borrower or will not adversely affect the Borrower's ability to comply with these regulations.
 - (j) The Brownfield is not a parcel:
 - (1) Currently listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (*42 U.S.C. Section 9605(a)(8)(B)*).
 - (2) Currently listed for a response action pursuant to *Section 25356 of the California, Health and Safety Code*.
 - (3) That is, or has ever been, owned or operated by a department, agency, or instrumentality of the United States.
 - (4) That is a hazardous waste facility that is subject to the requirements of Article 9, Chapter 6.5, Division 20 of the California Health and Safety Code.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-13-2001 order transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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ARTICLE 9. CALIFORNIA RECYCLE UNDERUTILIZED SITES (CAL REUSE) PROGRAM

4 CCR 8092 (2004)

§ 8092. Brownfield Project Application Content

An Application shall include all of the following:

(a) The Applicant's name, address, telephone number, federal tax identification number, type of business or entity, the date the business or entity was established.

(b) Whether the Applicant qualifies as a Small Business.

(c) The identity of the owner and any operators of the Brownfield, including name, address, and telephone number.

(d) If the Applicant is not the owner of the Brownfield, evidence of:

(1) The Applicant's legal interest in the Brownfield;

(2) Permission of the owner of the Brownfield for the Applicant or the Applicant's agent(s) to have access to the Brownfield (governmental action already taken or that is expected to be taken prior to disbursement of loan proceeds to gain access or control of the Brownfield will be deemed to be permission to have access to the Brownfield); and

(3) Permission of the owner of the Brownfield for the Applicant or the Applicant's agent(s) to perform a Brownfield Project on the Brownfield (governmental action already taken or that is expected to be taken prior to disbursement of loan proceeds to gain access or control of the Brownfield will be deemed to be permission to perform a Brownfield Project on the Brownfield).

(e) Information regarding the Brownfield for which the Loan is being requested, including:

(1) A description of the Brownfield including:

(A) the location of the Brownfield;

(B) evidence of the Brownfield's location in an Economically Struggling Community, if applicable;

(C) a site layout that includes the location and dimensions; of any existing buildings, utilities, and other pertinent features, if available;

(D) the current use and zoning of the Brownfield;

(E) the current land uses and zoning of adjacent property and the surrounding neighborhood;

(F) identification of Public Infrastructure and its proximity to the Brownfield;

(G) previous use of the Brownfield;

(H) known and suspected Hazardous Material located at the Brownfield;

- (I) proposed reuse of the Brownfield, if known;
 - (J) the estimated time period for completion, components, and costs of the Brownfield Project; and
 - (K) the goals and objectives of and the benefit to the community from the Brownfield Project or development of the Brownfield.
- (2) Development timetable for the Brownfield.
 - (3) A description of obstacles to reuse of the Brownfield (e.g., regulatory issues, complex remediation, liability, and/or marketability).
 - (4) Identification of local regulatory and land use jurisdictions within which the proposed Brownfield Project is located.
 - (5) A description of community involvement and local government support for the Brownfield Project.
 - (f) A description of the Applicant's experience managing projects similar to the one proposed and the qualifications of key personnel involved.
 - (g) Identification of a person that meets the definition of an Independent Consultant that will perform the activities necessary to complete the Brownfield Project.
 - (h) Identification of the proposed Oversight Agency if the proposed Loan will be used to finance Planning for Remediation of Hazardous Material.
 - (i) Identification of potential funding sources for:
 - (1) Completion of the Brownfield Project.
 - (2) Development of the Brownfield.
 - (3) Repayment of the Loan.
 - (j) A description of requested Eligible Costs to be financed by the Loan.
 - (k) The requested Loan amount and term.
 - (l) Information demonstrating ability to provide Match for the Loan.
 - (m) Information regarding any past or current bankruptcies, loan defaults, foreclosures, convictions, or criminal, civil or administrative investigations, orders, proceedings, litigation, settlements, or judgments, by or involving the Borrower or to which Borrower is or was a party.
 - (n) A signed, notarized statement from the Applicant whereby the Applicant agrees to all of the following:
 - (1) To provide Application-related documentation to the Strategic Partner upon request;
 - (2) That the Application will be evaluated according to Authority regulations, and that a Loan is not an entitlement;
 - (3) That information submitted to the Strategic Partner or the Authority is subject to the California Public Records Act; and
 - (4) Under penalty of perjury, that all information provided to the Strategic Partner or the Authority is true and correct, and that the Applicant has an affirmative duty to notify the Strategic Partner or the Authority of changes causing information in the Application or other submittals to become false.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

4 CCR 8092

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order, including amendment of subsections (d)(2) and (d)(3), transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8093 (2004)

§ 8093. Application Availability, Submission and Strategic Partner Review

(a) Loan Applications shall be available from the Authority's staff or from any Strategic Partner. Applicants can obtain a list of Strategic Partners or a copy of the Application by contacting the Authority's staff at the following address: California Pollution Control Financing Authority, 915 Capitol Mall, Room 457, Sacramento, California, 95814 Attention: California Recycle Underutilized Sites (Cal ReUSE) Program, or by telephoning (916) 654-5610. The Application shall contain the information set forth in Section 8092. The Applicant shall submit one (1) complete and signed Application to a Strategic Partner.

(b) The Strategic Partner shall review each Application in accordance with the provisions of this Article 9. No later than forty-five (45) days following receipt of an Application, the Strategic Partner shall in writing either:

(1) Notify the Applicant that the Application is approved;

(2) Notify the Applicant that the Application is denied and the reasons for the denial; or

(3) Notify the Applicant if the Application remains incomplete and describe what additional information the Applicant needs to submit to complete the Application. If the Strategic Partner determines that any document submitted in the Application is not adequate, the Application shall be deemed incomplete.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8094 (2004)

§ 8094. Loan Approval and Commitment Letter

(a) Loan Approval.

(1) The Strategic Partner shall be authorized to approve an Application when:

- (A) The Application is complete and meets all of the requirements of Section 8091; and
- (B) Funds are available.

(2) The Strategic Partner shall give priority to Applications for Loans as follows:

- (A) First, to Brownfields located in Economically Struggling Communities;
- (B) Second, to Brownfields located in areas with existing Public Infrastructure; and
- (C) Third, to other Brownfields.

(b) Commitment Letter. If the Loan is approved, the Strategic Partner shall notify the Applicant by a letter committing the Authority to provide Loan funds so long as the Applicant strictly complies with the terms and conditions contained therein. The commitment letter shall include at least all of the following:

- (1) Name(s) of the Borrower and any guarantor.
- (2) Loan amount and term.
- (3) A description of Eligible Costs to be financed by the Loan.
- (4) Description of Match, including amount and type.
- (5) Interest rate and any required loan fees.
- (6) A requirement that any evidence described in Section 8092 as being expected prior to the disbursement of loan proceeds shall be received as a condition to disbursement of loan proceeds.
- (7) Disbursement process, including a statement that Loan proceeds shall be disbursed on a reimbursement basis.
- (8) Insurance requirements.
- (9) Conditions and covenants.
- (10) The date when the commitment expires.
- (11) A statement that the Authority reserves the right to modify or cancel the commitment upon failure of the Applicant to execute a Loan Agreement that includes all of the terms and conditions set forth in the commitment letter,

or if the Authority or the Strategic Partner becomes aware of any matter which, if known at the time of Loan review or approval, would have resulted in the Application not being approved. Such matters may include, but will not be limited to:

(A) A determination that the Application was prepared incorrectly, contains incorrect information or omits required information.

(B) Business circumstances that would negatively affect the Applicant's ability to repay the Loan.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order, including new subsection (b)(6) and subsection renumbering, transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8095 (2004)

§ 8095. Loan Terms

The terms and conditions of a Loan shall be set forth in a Loan Agreement executed by the Borrower and shall include, at a minimum, all of the following terms and conditions:

- (a) A fixed interest rate equal to the average earnings rate of the State's Surplus Money Investment Fund for the calendar year prior to the date the Loan is made;
- (b) A Loan amount not greater than one hundred twenty five thousand dollars (\$ 125,000) for Eligible Costs with respect to a Brownfield. For purposes of this subdivision, contiguous or related parcels included in a Brownfield Project that are owned or controlled by the same Borrower shall together be deemed to constitute one Brownfield;
- (c) A Loan term not to exceed thirty-six (36) months;
- (d) Principal and interest to become due and payable in full upon the earliest of:
 - (1) Issuance of either a grading permit or a building permit for the Brownfield
 - (2) Sale or transfer (including, without limitation, an option to purchase or a contract of purchase) of all or part of the Brownfield;
 - (3) The maturity date set forth in the Loan Agreement, which date shall not be more than thirty-six (36) months after the date of the Loan; or
 - (4) The occurrence of an event of default under the Loan Agreement.
- (e) Evidence that the cash portion of the Match will be met at closing of the Loan and a description of and acknowledgment of credit for any non-cash portion of the Match;
- (f) Disbursement and repayment procedures pursuant to Section 8096;
- (g) A provision that any unused Loan funds shall revert to the Authority;
- (h) Default provisions including, but not limited to, interest from and after the date of default at a rate of ten percent (10%) per annum;
- (i) Agreement to comply with the Authority's program statutes and regulations;
- (j) Agreement that the Borrower will defend, indemnify and hold harmless the Authority and the State, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the Loan, the Brownfield or this program, including but not limited to, any and all claims, losses, costs, damages, or liabilities arising from or related to the presence, release, threatened release, investigation or remediation of Hazardous Material of the Brownfield;

4 CCR 8095

(k) Agreement to comply with laws outlawing discrimination including, but not limited to those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position on a labor dispute, age, marital status, and denial of statutorily-required employment-related leave;

(l) Agreement that continued compliance with program requirements is the Borrower's responsibility;

(m) Agreement that if the Loan is used for Eligible Costs pursuant to Section 8090(k)(1) and/or Section 8090(k)(3), that the Borrower will cause the Independent Consultant to prepare a Final Report;

(n) Agreement that the Borrower will provide or cause to be provided to the Strategic Partner a copy of the Final Report within 30 days of completion of the Final Report;

(o) Agreement that the Borrower will comply with all Hazardous Waste Reporting Laws applicable to the Brownfield or resulting from the contents of the Final Report;

(p) Agreement that the Borrower will deliver to the Strategic Partner within 90 days after Borrower's receipt of the Final Report a certification to the Authority in writing and under penalty of perjury all of the following:

(1) That the Borrower is informed of and understands all Hazardous Waste Reporting Laws applicable to the Brownfield and the contents of the Final Report;

(2) Whether there was a reporting requirement under any of the Hazardous Waste Reporting Laws applicable to the Brownfield or resulting from the contents of the Final Report;

(3) That the Borrower has made all the reports required by the Hazardous Waste Reporting Laws applicable to the Brownfield or resulting from the contents of the Final Report in the manner and within the time periods required by such Hazardous Waste Reporting Laws; and

(4) To whom and when such report was made.

(q) Agreement that Borrower's failure to comply with any Hazardous Waste Reporting Law applicable to the Brownfield or resulting from the contents of the Final Report, or failure to deliver the certification required by Section 8095(p) within the time period required, will constitute an event of default under the Loan resulting in all of the principal and interest on the Loan becoming immediately due and payable.

(r) If the Loan is for Planning for Remediation of Hazardous Materials, agreement that upon entering into the Loan Agreement, the Borrower will identify an Oversight Agency that will oversee and approve the activities that constitute Planning for Remediation of Hazardous Materials;

(s) Agreement by the Borrower to comply with all applicable law, including but not limited to statutes, rules, regulations, administrative orders and agreements, and judicial orders or consent decrees that apply to the Brownfield, related to or arising from assessment, characterization and remediation of a Brownfield, including but not limited to those requiring the preparation of a description of Hazardous Material on the Brownfield and those requiring oversight and supervision to assure the adequacy of any Feasibility Study, Remedial Investigation or Remedial Action Plan by the Oversight Agency;

(t) Agreement that if the Borrower recovers damages from a person who is liable for the release, threatened release, presence or existence of a Hazardous Material at the Brownfield, any money so recovered shall be used first to repay the Loan, except that the Borrower shall be permitted to retain fees and costs incurred in recovering the damages; and

(u) Any other provision agreed to by the parties.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

4 CCR 8095

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order, including amendment of subsections (b), (d)(2) and (k), transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8096 (2004)

§ 8096. Conditions of Funds Disbursement, Funds Disbursement and Loan Repayment Procedures

(a) Conditions of Funds Disbursement. The Strategic Partner shall not disburse Loan funds unless all of the following conditions are met:

- (1) All funds for completing the Brownfield Project are obtained and available for use.
- (2) All terms and conditions contained in the commitment letter described in 8094(b) are satisfied;
- (3) Execution of a Loan Agreement, Promissory Note and any other documents, as required, and compliance with all conditions precedent to disbursement contained in, the Loan Agreement.

(b) Funds Disbursement. The Strategic Partner shall cause funds to be disbursed as follows:

- (1) The Borrower shall sign and submit to the Strategic Partner a signed invoice documenting the service or procedure performed from entities providing materials and services for Eligible Costs covered by the Loan Agreement.
- (2) Upon receipt of the signed invoice, the Strategic Partner, in its sole discretion, shall authorize the disbursement of Loan funds to the Borrower:

- (A) First, from the cash portion of the Match until depleted, and
- (B) Second, from the funds of the Authority committed by the Authority for the Loan.

(c) Loan Repayment Procedures. The Strategic Partner shall cause any Brownfield Project loan repayment proceeds received from the Borrower to be delivered promptly upon receipt by the Strategic Partner to the following entities in the following order:

- (1) First, to the Authority until the funds advanced by the Authority for the Loan, or a Forgiven Loan, are repaid in full, with interest, and
- (2) Second, to the Strategic Partner to repay any loan to the Borrower by the Strategic Partner in connection with the Brownfield Project, if applicable.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8097 (2004)

§ 8097. Loan Extensions, Loan Forgiveness and Conditions for Forgiven Loans

(a) Loan Extensions. Upon written request received from the Borrower, the maturity of a Loan may be extended by the Strategic Partner if both of the following conditions are met:

(1) The Borrower clearly demonstrates that it is unable to complete the Brownfield Project by the end of the Loan term, and

(2) The Borrower clearly demonstrates how the Brownfield Project can be completed in the additional time requested.

(b) Loan Forgiveness. Upon written request from the Borrower, a Loan may be forgiven by the Strategic Partner if the Borrower, acting reasonably and in good faith, fails to complete the Brownfield Project or proceed with development of the Brownfield.

(c) Conditions for Forgiven Loans. Any forgiveness of a Loan hereunder shall be conditioned on:

(1) The Borrower's execution of a written agreement whereby:

(A) The Borrower promises that in the event the Borrower subsequently causes (i) the issuance of either a grading permit or a building permit for the Brownfield or (ii) sells or transfers (including, without limitation, an option to purchase or a contract of purchase) all or part of the Brownfield, the Borrower will repay the forgiven balance of the Loan (and the Strategic Partner shall receive and deliver such funds in accordance with Section 8096(c)); and

(B) The Borrower promises that if it recovers damages from a person who is liable for the release, threatened release, presence or existence of a Hazardous Material at the Brownfield, any money so recovered shall be used first by the Borrower to repay the forgiven balance of the Loan, except that the Borrower shall be permitted to retain fees and costs incurred in recovering the damages.

(2) The Borrower's delivery of documentation to the Strategic Partner evidencing that the Borrower has complied with all applicable laws, including but not limited to statutes, rules, and regulations, administrative orders and agreements, judicial orders, and consent decrees that apply to the Brownfield and relate to or arise from the site assessment and characterization, Planning for Remediation of Hazardous Materials, and remediation of the Brownfield. Such documentation shall include evidence that the Borrower has complied with any applicable requirement to obtain oversight and approval from an Oversight Agency.

(3) The Borrower's delivery of the Final Report to the Strategic Partner as required by Section 8095(n).

(4) The Borrower's delivery to the Strategic Partner of the certification as required by Section 8095(p).

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order, including amendment of subsections (a) and (c)(1)(A), transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8098 (2004)

§ 8098. Strategic Partner Reports and Records Retention

(a) A Strategic Partner shall provide the following quarterly reports to the Authority:

(1) Applications Received Report. This report shall include the following information:

(A) A listing of identified Brownfield Projects for which Applications have been submitted and for which funding is anticipated during the next six months.

(B) Identification of whether proposed Brownfields are located in Economically Struggling Communities.

(C) Identification of whether the Strategic Partner is the Applicant.

(2) Request for Funds Report. This report shall include the following information for each Brownfield Project to be funded during the next three months:

(A) A description of the Brownfield Project.

(B) Identification of whether the Brownfield is located in an Economically Struggling Community.

(C) Identification of whether the Strategic Partner is the Applicant.

(D) Identification of whether the Applicant qualifies as a Small Business.

(E) Requested Loan amount for Brownfield Project.

(F) Description of Eligible Costs to be funded for the Brownfield Project.

(G) Proposed Loan term.

(H) Description of Match for the Brownfield Project including the source and amount of Match.

(I) Identification of total amount of loan funds requested for the quarter.

(3) Brownfields Projects Status Report. This report shall describe the current status of each Brownfield Project for which a Loan (including a Loan for which the Strategic Partner is the Borrower) remains outstanding including:

(A) A description of activities performed at the Brownfield for the previous three months.

(B) A statement of whether or not the Strategic Partner has received the Final Report and, if so, a summary of the Final Report that was received during the previous three months.

(C) A statement of whether or not the Strategic Partner has received the certification as required by Section 8095(p).

(4) Outstanding Loans Report. This report shall describe the current repayment status of every Loan (including a Loan where the Strategic Partner is the Borrower) including:

- (A) Name of Borrower.
- (B) Identification of whether the Borrower is a Small Business.
- (C) Identification of whether the Borrower is a Strategic Partner.
- (D) Name of Brownfield Project.
- (E) Street Address of the Brownfield.
- (F) Draw down on Match.
- (G) Current payments.
- (H) Total Loan repayment status.
- (I) If a Loan is extended:
 - (i) The date that the Loan was extended, and
 - (ii) The current Loan amount and term.
- (J) If a Loan is a Forgiven Loan:
 - (i) The date that the Loan was forgiven, and
 - (ii) The amount forgiven.
- (5) Other reports and documents as reasonably requested by the Authority.

(b) Brownfields Development Status Report. A Strategic Partner shall provide an annual report to the Authority that shall describe the current status of the development of each Brownfield for which a Loan (including a Loan where the Strategic Partner is the Borrower) was made including:

- (1) A description of the proposed use for the Brownfield.
- (2) A detailed description of development activities performed at the Brownfield for the previous year.
- (3) Upon completion of development of the Brownfield, a description of the final use for the property.

(c) Records Retention. A Strategic Partner shall retain the Application, all documents that were submitted by the Borrower with the Application, and all documents pertaining to the Loan and the Brownfield Project for at least six years after the later of the termination of the Loan, or the completion of actions and the resolution of all issues, that arise as a result of any litigation, claim, negotiation or audit concerning the Loan Agreement or an agreement executed pursuant to Section 8097(c)(1).

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order, including repealer of subsection (a)(1)(D), transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8099 (2004)

§ 8099. Technical Assistance

(a) Upon request of an Applicant or Borrower the Strategic Partner may provide Technical Assistance to assist in the development of a Brownfield Project.

(b) Technical Assistance provided by a Strategic Partner for the Brownfield Project may count as Match for the Brownfield Project, but may not be reimbursed with Loan funds.

(c) Unless a Strategic Partner is a governmental entity that is exercising its regulatory authority under other applicable laws, regulations, inter-agency agreements, or governmental programs, a Strategic Partner shall not engage in any actions that would constitute participation in the management of property as defined in *Section 25548.1 of the California Health and Safety Code* or in *42 U.S.C. Section 9601(20)(F)*.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8100 (2004)

§ 8100. Strategic Partner Eligibility and Selection Criteria

(a) A governmental agency or public or private entity shall be eligible to participate as a Strategic Partner and Strategic Partners will be selected by the Authority based upon the following eligibility and selection criteria:

- (1) Demonstrated ability to provide Technical Assistance to a Development Entity;
- (2) Demonstrated understanding of the economic and real estate development processes;
- (3) Demonstrated understanding of environmental assessment and remediation requirements;
- (4) Demonstrated understanding of Brownfield regulatory and reporting requirements; and
- (5) Demonstrated partnership experience.

(b) The services to be provided by a Strategic Partner pursuant to Section 8090(ah) hereof shall be provided as an independent contractor pursuant to a written agreement to be entered into by and between the Strategic Partner and the Authority.

(c) An entity may not act as a Strategic Partner as to any Brownfield for which such entity is a responsible party as defined by *Section 25323.5 of the California Health and Safety Code*. However, as to any such Brownfield, the entity may be an Applicant and Borrower, and the Authority shall be the Strategic Partner with respect to such Application and Loan.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will, be repealed by operation of law on the following day.

2. Certificate of Compliance as to 8-13-2001 order transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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4 CCR 8101 (2004)

§ 8101. Strategic Partner as Applicant and/or Borrower

The following shall apply in all cases where the Strategic Partner is the Applicant and/or the Borrower:

- (a) In the event that a Strategic Partner is an Applicant or a Borrower, the Authority shall be the Strategic Partner as to such Application and Loan.
- (b) If the Authority is the Strategic Partner, the Executive Director shall be authorized to:
 - (1) Determine whether the Applicant shall be eligible for a Loan pursuant to Section 8091 hereof.
 - (2) Review the Application and notify the Applicant pursuant to Section 8093 hereof.
 - (3) Approve the Loan and notify the Applicant pursuant to Section 8094 hereof.
 - (4) Cause funds to be disbursed to the Borrower pursuant to Section 8096 hereof.
 - (5) Determine whether a Loan shall be extended or forgiven pursuant to Section 8097 hereof.

AUTHORITY:

Note: Authority cited: *Section 44520, Health and Safety Code*. Reference: *Sections 44501, 44502, 44504.1, 44505, 44507, 44508, 44520, 44525.7, 44526(h), 44526(i), 44537.5, 44548(a) and 44548(b), Health and Safety Code*.

HISTORY:

1. New section filed 8-13-2001 as an emergency; operative 8-13-2001 (Register 2001, No. 33). Pursuant to *Health and Safety Code section 44520*, a Certificate of Compliance must be transmitted to OAL by 2-11-2002 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-13-2001 order transmitted to OAL 2-8-2002 and filed 3-21-2002 (Register 2002, No. 12).

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ARTICLE 10. SUSTAINABLE COMMUNITIES GRANT AND LOAN PROGRAM-GRANTS

4 CCR 8110 (2004)

§ 8110. Definitions

The following definitions shall govern construction of Article 10.

(a) "Alternative Funding Sources" means the Applicant's internal sources of funds typically used to fund projects similar to the Applicant's Project and other state, federal, local or private sources of funds that are be available for similar projects.

(b) "Applicant" means any county, city and county, or city applying for program funding. The Applicant may partner with a public entity including, but not limited to, a redevelopment agency or joint powers authority.

(c) "Application" means the information referred to in Section 8112.

(d) "Authority" means the California Pollution Control Financing Authority, organized and existing under and by virtue of Division 27 (commencing with *Section 44500*) of the *California Health and Safety Code*.

(e) "Economically Distressed" means high unemployment levels, low-income levels, and/or high poverty.

(f) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority.

(g) "Eligible Costs" means reasonable and necessary Project costs that may include, but not be limited to, costs associated with any of the following:

(1) The planning and implementation processes for programs, plans (e.g., general plans, or portions thereof; specific plans, or portions thereof; alternative transportation studies; finance plans; redevelopment plans; engineering studies; the hiring of consultants to assist in the planning process; or similar type expenses).

(2) Costs associated with funding projects such as a community center, park enhancements, or infrastructure improvements that are key elements of a comprehensive community or neighborhood sustainable development project.

(3) Costs associated with facilitating public involvement (e.g., public hearings, information meetings, or similar type activities) related to developing policies, programs and projects.

(4) Costs associated with hiring technical experts to identify, assess, and complete applications for state, federal and private economic assistance programs that fund sustainable development and sound environmental policies and programs.

(5) Travel, telephone, postage and similar administrative expenses directly related to the project.

(6) Staff time (including staff training expenses) directly related to the Project.

(h) "First Priority" means Applicants that establish a case that there exists a Lack of Resources to complete their Projects.

4 CCR 8110

- (i) "Grant" means a grant made in accordance with the procedures set forth in this Article 10.
- (j) "Grantee" means an Applicant whose Grant has been approved and has executed a Grant Agreement.
- (k) "Grant Agreement" means a written agreement for a Grant entered into between a Grantee and the Authority.
- (l) "Ineligible Cost" means funds for expenses associated with:
 - (1) Work completed prior to Grant funding.
 - (2) Replacement of otherwise existing sources of funding for existing staff positions.
- (m) "Infill Development" means development or redevelopment of unused, underutilized, or existing properties within established urban and/or rural neighborhoods or communities, where those neighborhoods or communities are already served with streets, water, sewer and other public services.
- (n) "Lack of Resources" means that Alternative Funding Sources are unavailable to fund all, or a portion, of the Project for which program funds are being sought as demonstrated by an Applicant pursuant to section 8112(d)(2) hereof.
- (o) "Outside Reviewer" means an individual that meets all of the following requirements:
 - (1) Does not have any direct or beneficial interest in real property located in any Project Area(s) included in an Application;
 - (2) Is not the owner or employee of, the holder of a management position in, or in receipt of or in expectation of the receipt of income from any entity located, or otherwise having any business or property interest in any Project Area(s) included in an Application;
 - (3) Does not accept, or agree to accept, any payment that is in any way contingent upon the outcome of a report, evaluation, assessment, analysis, or award of a Grant or Loan in connection with an Application.
- (p) "Project" means the Applicant's proposal for one or more of the following:
 - (1) Developing and implementing policies, programs and projects that reduce pollution hazards and the degradation of the environment within existing neighborhoods/communities;
 - (2) Assisting one or more California neighborhoods that are Economically Distressed;
 - (3) Promoting Infill Development.
- (q) "Project Area" means a defined geographical area for which an Applicant proposes a Project or which the Applicant demonstrates will benefit from the Project.
- (r) "Project Period" means a defined beginning and end date for implementation of the Project by which time all program funds must be expended.
- (s) "Sustainable Development" means a Project that meets one or more of the following objectives:
 - (1) Develops and implements growth policies, programs and projects that reduce pollution hazards and the degradation of the environment;
 - (2) Promotes Infill Development;
 - (3) Promotes economic development within Economically Distressed communities;
 - (4) Promotes land use and policies, programs and projects that support alternative transportation options;
 - (5) Ensures a proper mix of business and housing, including affordable housing, in communities and neighborhoods;
 - (6) Balances job growth with new housing;
 - (7) Encourages communities centered around civic spaces;
 - (8) Ensures more efficient, well-planned higher density use of land; and
 - (9) Protects environmental resources.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New article 10 (sections 8110-8117) and section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-10-2002 or emergency language will be repealed by operation of law on the following day.
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TITLE 4. BUSINESS REGULATIONS
DIVISION 11. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
ARTICLE 10. SUSTAINABLE COMMUNITIES GRANT AND LOAN PROGRAM-GRANTS

4 CCR 8111 (2004)

§ 8111. Funding Eligibility

- (a) An Applicant may be eligible to receive funding when the Authority determines that:
- (1) The Applicant has submitted an Application that meets the requirements of Section 8112.
 - (2) The Applicant proposes a Project;
 - (3) The funds are requested to finance Eligible Costs associated with a Project;
 - (4) The Applicant demonstrates the ability to gather likely sources of capital to complete the Project.
 - (5) The Applicant receives a minimum passing score as set forth in section 8113(d) hereof.
- (b) Applicants may submit only one Application for program funds.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-10-2002 or emergency language will be repealed by operation of law on the following day.
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4 CCR 8112 (2004)

§ 8112. Project Application Content

The Application shall include all of the following information:

- (a) An Application checklist that generally describes the type and order of information that must be provided to ensure that the Applicant submits a complete Application package.
- (b) An Application cover sheet with:
 - (1) The Project name;
 - (2) Applicant information including (a) Applicant name(s), address(es), telephone numbers and (b) contact person name, title and telephone numbers;
 - (3) Project location information including city, county, zip code and Project Area descriptions including Project site address(es), if applicable;
 - (4) Funding information including requested funding amount, type of funding requested (i.e., Grant and/or Loan), other non-program funding amount(s) and total cost of Project; and
 - (5) Applicant certification that declares under the penalty of perjury that the information contained in the Application, exhibits, and attachments is true and correct to the best of Applicant's knowledge and belief and that Applicant understands that misrepresentation may result in the cancellation of the approved funding, and other actions, which the Authority may take.
- (6) A statement that the Authority reserves the right to request additional information for its review.
- (c) A Project description that includes (a) a description of the Project's expected outcomes and benefits and (b) cross-references to any supporting documentation, such as plans, pictures, drawings or other relevant information, included with the Application.
- (d) An eligibility and funding priority worksheet that:
 - (1) Includes a description of which eligibility criteria the Project meets and how the Project qualifies under the criteria described in section 8110(p) hereof; and
 - (2) Includes a description of whether there exists a Lack of Resources to develop and implement sustainable development and other sound environmental policies, programs and projects. In order to receive funding priority, Applicants must make a case as to the reason(s) that Alternative Funding Sources are not available, or are insufficient, for the Project by describing:

4 CCR 8112

(A) any Alternative Funding Sources that may ordinarily be available for the Project and the actions that have been taken to access such Alternative Funding Sources for the Project and

(B) why Alternative Funding Sources are unavailable or are insufficient for the Project.

(e) Project evaluation information with supporting documentation that:

(1) Describes how the Project promotes one or more Sustainable Development objectives (75 points).

(2) Describes how the Project promotes economic development within Economically Distressed communities (30 points) including:

(A) whether the project creates, or assists in creating employment for existing residents;

(B) whether the project improves the infrastructure and or the quality of life of the community/neighborhood to enhance its economic competitiveness;

(C) whether the project builds on or establishes relationships with local employment and training entities (e.g. One Stop Career Center, Pilot Regional Collaborative under the Regional Workforce Preparation and Economic Development Act, Workforce Investment Board, the Employment Development Department, and others) to link local job seekers with employment opportunities.

(3) Describes how the Project incorporates creative approaches (15 points) including:

(A) whether the Project provides a creative solution to an existing or a projected problem or demonstrates a new or innovative approach to planning and/or implementation;

(B) whether the Project involves multiple jurisdictions (more than one county or city, or federal, state, regional, or local government); and

(C) a description of any other creative features of the expected outcome(s) of the Project.

(4) Describes the likelihood that the Project's expected outcomes will be implemented (15 points) including:

(A) Identification and discussion of the financial feasibility, the practicality, the timing and the probability of implementing the Project's expected outcomes (e.g., the plan, idea or strategy being advanced by the Project); and

(B) Identification of community support for the Project's expected outcomes. This may include letters of support from community interests and co-sponsors that specifically reference community needs and the expected impacts of the Project. It may also include news articles, petitions, and any other representative information.

(5) A description of how the Project demonstrates applicability to other communities by identifying the applicability and transferability of the proposed Project elements to other communities (15 points).

(f) Project budget sheet that identifies all Eligible Costs and Ineligible Costs for the proposed Project including:

(1) Identifying the cost category;

(2) A description of the activities associated with the cost;

(3) Indication of whether the cost will be paid from program funding and/or Alternative Funding Sources;

(4) Indication of total cost(s) for that category.

(g) A detailed Project timeline for implementing and completing the proposed Project. The timeline should identify the activities, benchmarks, and products to be produced.

(h) Complete resumes of all staff and/or consultants who will be involved in implementing the Project described in the Application.

(i) Supporting Project documentation (maps, surveys, reports, etc.).

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-10-2002 or emergency language will be repealed by operation of law on the following day.
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TITLE 4. BUSINESS REGULATIONS
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4 CCR 8113 (2004)

§ 8113. Application Availability and Submission, Project Selection Process and Project Evaluation Process

(a) Application Availability. The Application shall contain the information set forth in Section 8112.

(b) Application Submission. Applications must be submitted in duplicate to the Authority by the application deadlines published by the Authority. The first Application deadline shall occur in June 2002; thereafter, Application deadlines shall occur at least on a semi-annual basis until program funding is exhausted.

(c) Project Selection Process. Authority staff shall:

(1) First determine if the Application meets the First Priority for funding.

(2) Next screen applications that meet the First Priority threshold to determine:

(A) Applicant eligibility, and

(B) Project eligibility.

(3) Evaluate and rank on a competitive basis Applications designated First Priority per the criteria in section (d) hereof. Authority staff may include additional Outside Reviewers to assist with scoring Applications.

(4) Screen and evaluate Applications not designated as First Priority as follows:

(A) After Applications that satisfy the First Priority designation are evaluated and ranked per subsection (c)(3) hereof and

(B) If Authority staff's funding recommendations to the Authority board for First Priority Applicants do not exceed the maximum funding availability for the program. If additional funding is available, the remaining Applications will be screened to determine Applicant and Project eligibility and will be evaluated as described in subsection (c)(3) above.

(d) Project Evaluation Process. Authority staff shall evaluate and score Applications on a competitive basis. Each Application will be evaluated based on how well the project:

(1) Demonstrates Sustainable Development-75 points (50% of Score);

(2) Contributes to economical development within Economically Distressed communities-30 points (20% of Score);

(3) Incorporates creative approaches-15 points (10% of Score);

(4) Demonstrates likelihood that the Project's expected outcome(s) will be implemented-15 points (10% of Score);
and

(5) Demonstrates applicability to other communities-15 points (10% of Score).

Projects must receive a minimum score of 70% (i.e., receive at least 105 of 150 points) to receive funding. Those Projects that receive a score of less than 70% will be ineligible to receive any funding.

(e) All Applications that receive a minimum score of 70% as evaluated by Authority staff shall be submitted to the Executive Director who will determine which Projects to recommend to the Authority for funding based on the Authority staff's evaluation. The Executive Director shall notify the Applicant by fax that either:

- (1) The Applicant's Project will be recommended for grant funding to the Authority; or
- (2) The Applicant's Project will not be recommended for grant funding to the Authority.

(f) The Authority staff may invite Outside Reviewers to review, evaluate and score Applications pursuant to this section. To the extent Outside Reviewers are utilized, no fewer than two Outside Reviewers will review any one Application.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-10-2002 or emergency language will be repealed by operation of law on the following day.

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4 CCR 8114 (2004)

§ 8114. Authority Approval and Commitment Letter

(a) Authority Approval. No later than ninety (90) days following receipt of an Application, the Executive Director will determine which Projects to recommend to the Authority for grant funding pursuant to section 8113(e) hereof. The Authority shall make the final determination as to which Applications will receive program funding. The Authority shall notify each Applicant whether or not its Application has been approved for funding.

(b) Commitment Letter. If funding is approved, the Authority shall notify the Applicant by a letter committing the Authority to provide Grant funds so long as the Applicant strictly complies with the terms and conditions contained therein. The commitment letter shall include all of the following:

- (1) Name(s) of the Grantee.
- (2) Grant amount and term.
- (3) A description of Eligible Costs to be financed.
- (5) Disbursement process, including a statement that proceeds shall be disbursed on a reimbursement basis.
- (6) Conditions and covenants.
- (7) The date when the commitment expires.
- (8) Such other items as may relate specifically to a Project and/or Applicant.

(9) A statement that the Authority reserves the right to modify or cancel the commitment upon failure of the Applicant to execute a Grant Agreement that includes all of the terms and conditions set forth in the commitment letter, or if the Authority becomes aware of any matter which, if known at the time of Application review or approval, would have resulted in the Application not being approved.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-10-2002 or emergency language will be repealed by operation of law on the following day.

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4 CCR 8115 (2004)

§ 8115. Grant Agreements

The terms and conditions of a Grant shall be set forth in a Grant Agreement executed by the Borrower and shall include all of the following terms and conditions:

- (a) A Grant amount not greater than three hundred fifty thousand dollars (\$ 350,000) for Eligible Costs with respect to a Project;
- (b) A Grant disbursement period not to exceed thirty-six (36) months from the execution date of the Grant Agreement;
- (c) Disbursement procedures pursuant to Section 8116;
- (d) A provision that any unused Grant funds shall revert to the Authority;
- (e) Agreement to comply with the Authority's program statutes and regulations;
- (f) Agreement that the Grantee will defend, indemnify and hold harmless the Authority and the State, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the Grant, the Project or this program;
- (g) Agreement to comply with laws outlawing discrimination including, but not limited to those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave;
- (h) Agreement that continued compliance with program requirements is the Grantee's responsibility;
- (i) Agreement that the Grant shall only be used for Eligible Costs as described in the Grantee's Application;
- (j) Any other provision agreed to by the parties.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

4 CCR 8115

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-10-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-13-2002 order transmitted to OAL 7-31-2002 and filed 9-12-2002 (Register 2002, No. 37).

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ARTICLE 10. SUSTAINABLE COMMUNITIES GRANT AND LOAN PROGRAM-GRANTS

4 CCR 8116 (2004)

§ 8116. Conditions of Funds Disbursement, Funds Disbursement

(a) Conditions of Funds Disbursement. The Authority shall not disburse funds unless the Applicant has executed a Grant Agreement and any other documents, as required to verify to the satisfaction of the Authority any information asserted in the Applicant's Application, and is in compliance with all conditions precedent to disbursement contained in the aforementioned agreement.

(b) Funds Disbursement. The Authority shall cause funds to be disbursed as follows:

(1) For Eligible Costs covered by the Grant Agreement, the Grantee shall sign and submit to the Authority either:

(a) a signed invoice documenting the service or procedure performed from entities providing materials and services,
or

(b) documentation of pending expenditure to receive funds on a prospective basis

(2) Upon receipt of the documentation described in subsection (b)(1) hereof, the Authority, in its sole discretion, shall authorize the disbursement of funds to the Grantee.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: Sections 44501, 44502, 44526(g) and; 44526(i), Health and Safety Code.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-10-2002 or emergency language will be repealed by operation of law on the following day.

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4 CCR 8117 (2004)

§ 8117. Reports, Certificate of Completion and Records Retention

(a) Reports. A Grantee shall provide quarterly status reports to the Authority that shall include:

- (1) A description of activities performed for the Project for the previous three months;
- (2) An estimated time schedule for completion of the Project;
- (3) A description of remaining work to be completed for the Project; and
- (4) A description of whether the Project is meeting the proposed budget and if not the reasons for any differences and what actions will be taken to insure that the Project will be completed.

(b) Certificate of Completion. Upon completion of the Project, a Grantee shall certify to the Authority that the Project is complete and provide a final report that describes the result(s) of the Project.

(c) Records Retention. Recipients shall retain all program and financial data necessary to substantiate the purposes for which the funds were spent for a period of three years after the certification of completion of the project has been submitted. Recipients shall provide supporting documentation (e.g. progress reports, project work plan, program budget, receipts, etc.) upon request to the Authority staff.

AUTHORITY:

Note: Authority cited: *Section 44520(a), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency;; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-10-2002 or emergency language will be repealed by operation of law on the following day.
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TITLE 4. BUSINESS REGULATIONS
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ARTICLE 11. SUSTAINABLE COMMUNITIES GRANT AND LOAN PROGRAM-LOANS

4 CCR 8118 (2004)

§ 8118. Definitions

The following definitions shall govern construction of Article 11.

(a) "Alternative Funding Sources" means the Applicant's internal sources of funds typically used to fund projects similar to the Applicant's Project and other state, federal, local or private sources of funds that are be available for similar projects.

(b) "Applicant" means any county, city and county, or city applying for program funding. The Applicant may partner with a public entity including, but not limited to, a redevelopment agency or joint powers authority.

(c) "Application" means the information referred to in Section 8120.

(d) "Authority" means the California Pollution Control Financing Authority, organized and existing under and by virtue of Division 27 (commencing with *Section 44500*) of the *California Health and Safety Code*.

(e) "Borrower" means an Applicant whose Loan has been approved and who has executed a Loan Agreement.

(f) "Economically Distressed" means high unemployment levels, low-income levels, and/or high poverty.

(g) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority.

(h) "Eligible Costs" means reasonable and necessary Project costs that may include, but not be limited to, costs associated with any of the following:

(1) The planning and implementation processes for programs, plans (e.g., general plans, or portions thereof; specific plans, or portions thereof; alternative transportation studies; finance plans; redevelopment plans; engineering studies; the hiring of consultants to assist in the planning process; or similar type expenses).

(2) Costs associated with funding projects such as a community center, park enhancements, or infrastructure improvements that are key elements of a comprehensive community or neighborhood sustainable development project.

(3) Costs associated with facilitating public involvement (e.g., public hearings, information meetings, or similar type activities) related to developing policies, programs and projects.

(4) Costs associated with hiring technical experts to identify, assess, and complete applications for state, federal and private economic assistance programs that fund sustainable development and sound environmental policies and programs.

(5) Travel, telephone, postage and similar administrative expenses directly related to the project.

(6) Staff time (including staff training expenses) directly related to the Project.

4 CCR 8118

(i) "First Priority" means Applicants that establish a case that there exists a Lack of Resources to complete their Projects.

(j) "Ineligible Cost" means funds for expenses associated with:

- (1) Work completed prior to loan funding.
- (2) Replacement of otherwise existing sources of funding for existing staff positions.

(k) "Infill Development" means development or redevelopment of unused, underutilized, or existing properties within established urban and/or rural neighborhoods or communities, where those neighborhoods or communities are already served with streets, water, sewer and other public services.

(l) "Lack of Resources" means that Alternative Funding Sources are unavailable to fund all, or a portion, of the Project for which program funds are being sought as demonstrated by an Applicant pursuant to section 8120(d)(2) hereof.

(m) "Loan" means a loan made in accordance with the procedures set forth in this Article 11.

(n) "Loan Agreement" means a written agreement for a Loan entered into between a Borrower and the Authority.

(o) "Outside Reviewer" means an individual that meets all of the following requirements:

(1) Does not have any direct or beneficial interest in real property located in any Project Area(s) included in an Application

(2) Is not the owner or employee of, the holder of a management position in, or in receipt of or in expectation of the receipt of income from any entity located, or otherwise having any business or property interest in any Project Area(s) included in an Application;

(3) Does not accept, or agree to accept, any payment that is in any way contingent upon the outcome of a report, evaluation, assessment, analysis, or award of a Grant or Loan in connection with an Application.

(p) "Project" means the Applicant's proposal for one or more of the following:

(1) Developing and implementing policies, programs and projects that reduce pollution hazards and the degradation of the environment within existing neighborhoods/communities;

(2) Assisting one or more California neighborhoods that are Economically Distressed;

(3) Promoting Infill Development.

(q) "Project Area" means a defined geographical area for which an Applicant proposes a Project or which the Applicant demonstrates will benefit from the Project.

(r) "Project Period" means a defined beginning and end date for implementation of the Project by which time all program funds must be expended.

(s) "Sustainable Development" means a Project that meets one or more of the following objectives:

(1) Develops and implements growth policies and programs that reduce pollution hazards and the degradation of the environment;

(2) Promotes Infill Development to revitalize communities;

(3) Promotes economic development within Economically Distressed communities;

(4) Promotes land use policies, programs and projects that support alternative transportation options;

(5) Ensures a proper mix of business and housing, including affordable housing, in communities and neighborhoods;

(6) Balances job growth with new housing;

(7) Encourages communities centered around civic spaces;

(8) Ensures more efficient, well-planned higher density use of land; and

(9) Protects environmental resources.

AUTHORITY:

Note: Authority cited: *Sections 44520(a) and 44520(c), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New article 11 (sections 8118-8125) and section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). A Certificate of Compliance must be transmitted to OAL by 11-12-2002 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-13-2002 order transmitted to OAL 7-31-2002 and filed 9-12-2002 (Register 2002, No. 37).

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TITLE 4. BUSINESS REGULATIONS
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4 CCR 8119 (2004)

§ 8119. Funding Eligibility

- (a) An Applicant may be eligible to receive funding when the Authority determines that:
- (1) The Applicant has submitted an Application that meets the requirements of Section 8120.
 - (2) The Applicant proposes a Project;
 - (3) The funds are requested to finance Eligible Costs associated with a Project;
 - (4) The Applicant demonstrates the ability to gather likely sources of capital to complete the Project.
 - (5) The Applicant receives a minimum passing score as set forth in section 8121 hereof.
- (b) Applicants may submit only one Application for program funds.

AUTHORITY:

Note: Authority cited: *Sections 44520(a) and 44520(c), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). Pursuant to *Health and Safety Code section 44520(c)* a Certificate of Compliance must be transmitted to OAL by 11-12-2002 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction adding inadvertently omitted 1 (Register 2002, No. 37).
3. Certificate of Compliance as to 5-13-2002 order transmitted to OAL 7-31-2002 and filed 9-12-2002 (Register 2002, No. 37).

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4 CCR 8120 (2004)

§ 8120. Project Application Content

The Application shall include all of the following information:

- (a) An Application checklist that generally describes the type and order of information that must be provided to ensure that the Applicant submits a complete Application package.
- (b) An Application cover sheet with:
 - (1) The Project name;
 - (2) Applicant information including (a) Applicant name, address, telephone numbers and (b) contact person name, title and telephone numbers;
 - (3) Project location information including city, county, zip code, Project Area descriptions and Project site address(es), if applicable;
 - (4) Funding information including requested funding amount, type of funding requested (i.e., Grant and/or Loan), other non-program funding amount(s) and total cost of Project; and
 - (5) Applicant certification that declares under the penalty of perjury that the information contained in the Application, exhibits, and attachments is true and correct to the best of Applicant's knowledge and belief and that Applicant understands that misrepresentation may result in the cancellation of the approved funding, and other actions, which the Authority may take.
- (6) A statement that the Authority reserves the right to request additional information for its review.
- (c) A Project description that includes (a) a description of the Project's expected outcomes and benefits and (b) cross-references to any supporting documentation, such as plans, pictures, drawings or other relevant information, included with the Application.
- (d) An eligibility and funding priority worksheet that:
 - (1) Includes a description of which eligibility criteria the Project meets and how the Project qualifies under the criteria described in section 8118(p) hereof; and
 - (2) Includes a description of whether there exists a Lack of Resources to develop and implement sustainable development and other sound environmental policies, programs and projects. In order to receive funding priority, Applicants must make a case as to the reason(s) that Alternative Funding Sources are not available, or are insufficient, for the Project by describing:

4 CCR 8120

(A) any Alternative Funding Sources that may ordinarily be available for the Project and the actions that have been taken to access such Alternative Funding Sources for the Project and

(B) why Alternative Funding Sources are unavailable or are insufficient for the Project.

(e) Project evaluation information with supporting documentation that:

(1) Describes how the Project promotes one or more Sustainable Development objectives (75 points).

(2) Describes how the Project promotes economic development within Economically Distressed communities (30 points) including:

(A) whether the project creates, or assists in creating employment for existing residents;

(B) whether the project improves the infrastructure and or the quality of life of the community/neighborhood to enhance its economic competitiveness;

(C) whether the project builds on or establishes relationships with local employment and training entities (e.g. One Stop Career Center, Pilot Regional Collaborative under the Regional Workforce Preparation and Economic Development Act, Workforce Investment Board, the Employment Development Department, and others) to link local job seekers with employment opportunities.

(3) Describes how the Project incorporates creative approaches (15 points) including:

(A) whether the Project provides a creative solution to an existing or a projected problem or demonstrates a new or innovative approach to planning;

(B) whether the Project involves multiple jurisdictions (more than one county or city, or federal, state, regional, or local government); and

(C) a description of any other creative features of the expected outcome(s) of the Project.

(4) Describes the likelihood that the Project's expected outcomes will be implemented (15 points) including:

(A) Identification and discussion of the financial feasibility, the practicality, the timing and the probability of implementing the Project's expected outcomes (e.g., the plan, idea or strategy being advanced by the Project).

(B) Identification of community support for the Project's expected outcomes. This may include letters of support from community interests and co-sponsors that specifically reference community needs and the expected impacts of the Project. It may also include news articles, petitions, and any other representative information.

(5) A description of how the Project demonstrates applicability to other communities by identifying the applicability and transferability of the proposed Project elements to other communities (15 points).

(f) Project budget sheet that identifies all Eligible Costs and Ineligible Costs for the proposed Project including:

(1) Identifying the cost category;

(2) A description of the activities associated with the cost;

(3) Indication of whether the cost will be paid from program funding and/or Alternative Funding Sources;

(4) Indication of total cost(s) for that category.

(g) A detailed Project timeline for implementing and completing the proposed Project. The timeline should identify the activities, benchmarks, and products to be produced.

(h) Complete resumes of all staff and/or consultants who will be involved in implementing the Project described in the Application.

(i) Supporting Project documentation (maps, surveys, reports, etc.).

AUTHORITY:

Note: Authority cited: *Sections 44520(a) and 44520(c), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). Pursuant to *Health and Safety Code section 44520(c)* a Certificate of Compliance must be transmitted to OAL by 11-12-2002 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-13-2002 order transmitted to OAL 7-31-2002 and filed 9-12-2002 (Register 2002, No. 37).

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4 CCR 8121 (2004)

§ 8121. Application Availability and Submission, Project Selection Process and Project Evaluation Process

(a) Application Availability. The Application shall contain the information set forth in Section 8120.

(b) Application Submission. Applications must be submitted in duplicate to the Authority by the application deadlines published by the Authority. The first Application deadline shall occur in June 2002; thereafter, Application deadlines shall occur at least on a semi-annual basis until program funding is exhausted.

(c) Project Selection Process. Authority staff shall:

(3) First determine if the Application meets the First Priority for funding.

(4) Next screen applications that meet the First Priority threshold to determine:

(A) Applicant eligibility, and

(B) Project eligibility.

(3) Evaluate and rank on a competitive basis Applications designated First Priority per the criteria in section (d) hereof. Authority staff may include additional Outside Reviewers to assist with scoring Applications.

(4) Screen and evaluate Applications not designated as First Priority as follows:

(A) After Applications that satisfy the First Priority designation are evaluated and ranked per subsection (c)(3) hereof and

(B) if Authority staff's funding recommendations to the Authority board for First Priority Applicants do not exceed the maximum funding availability for the program. If additional funding is available, the remaining Applications will be screened to determine Applicant and Project eligibility and will be evaluated as described in subsection (c)(3) above.

(d) Project Evaluation Process. Authority staff shall evaluate and score Applications on a competitive basis. Each Application will be evaluated based on how well the project:

(1) Demonstrates Sustainable Development-75 points (50% of Score);

(2) Contributes to economical development within Economically Distressed communities-30 points (20% of Score);

(3) Incorporates creative approaches-15 points (10% of Score);

(4) Demonstrates likelihood that the Project's expected outcome(s) will be implemented-15 points (10% of Score);

(5) Demonstrates applicability to other communities-15 points (10% of Score); and

Projects must receive a minimum score of 70% (i.e., receive at least 105 of 150 points) to receive funding. Those Projects that receive a score of less than 70% will be ineligible to receive any funding.

(e) All Applications that receive a minimum score of 70% as evaluated by Authority staff shall be submitted to the Executive Director who will determine which Projects to recommend to the Authority for funding based on the Authority staff's evaluation. The Executive Director shall notify the Applicant by fax that either:

- (1) The Applicant's Project will be recommended for loan funding to the Authority;, or
- (2) The Applicant's Project will not be recommended for loan funding to the Authority.

(f) The Authority staff may invite Outside Reviewers to review, evaluate and score Applications pursuant to this section. To the extent Outside Reviewers are utilized, no fewer than two Outside Reviewers will review any one Application.

AUTHORITY:

Note: Authority cited: *Sections 44520(a) and 44520(c), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). Pursuant to *Health and Safety Code section 44520(c)* a Certificate of Compliance must be transmitted to OAL by 11-12-2002 or emergency language will be repealed by operation of law on the following day.

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4 CCR 8122 (2004)

§ 8122. Authority Approval and Commitment Letter

(a) Authority Approval. No later than ninety (90) days following receipt of an Application, the Executive Director will determine which Projects to recommend to the Authority for loan funding pursuant to section 8121(e) hereof. The Authority shall make the final determination as to which Applications will receive program funding. The Authority shall notify each Applicant whether or not its Application has been approved for funding.

(b) Commitment Letter. If funding is approved, the Authority shall notify the Applicant by a letter committing the Authority to provide Loan funds so long as the Applicant strictly complies with the terms and conditions contained therein. The commitment letter shall include all of the following:

- (1) Name(s) of the Borrower.
- (2) Loan amount and term.
- (3) A description of Eligible Costs to be financed.
- (4) Disbursement process, including a statement that proceeds shall be disbursed on a reimbursement basis.
- (5) Conditions and covenants.
- (6) The date when the commitment expires.
- (7) Such other items as may relate specifically to a Project and/or Applicant.

(8) A statement that the Authority reserves the right to modify or cancel the commitment upon failure of the Applicant to execute a Loan Agreement that includes all of the terms and conditions set forth in the commitment letter, or if the Authority becomes aware of any matter which, if known at the time of Application review or approval, would have resulted in the Application not being approved.

AUTHORITY:

Note: Authority cited: *Sections 44520(a) and 44520(c), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). Pursuant to *Health and Safety Code section 44520(c)* a Certificate of Compliance must be transmitted to OAL by 11-12-2002 or emergency language will be repealed by operation of law on the following day.

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4 CCR 8123 (2004)

§ 8123. Loan Agreements

The terms and conditions of a Loan shall be set forth in a Loan Agreement executed by the Borrower and shall include all of the following terms and conditions:

- (a) A Loan amount not greater than one hundred fifty thousand dollars (\$ 150,000) for Eligible Costs with respect to a Project;
- (b) A Loan disbursement period not to exceed thirty-six (36) months from the execution date of the Loan Agreement;
- (c) A Loan term not to exceed sixty (60) months;
- (d) A Loan interest rate that bears zero (0%) interest;
- (e) Full repayment of the Loan will be due at maturity with no prepayment penalties;
- (f) Disbursement procedures pursuant to Section 8124;
- (g) A provision that any unused Loan funds shall revert to the Authority;
- (h) Agreement to comply with the Authority's program statutes and regulations;
- (i) Agreement that the Borrower will defend, indemnify and hold harmless the Authority and the State, and all officers, trustees, agents and employees of the same, from and against any and all claims, losses, costs, damages, or liabilities of any kind or nature, whether direct or indirect, arising from or relating to the Loan, the Project or this program;
- (j) Agreement to comply with laws outlawing discrimination including, but not limited to those prohibiting discrimination because of sex, race, color, ancestry, religion, creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave;
- (k) Agreement that continued compliance with program requirements is the Borrower's responsibility;
- (l) Agreement that the Loan shall only be used for Eligible Costs as described in the Borrower's Application;
- (m) Any other provision agreed to by the parties.

AUTHORITY:

Note: Authority cited: *Sections 44520(a) and 44520(c), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). Pursuant to *Health and Safety Code section 44520(c)* a Certificate of Compliance must be transmitted to OAL by 11-12-2002 or emergency language will be repealed by operation of law on the following day.
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4 CCR 8124 (2004)

§ 8124. Conditions of Funds Disbursement, Funds Disbursement

(a) Conditions of Funds Disbursement. The Authority shall not disburse funds unless the Applicant has executed a Loan Agreement and any other documents, as required to verify to the satisfaction of the Authority any information asserted in the Applicant's Application, and is in compliance with all conditions precedent to disbursement contained in the aforementioned agreement.

(b) Funds Disbursement. The Authority shall cause funds to be disbursed as follows:

(1) For Eligible Costs covered by the Loan Agreement, the Borrower shall sign and submit to the Authority either:

(a) a signed invoice documenting the service or procedure performed from entities providing materials and services,
or

(b) documentation of pending expenditure to receive funds on a prospective basis

(2) Upon receipt of the documentation described in subsection (b)(1) hereof, the Authority, in its sole discretion, shall authorize the disbursement of funds to the Borrower.

Note: Authority cited: *Sections 44520(a) and 44520(c), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). Pursuant to *Health and Safety Code section 44520(c)* a Certificate of Compliance must be transmitted to OAL by 11-12-2002 or emergency language will be repealed by operation of law on the following day.

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4 CCR 8125 (2004)

§ 8125. Reports, Certificate of Completion and Records Retention

(a) Reports. A Borrower shall provide a quarterly status report to the Authority that shall include:

- (1) A description of activities performed for the Project for the previous three months;
- (2) An estimated time schedule for completion of the Project;
- (3) A description of remaining work to be completed for the Project; and
- (4) A description of whether the Project is meeting the proposed budget and if not the reasons for any differences and what actions will be taken to insure that the Project will be completed.

(b) Certificate of Completion. Upon completion of the Project, a Grantee shall certify to the Authority that the Project is complete and provide a final report that describes the result(s) of the Project.

(c) Records Retention. Recipients shall retain all program and financial data necessary to substantiate the purposes for which the funds were spent for a period of three years after the certification of completion of the project has been submitted. Recipients shall provide supporting documentation (e.g. progress reports, project work plan, program budget, receipts, etc.) upon request to the Authority staff.

AUTHORITY:

Note: Authority cited: *Sections 44520(a) and 44520(c), Health and Safety Code*. Reference: *Sections 44501, 44502, 44526(g) and 44526(i), Health and Safety Code*.

HISTORY:

1. New section filed 5-13-2002 as an emergency; operative 5-13-2002 (Register 2002, No. 20). Pursuant to *Health and Safety Code section 44520(c)* a Certificate of Compliance must be transmitted to OAL by 11-12-2002 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-13-2002 order transmitted to OAL 7-31-2002 and filed 9-12-2002 (Register 2002, No. 37).