

400 Delaware Economic Development Office

402 Procedures Governing The Delaware Strategic Fund

1.0 Enabling Legislation

The Delaware Strategic Fund (the "Fund") was established pursuant to 29 **Del.C.** §§5027-5029 (the "Act"), and appropriated to the Delaware Economic Development Office on behalf of The Delaware Economic Development Authority. The Fund was created to facilitate the development of new programs to retain, attract and expand Delaware employment. The following regulations (the "Regulations") have been adopted by the Authority pursuant to its authority in §5029(a) of the Act and 29 **Del.C.** §5054(e)(1).

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2.0 Purpose

The purpose of these Regulations is to establish criteria for the administration of the Fund and for Fund Eligibility. The Regulations contain procedures governing the process for applying to the Authority for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the Authority's approval or disapproval of an application for economic assistance under the Fund.

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3.0 Definitions

Unless otherwise indicated below, all capitalized terms used herein shall have the meaning ascribed to such terms in 29 **Del.C.** §5052.

The terms defined in 1.0 of this Regulation shall have the meanings set forth for such terms therein.

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

"Application Evaluation Report" shall mean a comprehensive written evaluation of the merits of an application, and which employs the standards set forth in Section 7.0 herein.

"Application" means a certified application made to the Authority on such form or forms, together with all relevant attachments, and signed by an authorized officer or representative of the Applicant, as the Authority may, in its sole discretion, require in connection with administration of the Fund.

"Applicant" means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, not for profit corporations or other legal entities, including public or governmental bodies as well as natural persons for which a Project is undertaken or proposed to be undertaken, and all subsidiaries, parents, and associated entities of such Applicant.

"Assistance" shall mean any funding of a loan, grant, or equity investment from the Strategic Fund.

"Authority" shall mean The Delaware Economic Development Authority.

"Brownfield" means any vacant, abandoned or underutilized real property, the development or redevelopment of which may be hindered by the reasonably held belief that the real property may be environmentally contaminated.

"Brownfield Assistance" shall have the meaning set forth in 10.0 hereof.

"Certified Brownfield" means a Brownfield that the Secretary of the Department of Natural Resources and Environmental Control has certified as a Brownfield pursuant to the regulations promulgated under 7 **Del.C.** §9104(b)(2)p.

"Chairperson" means the Chairperson of the Authority.

"Council" means the Council on Development Finance.

"DEDO" shall mean the Delaware Economic Development Office.

"Eligible Project" shall have the meaning set forth in 10.1.2 hereof.

"Equity Investment" shall have the meaning set forth in 5.3 hereof.

"Final Approval" means the final approval of an Application by the Chairperson, and as set forth in Section 8.3 hereof.

"Grant" shall have the meaning set forth in 5.2 hereof.

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"**Loan**" shall have the meaning set forth in 5.1 hereof.

"**Project**" means the specific intended use of the proceeds from a Loan, Grant or Equity Investment.

"**Recapture**" shall mean an obligation to repay all or part of any Funding.

"**SBIR Program**" shall have the meaning set forth in 9.0 hereof.

"**STTR Program**" shall have the meaning set forth in 9.0

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4.0 Fees

- 4.1 Application Fees: The Authority shall charge and collect such fees and charges as it shall determine to be reasonable for the use of its services consistent with 29 **Del.C.** §5054 (e)(11). Such fees shall be reviewed annually by the Authority, and submitted for recommendation and approval by the Council. Fee schedules shall be posted on the DEDO website and a copy shall be provided with the application. The current fee schedule is attached to this regulation as Exhibit A.
- 4.2 Modification Fees: In any event in which a recipient of funding requests a modification to a previously awarded Application, Loan or Grant, a non-refundable fee shall be due at the time of approval. Modification fees shall be reviewed annually by the Authority and posted on the DEDO website.
- 4.3 Payment of Fees: All fees paid pursuant to this section shall be in the form of a check made payable to "The Delaware Economic Development Authority."
- 4.4 Waiver of Fees: The foregoing fees shall, unless otherwise waived by the Authority, be paid with respect to all financial assistance granted by the Authority.

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5.0 Forms of Assistance

- 5.1 Loans: The Authority is empowered to make direct loans to Applicants (a "Loan").
- 5.1.1 Loan proceeds can be used for, but are not limited to, working capital, renovation, construction, or any other type of improvements to roads, utilities and related infrastructure and public facilities, the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation of machinery, equipment and buildings and relocation expenses.
- 5.1.2 Interest Rate – The Authority shall determine reasonable interest rates for Loans made to an Applicant, and consistent with the Fund purpose.
- 5.1.3 Maturity – Loans shall have a reasonable maturity depending upon the purpose of the loan as working capital, the purchase or renovation of real estate, or other use, and consistent with the Fund purposes.
- 5.1.4 Repayment – Loans will be amortized and repaid to the Authority on a monthly basis. Any amortization of Loan repayment other than monthly principal and interest shall be at the sole discretion of the Authority, and consistent with the Fund purpose.
- 5.1.5 Collateral Provisions – The Loan shall be collateralized to the satisfaction of the Authority, consistent with standard commercial underwriting procedures, to determine such collateralization. In the case of a privately held company, personal guarantees from owners with ownership of twenty percent (20%) or greater will be required, unless waived by the Authority.
- 5.1.6 Mandatory Provisions in Closing Documents – All closing documents for a Loan shall require, if applicable, the Applicant to provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral with the Authority listed as loss payee, as its interests may appear, and public liability insurance policies. Additionally, standard non-appropriation language, and indemnification language, shall be required.
- 5.1.7 Annual Reporting – The Applicant shall, for a period equal to the term of the Loan, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. This reporting period may be extended or reduced, as appropriate, by the Authority in its sole discretion. Each Applicant shall also submit an annual statutory report, as required pursuant to 29 **Del.C.** §5053(k), report to the Authority no later than June 30, during the term of the loan.
- 5.2 Grants: The Authority is empowered to make grants to Applicants (a "Grant").

- 5.2.1 Grant proceeds can be used for, but are not limited to, working capital, renovation, construction, or any other type of improvements to roads, utilities and related infrastructure and public facilities, the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation of machinery, equipment, and buildings, and relocation expenses.
- 5.2.2 Recapture Provision – The Authority shall determine, in its sole discretion, those circumstances in which a Grantee must repay all or part of a Grant (“Recapture”). Such Recapture may include, but not be limited to, substantial or complete cessation of operations by the Applicant, or failure to reach employment or other benchmarks. The Recapture obligation shall be consistent with the Fund purposes, and should extend for the number of years necessary to realize the objectives of the Grant (“Recapture Period”).
- 5.2.3 Post-Grant Period – Annual Reporting – The Applicant shall, for a period equal to the Recapture Period of the Grant, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. This reporting period may be extended or reduced, as appropriate, by the Authority in its sole discretion. Each Applicant shall also submit an annual statutory report, as required pursuant to 29 **Del.C.** §5053(k), report to the Authority no later than June 30 of each of the term years of the loan.
- 5.3 Equity Investment: The Authority is empowered to purchase common or preferred stock, membership units, and/or convertible debt from an Applicant (“Equity Investment”).
 - 5.3.1 Proceeds of an Equity Investment can be used for, but are not limited to, financing expenses (such as laboratory equipment), working capital, laboratory and office space, patent filings, or prototyping.
 - 5.3.2 Post-Investment Period – Annual Reporting – The Applicant shall, for a period equal to the Investment, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. This reporting period may be extended or reduced, as appropriate, by the Authority in its sole discretion. Each Applicant shall also submit an annual statutory report, as required pursuant to 29 **Del.C.** §5053(k), report to the Authority no later than June 30 of each of the term years of the loan.

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6.0 Application Procedure

- 6.1 Before submitting an Application, the Applicant should consult with DEDO to determine if the Project meets Fund eligibility.
- 6.2 Eligibility Standards
 - 6.2.1 To be eligible for Assistance, a Project must serve a public purpose by maintaining or expanding employment in the State, by maintaining, attracting or diversifying business and industry in the State, and/or by maintaining or increasing its tax base. Also, the Applicant must be able to demonstrate to the satisfaction of the Authority that financial assistance from the State is necessary to effectuate the outcome of the Project.
 - 6.2.2 The following projects do not qualify for Assistance:
 - 6.2.2.1 Private speculative real estate ventures;
 - 6.2.2.2 Projects which do not attract or retain employment opportunities;
 - 6.2.2.3 Restaurants and professional office buildings;
 - 6.2.2.4 Refinancing of existing debt; and,
 - 6.2.2.5 Funding projects located outside the State.
- 6.3 Applications. Applicant shall submit a completed original Application concerning the Project to the Authority for review, together with the twelve (12) copies and the non-refundable Application Fee. All applications must be signed by persons authorized to bind the Applicant. Requests for confidential treatment for Applicant information may be made pursuant to The Policies and Procedures Regarding FOIA Procedures, 8 **DE Admin. Code**, Section 1500, Part 6.0., <http://regulations.delaware.gov/AdminCode/title8/1500.shtml#TopOfPage>. No application will be reviewed by the Authority until it is complete to the satisfaction of the Authority. Applicants may obtain Application forms by contacting the Director of Capital Resources, Delaware Economic

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Development Office, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271 / Fax (302) 739-5749, or through the Office's website at <http://dedo.delaware.gov/>.

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7.0 Evaluation Process

- 7.1 Upon determination that the Application is complete, DEDO will evaluate the Project based upon some or all of the following criteria:
 - 7.1.1 Visitation to the Applicant's place of business, which may take place prior to the Application as a part of the meeting to determine eligibility.
 - 7.1.2 Analysis of historical and projected financial statements and a comparison to industry peers.
 - 7.1.3 An independent industry study (using source material such as RMA Annual Statement Studies), comparing the Applicant's projections to the study, and considering the short term and long term outlook for the industry.
 - 7.1.4 Contact with the Applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timelines of delivery, length of the relationship, likelihood of the relationship being continued, and customer's opinions of the Applicant's management.
 - 7.1.5 Contact with the Applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of Applicant's management.
 - 7.1.6 Contact with the Applicant's bank(s) to ascertain credit history and obtain an opinion of the Applicant's management.
 - 7.1.7 An analysis of collateral available to secure any requested financing as to the adequacy of amount, quality, condition and marketability.
 - 7.1.8 Independent credit investigations of the Applicant and its principals, which may include judgment and lien searches.
 - 7.1.9 Independent inquiries about the Applicant and its principals with other agencies of the State, other states, or the United States.
- 7.2 After completing the evaluation, a determination shall be made regarding the merits of the request, the adequacy of the collateral available to secure the requested financing, if applicable, and, if applicable, the likelihood of repayment.
- 7.3 If a positive determination is made, the requested financing will be presented to the Chairperson for preliminary approval.

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8.0 Approval Process

- 8.1 Timing: DEDO shall use its reasonable best efforts to complete its review of the Application and to forward the Application to the Chairperson for preliminary approval or disapproval within sixty (60) days from the date it deems an Application complete.
- 8.2 Submission to Council: Upon preliminary approval by the Chairperson, an Application and an Applicant Evaluation Report shall be submitted to the Council for review, and the Council shall make a recommendation with respect to the Application to the Chairperson.
- 8.3 Final Approval and Findings: Upon recommendation by the Council, the Application shall be submitted to the Chairperson for consideration and final approval or disapproval. If approved, such approval shall be final ("Final Approval"). The Authority shall make the findings and determinations required by 29 Del.C. §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:
 - 8.3.1 Employment Standard: The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making a Grant, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of

the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

- 8.3.2 Abandonment Standard: When applying the "employment standard" set forth in 8.3.1 above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a Grant in a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.
- 8.3.3 Capability Standard; Adherence to Law: In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.
- 8.3.4 Business Standard: In making findings and determinations with respect the capital investment in a Project, the Authority will consider capital investment made and to be made in the proposed Project. If the Project involves an Agricultural Business or a Commercial Business, as those terms are defined in the Act, the Project must require a capital investment of at least ten thousand dollars (\$10,000), which funds, including the amount of Grant will be available or expended on the date that the Authority provides such Grant. The term "capital investment" shall be applied in accordance with generally accepted accounting principles.
- 8.3.5 Finality; Change in Circumstances: Final Approval shall constitute official action on the part of the Authority demonstrating its intent to issue the approved Assistance. Final Approval may be withdrawn at any time prior to the disbursement of Assistance, if the Authority determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, and such adverse change did not come to the Authority's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.
- 8.4 Final Approval will be effective for a period not to exceed one (1) year from the last date of the Council meeting(s) to review the Project prior to such Final Approval, and all funds committed for a Project must be completely dispersed by the Authority within that time. The Authority, in its sole discretion, may make limitations or grant extensions with respect to this one-year period.
- 8.5 The Applicant shall be issued a term letter outlining the terms and conditions of the Final Approval. When the term letter has been accepted by the Applicant and returned to the Authority together with any required fees, and all required documentation is prepared in form and content satisfactory to the Authority, a closing is scheduled and financial assistance is made available to the Applicant.

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9.0 Transition Grant Assistance

- 9.1 Authority: Grant funding pursuant to the Delaware Technical Innovation Program created pursuant to 29 **Del.C.** Sec. 5035, shall be administered by DE DO through the Strategic Fund, and these regulations shall be applicable to all applications for Small Business Innovation Research Program, ("SBIR Program") and Small Business Technology Transfer Program, ("STTR Program") , collectively ("Transition Grant").
- 9.2 Purpose: A Transition Grant permits an Applicant to maintain its staff and continue its research pending SBIR or STTR Program Phase II approval, which may take as long as nine months after the submission of an SBIR or STTR Program Phase II proposal. A Transition Grant may be used to help cover the salaries of personnel after completion of Phase I and before Phase II funds are available. In addition, a Transition Grant may be used to help defray expenses connected with scientific research, patent search and applications, strategic and business plan development, market research, product planning and product development. Capital equipment and construction or modifications of facilities are not covered.

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- 9.3 Transition Grant Approval and Standards: The Authority shall make the findings and determinations required by 29 **Del.C.** §5055, and Section 10.2 herein with respect to the Applicant and the Project. The Authority shall make the following additional findings with regard to Transition Grant awards:
- 9.3.1 Applicant has certified that as of the date of application to DEDO for Transition Grant funding that Applicant: (i) has been granted an SBIR Program or STTR Program Phase I award; (ii) has a pending application to the appropriate federal agency for a SBIR Program or STTR Program Phase II grant; and (iii) has received no actual funding for Phase II funding.
- 9.3.2 Applicant's principal place of business is in the State. In order to meet this standard, the Applicant shall demonstrate to the Authority that its Delaware operation is either its sole operation or its primary business location.
- 9.3.3 Applicant's research will benefit the State economy. In order to meet this standard, the Applicant shall demonstrate to the Authority that the SBIR or STTR Project will maintain or provide gainful employment within the State. The Authority's review will include, but will not be limited to, the wage scale applicable to persons to be employed as a result of the research project, the economic situation in the State, the impact of the project on the tax base of the State, and of the county or municipality in which the project is to be located, and the expected impact that the research project will have on the development of new economic activity within the State.
- 9.3.4 Applicant is a "small business" within the meaning of 29 **Del.C.** sec. 5035 (3). In order to meet this standard, an authorized officer or principal of the Applicant shall certify to the Authority that the Applicant maintains a full-time equivalent of not more than one hundred (100) employees.
- 9.4 SBIR Program and STTR Program Grant Limitations: The Authority may award a matching grant of up to a maximum of Fifty Thousand Dollars (\$50,000) per application. The Authority may not award more than five (5) SBIR Grants to an Applicant within ten (10) years of the date of a completed application for SBIR Grant assistance. Additional Awards may be granted by the Authority upon a showing of good cause, but the Authority may, in its discretion, require repayment of such additional awards. An Award may be made, at the sole discretion of the Authority, in a lump sum or in installments. The specific conditions under which the Authority shall make an Award to an Applicant shall be set forth in a commitment letter between the Authority and the Applicant.
- 9.5 Post-Award Documentation: The following documentation shall be required of all Applicants receiving Awards:
- 9.5.1 The Applicant shall, for a period of five (5) years following the funding of a Grant, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. This reporting period may be extended or reduced, as appropriate, by the Authority in its sole discretion. Each Applicant shall also submit an annual statutory report, as required pursuant to 29 **Del.C.** §5053(k), report to the Authority no later than June 30 of each of the term years of the loan.
- 9.5.2 Notification of Phase II SBIR Program or STTR Program Phase II application grant results no more than ten (10) days after notice to Applicant that the SBIR Program or STTR Program Phase II Grant application is approved or denied.

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10.0 Brownfield Assistance

- 10.1 Program Description.
- 10.1.1 The Authority is empowered to make financial assistance in the form of matching grants to Applicants for the costs of conducting environmental assessments and remediation at Certified Brownfield sites ("Brownfield Assistance").
- 10.1.2 The maximum amount of Brownfield Assistance by the Authority with respect to any single Certified Brownfield shall be the lesser of (a) one hundred thousand dollars (\$100,000), or (b) fifty percent (50%) of the total costs of environmental assessment and remediation with respect to that Certified Brownfield (an "Eligible Project"). The Authority may, in its sole discretion, limit the amount of Brownfield Assistance for any Eligible Project to any amount less than one hundred thousand dollars (\$100,000) or fifty percent (50%) of environmental assessment and remediation at the Eligible Project. The Authority may not award

more than one million dollars (\$1,000,000) of Brownfield Assistance, in aggregate, during any fiscal year of the State.

10.2 Eligibility Standards.

10.2.1 The following criteria will be used to determine eligibility for Brownfield Assistance:

- 10.2.1.1 The proposed investment should have the potential to serve a public purpose by maintaining or expanding employment in the State by maintaining, expanding, or diversifying business and industry in the State, and/or maintaining or increasing its tax base.
- 10.2.1.2 Since Brownfield Assistance is in the form of matching grants, the Applicant shall demonstrate to the satisfaction of the Authority that funds are available for environmental assessment and remediation expenses at the Eligible Project that will equal or exceed the amount of Brownfield Assistance requested.
- 10.2.1.3 Because Eligible Projects must be Certified Brownfields, the Applicant must submit with its Application the written certification of the Eligible Project as a Brownfield issued by the Secretary of the Department of Natural Resources and Environmental Control.

10.2.2 The following expenses or types of real property do not qualify for Brownfield Assistance:

- 10.2.2.1 Expenses for environmental assessment and remediation incurred prior to January 16, 2001.
- 10.2.2.2 Expenses for environmental assessment which are considered by the Authority, in its sole discretion, as normal and ordinary in the course of any financing or real estate transfer transaction or Phase One assessments.
- 10.2.2.3 Any site with respect to any portion of which enforcement action has been initiated under 7 **Del.C.** Ch. 63, Ch. 74 or §9101; 42 U.S.C. § 6901 et seq.; or 42 U.S.C. § 9606 or § 9607.
- 10.2.2.4 Sites which are owned by a governmental unit of the State.
- 10.2.2.5 Sites located outside the State.

10.3 Project Approval Standards.

10.3.1 Findings: As a precondition to approving Brownfield Assistance, the Authority shall make the findings and determinations required by 29 **Del.C.** §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

- 10.3.1.1 Capability Standard; Adherence to Law: In determining whether the Project may assist in creating or retaining employment in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Eligible Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any proposed operator or principal user of the Eligible Project.
- 10.3.1.2 Operator and User Standard: An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Eligible Project. The Authority shall apply the same standards with respect to the operators and principal users of the Eligible Project as are applied to the Applicants, unless the Applicant establishes good reason to make the findings and determinations with respect to the Applicant alone.

10.3.2 Recapture Provision: The Authority shall determine, in its sole discretion, appropriate recapture provisions for each Applicant under which the Applicant may be required to repay some or all of the Brownfield Assistance granted under this section 10.

10.3.3 Post-Grant Period; Annual Reporting: Unless waived or amended by the Authority in its sole discretion, the Applicant shall, within ninety (90) days after completing the environmental assessment and/or remediation at the Eligible Project, submit to the Authority a written report setting forth the total costs for management and labor, equipment, sampling and analysis and the removal and disposal of hazardous waste or other materials at the Eligible Project.

