

Remediation Funding Source Exemption Guidance

The Brownfield and Contaminated Sites Remediation Act (N.J.S.A. 58:10B-3) and the Administrative Requirements for the Remediation of Contaminated Sites Rule (N.J.A.C. 7:26C-5.2(b)) include the following exemptions from the requirement to establish and maintain a remediation funding source:

- Remediation in an Environmental Opportunity Zone;
- Remediation using an innovative remedial action technology;
- Implementation of an unrestricted or limited restricted use remedial action in a timely manner;
- Government entity;
- Remediation at a primary or secondary residence;
- Owner or operator of a licensed child care center; and
- Public, private or charter school

Sites that are subject to direct oversight, pursuant to N.J.A.C. 7:26C-14, are required to establish and maintain a Remediation Trust Fund. These sites are not eligible for a remediation funding source exemption provided at N.J.A.C. 7:26C-5.2(b).

Exemption Eligibility Requirements

Remediation in an Environmental Opportunity Zone:

The Environmental Opportunity Zone Act, N.J.S.A. 54:4-3.153 states that a municipality "...may, by ordinance, designate one or more qualified real properties in that municipality as an environmental opportunity zone." The Act requires that any ordinance adopted by a municipality and designating one or more qualified real properties as an "environmental opportunity zone" shall specifically list those real properties. The municipal ordinance must include all items outlined in N.J.S.A. 54:4-3.154-158 and granted as outlined in N.J.S.A. 54:4-3.155-158.

A person responsible for conducting the remediation who is seeking an environmental opportunity zone exemption from the remediation funding source requirements must ensure the site or a portion of the site is located within the municipal ordinance designated environmental opportunity zone. The exemption shall ONLY be applied to the area(s) of the site designated as an environmental opportunity zone.

Innovative Remedial Action Technology:

Pursuant to N.J.A.C. 7:26C-1.3, "Innovative remedial action technology" means a new or alternative method, procedure or process that does not have a substantial operational record. An innovative remedial action technology with a substantial operational record in one field could be considered innovative if it is proposed for a new or different environmental problem.

A person responsible for conducting the remediation who believes they are exempt from remediation funding source requirements because they are implementing an innovative technology may seek the Department's approval for this exemption after submittal of the remedial action workplan and a remedial

action workplan form that reflects the use of the innovative technology. The exemption shall ONLY be applied to the cost of the remediation involving the innovative technology.

NOTE: If the use of the innovative remedial action technology requires a [Discharge to Ground Water Permit-By-Rule Authorization Request](#), the authorization request shall be submitted prior to applying for the exemption.

Implementation of an Unrestricted or Limited Restricted Use Remedial Action in a Timely Manner:

A person responsible for conducting the remediation may seek an exemption from the remediation funding source requirements based on a timely implementation of an unrestricted or limited restricted use remedial action. In order to be eligible for this exemption:

- The remedial investigation must be complete as documented by submittal of a remedial investigation report and remedial investigation report form to the Department;
- A remedial action workplan and remedial action workplan form must have been submitted to the Department;
- The site must be in compliance with all applicable remediation requirements/time frames at the time the exemption request is submitted; and
- The remedial action must be completed within the designated regulatory time frame

The remedial action workplan must reflect the application of an unrestricted or limited restricted use remedial action for the entire site or a particular area(s) of concern. The exemption shall ONLY be applied to the cost of the remediation involving the unrestricted or limited restricted use.

Government Entity:

Federal, State, or local government entities identified as the person responsible for conducting the remediation are not required to establish a remediation funding source.

Remediation at a Primary or Secondary Residence:

A person responsible for conducting the remediation at his/her primary or secondary residence is exempt from the requirement to establish a remediation funding source.

Owner or Operator of a Licensed Child Care Center:

An owner or operator of a child care center (licensed pursuant to N.J.S.A. 30:5B-1 et seq.), performing remediation at the licensed child care center, is exempt from the requirement to establish a remediation funding source.

Public, Private or Charter School:

The person responsible for conducting the remediation at a public school or private school as defined in N.J.S.A. 18A:1-1, or a charter school established pursuant to N.J.S.A. 18A:26A-1, et seq., is not required to establish a remediation funding source.

Exemption Application Process:

For all remediation funding source exemption requests, the person responsible for conducting a remediation must submit the following to the Department:

1. A Remediation Cost Review and RFS-FA form (available at www.nj.gov/dep/srp/srra/forms/), completed in accordance with the form instructions, indicating that an exemption applies
2. A detailed cost estimate, showing the TOTAL cost to complete remediation (inclusive of the exemption), the costs that will be exempted, and the costs for any remaining AOCs.
3. The following specific documentation to support the request:
 - Environmental Opportunity Zone
 - A copy of the municipal ordinance adopted and granted in accordance with all requirements of N.J.S.A.54:4-3.153-158, which includes the site in the list of qualified real properties designated as environmental opportunity zones.
 - Innovative Technology Exemptions
 - Detailed description of the innovative technology, including its proposed use (list each AOC or entire site), summary of implementation process and anticipated results (Restricted, Limited Restricted or Unrestricted Use); and
 - Justification as to why the remedial action technology is innovative based upon whether:
 - It is a new or alternative method, procedure, or process that does not have a substantial operational record; or
 - It has a substantial operation record; however, the technology is believed to be innovative because it is either being utilized for a new or different environmental problem, it is being applied/distributed in a unique manner and/or it is being used in combination with other technologies
 - Unrestricted or Limited Restricted Use remedial action
 - A summary of the proposed remedial action, including the dates in which the remedial investigation report and remedial action workplan were submitted to the Department
 - Remediation at Primary or Secondary Residence
 - Provide proof of ownership or tenancy
 - Owner or Operator of a Licensed Child Care Center
 - Proof of ownership, tenancy or operational license
 - Public, Private or Charter School
 - Proof of school designation

Send to:

Bureau of Case Assignment & Initial Notice
Site Remediation and Waste Management Program
NJ Department of Environmental Protection
401-05H
PO Box 420
Trenton, NJ 08625-0420

If the exemption applies to all contaminated AOCs at the site, no remediation funding source is required and no additional annual filings related to remediation funding source are necessary. If the person responsible for conducting the remediation has previously established a remediation funding source, the Remediation Cost Review RFS-FA form (requesting the exemption) should also indicate a request to release the remediation funding source.

When the remediation funding source exemption is only being applied to specific AOCs, the person responsible for conducting the remediation may reduce the amount of remediation funding source equal to the remediation cost of the exemption(s). If the person responsible for conducting the remediation has previously established a remediation funding source, the Remediation Cost Reviewer RFS-FA form (requesting the exemption) should also indicate a request to reduce the remediation funding source. The remaining remediation funding source shall reflect the cost to complete the remediation for all other AOCs. The annual remediation funding source reporting requirements and remediation funding source surcharge payments (if applicable), pursuant to N.J.A.C. 7:26C-5, will continue to be required.

The Department will review each request for an exemption from the requirement to establish a remediation funding source on a case-by-case basis. The Department may deny the exemption request if a party does not meet the eligibility requirements as described in this guidance document. Upon approval or denial, the Department will provide written notification.

NOTE: If conditions change such that the person responsible for conducting the remediation is no longer eligible for the exemption, the Department must be notified and a remediation funding source must promptly be established in accordance with N.J.A.C. 7:26C-5.