

## Remediation Funding Source Applicability for "Remedial Investigation Complete Extension"

In order to qualify for an extension to the statutory deadline to complete the remedial investigation by May 7, 2014, the person responsible for conducting the remediation must either already have a Remediation Funding Source (RFS) in place or establish one by March 7, 2014, or demonstrate that they are not required to establish an RFS pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) at N.J.A.C. 7:26C-5.2(b)1, 2, 4, 5, 6, or 7. The scenarios depicted below describe the type of RFS that is required to be established and whether the person is required to pay the 1% surcharge.

- If the person responsible for conducting the remediation has already established RFS pursuant to the Brownfield Act at N.J.S.A. 58:10B-3, (for example, due to an ISRSA trigger or the requirement to post RFS in an Administrative Consent Order), is in compliance with all RFS requirements including maintaining the RFS, and is up-to-date in paying the RFS 1% surcharge, if applicable, the RFS criterion for qualifying for the extension has been met.
- If the person responsible for conducting the remediation is not required to establish RFS pursuant to ARRCS at N.J.A.C. 7:26C-5.2(b)1, 2, 4, 5, 6, or 7, then that person also does not need to establish an RFS pursuant to P.L.2013, c.283 in order to meet the RFS criterion for qualifying for the extension.

If the person responsible for conducting the remediation does not meet either scenario above, then, the person must establish a Remediation Funding Source and have all outstanding 1% surcharge payments made by March 7, 2014. The type of RFS that is required to be established and whether the 1% surcharge must be paid going forward depends on which of the following scenarios apply:

- If the person responsible for conducting the remediation is required to establish and maintain RFS pursuant to N.J.S.A. 58:10B-3 but has failed to do so, then that person must establish RFS for the cost of the entire remediation and pay all outstanding 1% surcharges, if applicable, back to the date that the original 1% surcharge was due, by March 7, 2014. Any of the instruments available at N.J.S.A. 58:10B-3 can be used to establish the RFS.
- If the person responsible for conducting the remediation of a site subject to the Industrial Site Recovery Act is not required to establish RFS pursuant to N.J.S.A. 58:10B-3 until the licensed site remediation professional (LSRP) certifies the remedial action workplan (RAW), then that person must, by March 7, 2014, establish RFS for the cost of completing the remedial investigation. Any of the instruments available at N.J.S.A. 58:10B-3 can be used to establish the RFS. The person does not have to pay 1% surcharge on the RFS established for completion of the remedial investigation. The person responsible for conducting the remediation must adjust the amount of RFS at the time the LSRP certifies the RAW to reflect the cost of the entire remediation, and also begin paying the 1% surcharge, if applicable.

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- If the person responsible for conducting the remediation is not required to establish RFS pursuant to the Brownfield Act at N.J.S.A. 58:10B-3 and does not meet any of the conditions in ARRCS at N.J.A.C. 7:26C-5.2(b)1, 2, 4, 5, 6, or 7, then that person must establish a Remediation Trust Fund for the cost of completing the remedial investigation by March 7, 2014. The 1% surcharge is not required.

If the person responsible for conducting the remediation is required to establish RFS in order to meet the RFS criterion of P.L. 2013, c.328, the following apply:

- The person responsible for conducting the remediation must certify that the language of the RFS instrument mirrors the language of the Department's model documents that are posted on the website at [www.nj.gov/dep/srp/guidance/rfsguide/](http://www.nj.gov/dep/srp/guidance/rfsguide/) without deviation.
- The regulatory requirements concerning RFS instruments apply. These requirements can be found in ARRCS, N.J.A.C. 7:26C-5.4 through N.J.A.C. 7:26C-5.8.
- The person responsible for conducting the remediation must submit a fully executed "Remediation Cost Review and RFS/FA" form with the RFS instrument. Please note that the Department has recently revised the form and instructions, which are available at [www.nj.gov/dep/srp/srra/forms](http://www.nj.gov/dep/srp/srra/forms). Be sure to submit the most recent version of the form.
- The person responsible for conducting the remediation who has established RFS only for the cost of the remedial investigation for the purpose of qualifying for the extension, may only use the money to pay for the actual costs relating to completing the remedial investigation. The funds may not be used to pay for any other costs of remediation at the site.