

CHAPTER 3

REDEVELOPMENT AGREEMENTS

Authority

N.J.S.A. 13:1E-116.1 et seq. (P.L. 1996, c.124) and P.L. 1998, c.44.

Source and Effective Date

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Sec: 30 N.J.R. 1397(a), 30 N.J.R. 3511(a).

Executive Order No. 66(1978) Expiration Date

Chapter 3, Redevelopment Agreements, expires on September 21, 2003.

Law Review and Journal Commentaries

Financial Incentives Under the Brownfield Act. Leah Healey and Todd L. Normane, 155 N.J.L.J. 702 (1999).

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SUBCHAPTER 1. MUNICIPAL LANDFILL SITE
CLOSURE, REMEDIATION AND
REDEVELOPMENT AGREEMENT RULES**12A:3-1.1 Scope and purpose**

This subchapter establishes the rules governing the redevelopment agreement provisions of the Municipal Landfill Site Closure, Remediation and Redevelopment Program ("Program"). Operated in conjunction with the Departments of Treasury and Environmental Protection, the Program provides funds to reimburse developers, who have entered a redevelopment agreement pursuant to these regulations, in an amount equal to 75 percent of the closure and remediation costs associated with the redevelopment of an eligible municipal solid waste landfill. The intent of the fund is to encourage economic development and job creation on former municipal landfill sites.

12A:3-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise:

"CEO/Secretary" means the Chief Executive Officer/Secretary of the New Jersey Commerce and Economic Growth Commission.

"Closure" means all activities associated with the design, purchase, construction or maintenance of all measures required by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from municipal solid waste landfills subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of final earthen or vegetative cover, the installation of methane gas vents or monitors and leachate monitoring wells or collection systems, and long-term operations and maintenance, at the site of any municipal solid waste landfill that is not listed on the National Priorities List pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. § 9605.

"Closure and remediation costs" means all reasonable costs associated with the closure and remediation of a municipal solid waste landfill, including costs incurred prior to the filing of an application which are incidental to and necessary for the development of the Department of Environmental Protection Memorandum of Agreement, preliminary assessment and site investigation, the remedial investigation, and the remedial work plan, except that "closure and remediation costs" shall not include either:

1. The fees imposed by the Department of Environmental Protection for services rendered in providing supervision of the remediation; or
2. Any costs incurred in financing the closure or remediation.

"Commercial solid waste" means any nonhazardous solid waste derived from wholesale, retail, or service establishments, including stores, markets, theaters, offices, restaurants, warehouses, or from other non-manufacturing commercial establishments.

"Commission" means the New Jersey Commerce and Economic Growth Commission.

"Developer" means any person that enters or proposes to enter into a redevelopment agreement with the State pursuant to the provisions of section 3 of P.L. 1996, c.124 (N.J.S.A. 13:1E-116.3).

"Director" means the Director of the Division of Taxation in The Department of the Treasury.

“Household solid waste” means any solid waste derived from households, including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, except that “household solid waste” shall not include septic waste as defined in section 3 of P.L. 1970, c.40 (N.J.S.A. 48:13A-3).

“Industrial solid waste” means any solid waste derived from manufacturing, industrial and research and development processes and operations that is not a hazardous waste as defined in section 1 of P.L. 1976, c.99 (N.J.S.A. 13:1E-38), except that “industrial solid waste” shall not include mining waste, oil waste, gas waste, or cement kiln dust waste.

“Municipal solid waste landfill” means a landfill that ceased operations prior to January 1, 1982 and received for disposal household solid waste and at least one of the following: commercial solid waste; industrial solid waste; or waste material that was received for disposal prior to October 21, 1976 and that is included within the definition of hazardous waste adopted by the Federal government pursuant to the “Resource Conservation and Recovery Act,” 42 U.S.C. §§ 6921 et seq.; except that “municipal solid waste landfill” shall not include any landfill that is approved for disposal of hazardous waste and regulated pursuant to Subchapter III of the “Resource Conservation and Recovery Act,” 42 U.S.C. §§ 6921 et seq.

“Project” or “redevelopment project” means a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within an area of land whereon a municipal solid waste landfill is or has been located, including an area which is proximate to the municipal solid waste landfill and is of common ownership to the landfill and is part of the integrated redevelopment plan, under a redevelopment agreement with the State pursuant to section 3 of P.L. 1996, c.124 (N.J.S.A. 13:1E-116.3).

“Redevelopment agreement” means an agreement between the State and a developer under which the developer agrees to perform any work or undertaking necessary for the environmentally sound and proper closure and remediation of the municipal solid waste landfill located at the site of the redevelopment project, and for the clearance, development or redevelopment, construction or rehabilitation of any structure or improvement of commercial, industrial or public structures or improvements within an area of land whereon a municipal solid waste landfill is or has been located pursuant to section 3 of P.L. 1996, c.124 (N.J.S.A. 13:1E-116.3), including an area which is proximate to the municipal solid waste landfill and is of common ownership to the landfill and is part of the integrated redevelopment plan, and the State agrees that the developer shall be eligible for the reimbursement of 75 percent of the costs of closure and remediation of the municipal solid waste landfill from the fund established pursuant to section 6 of P.L. 1996, c.124 (N.J.S.A. 13:1E-116.6) as authorized pursuant to section 4 of P.L. 1996, c.124 (N.J.S.A. 13:1E-116.4).

“Remediation” or “remediate” means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in section 23 of P.L. 1993, c.139 (N.J.S.A. 58:10B-1).

12A:3-1.3 Redevelopment agreement, negotiation

(a) The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer may enter into a redevelopment agreement with the State pursuant to the provisions of this section.

(b) The CEO/Secretary of the New Jersey Commerce and Economic Growth Commission in consultation with the State Treasurer will negotiate the terms and conditions of any redevelopment agreement on behalf of the State.

(c) In negotiating a redevelopment agreement with a developer, the CEO/Secretary will consider the following factors:

1. The economic feasibility of the redevelopment project;
2. The extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;
3. The degree to which the redevelopment project will advance State, regional and local development strategies;
4. The likelihood that the redevelopment project will, upon completion, be capable of repaying the closure and remediation costs incurred;
5. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality; and

6. The degree to which the redevelopment project enhances and promotes job creation and economic development.

12A:3-1.4 Eligibility criteria

(a) Redevelopment agreements can only be considered for projects to be located on a municipal solid waste landfill site that ceased operations prior to January 1, 1982 and received for disposal household solid waste and at least one of the following:

1. Commercial solid waste;
2. Industrial solid waste; or
3. Waste material that was received for disposal prior to October 21, 1976 and that is included within the definition of hazardous waste adopted by the Federal government pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. §§ 6921 et seq.

(b) Landfills that are approved for disposal of hazardous waste and regulated pursuant to Subchapter III of the "Resource Conservation and Recovery Act," 42 U.S.C. §§ 6921 et seq. are not eligible for consideration under a redevelopment agreement.

12A:3-1.5 Requests for applications

The Commission shall make available Municipal Landfill Site Closure, Remediation and Redevelopment Agreement applications on request. Application requests may be addressed to the CEO/Secretary, New Jersey Commerce and Economic Growth Commission, 20 West State Street, PO Box 820, Trenton, NJ 08625-0820.

12A:3-1.6 Submission requirements

(a) Each application to the Commission for a Municipal Landfill Site Closure, Remediation and Redevelopment Agreement shall be submitted to the Department and shall include the following information:

1. The name and address of the applicant;
2. The economic feasibility of the redevelopment project;
3. The extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;
4. The degree to which the redevelopment project will advance State, regional and local development strategies;
5. The likelihood that the redevelopment project will, upon completion, be capable of repaying the closure and remediation costs incurred;
6. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

7. The degree to which the redevelopment project enhances and promotes job creation and economic development; and

8. Such additional information as may be required by the CEO/Secretary to provide a complete and accurate description of the project.

12A:3-1.7 Redevelopment agreement

All applicants must execute an agreement with the Commission to establish the terms and conditions associated with the redevelopment agreement.

12A:3-1.8 Application and review procedures

(a) Applicants shall submit to the Commission a completed Municipal Landfill Site Closure, Remediation and Redevelopment Agreement application. The application shall bear either a legible, non-metered post-mark, or a date stamp from the CEO/Secretary's Office indicating that the application was submitted on or before any established deadline.

(b) The Commission shall conduct a review of the applications, commencing with the application bearing the earliest submission date. The Commission may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Department shall review the applications to determine whether:

1. The application is made on behalf of an eligible applicant; and
2. The application is complete as to the submission requirements of N.J.A.C. 12A:3-1.6;

(c) Upon completion of the review of an application pursuant to (b) above, the Commission shall notify the applicant in writing whether the application has been approved, approved with modification, or denied. Reimbursements shall be considered in the order that applications are submitted.

1. In the event that an application is approved, an agreement shall be executed with the Commission to establish the terms and conditions associated with the reimbursement.

2. In the event that an application is approved with modification, the Commission shall indicate preliminarily in writing, the terms under which a reimbursement will be extended to the applicant and the amount of the reimbursement.

3. In the event that an application is denied, the applicant shall be ineligible to receive a reimbursement under this program for the same project, and shall not be permitted to submit another application for the same project under this program.

12A:3-1.9 Severability

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