

## 53 N.J.R. 1859(a)

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### RULE ADOPTIONS

#### Reporter

53 N.J.R. 1859(a)

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### Agency

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OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

### Administrative Code Citation

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

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

### Text

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#### Authority Assistance Programs

#### Hazardous Discharge Site Remediation Fund

Proposed: August 2, 2021, at 53 N.J.R. 1270(a).

Adopted: October 6, 2021, by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: October 6, 2021, as R.2021 d.126, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2017, c. 353 and P.L. 2021, c. 20.

Effective Date: November 1, 2021.

Expiration Date: May 8, 2025.

**Summary** of Public Comment and Agency Response:

**No public comments were received.**

**Summary of Agency-Initiated Changes:**

The Authority is changing N.J.A.C. 19:31-8.6(b), (c), and (d) upon adoption to revise certain funding allocation amounts pursuant to statutory revisions contained at P.L. 2021, c. 20, enacted on August 24, 2021, following the publication of the proposed amendments and new rules in the New Jersey Register on August 2, 2021. The amendments upon adoption from the original proposal incorporate the revised funding allocation amounts based on current law controlling the administration of the Hazardous Discharge Site Remediation Fund Program and, therefore, do not require additional public notice and comment.

**Federal Standards Statement**

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

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[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.

...

**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 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.)

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 that propose to perform a remedial action;

7. In a brownfield development area, for preliminary assessment, site investigation, remedial investigation, and remedial action 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 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. 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.

(e) Preconditions to eligibility are as follows:

1. For public entities:

i. (No change.)

ii. Except for a grant awarded pursuant to (b) 3, 4, or 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 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 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 \$ 500,000.

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

(c) The Authority may award an additional amount of up to \*[\$ 1,000,000]\* **\*\$ 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 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 \*[\$ 2,500,000]\* **\*\$ 10,000,000\*** in any calendar year.

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 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;
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 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. 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 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.

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