

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

HAZARDOUS DISCHARGE SITE REMEDIATION FUND

1994 ANNUAL REPORT

Presented to:

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Hazardous Discharge Site Remediation Fund

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In accordance with P.L. 1993, c. 139, the New Jersey Economic Development Authority (the "EDA") hereby submits this report setting forth the financing activities of the **Hazardous Discharge Site Remediation Fund** (the "Fund") during 1994. In addition to providing a list of the Fund's 1994 activity, this report provides a brief history of how the Fund was established, identifies available funds for 1995, lists some creative initiatives that the EDA and the New Jersey Department of Environmental Protection (the "DEP") have pursued in the implementation of the Fund, and provides suggestions for legislative action to further the legislative intent of facilitating remediation and promoting the redevelopment of existing industrial sites.

Fund 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 which 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 some of 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** (the "Fund") which the EDA jointly administers with the DEP. The Fund was also capitalized with an additional \$10 million from the Economic Recovery Fund; making a total of \$55 million available for the future remediation of contaminated sites.

The responsibilities associated with administering the Fund have been divided between the EDA and the DEP. Initial contact and proposals for funding are made through DEP, which has streamlined the environmental review process to provide timely approvals. Once environmental approvals and eligible project costs have been determined by DEP, the applications are forwarded to the EDA so that eligible parties may access the financing available through this Fund.

Funding Categories

As defined in the Act, financial assistance and grants from the Fund are provided for the following seven purposes and obligated on an annual basis in the defined percentages.

- (1) **Private Loans in Qualifying Municipalities:** At least 15% of the moneys (or \$8.25 million in 1994) shall be allocated for financial assistance to persons, other than municipal governmental entities, for the 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) **Municipal Grants and Loans:** At least 10% of the moneys (or \$5.5 million in 1994) shall be allocated for financial assistance and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on a property it owns may obtain a loan for the purpose of continuing the remediation as necessary to comply with standards adopted by the DEP;
- (3) **Private and Municipal Loans for Imminent Threat:** At least 15% of the moneys (or \$8.25 million in 1994) shall be allocated for financial assistance to persons or municipal governmental entities 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;
- (4) **Private Loans for Voluntary Remediation:** At least 10% of the moneys (or \$5.5 million in 1994) shall be allocated for financial assistance to persons, other than municipal governmental entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the DEP or by a court;
- (5) **Private Loans for Required Remediation:** At least 20% of the moneys (or \$11 million in 1994) shall be allocated for financial assistance to persons, other than municipal governmental entities, who are required to perform remediation activities at an industrial establishment pursuant to P.L. 1983, c.330 (c.13:1K-6 et al.), as a condition of the closure, transfer, or termination of operations at that industrial establishment;
- (6) **Private Innocent Party Grants:** At least 20% of the moneys (or \$11 million in 1994) shall be allocated for grants to persons, other than municipal governmental entities, 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 the site, and that person certifies that s/he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant 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 to any person may exceed \$1 million; and

(7) **Catch All (Private and Municipal Loans and Grants):** The remaining 10% of the moneys (or \$5.5 million in 1994) in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraph (1) through (6) of this subsection.

1994 Activity

We are happy to report that the Hazardous Discharge Site Remediation Fund had a momentous first year of operation. Approximately \$8.9 million in financial assistance and grants to private individuals and municipal governmental entities were approved by the Department of Environmental Protection and the Economic Development Authority to clean up contaminated sites around New Jersey. Of these Fund commitments, approximately \$3 million were disbursed in 1994 and used to commence work at these sites. The chart below illustrates the amount of funds available in each category of eligibility for 1994, as well as total disbursements that were actually made from each of these categories during the year.

Funding Category	1994 Allocations	1994 Disbursements
1	\$8.25 mm	\$ 1,058,850
2	\$5.5 mm	\$ 19,291
3	\$8.25 mm	\$ 26,939
4	\$5.5 mm	0
5	\$11.0 mm	\$ 676,485
6	\$11.0 mm	\$ 1,250,134
7	\$5.5 mm	0
Total	\$55.0 mm	\$ 3,031,699

For your convenience, Exhibit A provides more detailed information about the individual disbursements that were made in 1994 and Exhibit B details the Fund's outstanding commitments at the close of 1994 that we expect to disburse in 1995. These commitments total approximately \$5.9 million.

As you know, the Statute prescribes a specific method for determining the funding priority of projects that receive approvals from the DEP and EDA. Upon receiving EDA Board approval, applicants have a certain period of time to submit an executed contract for remediation services on the site in order to draw down on the available funds. Private individuals have 90 days to submit this evidence, while municipal governmental entities have 180 days. If the defined period of time should elapse for any reason, the commitment loses funding priority to that of newer applicants. However it should be noted that this lower funding priority does not cancel the Fund's commitment to the applicant. If the applicant submits the required evidence at some point after the defined time period has elapsed, the Fund is obligated to honor the commitment if monies are available in the Fund. So although the Fund disbursed \$3 million in 1994, it has outstanding 1994 commitments totaling \$5.9 million which we anticipate will be disbursed in 1995.

1995 Available Funds

Pursuant to N.J.S.A. 58:10B-6, the monies available in the Fund are annually obligated to each category of eligibility based on defined percentages. At the close of 1994, the Fund had disbursed approximately \$3 million in financial assistance and grants to eligible parties as illustrated above. Based on actual disbursements, approximately \$52 million are available for Fund activity in 1995. The following chart illustrates the obligation of these funds for 1995 into the seven categories of eligibility and their respective annual percentage shares of the Fund as defined in the Statute.

Funding Category	Annual Percentage Obligations	1995 Allocations
1	15 %	\$ 7,800,000
2	10 %	\$ 5,200,000
3	15 %	\$ 7,800,000
4	10 %	\$ 5,200,000
5	20 %	\$ 10,400,000
6	20 %	\$ 10,400,000
7	10 %	\$ 5,200,000
Total		\$ 52,000,000

Again, we feel that it is imperative for us to note that at the close of 1994, the Fund had outstanding commitments of approximately \$5.9 million. As these monies have not yet been drawn upon by our applicants, they were not illustrated in either of the two tables above, however they are active commitments against the \$52 million remaining in the Fund for 1995.

Fund Implementation

In addition to the financing activity outlined above, the EDA and DEP spent the Fund's first year establishing departmental infrastructures to implement the Fund, as well as launched a comprehensive marketing effort to promote the Fund. This marketing effort included the distribution of printed materials as well as the sponsoring of educational seminars around the State. Exhibits C and D are two postcards that were developed to advertise the Fund. The cards, which target the private and public sectors, were distributed by direct mail to banks, businesses, environmental consultants and every Mayor in the State. In addition to this direct mailing effort, the EDA and DEP co-sponsored educational seminars about the Fund to interested parties. To date, seminars have been held in Camden, New Brunswick, Jersey City and Paterson. We are currently preparing to sponsor additional seminars in Asbury Park, Elizabeth and Trenton.

Beyond these intergovernmental efforts to promote awareness of the Fund, we have also begun to work with non-profit organizations to expand our outreach efforts. In fact, the New Jersey League of Municipalities recently did a direct mailing (Exhibit E) to every municipal finance officer and tax collector in the State highlighting the financing that is available to municipalities and intends to do several articles about the Fund in its newsletter over the coming months. The League of Municipalities, as well as the New Jersey Council on Urban Economic Development (NJCUED), is also interested in jointly sponsoring additional educational seminars about the Fund with the EDA and DEP throughout the State during 1995.

In addition to these marketing and educational efforts, the EDA and DEP have sought to work internally and with other state departments to make this program as user friendly and efficient as possible. A good example of these interdepartmental efforts is a "Program Approval" (Exhibit F) that was granted by the Local Finance Board of the Department of Community Affairs for municipalities that would like to receive financial assistance from the Fund for the purpose of remediating sites on which the municipality has foreclosed due to tax delinquency. The Local Finance Board granted this approval on September 14, 1994 to enable municipalities to remediate contaminated sites without being required to make any repayments on the subject loan for two years or until the site has been sold. In addition to this repayment moratorium, the Local Finance Board has agreed to waive the 5% down payment requirement for such financings and has prepared an abbreviated application for the municipality to obtain Local Finance Board approval. The goal of this Program Approval is to enable municipalities to affordably clean-up abandoned properties so that they may be sold to private users and returned to active status on the tax rolls without directly impacting their capital or operating budgets.

Potential Legislative Action

As noted throughout this report, we are very enthusiastic about the activity that the Fund has seen to date. In addition to implementing this Fund in a customer-oriented manner, we have also sought to work cooperatively with other state agencies and interested parties to improve the operation of the Fund.

The Statute mandates that we offer the Legislature recommendations for legislative action that

we believe will improve the Fund. At this time we feel that there are two primary actions that the Legislature could take to further the original intent of the law:

1) As the legislative intent behind providing grants to municipalities was to enable them to determine the extent of contamination on abandoned properties in order facilitate their return to the tax rolls, we recommend that the scope of municipal grant eligible activities be expanded to include remedial investigations. Preliminary assessments and site investigations are currently eligible, however the next remediation step, remedial investigation, is not. This step is vitally important to municipalities as it may provide information to identify the responsible party or parties as well as provide a realistic estimate for the cost of remedial action. By allowing municipalities to utilize grant funds, even recoverable grants, to conduct remedial investigations, they will be able to use this information to better determine if they should proceed with remediating the site, work with the responsible party to clean up the site, or market the site to a private developer.

2) As financial assistance from this Fund was meant to provide borrowers with below-market interest rates to facilitate the remediation of contaminated sites, we recommend that the municipal interest rate be lowered to be competitive with the municipal bond market. All financial assistance from this Fund currently carries an interest rate of 5%. While this rate is extremely attractive to private individuals, it is not attractive to municipalities which can currently issue bonds for approximately 5.5% in the open market. The municipal interest rate could be set on a sliding scale at: "200 basis points (or 2 percentage points) below a AA- rated municipal bond for a comparable term at the time of approval or closing, whichever is lower (as listed in a daily newspaper which daily publishes municipal bond prices, such as The Bond Buyer)". Under current market conditions, this measure would allow municipalities to close a ten year loan at an interest rate of 3.5%.

Conclusion

This concludes the 1994 Annual Report on yearly activity in the Hazardous Discharge Site Remediation Fund. Should you need any additional information about any of the contents of this report, please do not hesitate to contact the EDA or DEP.

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