



# Remedial Action Permits

## Financial Assurance

Wayne Howitz  
Assistant Director  
Remediation Oversight Element  
[Wayne.Howitz@dep.state.nj.us](mailto:Wayne.Howitz@dep.state.nj.us)  
(609) 984-1351





# **Financial Assurance – When?**

**Q: When is financial assurance required?**

**A: When a Remedial Action includes an engineering control.**





# **Who has to establish Financial Assurance?**

**Both co-permittees**

- 1. Party who conducts the remediation; and**
- 2. Property owner.**

**Must evaluate their situation to determine if they are required to post financial assurance.**





## **Who needs to post FA? (continued)**

- 1. Examine if each co-permittee qualifies for the Financial Assurance exemption (N.J.A.C. 7:26C-7.10).**
- 2. If one party qualifies under the exemption, the other party must post the Financial Assurance.**

**If both parties do not meet the exemption. Both need to determine who will establish the Financial Assurance.**





# Financial Assurance for Engineering Controls

Remediation Trust Funding Sources	Acceptable as Financial Assurance for Engineering Control?
1. A remediation trust fund agreement in accordance with N.J.A.C. 7:26C-5.4;	Yes
2. An environmental insurance policy in accordance with N.J.A.C. 7:26C-5.5;	Yes
3. A line of credit agreement in accordance with N.J.A.C. 7:26C-5.6;	Yes
4. A letter of credit in accordance with N.J.A.C. 7:26C-5.7	Yes
5. A self-guarantee in accordance with N.J.A.C. 7:26C-5.8; or	<u>No</u>
6. A loan or a grant in accordance with N.J.A.C. 7:26C-11 and 12.	Yes





# **Financial Assurance Exemptions**

## **N.J.A.C. 7:26C-7.10**

**Who does not have to establish Financial Assurance?**

- 1. Government entities;**
- 2. Person who is not liable for cleanup and removal costs pursuant to the Spill Compensation and Control Act, who purchased a contaminated site prior to May 7, 2009, and is remediating, or has remediated, the contaminated site pursuant to N.J.S.A. 58:10-23.11g.d;**
- 3. Person who remediates at that person's primary or secondary residence;**





# Financial Assurance Exemptions

## N.J.A.C. 7:26C-7.10

4. The owner or operator of a **child care center** licensed pursuant to N.J.S.A.30: 5B-1 et seq. who performs remediation at the licensed child care center;
5. The person responsible for performing 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:36A-1 et seq.; and
6. The owner or operator of a **small business** who is responsible for performing a remediation at his/her business property





# Remedial Action Permit Application Form

**Person Responsible for Conducting the Remediation – Co-Permittee**

**Current Owner of the Site – Co-Permittee**

..... **Government entity**

..... **A person not**

**liable pursuant to the Spill Act that purchased contaminated property before May 7, 2009**

..... **A person that**

**conducted remediation at their primary or secondary residence**

..... **Owner or**

**operator of a child care center**

..... **Public school or**

**private school**

..... **Owner or**

**operator of a small business responsible for conducting remediation at the location of the business**







# **Remedial Application Permit Form (Continued) - Associations**

**3. Is the current owner of the site either a homeowner association or a condominium association pursuant to the New Jersey Common Interest Association Act, N.J.S.A. 46:8A-1 et seq.? ..... Yes No**

**If "Yes," and the association is identified in Section D and E of this Permit Application, attach a copy of the association's annual budget that includes funds for the operation, maintenance, and monitoring of the engineering control(s) at the site.**





# **Financial Assurance – How Much?**

**Q: How much Financial Assurance is required?**

**A: Estimate of the future costs to operate, maintain, and inspect all engineering controls that are a part of any remedial action at the site.**





# Financial Assurance Costs

## N.J.A.C. 7:26C-5.3(c)

**N.J.A.C. 7:26C-5.3(c) – The person responsible for conducting the remediation implementing a remedial action that includes an engineering control shall establish and maintain the financial assurance in an amount that is equal to or greater than the full cost to operate, maintain and inspect all engineering controls that are part of any remedial action over the life of the permit as estimated at the time the person submits the complete remedial action permit application.**





# What costs should I include?

- 1. Fees** – This should include all annual fees over the lifetime of the permit. Soil permits have duration of 30-years for calculating financial assurance. However, financial assurance must be maintained for the life of the engineering control which goes beyond a 30-year period.
- 2. LSRP Fees** – Annual Inspections, completion of the biennial certification every 2 years for the life of the engineering control.
- 3. Maintenance costs** – Route maintenance of the engineering control. For example an asphalt cap, will require patching of cracks, resurfacing on a periodic basis.
- 4. Landscaping costs** – Routine costs of maintaining the area around the engineering control. For example, an asphalt cap may require mowing the grass, seeding, mulching the area adjacent to the engineering control. **Only costs related to the engineering control need to be included**, costs associated with the maintenance of a 100 acre site should not be included if the engineering control only consists of ½ acre.





# What can I use to calculate how much FA is needed?

**There are commercially available software that can assist in this calculation.**

- **Cost Pro;**
- **RACER (Remedial Action Cost Engineering and Requirements);**
- **Other commercially available engineering cost projection software that can develop cost projections for the maintenance of an engineering control.**





# Example 1

A gasoline service station has a  $\frac{1}{4}$  acre site that is capped and a deed notice filed. (A small business exemption does not apply for this example)





# Calculation as to how much financial assurance is required is as follows:

<b>Activity</b>	<b>Annual Cost</b>	<b>Years</b>	<b>Cost over 30 yrs.</b>
<b>DEP Fees</b>	\$320.00	30	<b>\$9,600.00</b>
<b>LSRP Fees</b>	\$1,500.00	15* biennial certification is every 2-years.	<b>\$22,500.00</b>
<b>Maintenance Costs</b>	\$500.00	30	<b>\$15,000.00</b>
<b>Landscaping Costs</b>	\$100.00	30	<b>\$3,000.00</b>
<b>Total</b>			<b>\$50,100.00</b>





## **How much financial assurance is required?**

**Based on the above table, the service station would be required to establish financial assurance (environmental insurance policy, letter of credit, line of credit, remediation trust fund) in the amount of \$51,100.00.**







# Common Questions





# **Can I draw down on the financial assurance?**

**No. Financial Assurance must be maintained for the life of the engineering control.**





**I am selling my property; can I cancel my Financial Assurance?**

**The Department will only authorize the removal of a financial assurance instrument when a new one is established and in place.**





**I have a CEA for natural attenuation, do I need to establish Financial Assurance?**

**No, there is no engineering control in place.**





# Can I use Net Present Value (NPV) in calculating my Financial Assurance?

**Yes.**

$$NPV = \sum_{t=1}^T \frac{C_t}{(1+r)^t} - C_0$$





## **Historic Fill**

**My site is contaminated with historic fill. There are no operational discharges at the site. Do I need to obtain a remedial action soil permit?**

**Response: Yes**





## **Historic Fill (continued)**

**Do I need to establish financial assurance for the engineering control?**

**Response: Yes, unless you meet the financial assurance exemptions at N.J.A.C. 7:26C-7.10**





**Thank You**

