



# **Remediation Funding Source and Financial Assurance**

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(BEI)**

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RFS Unit**





# Overview

- General information about Remediation Funding Source (RFS) and Financial Assurance (FA)
- RFS Process
- The 1% RFS surcharge
- Process for changing the RFS
- Process for FA
- Process for sites that have a RFS and need a FA
- Miscellaneous
- Q and A





# Remediation Funding Source v. Financial Assurance

- Purpose of RFS – To ensure funds exist to complete a remediation
- Purpose of FA – To ensure funds exist for long term operation and maintenance of an engineering control







# Differences between RFS and FA

- RFS for ongoing remediation whereas FA is for O&M of engineering control
- 1% surcharge on RFS but not on FA
- FA cannot be used to fund O&M
- Can't use self guarantee for FA
- Exemptions differ





# RFS General

## Who must establish

- ISRA
- ACO
- Directive
- Court order

## Who does not

- Unrestricted or limited restricted in a timely fashion
- Environmental Opportunity Zone
- Innovative Technology
- A Gov't entity
- Child care/school





# RFS Unit Staff

- Karen Jentis - Unit Supervisor
- Audrey Williams – processes surcharge checks, annual verifications and self-guarantee apps
- Comfort Caulker - remediation certs, all things RFS except Self-Guarantees
- Gina Tonti – liaison for IT
- Shawna Baldwin - secretary







# What constitutes a complete RFS Package

- Remediation Certification form - initial
- Remediation Cost Review and RFS/FA form
- Original RFS instrument or self-guarantee application
  - The certification at the end of the instrument is to be signed by the person required to establish the RFS
- 1% surcharge check



## CERTIFICATION

The person with the obligation to establish the remediation funding source has the obligation to execute and submit the certification required by N.J.A.C. 7:26C-1.5(b)2, not any other person establishing the remediation funding source pursuant to N.J.A.C. 7:26C-5 et seq.

I certify under penalty of law that I am fully aware of the requirements of N.J.S.A. 58:10B-3 as they pertain to remediation funding sources. Specifically, I am aware of the responsibilities to establish and maintain the remediation funding source. Additionally, I acknowledge that the remediation funding source as required by N.J.A.C. 7:26C-5 shall be maintained in the appropriate amount and form until such time as an alternative remediation funding source is submitted to the Department and it has been approved by the Department in writing or the Department determines that it is no longer necessary to maintain a remediation funding source. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement that I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for all resulting penalties.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: [TYPE FULL NAME OF INDIVIDUAL SIGNING CERTIFICATION]

Title: [TYPE TITLE OF INDIVIDUAL SIGNING CERTIFICATION]





# Exemptions and forms

Even if claiming exemption from either RFS or FA, must submit form

- Forms revised to include check-off boxes for exemptions
- Need to know that you are claiming exemption
- Review/audit purposes



## SECTION B. PERSON RESPONSIBLE FOR CONDUCTING THE REMEDIATION

Full Legal Name Person Responsible for Conducting Remediation: \_\_\_\_\_

Representative First Name: \_\_\_\_\_ Representative Last Name \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Ext: \_\_\_\_\_ Fax: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Email Address: \_\_\_\_\_

I am also the person responsible for establishing and maintaining a remediation funding source.

Attach additional sheets to name each person responsible for conducting the remediation if more than one. Please note on the sheet if that person is also responsible for establishing and maintaining a remediation funding source.

If claiming an exemption from the requirement to post RFS pursuant to N.J.A.C. 7:26C-5.2(b), please check the appropriate box below, and do not complete sections C through G):

- Environmental Opportunity Zone (please include the Municipal Ordinance Number designating the property as an Environmental Opportunity Zone)
- Innovative remedial action technology (please attach documentation supporting the claim of innovative remedial action technology)
- Unrestricted or limited restricted use remedial action
- Government entity
- Remediation at primary or secondary residence
- Owner or operator of a licensed child care center
- Public, private or charter school



# Remediating a site in an Environmental Opportunity Zone (EOZ)

- The EOZ Act allows municipalities to pass ordinance designating certain property as an EOZ.
- If claiming this exemption, submit copy of ordinance along with Remediation Cost Review and RFS/FA form





# Remediating a site using an innovative technology

When claiming this exemption include an explanation of what the innovative technology is with the Remediation Cost Review and RFS/FA form.







# RFS Process - Initial Submission

Submit original financial instrument to the Department:

- For ISRA:
  - Within 14 days after LSRP certifies a remedial action work plan; or
  - Upon the submission to the Department of a remediation certification
- For non-ISRA: as ordered or directed





REMEDIATION COST REVIEW AND RFS/FA FORM

Date Stamp  
(For Department use only)

SECTION A. SITE NAME AND LOCATION

Site Name: \_\_\_\_\_  
List All AKAs: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Municipality: \_\_\_\_\_ (Township Borough or City)  
County: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Program Interest (PI) Number(s): \_\_\_\_\_ Case Tracking Number(s): \_\_\_\_\_

SECTION B. PERSON RESPONSIBLE FOR CONDUCTING THE REMEDIATION

Full Legal Name Person Responsible for Conducting Remediation: \_\_\_\_\_  
Representative First Name: \_\_\_\_\_ Representative Last Name \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone Number: | \_\_\_\_\_ Ext: \_\_\_\_\_ Fax: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City/Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email Address: \_\_\_\_\_

I am also the person responsible for establishing and maintaining a remediation funding source.

Attach additional sheets to name each person responsible for conducting the remediation if more than one. Please note on the sheet if that person is also responsible for establishing and maintaining a remediation funding source.

SECTION C. PURPOSE OF COST REVIEW/ESTIMATE

- Initial Remediation Funding Source pursuant to N.J.A.C. 7:26C-5
- Initial Financial Assurance for a Remedial Action Permit pursuant to N.J.A.C. 7:26C-7
- Annual Remediation Cost Review pursuant to N.J.A.C. 7:26C-5.10

**SECTION D. TYPE AND AMOUNT OF REMEDIATION FUNDING SOURCE OR FINANCIAL ASSURANCE POSTED**

**Initial or Existing Mechanism (Check all that apply)**

- Letter of Credit
- Environmental Insurance Policy
- Performance Bond
- Line of Credit
- Self Guarantee
- Fully Funded Trust
- Remediation Trust Fund
- Surety Bond

**Replacement Mechanism (Check all that apply & indicate provider (lender) for each)**

- Letter of Credit: \_\_\_\_\_
- Remediation Trust Fund: \_\_\_\_\_
- Self Guarantee
- Line of Credit: \_\_\_\_\_
- Environmental Insurance Policy: \_\_\_\_\_
- Direct Oversight Remediation Trust Fund: \_\_\_\_\_

1. Expiration Date of RFS or FA Posted: ..... 10/11/2013

2. Amount of remediation funding source or financial assurance posted as of the date of this filing (after increase/reduction/disbursement): ..... 100000.00



## SECTION E. METHOD OF REMEDIATION COST ESTIMATION (Check all that apply)

- RACER<sup>®</sup> (attach documentation for estimate)
- Cost-Pro<sup>®</sup> (attach documentation for estimate)
- Surrogate Cost from NJDEP Guidance
- Cost Estimate Guidance which can be found on the Department's Website at <http://www.nj.gov/dep/srp/guidance>
- Calculated independently by LSRP/Consultant using (attach documentation used to generate calculation):
  - Actual competitive bid(s)
  - Internal company data
  - Other commercially available software. Specify: \_\_\_\_\_
  - Other. Specify: PA/SI not complete. Using surrogate amount of \$100,000.00

Estimated cost to complete remediation: \$100,000.00

Full legal name of person who prepared the cost estimate: Karen Hope Jentis, LSRP





# RFS Process - Subsequent Submissions

**The Remediation Cost Review and RFS/FA form must be updated and submitted every year on the anniversary date that the initial RFS was required to be established.**

The form requires a detailed cost estimate:

- Summary of all money spent as of date of form
- Estimate of remaining costs to complete remediation
- Explanation of changes from most recently submitted cost review





# 1% RFS Surcharge

- When establishing RFS a check must also be submitted for 1% of the RFS for the surcharge, except Self-guarantee
- Required by N.J.S.A. 58:10B-11 and implemented by N.J.A.C. 7:26C-5.9
- Goes into the Remediation Guarantee Fund





# 1% RFS Surcharge

- Only calculate 1% of what is required for RFS – do not include interest that has accrued on the account
- Cannot pay the 1% surcharge from the RFS







# 1% RFS Surcharge Pop Quiz

Question: What is the most important thing to remember when submitting the surcharge check?

- Hint: Was in a listserv message that went out on 10/2/12
- Answer: Include the PI# and/or the ISRA case# and the case name on the check or the stub or the cover letter!!!





# Svenska Handelsbanken

875 Third Avenue, Fourth Floor, New York, NY 10022-7218

Telephone: (212) 326-5104/5142

[letterofcredit.ny@handelsbanken.se](mailto:letterofcredit.ny@handelsbanken.se)

[lami01@handelsbanken.se](mailto:lami01@handelsbanken.se)

June 26, 2012

**VIA FEDERAL EXPRESS, EMAIL AND FAX: 609 292-7695**

Commissioner,  
State of New Jersey  
401 E. State Street, 7<sup>th</sup> Floor, East Wing  
Trenton, NJ 08625-0402

RECEIVED

JUL - 3 2012

OFFICE OF THE  
ASSISTANT COMMISSIONER

**Attn: Bob Martin, Commissioner**

**Phone: #609 292-2885**

**Re: Issuance of Letter of Credit No. S12081 for \$1,000,000.00**

Attached please find the original of our above mentioned Letter of Credit issued on behalf of APM Terminals North America, Inc.

Kindly confirm receipt of the above-mentioned Letter of Credit by signing and returning to us the enclosed acknowledgement copy.

Sincerely,



Letter of Credit Department

Enclosures

Search

History

Search

By ID Number:

OR

By Name:

Program:

Search by Block and Lot

Program Interests

Sites

People Masterfile

Search Now

Site ID #	PI ID #	Program Interest Name	Municipality	Type	Active
00165198	42401	APM TERMINALS NORTH AMERICA INC	Elizabeth City	AIR	<input checked="" type="checkbox"/>
00165198	00000006615	APM TERMINALS NORTH AMERICA, INC.	Elizabeth City	POLLUTION PREVENT	<input checked="" type="checkbox"/>

Show All  Show Active Only

Display PI Alternate IDs

In State  Out of State  Both

OK

Cancel



# 3 ways RFS can or must be changed

- Can be disbursed to pay for remediation costs
- Can be decreased based on decreased cost estimate
- Must be increased based on increased cost estimate
- Returned after RAO issuance





# RFS Process - Disbursement

The request must include the following information:

- Identification of the site (case name, PI number, ISRA case number, e.g., E20120001)
- The amount of the disbursement request
- Certification by the person responsible for conducting the remediation and the LSRP that the cost is for remediation costs that were OR that will be incurred







# RFS Process - Disbursement

A person with the following types of RFS shall make a written request **to the provider** of the RFS to disburse money for the actual cost of remediation:

- Remediation Trust Fund
- Line of Credit





# RFS Process - Disbursement

LSRP may authorize the disbursement ONLY IF the financial instrument has been amended to include language that allows this – see [www.nj.gov/dep/srp/guidance/rfsguide/#modeldocuments](http://www.nj.gov/dep/srp/guidance/rfsguide/#modeldocuments)

- **Must** copy DEP on request
- Can only be quarterly
- Must provide DEP with notice of disbursement and the amount of remaining RFS within 30 days on Remediation Cost Review and RFS/FA form





# RFS Process - Disbursement

A person with the following types of RFS must make a written request **to the Department** to disburse money for the actual cost of remediation:

- Letter of Credit
- Environmental Insurance Policy



## SECTION G. DISBURSEMENTS REQUEST / NOTIFICATION

1. Date previous disbursement request submitted: ..... March 10, 2012
2. Total amount of this disbursement: ..... \$7,0000

For sites subject to the Department Direct Oversight pursuant to N.J.A.C. 7:26C-14 also complete 3-5:

3. Provide the names of all parties/individuals to receive payment from this disbursement. Provide addresses, and amount of each party who is to be paid.

4. Attach detailed description, including documentation, of remediation costs incurred or to be incurred and the specific remediation that has or will be completed under this request. **Installing 12 wells at \$200 per well**
5. Attach a detailed estimate of remaining costs to complete the remediation. **\$123,321.42**





# Increasing/Decreasing RFS

## 7:26C-5.11

- May decrease if LSRP's cost estimate to complete the remediation reflects cost is less than RFS posted
- Submit the Remediation Cost Review and RFS/FA Form detailing why cost estimate is less
- May decrease upon submission of the form (except in Direct Oversight)





# Increasing/Decreasing RFS

## 7:26C-5.11

- Person must increase RFS amount within 30 days of receipt of LSRP's estimate showing that remaining remediation costs exceed currently posted RFS.
- Submit the Remediation Cost Review and RFS/FA Form documenting the increased cost estimate and corresponding RFS adjustment.





# Release/Return of RFS

When will DEP authorize the return/release of RFS?

- Person substitutes another form of RFS
- Another person has established a RFS, except Self-guarantee
- Full site RAO submitted to the Department







# Release/Return of RFS

- When a site gets a full site RAO, the RP can ask DEP to authorize release of RFS
- DEP will close out RFS in our database – surcharge no longer due
- Form letter will be posted on our website for requesting release







# Release/Return of RFS

- Reminder: in order to issue a RAO, all of the money owed to the Department must be paid
  - Oversight costs
  - Annual Remediation Fees
  - Permit Fees
- Use data miner to check that there are no outstanding oversight costs or fees



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▶ **Stewardship**

▶ **Sustainable Planning**

▶ **Citizen**

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**Information Tools**

▶ **DEP Online**

▶ **NJ-GeoWeb/i-MapNJ**

▶ **CIS Data**

▶ **Data Miner**

▶ **Public Records (OPRA)**

▶ **DEP Bulletin**

▶ **Rules & Regulations**

▶ **Environmental Standards**



**DEP Fall Forestry Festival in Jackson on Saturday...**

The annual Fall Forestry Festival – a celebration of the changing of the seasons, nature, and New Jersey’s heritage – will be held from 10 a.m. to 3 p.m. this Saturday at the DEP’s Forest Resource Education Center in Jackson, Ocean County. The festival provides fun and creative programs and activities that educate visitors on the ecological importance of trees as well as the role they played in the development of New Jersey.

[Read the news release.](#)

**News Releases**



**October 10, 2012**

[First Garden State Green Hotels Workshop to be Held on October 19](#)

**October 4, 2012**

[Christie Administration Will Enhance Public Access to Beaches and Tidal Waterways](#)

**October 3, 2012**

[Parvin State Park to Reopen This Weekend Following Three-month Storm Clean-up Effort](#)

**October 3, 2012**

[Connect with Nature and New Jersey Heritage at 18th Annual Fall Forestry Festival This Saturday in Jackson](#)



**1-877-WARN DEP Hotline**

**New Waiver Rule Info**



**State Parks Mobile App**



**NJ Saltwater Registry**



**Today's Air Quality**



**Transformation & Stakeholder Involvement**



**Meetings & Events**



**Barnegat Bay Plan**

**Bob Martin, Commissioner**



**DEP Commissioner**

401 E. State St.  
7th Floor, East Wing  
P.O. Box 402  
Trenton, NJ 08625-0402

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▶ **DEP Vision and Priorities (pdf)**





# Substituting type of RFS

- Submit the Remediation Cost Review and RFS/FA Form
- DEP will return the original financial mechanism after proof is provided that an acceptable alternate mechanism has been established





# How can a “third party” use RFS?

- If person fails to remediate, DEP can take their RFS.
- Another person may petition DEP to use these funds to remediate the site and DEP may authorize the disbursement
- DEP won't disburse until remaining costs are less than the amount available in the fund.







# Going from RFS to FA – Full Site RAO

If a full site RAO is to be issued, the money in the RFS can be transitioned to FA as follows:

- Person may decrease RFS amount to equal the cost of the FA
- Person must notify DEP via permit application of intention to use existing RFS to meet FA requirements
- When DEP receives notification DEP will close out the RFS record (no longer have to pay 1% surcharge).





# Going from RFS to FA –AOC only

If an RAO is only issued for AOC(s) and not the full site, the RFS must be maintained in an amount to cover the cost of remediating the remaining AOC(s)

- Person may submit request to the DEP to decrease RFS amount to reflect cost to remediate remaining AOCs
- A separate instrument must be established for the FA





# Going from RFS to FA

- If self-guarantee used as RFS, must establish separate instrument for FA regardless of whether a full site or AOC RAO





# FA - General

## Who must establish

- Permittees implementing a remedial action that requires an engineering control

## Who does not

- A government entity
- Some non-Spill Act liable parties
- Primary or secondary residence
- Child care/school
- Small business owner or operator







# FA

- Amount equal to the cost estimate for duration of engineering controls. If indeterminate duration, then use 30 years.
- Funds cannot be disbursed from FA to fund O&M
- Condo Associations– show that they have budgeted for O&M of engineering control
- No surcharge applied





# Substituting form of FA

- Submit the remediation Cost Review and RFS/FA Form
- DEP will return the original financial mechanism after proof is provided that an acceptable alternate mechanism has been established





# Release/Return of FA

When will DEP release/return FA?

- Permittee has substituted another form of FA
- Another permittee has established FA
- DEP has amended the RAP because the engineering control is no longer necessary





# Exemptions for FA

- A government entity
- Some non-Spill Act liable parties
- Primary or secondary residence
- Child care/school







# Exemptions for FA

- Small business owner or operator
  - A business entity that does not acquire property for development or redevelopment, and
  - During the prior three tax years, employed not more than 50 full-time employees or the equivalent thereof, and
  - Qualifies as a small business concern within the meaning of the Federal “Small Business Act,” 15 U.S.C. §§ 631 et seq.





# Miscellaneous issues

Using the proceeds of a sale to fund RFS

- Must submit to DEP evidence of a financial institution/trustee that will establish the RFS; and
- RFS must be established and Remediation Cost Review and RFS/FA form and 1% surcharge check must be submitted to DEP within 5 business days of the sale





# Contact Information

- Karen Jentis, Supervisor, RFS Unit  
Karen.jentis@dep.state.nj.us  
609-633-0705
- Linda Grayson, Bureau Chief, BEI  
Linda.Grayson@dep.state.nj.us  
609-633-1464







# Contact Information - RFS

- Audrey Williams 609-984-2082

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- Comfort Caulker 609-633-1437

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- Gina Tonti 609-633-1480

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- Shawna Baldwin 609-633-1464

[Shawna.baldwin@dep.state.nj.us](mailto:Shawna.baldwin@dep.state.nj.us)







# Contact Information – FA

## Bureau of Remedial Action Permits

- Bob Soboleski, Chief 609-984-2990  
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- Mike Infanger 609-984-4430  
[Michael.infanger@dep.state.nj.us](mailto:Michael.infanger@dep.state.nj.us)
- Renee Bancroft 609-984-1586  
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- Mark Souder 609-292-1945  
[Mark.souder@dep.state.nj.us](mailto:Mark.souder@dep.state.nj.us)





# Links/Resources

- Quick Reference Guide RFS and FA  
[www.nj.gov/dep/srp/srra/training/matrix/new\\_responsibilities/rfs\\_fa.pdf](http://www.nj.gov/dep/srp/srra/training/matrix/new_responsibilities/rfs_fa.pdf)
- Forms  
[www.nj.gov/dep/srp/srra/forms/](http://www.nj.gov/dep/srp/srra/forms/)
- RFS/FA financial instruments document  
[www.nj.gov/dep/srp/guidance/rfsguide/#model\\_documents](http://www.nj.gov/dep/srp/guidance/rfsguide/#model_documents)





# Questions?

