

# **Hazardous Discharge Site Remediation Fund**

## **2013 Annual Report**

### **Introduction**

The Hazardous Discharge Site Remediation Fund (HDSRF), administered by the New Jersey Economic Development Authority (EDA) and the New Jersey Department of Environmental Protection (DEP) offers assistance to municipalities, businesses, developers and community groups at various stages of the brownfield restoration process, from planning to cleanup and redevelopment.

The HDSRF has been an integral component of this assistance since 1993, helping to transform underutilized and contaminated sites into environmentally sound, productive properties. This is particularly important in the redevelopment of older urban areas so vital to achieving the smart growth objectives of the State's Strategic Plan.

As of December 31, 2013, the HDSRF had \$8.8 million in uncommitted funds to award. With the combined anticipated funding of \$32.9 million from fiscal year 2012, 2013 and 2014, the HDSRF will have available to award \$41.7 million. The existing pipeline of projects at the DEP and EDA total nearly \$48.8 million resulting in the underfunding of the HDSRF by approximately \$7.1 million, impacting many ongoing and anticipated brownfield redevelopment projects.

The EDA and the DEP, which jointly administer the program, present the results of activities for calendar year 2013 under the HDSRF in accordance with the reporting requirements of N.J.S.A. 58:10B-6.

### **Background on the HDSRF**

The DEP first reviews applications to determine eligibility, reasonableness of costs, and the scope of work needed to investigate and remediate each site. The EDA manages the HDSRF and makes grants or loans to projects the DEP determines are eligible. Since the program was established, over \$325 million in assistance has been provided to 1653 projects.

Under the HDSRF, financial assistance may be provided for preliminary assessments (PA) for onsite inspections and to review historical ownership and site use to determine if contamination may be present at the sites; site investigations (SI) to characterize suspected contamination through preliminary intrusive investigation work; remedial investigations (RI) to determine the extent of contamination present; and remedial action (RA) to effectuate cleanup of impacted portions of the sites.

Municipalities, counties and redevelopment agencies may apply for grants up to \$3 million per year for investigation and remediation activities on properties they own or for which they hold a tax sale certificate and have a comprehensive plan or realistic opportunity to develop within three

years upon completion of the remediation. Furthermore, an additional \$2 million per year is available to municipalities that contain Brownfields Development Areas (BDAs). RA grants require an either 25% or 50% match of the eligible project costs – depending on the BDA – by the municipality, county or redevelopment agency.

Private parties required to perform remediation activities and individuals who want to conduct such actions voluntarily may qualify for low-interest loans of up to \$1 million per year if they are unable to obtain private funding.

Municipalities that utilize the HDSRF enjoy two significant advantages. First, the remediation and return to productive use of dormant, contaminated properties rids communities of abandoned and, possibly, dangerous sites. Second, once sites are remediated and improved, they can once again provide revenue producing ratable assets for the municipality.

Businesses and private individuals using HDSRF monies to investigate and clean up contaminated properties, like former gas stations and industrial properties, can enhance the surrounding community by improving the environment and increasing property values while stimulating new investment.

The report provides details of the HDSRF’s financing activity during the year and includes a list of the projects financed, by county (Exhibit A) for the period of January 1, 2013 through December 31, 2013.

**2013 HDSRF Activity**

In 2013, the EDA closed 3 loans amounting to over \$321 thousand and 26 grants amounting to \$5.2 million, providing assistance to businesses, private individuals, and municipal governmental entities for the investigation and clean-up of contaminated sites throughout New Jersey.

The following chart illustrates the allocation of funds for each eligibility category – the amounts of which are assigned by EDA in accordance with statutory authorization – total approvals for the year, and total disbursements.

*Note: 2013 disbursements may exceed 2013 allocations and approvals, as in Categories 1 and 2, which reflect the amount of prior year unexpended allocations for previously approved projects receiving funds in the current reporting year. In addition, the attached addendum provides a description for each funding category.*

<b>Funding Category</b>	<b>2013 Allocations</b>	<b>2013 Approvals</b>	<b>2013 Disbursements</b>
<b>1</b>	<b>\$1,669,020</b>	<b>\$1,683,020</b>	<b>\$2,135,444</b>
<b>2</b>	<b>\$10,014,119</b>	<b>\$9,258,304</b>	<b>\$5,467,030</b>

<b>3</b>	<b>\$10,014,119</b>	<b>\$321,443</b>	<b>\$212,058</b>
<b>4</b>	<b>\$3,338,040</b>	<b>\$17,343</b>	<b>\$93,536</b>
<b>5</b>	<b>\$1,669,020</b>	<b>\$0</b>	<b>\$34,101</b>
<b>6</b>	<b>\$3,871,615</b>	<b>\$178,978</b>	<b>\$210,146</b>
<b>7</b>	<b>\$6,676,079</b>	<b>\$0</b>	<b>\$0</b>
<b>Total</b>	<b>\$37,252,01</b>	<b>\$11,459,088</b>	<b>\$8,154,315</b>

The original statute prescribed a specific method for determining the funding priority of projects that receive approvals from DEP and EDA. Upon receiving EDA Board approval, applicants have a certain period of time to submit closing documents, including an executed contract for remediation services, in order to draw down on the available funds. Private individuals have 90 days to submit these documents and close their loan or grant award, while municipal governmental entities have 180 days prior to the lapse of the closing deadline.

Pursuant to N.J.S.A. 58-10B-7, an extension may be requested in writing explaining the reasons for the delay. If the defined period of time should expire, the commitment loses funding priority to that of newer applicants unless this period is extended. If the applicant submits the required evidence at some point after the defined time period has expired, the HDSRF is obligated to honor the commitment if monies are available in the HDSRF.

### **2013 Available Funds**

The available cash balance in the HDSRF as of December 31, 2013 is approximately \$8.8 million after deductions for outstanding commitments, undisbursed loans and grants. This amount includes loan repayments, interest earnings, and surcharges collected through year's end.

Below is a chart, which demonstrates HDSRF allocations for calendar year 2014 by category, which was revised under 2005 amendments to the statute (see addendum for new category descriptions).

**Hazardous Discharge Site Remediation Fund  
Allocation by Category**

<b>Funding Category</b>	<b>2014 Allocation</b>
<b>1</b>	<b>\$1,838,412</b>
<b>2</b>	<b>\$11,030,473</b>
<b>3</b>	<b>\$11,030,473</b>
<b>4</b>	<b>\$3,676,824</b>
<b>5</b>	<b>\$1,838,412</b>
<b>6</b>	<b>\$5,000,000</b>
<b>7</b>	<b>\$7,353,649</b>
<b>Total</b>	<b>\$41,768,243</b>

**Assessment of Current Funding Levels to Meet Obligations**

Below is an accounting of the project applications that are in process as of April 30, 2014. The DEP projects below are those for which DEP is reviewing statutory eligibility prior to making a recommendation to EDA.

		Application request
Municipal projects awaiting financing by EDA:	15 projects	\$ 941,531
Private projects awaiting financing by EDA:	7 projects	\$ 1,149,377
Municipal projects under review by DEP:	102 projects	\$ 40,500,000
Private projects under review by DEP:	38 projects	\$ 6,100,000
Non-Profit Projects under review by DEP:	3 projects	\$ 80,000
<b>Totals:</b>	<b>165 projects</b>	<b>\$ 48,770,908</b>

## **Synopsis of 2013 Brownfields Development Area (BDA) Activity**

Under the BDA approach, DEP works with communities affected by multiple brownfields to design and implement remediation and reuse plans for these properties simultaneously. The BDA approach enables remediation and reuse to occur in a coordinated fashion. In the process, DEP invites the various stakeholders, including owners of contaminated properties, potentially responsible parties, developers, community groups, technical experts for the local government and residents themselves, to participate in this cleanup and revitalization approach.

Five BDA's were approved in 2013 for a total of \$7.2 million. Note that the funding approvals are less in 2013, as compared to 2010 during which 30 BDA's were approved, as DEP has ceased processing applications due to low program funding levels.

## **Recommendations**

The Hazardous Discharge Site Remediation Fund (HDSRF) is one of several programs, including the Brownfields/Landfill Reimbursement Programs and the New Jersey Environmental Infrastructure Financing (EIF) Program, for brownfield remediation and redevelopment in New Jersey.

As indicated in this report and the 2010 Annual Report, the amount of funds currently available to the HDSRF program is considerably less than the amount of total demand. The shortfall in available funding for the HDSRF as well as the UST Fund, may require strategies to enhance coordination and utilization of the HDSRF, Brownfields/Landfill Reimbursement Programs and EIF Program.

## ADDENDUM

### I. Addendum: HDSRF History

In 1993, the Legislature amended and supplemented P.L. 1983, c.330, formerly known as the “Environmental Cleanup and Responsibility Act” to become the “Industrial Site Recovery Act.” The Legislature sought these changes to promote certainty in the regulatory process that would serve to facilitate the remediation of contaminated sites and promote the redevelopment of existing industrial sites around the State.

In addition to regulatory reform, the Legislature sought to alleviate the financial burdens that have been imposed on individuals, corporations and municipal government entities that have either voluntarily or involuntarily remediated contaminated sites. This assistance came in the form of a \$45 million appropriation from the Hazardous Discharge Bond Act of 1986 to a new fund entitled the Hazardous Discharge Site Remediation Fund (HDSRF), which EDA jointly administers with DEP.

The HDSRF received an additional \$10 million from the Economic Recovery Fund in its initial capitalization, and in 1997, the Legislature appropriated an additional \$20 million from the Hazardous Discharge Bond Act of 1986 to the HDSRF making a total of \$75 million available for the remediation of contaminated sites.

The responsibilities associated with administering the HDSRF have been divided between the EDA and the DEP. Initial contact and proposals for funding are made through the DEP, which has streamlined the environmental review process to provide timely approvals. Once environmental approvals and eligible project costs have been determined by the DEP, the applications are forwarded to the EDA so that eligible parties may access the financing available to them through the HDSRF. Upon receiving these applications, the EDA conducts a financial review and forwards them to its Board of Directors with a recommendation for funding. The DEP and EDA have adhered to a strict interpretation of the law in implementing the HDSRF. As a consequence of this interpretation, the HDSRF is truly the last resort to finance potential remediations.

Applicants do not possess insurance and in most cases have little or no collateral to secure loans made by the HDSRF. Under normal circumstances, these applications would not meet the EDA's credit criteria for funding. Each application is reviewed therefore in light of the legislative intent behind the program that dictates to the EDA that these more risky loans should be made for the general public good that will be achieved through such remediations.

In 1997, the Act was amended to create two new eligibility categories that EDA and DEP implemented in early 1998: Category 8 provides matching grants for individuals using innovative technology for remediation; and Category 9 provides matching grants or loan guarantees for persons or businesses that implement limited restricted use or unrestricted use remedial actions. As a result, Category 10 is now the “catch all” category, which was formerly Category 8. These new categories were created by allocating 5% each from Category 5 and Category 6.

In 1999, the Legislature revised the qualification for municipalities to receive certain grants for remediation investigations from the HDSRF. As a result, a municipality is required to either have a comprehensive Brownfields redevelopment plan in place, or to demonstrate to the EDA that a property has a realistic opportunity of being developed or redeveloped within three years of the completion of the remediation. In addition, a municipality or the New Jersey Redevelopment Authority is required to actually own the real property prior to receiving a grant for remedial investigation from the HDSRF. Finally, the revisions ensure that a municipality does not spend funds without having made a substantial commitment to the development of the Brownfields site.

In 2003, legislation was enacted dedicating an additional \$40 million to aid in replenishing the HDSRF. In addition, New Jersey voters approved a State Constitutional amendment in November 2003 permitting the State to use a surplus in Corporate Business Tax revenues dedicated to the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure (UST) Program to provide a new and reliable long-term funding source for the HDSRF.

In 2005, statutory revisions created new and expanded uses of HDSRF funds for municipalities, counties and redevelopment entities. Specifically, grant funds were authorized for recreation areas, conservation areas and projects involving affordable housing, as well as additional grant funds on a priority basis and dedicated case management in DEP to municipalities with areas designated as a BDA.

In 2006, statutory revisions changed the limits on grants from the HDSRF to municipalities, counties and redevelopment agencies authorized to exercise redevelopment powers pursuant to N.J.S.A.40A:12A-4. The law previously limited grants to those entities to 75% of the total costs of the remediation. Under the changes, grants are authorized to those entities for up to 100% of the costs of the preliminary assessment, site investigation and remedial investigation regardless of the date the application for funding was submitted to DEP. Also, grants are authorized for up to 75% of the costs of the remedial action of a contaminated site for applications received by DEP after September 15, 2005.

In 2007, legislation was enacted that removed the 70% cap on the amount of grant money that could be awarded from the HDSRF which allows projects that were initially approved as loans, to subsequently be converted to grants in 2007.

In 2009, statutory revisions established the Licensed Site Remediation Professional Program which requires any submissions concerning the remediation of a contaminated site to be signed and certified by a licensed site professional or by a certified subsurface evaluator. The new law also established criteria for a ranking system and direct oversight of contaminated sites based upon the level of risk to the public health, safety, or the environment, the length of time the site has been undergoing remediation, the economic impact of the contaminated site on the municipality and on surrounding property, and any other factors deemed relevant by DEP.

## **II. Addendum: Funding Categories**

As defined in the Act, financial assistance and grants from the HDSRF were provided for the following purposes and obligated on an annual basis in the defined percentages. An additional funding category was also created by the legislation, C.58:10B-25.3, to establish a pilot program for awarding grants to non-profit organizations. Funding for the pilot program is capped at \$5,000,000 by statute. The non-profit category is listed as item 7 below because it appears last in the legislation; however it is reported as item 6 in the above charts to comport with technical aspects of EDA's tracking system.

### **2005 Funding Categories:**

**(1) Loans to Persons in a Qualifying Municipality:** Moneys shall be allocated for financial assistance to persons, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178).

#### **(2) Municipalities, Counties and Redevelopment Entities:**

(a) Moneys shall be allocated to: municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4).

(i) BDAs: projects in brownfield development areas pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5);

(ii) Matching grants for innovative technology: matching grants up to a cumulative total amount from the HDSRF of \$5,000,000 per year of up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the comprehensive plan for the development or redevelopment of contaminated property, or up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);

(iii) Matching grants for unrestricted or limited restricted use cleanup: grants for preliminary assessment, site investigation or remedial investigation of a contaminated site;

(iv) Matching grants for recreation, conservation and affordable housing: financial assistance for the implementation of a remedial action;

(v) Financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a

discharge of a hazardous substance or hazardous waste, and the discharge or threatened 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; or

(b) persons for financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened 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) Private Loans for Voluntary Remediation:** Moneys shall be allocated for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge.

**(4) Innocent Party Grants:** Moneys shall be allocated for grants to persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed \$1,000,000.

**(5) Private Loans for Environmental Opportunity Zones:** Moneys shall be allocated for (a) financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), who propose to perform a remedial action that uses an innovative technology, or for the implementation of a limited restricted use remedial action or an unrestricted use remedial action except that no grant awarded pursuant to this paragraph may exceed \$250,000.

**(6) Catch all:** Twenty percent of the moneys in the remediation HDSRF shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraphs (1) through (5).

**(7) Non-profits:** The Department of Environmental Protection, in consultation with the New Jersey Economic Development Authority, shall develop a pilot program to award grants from the HDSRF established pursuant to section 26 of P.L.1993, c.139 (C.58:10B-

4) to nonprofit organizations described in section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3), that are exempt from taxation pursuant to section 501(a) of the federal Internal Revenue Code, 26 U.S.C. s.501(a), for the 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 “Brownfield and Contaminated Site Remediation Act,” P.L.1997, c.278 (C.58:10B-1.1 et al.) shall apply to the award of grants to a nonprofit organization pursuant to this section. The total amount awarded pursuant to this pilot program shall not exceed \$5,000,000.

**III. Addendum: Impact of funding category changes, including the addition of BDAs and remedial action financing.**

During the past 9 years EDA has closed the following:

<b>Year</b>	<b>Loans</b>	<b>Grants</b>	<b>Amount in millions</b>
2013	3	26	\$5.6
2012	1	15	\$10.8
2011	1	59	\$28
2010	2	105	\$49.3
2009	1	99	\$36.9
2008	5	114	\$38
2007	6	76	\$23.4
2006	1	43	\$10.8
2005	4	47	\$3.6