

53 N.J.R. 1270(a)

VOLUME 53, ISSUE 15, AUGUST 2, 2021

RULE PROPOSALS

Reporter

53 N.J.R. 1270(a)

NJ - New Jersey Register > 2021 > AUGUST > AUGUST 2, 2021 > RULE PROPOSALS > OTHER AGENCIES -- NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Code Citation

Proposed Amendments: N.J.A.C. 19:31-8.2, 8.3, 8.6, 8.7, 8.9 and 8.10

Proposed New Rules: N.J.A.C. 19:31-8.16 and 8.17

Text

Authority Assistance Programs

Hazardous Discharge Site Remediation Fund

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2017, c. 353.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-072.

Submit written comments by October 1, 2021, to:

Jacob Genovay, Sr, Legislative and Regulatory Officer
New Jersey Economic Development Authority
PO Box 990
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The agency proposal follows:

Summary

The New Jersey Economic Development Authority ("NJEDA" or "Authority") is proposing amendments to the rules implementing the Hazardous Discharge Site Remediation Fund ("HDSRF" or "Fund") program pursuant to P.L. 2017, c. 353 (approved January 16, 2018).

The HDSRF was established in July 1993, to provide funding to public and qualifying private entities for the remediation of a suspected or known discharge of a hazardous substance or hazardous waste. This program offers financial assistance to municipalities, counties, redevelopment agencies, businesses, individuals, and non-profit organizations at various stages of the brownfield restoration process, from environmental investigation to cleanup of redevelopment sites. By statute, eligibility for grants is broader for the assessment and investigation phase of the project, while funding eligibility for cleanups is more limited.

The HDSRF is funded through a constitutionally dedicated portion of the New Jersey Corporate Business Tax (CBT) and is administered through a partnership between the New Jersey Department of Environmental Protection ("NJDEP" or "Department") and the New Jersey Economic Development Authority. The NJDEP evaluates an applicant's preliminary eligibility requirements and the estimated remediation costs. Upon the NJDEP's recommendation for funding, the NJEDA evaluates an applicant's financial status, determines grant and/or loan eligibility, and awards funding.

In 2018, statutory revisions to the HDSRF program were enacted. While the amendments did not alter the CBT funding source, they did reduce grant and loan amounts to eligible public and private entities and eliminated Innocent Party, Innovative Technology, and Limited Restricted Use Remedial Action grants provided by the HDSRF. Excluding the Brownfield Development Areas, grants to each municipality, county, and redevelopment agency were reduced from \$ 3 million to \$ 2 million per year. Municipalities with Brownfield Development Areas continued to be eligible for additional funds, but the amount of the add-on grant was reduced from \$ 2 million to \$ 1 million per year. The annual loan program for a person that is not a municipality, county, or redevelopment entity was reduced from \$ 1 million to \$ 500,000 per year. The total amount of grants available for all recreation and conservation, affordable housing, and renewable energy projects was reduced from \$ 5 million to \$ 2.5 million annually. The statute also allocated at least 30 percent of the moneys in the Fund for grants to public entities for the preliminary assessment, site investigation, remedial investigation, or remedial action of real property, not located in a brownfield development area, that has been contaminated by a discharge or a suspected discharge of a

hazardous substance or hazardous waste. The remainder of the moneys in the Fund shall be allocated for any of the purposes authorized under section 28 of the Act. The statutory revisions also enacted time frames for the expenditure of the preliminary assessment, site investigation, and remedial investigation funds, authorizing the NJEDA to cancel the award if they are not met. The amendments revised the prioritization ranking for the HDSRF funded awards, such that a site owned by a municipality in a Brownfield Development Area is prioritized before sites in Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the State Planning Act.

In addition, the statutory amendments require the NJEDA to update its rules to reflect these changes. Specifically, the amendments to the HDSRF law require the NJEDA to develop criteria to demonstrate "commitment" for public entities and to incorporate "readiness to proceed with remediation" as a criterion for prioritization of grants. The proposed rules also streamline and modernize the underwriting process and codify the appeals process and severability rules.

The following provides a summary of the proposed amendments:

N.J.A.C. 19:31-8.2 Definitions

The proposed amendments redefine certain terms used in this subchapter, as follows: "Department" is revised to include the words "New Jersey" pertaining to the Department of Environmental Protection; and "discharge" is revised to include the words "Technical Requirements for Site Remediation," which is the heading of N.J.A.C. 7:26E. In addition, the proposed amendments establish a new definition for "community collaborative initiative." Finally, the proposed amendments delete the definitions of "innocent party" and "qualifying person."

N.J.A.C. 19:31-8.3 Eligibility

The proposed amendments update rule language in conformance with the statute at N.J.A.C. 19:31-8.3(b), which outlines the amount of HDSRF grants that may be made to public entities for eligible projects, as follows:

N.J.A.C. 19:31-8.3(b)1 is amended to delete the terms "contaminated site" and replace it with "suspected or confirmed discharge of a hazardous substance or hazardous waste," pertaining to preliminary assessment, site investigation, or remedial investigation.

Proposed new N.J.A.C. 19:31-8.3(b)2 provides a grant amount not to exceed 75 percent of the total costs of the remedial action for implementation on the real property where there is a confirmed discharge of a hazardous substance or hazardous waste.

The proposed amendments at recodified N.J.A.C. 19:31-8.3(b)6, pertain to certain matching grants, which the pre-amendment statute made eligible for an unrestricted use remediation grant, and deletes the related words, "uses an innovative technology" and "or a limited restricted use remedial action."

The proposed amendments at recodified N.J.A.C. 19:31-8.3(b)7: 1) delete the terms "on contaminated" and add "where there is a discharge or suspected discharge of a hazardous substance or hazardous waste" in a brownfield development area, for preliminary assessment, site investigation, remedial investigation, and remedial action; and 2) specifies that an ownership interest in the real property shall not be required to receive a grant for a preliminary assessment, site investigation, and remedial investigation.

Proposed new N.J.A.C. 19:31-8.3(b)8 provides that: 1) at least 30 percent of the moneys in the Fund shall be allocated for grants to public entities for the preliminary assessment, site investigation, remedial investigation, or remedial action of real property, not located in a brownfield development area, that has been contaminated by a discharge or a suspected discharge of a hazardous substance or hazardous waste; and, 2) the remainder of the moneys in the Fund shall be allocated for any of the purposes authorized under section 28 of the Act.

N.J.A.C. 19:30-8.3(d) addresses grants to persons for eligible projects. The proposed amendments reflect the statutory changes, clarifying that such grants may be made to "qualifying" persons who propose to perform a

remedial action that will qualify as an "unrestricted use" remedial action, pursuant to NJDEP rules. They also clarify that eligibility requires the person to have a net worth of not more than \$ 2 million.

N.J.A.C. 19:31-8.3(d)1, which provides that for persons who own real property on which there has been a discharge of a hazardous substance or 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, is deleted.

N.J.A.C. 19:31-8.3(d)3 is deleted and relocated at proposed new N.J.A.C. 19:31-8.3(d)1.

N.J.A.C. 19:31-8.3(e) relating to preconditions to eligibility for a grant for public entities, is amended at subparagraph (e)1iii to: 1) delete the words "that a realistic opportunity exists" and add the words "otherwise" and "its commitment," strengthening the provision requiring a public entity to have adopted a comprehensive plan for the development or redevelopment of the property or otherwise show a realistic opportunity for development within three years of the remediation.

Further, subparagraph N.J.A.C. 19:31-8.3(e)1iii is amended to provide that demonstration of a public entity's commitment to develop or redevelop the real property may include, but is not limited to the following criteria:

1. A resolution to complete an investigation to determine whether an area is in need of redevelopment or rehabilitation including the real property;
2. A demonstration that the real property is within an area designated as in need of redevelopment or rehabilitation and that the proposed project is consistent with that designation;
3. A demonstration that the project plan is consistent with a community-driven vision or a need to address environmental or public health issues, as formalized in a plan by a community-based organization (for example, neighborhood plan);
4. A resolution demonstrating financial commitment for a development or redevelopment project by the local governing body; or
5. Commitment to leverage other stable financial funding sources, including Federal or State funding that may expire, to ensure project viability.

N.J.A.C. 19:31-8.3(e)3, which concerns certain financial assistance from the Fund for persons who cannot establish a remediation funding source for the full amount of the remediation, revises the existing exclusion for public entities or persons who are not required to establish a remediation funding source for certain part(s) of remediation to delete "an innovative technology," and "an unrestricted use remediation funding source for the part of the remediation involving an innovative technology."

Proposed new N.J.A.C. 19:31-8.3(e)4 establishes the time limits within which an award from the Fund must be spent. Failure to do so will result in cancellation of the award.

Proposed new N.J.A.C. 19:31-8.3(e)5 provides that no financial assistance or grant from the Fund shall be rendered to a person or any public entity until it has been demonstrated to the Authority that the full amount of any previous financial assistance or grant awarded to that applicant for the same property has been or will be fully expended.

19:31-8.6 Amount of financial assistance and grants

The proposed amendments at N.J.A.C. 19:31-8.6 revise the amount of financial assistance and grants, as follows: subsection (a) reduces financial assistance and grants that may be for up to 100 percent of the estimated applicable remediation costs for one or more properties, from \$ 1,000,000 to \$ 500,000; subsection (b) reduces the financial assistance and grants to any one public entity that shall not exceed \$ 2,000,000, rather than the existing \$ 3,000,000 in any calendar year; subsection (c) reduces from \$ 2,000,000 to \$ 1,000,000, the maximum additional award the Authority may make in any calendar year to any one public entity for the remediation of real property in a

brownfield development area; subsection (d) revises the total cumulative amount of matching grants awarded to public entities to be capped for all at 75 percent of the costs of the remedial action on real property to be used for recreation and conservation purposes, and for up to 75 percent of the costs of the remedial action for renewable energy generation or for up to 50 percent of the costs for affordable housing, which shall not exceed \$ 2,500,000, rather than \$ 5,000,000 in any calendar year.

The proposed amendments delete N.J.A.C. 19:31-8.6(e) which provides that grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$ 1,000,000.

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

At N.J.A.C. 19:31-8.7(a), amendments alter the priority for assistance and bring other criteria into line with the statute. Priority shall be based on readiness to proceed with remediation as determined by the Department and the Authority. In addition, the order of priority to determine availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority, is revised to delete paragraph (a)2, pertaining to 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, which is replaced with the provision at proposed new N.J.A.C. 19:31-8.7(a)2 for "sites that are owned by a municipality in a brownfield development area" and the provision at proposed new N.J.A.C. 19:31-8.7(a)3 for "sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.)."

The proposed amendments delete and recodify N.J.A.C. 19:31-8.7(a)3 as proposed new N.J.A.C. 19:31-8.7(c), which provides that 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.

Proposed new N.J.A.C. 19:31-8.7(b) establishes the criteria for the demonstration of readiness to proceed with the remediation, which shall include proof of ownership or control over the real property and the retention of a Licensed Site Remediation Professional. Additional factors that may be considered include, but are not limited to: whether the project is located in a municipality designated as part of the Community Collaborative Initiative; whether the project was developed through stakeholder and community engagement; documentation of a resolution by the local governing body demonstrating financial commitment for a development or redevelopment project; or documentation that the project has a commitment of a stable leveraged funding source and requires financial assistance or a grant from the Fund to fulfill a cost-share requirement.

19:31-8.9 Application for financial assistance and grants

The proposed amendment at N.J.A.C. 19:31-8.9(c), which pertains to priority given for applicants for financial assistance and grants, is revised to include new provisions for readiness to proceed with the remediation and for availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to any priority given pursuant to N.J.A.C. 19:31-8.7 and credit approval by the Authority.

N.J.A.C. 19:31-8.9(f), which delineates the requirements for a completed application, is revised to include new provisions that add criteria for demonstrating that the real property will be redeveloped within three years from the completion of the remediation and demonstrating readiness to proceed with remediation at new paragraphs (f)3 and 4.

N.J.A.C. 19:31-8.9(h), consistent with the Authority's application and underwriting process, is proposed for amendment to delete the provision that within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application.

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

The proposed amendments at N.J.A.C. 19:31-8.10(a) delete the words "credit evaluation based upon applicable criteria as determined by the Authority, including" and paragraphs (a)1 through 8. The words "underwriting analysis" are added at existing paragraph (a)9, which is relocated to be part of the main subsection, to make clear that the Authority will perform its own underwriting analysis.

Proposed new N.J.A.C. 19:31-8.16 Appeals

The new section outlines the requirements for an applicant to appeal an action of the EDA Board and the process by which the Authority shall consider each appeal in a timely manner.

Proposed new N.J.A.C. 19:31-8.17 Severability

The new section states that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The remediation and redevelopment of contaminated sites in communities is a critical component of smart development that provide multiple social benefits, including cleaning up the environment, which protects human health, removing blight, eliminating health and safety hazards, and alleviating concerns from residents. This remediations leads to redevelopment that fosters safer, stronger, and more vibrant communities.

Economic Impact

According to the NJEDA's 2020 Annual HDSRF report, since the program was established, \$ 395.3 million in assistance has been provided to 2,052 projects. The HDSRF program has helped to transform underutilized and contaminated sites into environmentally sound, productive properties since 1993. This is particularly important in the redevelopment of older urban areas and New Jersey's most distressed communities, and is vital to achieving a stronger, fairer, greener, and more equitable New Jersey. These rule changes will allow NJEDA and NJDEP to prioritize projects that will complete remediation to allow for redevelopment, which supports economic prosperity.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and new rules are not subject to any Federal requirements or standards.

Jobs Impact

The EDA anticipates that the proposed amendments and new rules will spur an indeterminate amount of increased job creation throughout New Jersey. The United States Environmental Protection Agency reports that 10.3 jobs were leveraged per \$ 100,000 of United States Environmental Protection Agency brownfield funds spent on assessment and cleanup activities. It is expected that HDSRF would have a similar impact in New Jersey.

Agriculture Industry Impact

The proposed amendments and new rules will have minimal impact on the agriculture industry in New Jersey. The impacts to the agricultural industry would be concentrated on former agriculture land that will be remediated, and land may be redeveloped for agriculture uses. Additionally, remediating land so that it can be repurposed for other uses, will take development pressure off of farmland.

Regulatory Flexibility Statement

The proposed amendments and new rules may impose reporting, recordkeeping, or other compliance requirements on small business, such as consulting companies, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed fees for the program are intended to ensure a source of necessary administrative fee revenue for EDA to more fully cover the costs of the program.

Housing Affordability Impact Analysis

The proposed amendments and new rules will have indirect effects on the affordability of housing in New Jersey and may evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State. Remediating land so that it can be repurposed for other uses, such as housing, will increase the availability and affordability of housing throughout the State, with a larger impact in urban areas.

Smart Growth Development Impact Analysis

The proposed amendments and new rules may have a positive smart growth impact and may increase the number of housing units and may result in a decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments and new rules will continue to prioritize applications for sites that are owned by a municipality in a brownfield development area; and sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the State Planning Act, and have added additional factors for prioritization that are consistent with Smart Growth principles.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments and new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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:

...

"Community collaborative initiative" means the partnership established between the New Jersey Department of Environmental Protection and the Authority, where Department staff are assigned to work directly with Department-designated communities to address environmental and redevelopment issues.

"Department" means the **New Jersey** Department of Environmental Protection.

"Discharge" shall have the same meaning as set forth at N.J.A.C. 7:26E, **Technical Requirements for Site Remediation**.

...

["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.]

...

["Qualifying person" means any person who has a net worth of not more than \$ 2 million.]

...

19:31-8.3 Eligibility

(a) (No change.)

(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] **suspected or confirmed discharge of a hazardous substance or hazardous waste;**

2. Implementation of remedial action for real property where there is a confirmed discharge of a hazardous substance or hazardous waste, not to exceed 75 percent of the total costs of the remedial action;

Recodify existing 2.-4. as **3.-5.** (No change in text.)

[5.] **6.** Matching grants of up to 25 percent of the project costs **of that portion of the total costs of a remediation to implement an unrestricted use remedial action**, in a total amount not to exceed \$ 250,000, to public entities [which] **that** 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]

[6.] **7.** In a brownfield development area, for preliminary assessment, site investigation, remedial investigation, and remedial action [on contaminated] **for real property where there is a discharge or suspected discharge of a hazardous substance or hazardous waste.** An ownership interest in the real property shall not be required **to receive a grant for a preliminary assessment, site investigation, and remedial investigation;** 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] **at N.J.A.C. 19:31-8.4[.]; and**

8. At least 30 percent of the moneys in the Fund shall be allocated for grants to public entities for the preliminary assessment, site investigation, remedial investigation, or remedial action of real property, not located in a brownfield development area, that has been contaminated by a discharge or a suspected discharge of a hazardous substance or hazardous waste. The remainder of the moneys in the Fund shall be allocated for any of the purposes authorized pursuant to section 28 of the Act.

(c) (No change.)

(d) Grants from the Fund may be made for eligible projects to **qualifying persons who are applying for a matching grant and proposing to perform a remedial action for the implementation of an unrestricted use remedial action and who have a net worth of not more than \$ 2 million** 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;]

1. Matching grants of up to 25 percent of the project costs of that portion of the total costs of a remediation to implement an unrestricted use remedial action, incurred after receipt of the application by the Department, in a total grant amount not to exceed \$ 250,000; and

2. An owner or operator of a child care center licensed pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), or a prospective owner or operator of a child care center who has applied for a license pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), a grant of \$ 1,500 for the costs of a preliminary assessment performed in order to obtain a no further action letter as required pursuant to the provisions of subsection b. of section 2 of P.L. 2007, c. 1 (N.J.S.A. 52:27D-130.5) or performed as part of the child care center licensing requirements established by the Department of Children and Families[; and].

[3. 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. (No change.)

ii. Except for a grant awarded pursuant to (b)[2,] 3, 4, or [6] 7 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 **otherwise** demonstrate **its commitment** 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. **Demonstration of a public entity's commitment to develop or redevelop the real property may include, but is not limited to:**

(1) A resolution to complete an investigation to determine whether an area is in need of redevelopment or rehabilitation including the real property;

(2) A demonstration that the real property is within an area designated as in need of redevelopment or rehabilitation and that the proposed project is consistent with that designation;

(3) A demonstration that the project plan is consistent with a community-driven vision or need to address environmental or public health issues, as formalized in a plan by a community-based organization (for example, neighborhood plan);

(4) A resolution demonstrating financial commitment for a development or redevelopment project by the local governing body; or

(5) Commitment to leverage other stable financial funding sources, including Federal or State funding that may expire, to ensure project viability.

2. (No change.)

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.

4. Failure to expend an award of financial assistance or grant from the Fund within the following time limits shall result in the cancellation of the award, recoupment of unexpended funds, if funds are provided prior to incurring costs, and no further disbursement of unexpended funds:

i. Preliminary assessment or site investigation of a contaminated site shall be expended within two years after the date of the award; and

ii. Remedial investigation of a contaminated site shall be expended within five years after the date of the award, unless such time is extended by the Authority in consultation with the Department.

5. No financial assistance or grant from the Fund shall be rendered to a person or any public entity until it has been demonstrated to the Authority that the full amount of any previous financial assistance or grant awarded to that applicant for the same property has been or will be fully expended.

(f) (No change.)

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] **\$ 500,000**.

(b) Financial assistance and grants to any one public entity shall not exceed [\$ 3,000,000] **\$ 2,000,000** in any calendar year, except as provided [in] **at** (c) below.

(c) The Authority may award an additional amount of up to [\$ 2,000,000] **\$ 1,000,000** 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 **up to 75 percent of the costs of the** remedial action of real property to be used for recreation and conservation purposes, for **up to 75 percent of the costs of the remedial action for** renewable energy generation or for **up to 50 percent of the costs for** affordable housing, shall not exceed [\$ 5,000,000] **\$ 2,500,000** in any calendar year.

[(e) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$ 1,000,000.]

Recodify existing (f)-(g) as **(e)-(f)** (No change in text.)

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, **readiness to proceed with remediation as determined by the Department and the Authority**, 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] **section** 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.]

2. Sites that are owned by a municipality in a brownfield development area; and

3. Sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.).

(b) Demonstration of readiness to proceed with the remediation shall, at a minimum, include proof of ownership or control over the real property and retention of a Licensed Site Remediation Professional. Additional factors that may be considered include, but are not limited to: whether the project is located in a municipality designated as part of the Community Collaborative Initiative; whether the project was developed through stakeholder and community engagement; documentation of a resolution by the local governing body demonstrating financial commitment for a development or redevelopment project; or documentation that the project has a commitment of a stable leveraged funding source and requires financial assistance or a grant from the Fund to fulfill a cost-share requirement.

(c) 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.

19:31-8.9 Application for financial assistance and grants

(a)-(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, **readiness to proceed with the remediation, and availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant**, subject to any priority given [under] at N.J.A.C. 19:31-8.7 **and credit approval by the Authority.**

(d)-(e) (No change.)

(f) A completed application shall include, if applicable, as determined by the Authority:

1.-2. (No change.)

3. Where a public entity is applying for a grant, either an adopted comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated real property, or demonstration of commitment that the real property will be developed or redeveloped within three years from the completion of the remediation, pursuant to N.J.A.C. 19:31-8.3;

4. Demonstration of readiness to proceed with remediation, as required to be prioritized for the ranking pursuant to N.J.A.C. 19:31-8.7;

Recodify existing 3.-9. and **5.-11.** (No change in text.)

(g) (No change.)

(h) Applications are processed through several layers of staff review[,] and may then be recommended for consideration and official action of the Authority Members at a public meeting. [Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application.] The applicant has no right to have its application presented to the Members.

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. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with 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;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability;
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches; and
- 9.] **underwriting criteria.** For public entities, all Local Finance Board requirements must be satisfied.

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

19:31-8.16 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority, as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall

include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-8.17 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

NEW JERSEY REGISTER

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