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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

38 N.J.R. 4503(a)

Adopted Amendments: *N.J.A.C. 19:30-6.7; and 19:31-3.1, 3.2, 8.2 through 8.10, and 8.12*

Adopted New Rules: *N.J.A.C. 19:31-8.4 and 8.8*

Administrative Rules

Fees

Fee Waiver

Authority Assistance Programs

Direct Loan Program

Program Description; Eligibility Standards

Hazardous Discharge Site Remediation Fund

Definitions; Eligibility; Terms of Financial Assistance; Amount of Financial Assistance and Grants; Priority System for Financial Assistance and Grants; Non-profit Pilot Program; Application for Financial Assistance and Grants; Evaluation Process for Financial Assistance and Grants; Approval Process for Financial Assistance and Grants; Disbursement of Financial Assistance and Grants; Attorney General Review and Public Record

Proposed: July 17, 2006 at *38 N.J.R. 3001(a)*.

Adopted: September 18, 2006 by the New Jersey Economic Development Authority, Caren Franzini, Chief Executive Officer.

Filed: September 18, 2006 as R.2006 d.369, **without change**.

Authority: *N.J.S.A. 34:1B-1* et seq.

Effective Date: October 16, 2006.

Expiration Date: July 22, 2010, *N.J.A.C. 19:30* and *19:31*.

Summary of Public Comment and Agency Response:

COMMENT: B. Sachau opposes the following proposed amendments: fee waiver; increasing the New Market loan to a maximum of \$ 25 million per project from 10 million dollars; imposition of a one time \$ 1,000 New Markets loan monitoring fee and five percent management fee; the creation of a \$ 5 million pilot program under the Hazardous Discharge Site Remediation Fund (HDSRF); and increasing the assistance allowed to municipalities under that program from two million dollars to three million dollars per year.

RESPONSE: Rejected. The Authority is a self-financed entity that does not receive public funding to support its operations or programs. Operations are supported by the fees and interest the Authority charges applicants to its programs and other interest earnings. The Authority will establish and maintain its program with existing financial resources and has received the approval of its Board of Directors, as authorized by *N.J.S.A. 34:1B-1* et seq., to approve loans under the New Markets program and assess various fees at the amounts indicated. In certain hardship instances the Authority reserves the right to waive fees as proposed.

With regards to the proposed amendments under the HDSRF, these changes have been approved by the New Jersey Legislature and implement P.L. 1993, c. 139 as amended and signed into effect by Acting Governor Albio Sires in September, 2005.

Federal Standards Statement

The rules at *N.J.A.C. 19:31-3.1* and *3.2*, as amended, are subject to Federal standards; however, the requirements of the amendments are the same as those imposed pursuant to the Community Renewal Tax Relief Act of 2000 (P.L. 106-544) and Section 45 of the Internal Revenue Service Code, and do not exceed those standards. There are no other Federal Standards or requirements applicable to the adopted amendments and new rules.

Full text of the adoption follows:

19:30-6.7 Fee waiver

The Chief Executive Officer may, with the approval of the members, waive certain fees as described in this subchapter, upon demonstration by the applicant that the imposition of the fee would impose an undue financial hardship. The members may delegate to a Director, with the concurrence of the Chief Executive Officer, Chief Operating Officer or Senior Vice President, authority to waive a loan commitment fee; and may delegate to a Director, authority to waive late fees when the cause for the late fee is beyond the control of the borrower. The Chief Executive Officer, with the approval of the members, may waive, postpone or decrease bond application and closing fees for municipal governmental agency(s) or State agency projects. In the case of State agency projects, such waiver, postponement or decrease shall be in accordance with the directives of the State Treasurer regarding the specific State agency projects.

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) (No change.)

(b) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of \$ 750,000 for fixed asset financing and \$ 500,000 for working capital.

1.-4. (No change.)

(c)-(f) (No change.)

(g) For the Authority's Direct Loan Program, the applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate as set forth in (g)1 below or a variable interest rate as provided in (g)2 below.

1. Fixed Rate Interest:

i.-iii. (No change.)

2.-3. (No change.)

(h) The term of a fixed asset or working capital loan is a maximum of 10 years, although the repayment schedule is usually for a shorter time based on the applicant's ability to repay. Smart Growth Predevelopment and Brownfield Redevelopment loans will have a maximum term of three years. The New Jersey Growth Fund term is a maximum of 10 years, and may allow for interest only payments for apportionment of the term, or for interest and payment deferrals, with the repayment schedule to be determined on revenue and operational milestone achievement.

(i)-(k) (No change in text.)

(l) For New Markets Loans:

1. The maximum amount of total financing for a New Markets loan is \$ 10 million, except for projects that provide extraordinary economic development benefits when the maximum amount of total financing for a New Markets loan is \$ 25 million.

2. The rate for loans shall be fixed at three percent and shall be interest only for at least the first seven years of the term of the loan.

3. New Markets loans will have terms of no less than seven years and may be up to 10 years.

4. For New Markets loans, the projects must be located within areas designated for smart growth land use development and designated by the New Jersey Development and Redevelopment Plan as in Planning Areas One or Two or is a designated center or endorsed plan. Additionally, projects must be located in communities and census tracts as approved by the Community Development Financial Institutions Fund (CDFI) as described in (l)4i through iii below and must have at least one of the characteristics described in (l)5 below.

i. A poverty rate of at least 20 percent;

ii. In the case of a tract not located within a Metropolitan area as defined by the United States Census, where the median income family income for such tract does not exceed 80 percent of the Statewide median family income; or

iii. In the case of a tract located within a Metropolitan area, where the median family income for such tract does not exceed 80 percent of the greater of Statewide median income or the Metropolitan area median family income.

5. Additionally, New Markets loans must be located in at least one of the following types of designated areas:

i. CDFI Hot Zone, Empowerment Zone, Renewal Community, HOPE VI Redevelopment area or Small Business Administration HUB Zone;

ii. A brownfield redevelopment area, locally designated redevelopment area, or New Jersey Urban Enterprise Zone;

iii. A census tract with an unemployment rate of 1.5 times the national average; or

iv. A census area with a poverty rate greater than 30 percent or with median incomes of less than 60 percent of the area median income.

6. In addition to any interest charges on a New Markets loan, the Authority shall also require the payment of additional fees, including a one-time monitoring fee of \$ 1,000 and a management fee of five percent of the loan amount, with the exception of non-profit borrowers that will be charged a 3.5 percent management fee.

19:31-3.2 Eligibility standards

(a)-(f) (No change.)

SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

19:31-8.2 Definitions

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

"Act" means P.L. 1993, c. 139, as amended and supplemented.

"Applicant" means a municipality, county, redevelopment entity, company, firm, non-profit organization, an individual, corporation, partnership, or other private business entity which has been determined by the Department to be eligible for financial assistance or a grant under the Fund.

...

"Brownfield development area" means an area that has been so designated by the Department, in writing, pursuant to Section 7 of P.L. 1993, c. 139 as amended.

"Brownfield site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

"Department" means the Department of Environmental Protection.

...

"Innocent party" means a person who:

1. Acquired the real property prior to December 31, 1983 and continues to own the real property at least until the Authority renders final approval to the grant;
2. Demonstrates that the hazardous substance or hazardous waste that was discharged at the real property was not used by that person, or by any person that had permission to use the site from the applicant; and
3. Certifies that the applicant or any person that had permission to use the site from the applicant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

...

"Non-profit organizations" mean 501(c)3 corporations pursuant to Section 501(c) 3 of the *federal Internal Revenue Code*, 26 U.S.C. §501(c)3, that are exempt from taxation pursuant to *section 501(a) of the Federal Internal Revenue Code*, 26 U.S.C. §501(a).

"Person" means any individual, corporation, company, partnership, firm, or other private business entity and shall not include non-profit organizations.

...

"Public entities" means municipalities, counties and, as defined in this section, redevelopment entities.

...

"Redevelopment entity" means any redevelopment entity authorized to exercise government powers pursuant to section 4 of P.L. 1992, c. 79 (*N.J.S.A. 40A:12A-4*).

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation or natural resources, or both.

...

19:31-8.3 Eligibility

(a) Financial assistance from the Fund may be made for eligible projects to public entities for:

1. Implementation of remedial action on contaminated real property; and
2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose in imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

(b) Grants from the Fund may be made for eligible projects to public entities for:

1. Preliminary assessment, site investigation, or remedial investigation of a contaminated site;
2. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property to be used for recreation and conservation purposes, provided that such use is included in the comprehensive plan for the development or redevelopment of the real property and a permanent restriction regarding development and preserving such use is recorded and indexed with the deed in the registry of deeds for the county in which the real property is located;
3. Matching grants of up to 50 percent of the costs of remedial action on contaminated real property to be used for affordable housing pursuant to *N.J.S.A. 52:27D-301* et seq.;
4. Matching grants of up to 25 percent of the project costs, in a total amount not to exceed \$ 250,000, to public entities which propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action; and
5. In a brownfield development area, for preliminary assessment, site investigation, remedial investigation and remedial action on contaminated real property. An ownership interest in the real property shall not be required; however, any grant awarded for remedial action on real property not owned by the public entity shall be subject to the lien provisions set forth in *N.J.A.C. 19:31-8.4*.

(c) Financial assistance from the Fund may be made for eligible projects to persons for:

1. Remediation of real property located in a qualifying municipality, as defined in *N.J.S.A. 52:27D-178*;
2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;
3. Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the *N.J.A.C. 7:26C*, and who have not been ordered or directed to perform the remediation by the Department or by a court pursuant to Section 27b(3) of the Act; and
4. Persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted.

(d) Grants from the Fund may be made for eligible projects to persons for:

1. Persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person is an innocent party, a grant may be up to 50 percent of the remediation costs, but shall not exceed the total grant amount of \$ 1,000,000; and
2. Matching grants of up to 25 percent of the project costs incurred after receipt of the application by the Department, in a total grant amount not to exceed \$ 250,000 to qualifying persons who propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action.

(e) Preconditions to eligibility are as follows:

1. For public entities:

i. Except for remediation grants made pursuant to (b)5 above, public entities shall either hold a tax sale certificate on the real property; have acquired the real property through foreclosure or other similar means; or have acquired the real property through voluntary conveyance, or have passed a resolution or ordinance or other appropriate document to acquire it through voluntary conveyance for the purpose of redevelopment or for recreation and conservation purposes. Regarding the third precondition above, the document authorizing the real property acquisition may also provide that, should good faith negotiations fail, the public entity may choose to exercise its right of eminent domain in order to acquire title to the real property. Additionally, there must have been a discharge, or there is currently a suspected discharge, of a hazardous substance or hazardous waste on the real property.

ii. Except for grant awarded pursuant to (b)2, 3 or 5 above, no grant or financial assistance shall be awarded for a remedial action until the public entity actually owns the real property.

iii. No grant shall be awarded unless the public entity has adopted a comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated real property, or can demonstrate to the Authority that a realistic opportunity exists that the real property will be developed or redeveloped within three years from the completion of the remediation.

2. No financial assistance or grant from the Remediation Fund shall be rendered to a person or any public entity that, at the time of application, is in violation of an administrative or judicial order, judgment or consent agreement regarding violation or threatened violation of an environmental law regarding the subject real property, unless the violation, fee, penalty or assessment is currently being contested by the applicant in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform the required remediation activities.

3. Financial assistance from the Fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of the remediation and may be rendered only for that amount of the cost of remediation for which the person cannot establish a remediation funding source. An applicant for financial assistance or a grant shall certify to the Department and to the Authority that it cannot establish a remediation funding source for all or part of the remediation costs. This requirement shall not apply to public entities or to persons who are not required to establish a remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remedial action, persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation.

(f) The determination of eligibility will be made by the Department in accordance with Sections 28 through 31 of the Act.

19:31-8.4 Lien provision

Any expenditure of grant monies by a public entity for a remedial action in a brownfield development area for real property in which the public entity does not have an ownership interest shall constitute a debt of the real property owner to the fund. The authority shall cause to be filed in the county recording office of the county in which the real property

is located a notice of lien listing the name of the real property owner, a description of the real property subject to the remedial action and an identification of the amount of the grant awarded from the fund. The notice of lien shall have priority over all other claims or liens which have been filed against the real property, except as provided in the act. The lien shall be removed upon transfer of ownership of the real property to the public entity that expended grant monies for remedial action on that real property.

19:31-8.5 Financial assistance: term; interest rate; transfer of title

(a) (No change.)

(b) Loans to public entities shall bear an interest rate equal to two points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate shall be no lower than three percent. Loans to persons shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, with a minimum floor of five percent.

(c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable. Notwithstanding the foregoing, the unpaid balance of the loan that is transferred by devise or succession shall not become immediately payable in full, and loan repayments shall be made by the new title holder of the real property.

19:31-8.6 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable remediation costs, except that the cumulative maximum amount of financial assistance to a person in any calendar year, for one or more properties, shall be \$ 1,000,000.

(b) Financial assistance and grants to any one public entity shall not exceed \$ 3,000,000 in any calendar year, except as provided in (c) below.

(c) The Authority may award an additional amount of up to \$ 2,000,000 of financial assistance and grants in any calendar year to any one public entity for the remediation of real property in a brownfield development area.

(d) The total cumulative amount of matching grants awarded to public entities for remedial action of real property to be used for recreation and conservation purposes shall not exceed \$ 5,000,000 in any calendar year.

(e) (No change in text.)

(f) The amount of financial assistance or grant awarded shall be based upon a scope of work for remediation which is in compliance with *N.J.A.C. 7:26D, 7:26E, 7:26B* and 7:14B as applicable.

(g) The amount of a grant for costs of a remedial action shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances do not allow for residential use.

19:31-8.7 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule in the following order of priority:

1. Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; and

2. Sites in areas designated as Planning Area 1, Planning Area 2, designated centers, or areas receiving plan endorsement as designated pursuant to the "State Planning Act," section 1 through 12 of P.L. 1985, c. 398 (*N.J.S.A. 52:18A-196 et seq.*), sites that the Brownfields Redevelopment Task Force, established pursuant to section 5 of P.L. 1997, c. 278 (*N.J.S.A. 58:10B-23*), determines are of immediate economic development potential, and sites in brownfield development areas.

3. The Chief Executive Officer of the Authority shall, from time to time review the allocation of moneys in the Fund and the requirements of applicants for money from the Fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

19:31-8.8 Non-profit pilot program

In accordance with the Act, an allocation from the Fund in an amount not to exceed \$ 5,000,000 shall be set aside for a Non-Profit Pilot Program. Under this Pilot Program, grants may be made for eligible projects to non-profit organizations for the purpose of funding preliminary assessment, site investigation and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the Brownfields and Contaminated Site Remediation Act, *N.J.S.A. 58:10B-1.1* to 3.1, shall apply to the award of grants to non-profit organizations under this section.

19:31-8.9 Application for financial assistance and grant

(a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source, if applicable.

(b) (No change.)

(c) The applicant will be given priority for financial assistance and grants based on the date of receipt by the Authority of a completed application, subject to any priority given under *N.J.A.C. 19:31-8.7*.

(d) (No change.)

(e) If the applicant fails to file the additional information within the 30-day period, the filing date for the application shall be the date the additional information is received by the Authority, for those applications relating to sites that are not within a priority category enumerated in *N.J.A.C. 19:31-8.7*.

(f)-(h) (No change.)

19:31-8.10 Evaluation process for financial assistance and grants

(a) When all of the required information is received, the Authority will perform its own credit evaluation based upon applicable criteria as determined by the Authority, including:

1. Visitation to the applicant's place of business, or real property which is the subject of the application;

2.-8. (No change.)

9. For public entities, all Local Finance Board requirements must be satisfied.

(b) (No change.)

(c) If a positive determination is made, the requested financial assistance or grant shall be presented to the Members for approval.

19:31-8.11 Approval process for financial assistance and grants

(a) Only the Members can approve financial assistance or a grant, except that Authority staff may approve a request for grant or financial assistance as delegated to them by the Authority Members.

(b)-(c) (No change.)

(d) If there has been no veto, a formal commitment letter, award closing package, notice of approval of financial assistance, or grant, is issued to the applicant.

1. The notice of approval will contain all material terms, conditions and collateral required by the Authority and will include personal guarantees of owners of 10 percent or more of the applicant and corporate, partnership or limited liability company guarantees of any companies related to the applicant. There may be a requirement for collateral apart from the applicant's collateral to secure the guarantees.

(e) Within 90 calendar days for a person, or within 180 calendar days for a public entity, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority within the requisite time frame, a list of closing instructions shall be mailed to the applicant or public entity or its designated representative. The Authority's commitment shall terminate and the Authority shall have no further obligation in connection with an application if the notice of approval is not signed and returned to the Authority, together with the applicable fees, within 120 days of its delivery or month's end, whichever is later for public entities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants. In addition, in the event that the financing is not closed on or before 90 days from the date of acceptance for public entities and 180 days from the acceptance date for other applicants, the Authority's obligation to provide financing shall terminate and the applicant shall be required to submit a new application. Upon receipt of a written request, the Authority, in consultation with the Department, may consider an extension of time.

(g) (No change.)

19:31-8.12 Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant with a certification from the contractor or consultant that the requested moneys will be spent or have been spent in accordance with a Department approved scope of work and a certification from the applicant that it is in full compliance with all of the terms and conditions of the assistance agreement. Disbursements are subject to certain preconditions, including, among other things, approval by the Department of the remediation contracts and all previously performed work.

(b) The recipient of the financial assistance or grant must provide access, to the Authority and the Department, at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) (No change.)

(d) Where financial assistance to a person is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.

(e) Upon request, the recipient of financial assistance or grant shall provide the Authority with evidence that the monies are being spent in accordance with the Department approved scope of work, and that it is adhering to the terms and conditions of its agreement with the Authority.

19:31-8.13 (No change in text.)

19:31-8.14 Fees

A \$ 500.00 application fee shall be due upon submittal of an application for financial assistance or a grant. A commitment fee and closing fee for financial assistance will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6). No Authority fees shall be paid from the financial assistance or grant award.

19:31-8.15 (No change in text.)