

[N.J.A.C. 19:31G-1.1](#)

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 58 No. 15,
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§ 19:31G-1.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections at P.L. 1993, c.139 which pertain to the Hazardous Discharge Site Remediation Fund. The Act established the Hazardous Discharge Site Remediation Fund, a special, revolving fund for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous waste.

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Under the Brownfield and Contaminated Site Remediation Act, an applicant for an Innocent Party Grant to defray the cost of remediating a contaminated property must own the property at the time it submits the application. [TAC Assocs. v. New Jersey Dep't of Env'tl. Prot.](#), 202 N.J. 533, 998 A.2d 450, 2010 N.J. LEXIS 592 (2010).

In a former property owner's appeal of a decision of the New Jersey Department of Environmental Protection rejecting its application to receive an Innocent Party Grant on the ground that it no longer owned the contaminated property at issue, the denial was reversed, since the definition of "innocent party" set forth in N.J.A.C. 19:31-8.2, which required continuous ownership of the property at issue, was held inconsistent with the statutory definition in [N.J.S.A. 58:10B-6\(b\)\(4\)](#). Therefore, N.J.A.C. 19:31-8.2 was declared ultra vires and invalid. [TAC Assocs. v. New Jersey Dep't of Env'tl. Prot.](#), 408 N.J. Super. 117, 973 A.2d 969, 2009 N.J. Super. LEXIS 147 (2009).

Definition of "innocent party" in N.J.A.C. 19:31-8.2 is inconsistent with the statutory definition in [N.J.S.A. 58:10B-6\(b\)\(4\)](#) and, therefore, N.J.A.C. 19:31-8.2 is declared ultra vires and invalid. [TAC Assocs.](#)

v. New Jersey Dep't of Env'tl. Prot., 408 N.J. Super. 117, 973 A.2d 969, 2009 N.J. Super. LEXIS 147 (2009).

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[N.J.A.C. 19:31G-1.2](#)

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§ 19:31G-1.2 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.

"Authority" means the New Jersey Economic Development Authority.

"Brownfield development area" means an area that has been so designated by the Department, in writing, pursuant to section 7 at 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.

"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.

"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

"Financial assistance" means loans and loan guarantees.

"Fund" means the Hazardous Discharge Site Remediation Fund.

"Members" means the members of the Authority.

"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.

"Preliminary assessment" shall have the same meaning as set forth at [N.J.A.C. 7:26E](#).

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

"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.

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

"Remediation" shall have the same meaning as set forth at [N.J.A.C. 7:26E](#).

"Remediation funding source" means the methods of financing the remediation of a discharge.

"Renewable energy generation" means:

1. Electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, methane gas from landfills, a resource recovery facility, a hydropower facility or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner, and provided further that the Commissioner of the Department of Environmental Protection has determined that the resource recovery facility, hydropower facility or biomass facility, as appropriate, meets the highest environmental standards and minimizes any impacts to the environment and local communities; and
2. Energy produced from solar thermal or geothermal technologies.

"Site investigation" shall have the same meaning as set forth at [N.J.A.C. 7:26E](#).

History

HISTORY:

Amended by R.1994 d.375, effective July 18, 1994.

See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

Rewrote "Applicant"; and inserted "Municipal governmental entity", "NJRA" and "Qualifying person".

Amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

In definition "Act", inserted ", as amended and supplemented"; in definition "Applicant", substituted "municipality, county, redevelopment entity, company, firm, non-profit organization" for "municipal governmental entity, the New Jersey Redevelopment Authority"; added definitions "Brownfield development area", "Brownfield site", "Non-profit organizations", "Public entities", "Redevelopment entity" and "Recreation and conservation purposes"; in definition "Department", deleted "and Energy" from the end; rewrote definitions "Innocent Party" and "Person"; and deleted definitions "Municipal governmental entity" and "NJRA".

Amended by R.2010 d.285, effective December 6, 2010.

See: [42 N.J.R. 2019\(a\)](#), [42 N.J.R. 2969\(a\)](#).

Added definition "Renewable energy generation".

Amended by R.2021 d.126, effective November 1, 2021.

See: [53 N.J.R. 1270\(a\)](#), [53 N.J.R. 1859\(a\)](#).

Added definition "Community collaborative initiative"; in definition "Department", inserted "New Jersey"; in definition "Discharge", inserted ", Technical Requirements for Site Remediation"; and deleted definitions "Innocent party" and "Qualifying person".

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Case Notes

Under the Brownfield and Contaminated Site Remediation Act, an applicant for an Innocent Party Grant to defray the cost of remediating a contaminated property must own the property at the time it submits the application. [TAC Assocs. v. New Jersey Dep't of Env'tl. Prot.](#), 202 N.J. 533, 998 A.2d 450, 2010 N.J. LEXIS 592 (2010).

In a former property owner's appeal of a decision of the New Jersey Department of Environmental Protection rejecting its application to receive an Innocent Party Grant on the ground that it no longer owned the contaminated property at issue, the denial was reversed, since the definition of "innocent party" set forth in N.J.A.C. 19:31-8.2, which required continuous ownership of the property at issue, was held inconsistent with the statutory definition in [N.J.S.A. 58:10B-6\(b\)\(4\)](#). Therefore, N.J.A.C. 19:31-8.2 was declared ultra vires and invalid. [TAC Assocs. v. New Jersey Dep't of Env'tl. Prot.](#), 408 N.J. Super. 117, 973 A.2d 969, 2009 N.J. Super. LEXIS 147 (2009).

Definition of "innocent party" in N.J.A.C. 19:31-8.2 is inconsistent with the statutory definition in [N.J.S.A. 58:10B-6\(b\)\(4\)](#) and, therefore, N.J.A.C. 19:31-8.2 is declared ultra vires and invalid. [TAC Assocs.](#)

v. New Jersey Dep't of Env'tl. Prot., 408 N.J. Super. 117, 973 A.2d 969, 2009 N.J. Super. LEXIS 147 (2009).

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[N.J.A.C. 19:31G-1.3](#)

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§ 19:31G-1.3 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 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;
 3. 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;
 4. 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.;
 5. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property for renewable energy generation;
 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. 19:31G-1.4](#); 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) 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 at [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 [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 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 at 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. Except for remediation grants made pursuant to (b)6 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 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 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 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) The determination of eligibility will be made by the Department in accordance with sections 28 through 31 of the Act.

History

HISTORY:

Amended by R.1994 d.375, effective July 18, 1994.

See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

Rewrote the section.

Amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

Rewrote the section.

Amended by R.2010 d.285, effective December 6, 2010.

See: [42 N.J.R. 2019\(a\)](#), [42 N.J.R. 2969\(a\)](#).

Added new (b)4; recodified former (b)4 and (b)5 as (b)5 and (b)6; in (d)1, deleted "and" from the end; added new (d)2; recodified former (d)2 as (d)3; and in (e)1i and (e)1ii, substituted "6" for "5".

Amended by R.2021 d.126, effective November 1, 2021.

See: [53 N.J.R. 1270\(a\)](#), [53 N.J.R. 1859\(a\)](#).

Rewrote the section.

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Case Notes

Under the Brownfield and Contaminated Site Remediation Act, an applicant for an Innocent Party Grant to defray the cost of remediating a contaminated property must own the property at the time it submits the application. [TAC Assocs. v. New Jersey Dep't of Env'tl. Prot.](#), 202 N.J. 533, 998 A.2d 450, 2010 N.J. LEXIS 592 (2010).

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[N.J.A.C. 19:31G-1.4](#)

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§ 19:31G-1.4 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.

History

HISTORY:

New Rule, R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

Former N.J.A.C. 19:31-8.4, Terms of financial assistance, recodified to N.J.A.C. 19:31-8.5.

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N.J.A.C. 19:31G-1.5

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§ 19:31G-1.5 Financial assistance: term; interest rate; transfer of title

- (a) Loans from the Fund or loans guaranteed by the Fund shall be for a term of not more than 10 years.
- (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.

History

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), [27 N.J.R. 3216\(a\)](#).

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

Rewrote (b).

Recodified from N.J.A.C. 19:31-8.4 and amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

Section was "Terms of financial assistance". Rewrote (b) and (c). Former N.J.A.C. 19:31-8.5, Amount of financial assistance and grants, recodified to N.J.A.C. 19:31-8.6.

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[N.J.A.C. 19:31G-1.6](#)

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§ 19:31G-1.6 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 \$ 3,000,000 in any calendar year, except as provided at (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 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 \$ 10,000,000 in any calendar year.
- (e) 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.
- (f) 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.

History

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

In (a), deleted "and grants" following "assistance"; and in (b), inserted "or NJRA" following "entity".

Recodified from N.J.A.C. 19:31-8.5 and amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

In (a), substituted "remediation" for "Remediation"; rewrote (b); added new (c), (d) and (g); recodified former (c) and (d) as new (e) and (f); and in (f), inserted "awarded". Former N.J.A.C. 19:31-8.6, Priority system for financial assistance and grants, recodified to N.J.A.C. 19:31-8.7.

Amended by R.2010 d.285, effective December 6, 2010.

See: [42 N.J.R. 2019\(a\)](#), [42 N.J.R. 2969\(a\)](#).

In (d), inserted ", for renewable energy generation or for affordable housing,".

Amended by R.2021 d.126, effective November 1, 2021.

See: [53 N.J.R. 1270\(a\)](#), [53 N.J.R. 1859\(a\)](#).

In (a), substituted "\$ 500,000" for "\$ 1,000,000"; in (b), substituted "at" for "in"; rewrote (d); deleted former (e); and recodified former (f) and (g) as (e) and (f).

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[N.J.A.C. 19:31G-1.7](#)

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§ 19:31G-1.7 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 pursuant to section 28(a) of the Act.

History

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

In (b), inserted a reference to the NJRA.

Amended by R.2005 d.274, effective August 15, 2005.

See: [37 N.J.R. 1714\(a\)](#), [37 N.J.R. 3058\(a\)](#).

In (a)2, substituted "Chief Executive Officer" for "Executive Director".

Recodified from N.J.A.C. 19:31-8.6 and amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

In the introductory paragraph of (a), substituted "in the following order of priority:" for a period at the end; rewrote (a)1; added new (a)2; recodified former (a)2 as new (a)3; and deleted (b). Former N.J.A.C. 19:31-8.7, Application for financial assistance and grants, recodified to N.J.A.C. 19:31-8.9.

Amended by R.2021 d.126, effective November 1, 2021.

See: [53 N.J.R. 1270\(a\)](#), [53 N.J.R. 1859\(a\)](#).

In (a), inserted ", readiness to proceed with remediation as determined by the Department and the Authority," and substituted "section" for "rule"; in (a)1, deleted "and" from the end; rewrote (a)2 and (a)3; and added (b) and (c).

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§ 19:31G-1.8 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. Pursuant to 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](#) through 3.1, shall apply to the award of grants to non-profit organizations under this section.

History

HISTORY:

New Rule, R. 2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

Former N.J.A.C. 19:31-8.8, Evaluation process for financial assistance and grants, recodified to N.J.A.C. 19:31-8.10.

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§ 19:31G-1.9 Application for financial assistance and grants

- (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) The Department shall forward the approved application to the Authority for further processing. The Authority shall have the discretion to request any additional information from the applicant and/or from the Department which it deems necessary in order to complete its evaluation of the application. An application shall be deemed to be complete at such time as the Authority has received all required information in the required form.
- (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. 19:31G-1.7](#) and credit approval by the Authority.
- (d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority. Notwithstanding anything in this section to the contrary, in the event the applicant submits the additional information in the required form within the 30-day period, the application shall be deemed complete as of the initial application submission date.
- (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 at [N.J.A.C. 19:31G-1.7](#).
- (f) A completed application shall include, if applicable, as determined by the Authority:
 - 1. A history and description of the applicant's business;
 - 2. A description of the proposed project and a detailed breakdown of the use of the loan or grant proceeds;

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. 19:31G-1.3](#);
 4. Demonstration of readiness to proceed with remediation, as required to be prioritized for the ranking pursuant to [N.J.A.C. 19:31G-1.7](#);
 5. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years.
 6. A current interim statement, if the most recent annual financial statement is more than six months old;
 7. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
 8. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
 9. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;
 10. A schedule of all officers, directors, and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and
 11. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.
- (g) The Authority may also require:
1. Appraisal(s) on real property and/or machinery and equipment;
 2. Aging of accounts receivable;
 3. Aging of accounts payable; and/or
 4. Any additional information deemed necessary to evaluate the application.
- (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.

History

HISTORY:

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

Rewrote (b); inserted references to grants in (c) and (f)2; and in (d), added a second sentence.

Recodified from N.J.A.C. 19:31-8.7 and amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

In (a), inserted ", if applicable"; in (c), inserted ", subject to any priority given under N.J.A.C. 19:31-8.7"; and in (e), inserted ", for those applications relating to sites that are not within a priority category enumerated in N.J.A.C. 19:31-8.7". Former N.J.A.C. 19:31-8.9, Approval process for financial assistance and grants, recodified to N.J.A.C. 19:31-8.11.

Amended by R.2021 d.126, effective November 1, 2021.

See: [53 N.J.R. 1270\(a\)](#), [53 N.J.R. 1859\(a\)](#).

Rewrote (c); in the introductory paragraph of (f), inserted a comma following "applicable"; added (f)3 and (f)4; recodified former (f)3 through (f)9 as (f)5 through (f)11; and rewrote (h).

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Case Notes

Under the Brownfield and Contaminated Site Remediation Act, an applicant for an Innocent Party Grant to defray the cost of remediating a contaminated property must own the property at the time it submits the application. [TAC Assocs. v. New Jersey Dep't of Env'tl. Prot.](#), [202 N.J. 533](#), [998 A.2d 450](#), [2010 N.J. LEXIS 592 \(2010\)](#).

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§ 19:31G-1.10 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) After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.
- (c) If a positive determination is made, the requested financial assistance or grant shall be presented to the Members for approval.

History

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

Inserted (a)9.

Recodified from N.J.A.C. 19:31-8.8 and amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

In the introductory paragraph of (a), substituted "applicable criteria as determined by the Authority, including" for "the following"; in (a)1, inserted ", or real property which is the subject of the application"; in (a)9, substituted "public entities" for "municipal government entities"; and in (c), inserted "or grant". Former N.J.A.C. 19:31-8.10, Disbursement of financial assistance and grants, recodified to N.J.A.C. 19:31-8.12.

Amended by R.2021 d.126, effective November 1, 2021.

See: [53 N.J.R. 1270\(a\)](#), [53 N.J.R. 1859\(a\)](#).

Rewrote the section.

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§ 19:31G-1.11 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)** When the Members approve financial assistance or a grant, the minutes of the meeting at which such approval occurs are submitted to the Governor.
- (c)** The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.
- (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) When all required documentation is prepared, in form and content satisfactory to the Authority, a closing shall be scheduled and the funds made available to the applicant subject to approval by the Authority.

History

HISTORY:

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), [27 N.J.R. 3216\(a\)](#).

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

Rewrote (d) and (f); in (e), inserted a reference to grants; and in (g), substituted a reference to closings for a reference to loan closings, and deleted a reference to sponsors.

Amended by R.2000 d.482, effective December 4, 2000.

See: [32 N.J.R. 3555\(a\)](#), [32 N.J.R. 4275\(b\)](#).

In (f), added "for municipalities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants" at the end of the second sentence, and inserted "for municipalities and 180 days from the acceptance date for other applicants" following "acceptance" in the third sentence.

Recodified from N.J.A.C. 19:31-8.9 and amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

Rewrote (a) and (d)1; in (e), substituted "person" for "private entity" and "public entity" for "municipal governmental entity or NJRA"; in (f), substituted "applicant or public entity" for "municipality", "its designated representative" for "attorney for the applicant", and "public entities" for "municipalities" twice; and, also in (f), deleted "of Environmental Protection" following "Department". Former N.J.A.C. 19:31-8.11, Attorney General review, recodified to N.J.A.C. 19:31-8.13.

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§ 19:31G-1.12 Disbursement of financial assistance and grants

- (a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant to the Department 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) In the case of a grant or financial assistance, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the insurance carrier, discharger, or person in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.118 who does not have a defense to that liability pursuant to [N.J.S.A. 58:10-23.11\(g\)](#). All moneys collected in a cost recovery subrogation action shall be deposited into the Fund. No award of a grant or financial assistance shall be made if the applicant relinquishes, impairs, or waives, or has relinquished, impaired or waived, any right to recover the costs of remediation against any insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to [N.J.S.A. 58:10-23.11\(g\)](#).
- (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.

History

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

Rewrote (a); in (c), substituted a reference to liable parties for a reference to responsible parties, and added a second sentence; and in (d) inserted a reference to the NJRA.

Recodified from N.J.A.C. 19:31-8.10 and amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

In (a), inserted "or have been spent" and substituted "with" for "within" following "accordance"; in (b), substituted "to" for "by" following "access,"; in (d), deleted "other than a municipal governmental entity or the NJRA" following "person"; and added (e). Former N.J.A.C. 19:31-8.12, Fees, recodified to N.J.A.C. 19:31-8.14.

Amended by R.2010 d.285, effective December 6, 2010.

See: [42 N.J.R. 2019\(a\)](#), [42 N.J.R. 2969\(a\)](#).

In (a), inserted "to the Department"; and rewrote (c).

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§ 19:31G-1.13 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General's Office.

History

HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), [27 N.J.R. 3216\(a\)](#).

Recodified from N.J.A.C. 19:31-8.11 by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

Former N.J.A.C. 19:31-8.13, Public record, recodified to N.J.A.C. 19:31-8.15.

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§ 19:31G-1.14 Fees

(a) Application fees shall be charged as follows:

1. A \$ 500.00 non-refundable fee shall be due upon submittal of an application for financial assistance or grant;
2. Additional non-refundable application fees for financial assistance are as follows: \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged upon the acceptance of financial assistance under the Fund; and \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged at closing.

(b) An applicant shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

(c) No Authority fees shall be paid from the financial assistance or grant award.

History

HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: [32 N.J.R. 1705\(a\)](#), [32 N.J.R. 2602\(c\)](#).

Rewrote the section.

Recodified from N.J.A.C. 19:31-8.12 and amended by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

Rewrote the section.

Repeal and New Rule, R.2010 d.285, effective December 6, 2010.

See: [42 N.J.R. 2019\(a\)](#), [42 N.J.R. 2969\(a\)](#).

Section was "Fees".

Amended by R.2020 d.122, effective November 16, 2020.

See: [52 N.J.R. 1612\(a\)](#), [52 N.J.R. 2064\(a\)](#).

Added (b) and recodified former (b) as (c).

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§ 19:31G-1.15 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions at P.L. 1963, c. 73 ([N.J.S.A. 47:1A-1](#) et seq.).

History

HISTORY:

Recodified from N.J.A.C. 19:31-8.13 by R.2006 d.369, effective October 16, 2006.

See: [38 N.J.R. 3001\(a\)](#), [38 N.J.R. 4503\(a\)](#).

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§ 19:31G-1.16 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.

History

HISTORY:

New Rule, R.2021 d.126, effective November 1, 2021.

See: [53 N.J.R. 1270\(a\)](#), [53 N.J.R. 1859\(a\)](#).

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§ 19:31G-1.17 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.

History

HISTORY:

New Rule, R.2021 d.126, effective November 1, 2021.

See: [53 N.J.R. 1270\(a\)](#), [53 N.J.R. 1859\(a\)](#).

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