



Remediation Funding Source & Financial Assurance

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Welcome

- In-Person Attendees
- Webinar Attendees





Continuing Education Credits (CECs)

SRP Licensing Board **has approved**
2 Regulatory CECs
for this Training Class

Attendance Requirements:

- **In-Person Attendance:** Must sign-in/sign-out: May not miss more than 45 minutes of the training
- **Webinar participants:** must be logged-in for entire session and answer 3 out of 4 test questions (randomly inserted in the presentation)



CECs: What's the Process?

Since the SRPL Board HAS Approved CECs for the course:

- DEP compiles a list of "in-person" and "webinar" participants eligible for CECs and provides the list to the LSRPA
- LSRPA will email eligible participants a "Link" to a LSRPA webpage with certificate access instructions
- Certificates are issued by the LSRPA after paying a \$25 processing fee



CECs: What's the Process?

Since the SRPL Board has approved CECs for the course...

The certificate process will occur **within the next few weeks**



Test Your Knowledge

RFS is the acronym for what?

- A. Really Fun Stuff
- B. Remediation Fact Sheet
- C. Remediation Funding Source

EXAMPLE WEBINAR QUIZ SLIDE

Test Your Knowledge

RFS is the acronym for what?

- A. Really Fun Stuff
- B. Remediation Fact Sheet
- C. Remediation Funding Source



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Important Reminders

- **Please mute cell phones**
- **Phone calls/conversations**
 - Please take outside of the meeting room
- **Questions/Answers**
 - At times specified during the presentation
 - Please wait for the microphone
 - Webinar participants, wait for question period to "open up", then type in question



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Remember!

Please fill out the Course Evaluation Form

Remember to sign in and out for credit



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NJDEP Training on Remediation Funding Source (RFS) and Financial Assurance (FA) (Course #2019-097 - 2 Regulatory CECs) Trenton, NJ December 11, 2019

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Horizontal lines for notes on slide 10.



11

Horizontal lines for notes on slide 11.



12

Horizontal lines for notes on slide 12.



Upcoming Events

December 17, 2019 – LSRPA Member Breakfast (Ponzio's Diner, Cherry Hill, NJ) (#2019-059) (2 Reg CECS)

December 19, 2019 – LSRP Steering Committee Meeting (Mt. Laurel, NJ)

SAVE THE DATES: February 4-5, 2020 – 3rd Annual NJ Site Remediation Conference (New Brunswick, NJ)

LSRPA Initiatives

- Member Breakfasts, held throughout the state: Check lsrpa.org for locations
- LSRPA was a Stakeholder in the SRRA 2.0 revisions and will continue to be a stakeholder in NJDEP and the Licensing Board regulatory processes
- Dispute Resolution, LSRPA Sounding Board & CE Tracking Spreadsheet Tool

GET INVOLVED !

• **LSRPA Committees**

- | | |
|---------------------------------|-------------------|
| Governance (incl. Bylaws) | Communications |
| Continuing Education | College Outreach |
| Membership/Next Generation | Finance |
| Risk Management/Loss Prevention | Legal/Legislative |
| Mentoring | Nominating |
| Regulatory Outreach | SRRA 2.0 |
| Sponsorship | Conference |
| Sounding Board | |

WANTED - VOLUNTEERS





Thank You!

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**General Overview
Remediation Funding Source &
Financial Assurance**

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**Remediation Funding Sources
What is the Purpose?**

Guarantee to the State and the public that funds are available to complete the remediation



Remediation Funding Requirements

Legislative Mandate

- Brownfield and Contaminated Site Remediation Act– established, maintenance of remediation funding source (N.J.S.A. 58:10B-3)

Regulations

- Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) Rule – Subchapter 5 (N.J.A.C. 7:26C-5)



**RFS
Who has to Establish?**

ISRA Subject Parties

- Owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to Industrial Site Recovery Act (ISRA)

Spill Act Subject Parties, if:

- Directive issued by State Agency, Court Order, or Administrative Consent Order (ACO)

Direct Oversight



RFS
When to Establish RFS?

For ISRA

- With submission of a Remediation Certification to DEP
- Within 14 days after LSRP certifies a RAW

For Non-ISRA

- As Ordered or Directed
- Direct Oversight - within 90 days of an event described in N.J.A.C. 7:26C-14.2



SRRA 2.0

Amendments to Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1 et seq.): Chapter 3

- Significant Change – Surety Bonds
 - Surety Bond Update
- Other minor changes for consistency with the ARRCs Rule and for what each financial mechanism allows



Financial Assurance (FA)
What is the Purpose?

Guarantee to the State and the public that funds are available to operate, maintain, and inspect the engineering controls for period that such controls are required



FA Requirements

Legislative Mandate

- Site Remediation Reform Act – established permitting program to regulate operation, maintenance, and inspection of engineering or institutional controls

Regulations

- Financial Assurance largely governed by the ARCS Rule



When to Establish FA?

The financial assurance is required to be established at the time the person responsible for conducting remediation (PRCR) submits with the complete remedial action permit application



The screenshot shows the 'Remediation Funding Source (RFS)' page on the NJDEP website. The page content includes:

- Purpose of RFS:** To ensure that funds are available to complete the remediation of a site if the person who is required to conduct remediation fails to do so.
- Who must post and when?:** Owners and operators of an industrial establishment subject to DIRM must establish an RFS and submit it with a [Remediation Certificate](#) prior to the sale or transfer of ownership or operations of the industrial establishment or no more than 14 days after submission of a remedial action worksheet certified by a licensed site remediation professional (SIRP).
- What are the requirements?:** Parties required to post RFS must comply with the RFS requirements detailed at [§ 14:27-2.6\(c\)](#).
- How to determine the amount of RFS:** The amount of the RFS posted must be equal to or greater than the amount calculated in a detailed remediation cost estimate to complete the remediation, including the DEP fee and oversight cost, and including the estimated cost to operate, maintain and inspect engineering controls.

The 'Important Links' sidebar contains:

- Remediation Funding Source Guide
- Remediation Funding Source
- Remediation Certifications
- RFS FAQ
- Detailed Cost Estimate Guidance
- Detailed Remediation Cost Estimate Checklist
- Example Detailed Remediation Cost Estimate Worksheet
- FAQs About Detailed Remediation Cost Estimates
- RFS Dispersion Guidance
- Actual Remediation Funding Source Data Access Report



Questions?





Financial Mechanisms & Templates

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Mechanism Summary Table

Mechanism	Remediation Funding Source (RFS)	Direct Oversight (DO)	Financial Assurance (FA)
Remediation Trust Fund (RTF)	X	X	X
Line of Credit (LOC)	X	X	X
Letter of Credit (LTRC)	X	X	X
Environmental Insurance Policy (EIP)	X	X	X
Self-Guarantee (SG)	X		
Loan or Grant	X		
Homeowner's Association Budget			X

Surety Bonds coming soon!

Different versions of each mechanism for RFS and FA



Remediation Funding Source (RFS) Types of Mechanisms

1. **Remediation Trust Fund** - cash held in trust account
2. **Line of Credit** - open line of cash available
3. **Letter of Credit** - promise of cash to beneficiary (DEP)
4. **Environmental Insurance Policy** - claims based available funds to DEP
5. **Self Guarantee** - proof of financial viability through submission of audited financial statements and financial tangible net worth and cash flow tests
6. **Loan or Grant** - Hazardous Discharge Site Remediation Fund (HDSRF) or UST Fund

TEMPLATES AVAILABLE ON RFS WEBSITE!
<https://www.nj.gov/dep/srp/guidance/rfsguide/>



Remediation Trust Fund – N.J.A.C. 7:26C-5.4

- Original Remediation Trust Fund Agreement (RTFA) must be submitted
- RTFA cannot be revoked or terminated without written DEP approval
- Trustee is typically a bank or an attorney (not PRCR)
- Trustee may only disburse those funds from the Remediation Trust Fund for actual Remediation Costs



Line of Credit – N.J.A.C. 7:26C-5.6

- Original Line of Credit (LOC) must be submitted
- Must be issued by an entity that is licensed by the NJ Dept of Banking and Insurance or a Federally regulated bank
- Includes auto-renewal clause
- Issuer may only disburse funds from the LOC for actual Remediation Costs
- DEP may access the LOC for failure to remediate pursuant to N.J.A.C. 7:26C-5.13(d)



Letter of Credit – N.J.A.C. 7:26C-5.7

- Original Letter of Credit (LTRC) must be submitted
- Must be issued by an entity that is licensed by the NJ Dept of Banking and Insurance or a Federally regulated bank
- Indicate that LTRC is irrevocable, issued for at least one year
- Includes auto-renewal clause
- DEP may access the LTRC for failure to remediate pursuant to N.J.A.C. 7:26C-5.13(d)



**Environmental Insurance Policy
N.J.A.C. 7:26C-5.5**

- Original Environmental Insurance Policy (EIP) must be submitted
- Must be issued by an entity that is licensed by the NJ Dept of Banking and Insurance
- Cannot be revoked or terminated without written approval of the DEP, except for failure to pay the premium
- Issuer may only disburse funds from the EIP for actual Remediation Costs
- DEP may access the EIP for failure to remediate pursuant to N.J.A.C. 7:26C-5.13(d)



Self-Guarantee – N.J.A.C. 7:26C-5.8

- Only the RFS RP or a Direct Parent company can provide a Self-Guarantee
 - No third party can post a Self-Guarantee for any other party
 - To become the RFS RP on an ISRA case requires completion of a Remediation Certification
- Certified by the Chief Financial Officer or similar officer and RFS RP/PRCR
- Submitted annually to renew



What is Self-Guarantee? N.J.A.C. 7:26C-5.8

- Audited Financial Statements
 - Annual 10-K or financial report
 - Independent Auditor's Unqualified Opinion
- Special Purpose Entity Self-Guarantee
 - Statement of assets and liabilities
 - Certified by a certified public accountant

Self-Guarantee Application is located here:

SRP Forms Library page <https://www.nj.gov/dep/srp/sra/forms/>



What is Self-Guarantee? N.J.A.C. 7:26C-5.8

Three financial tests:

1. 1/3 tangible net worth > RFS to be established
2. Net cash provided by operating activities > estimate for the next 12 months
3. Gross Revenue minus Gross Payments > estimate for next 12 months

Must pass all 3 tests!



SECTION D. ESTIMATED COST OF REMEDIATION	
1. Current estimated cost of remediation:	\$
2. Estimated cost of remediation for the next 12-month period:	\$
SECTION E. REMEDIATION FINANCING SOURCE (RFS) AMOUNT	
Total amount of RFS to be established:	\$
SECTION F. FINANCIAL DOCUMENTATION	
1. Does the required remediation financing source amount exceed one-third of the applicant's tangible net worth? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Self Guarantor's Net Worth (approx.)	\$
Self Guarantor's Intangible Assets (approx.)	\$
Self Guarantor's Tangible Net Worth (Real Estate minus Intangible Assets)	\$
One-third of Tangible Net Worth Listed Above	\$
2. Is cash flow sufficient to assure the availability of sufficient monies for the remediation? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Self Guarantor's NET Cash provided by (used in) operating activities (approx.)	\$
3. Do the gross receipts (revenues) exceed gross payments (expenses) in an amount at least equal to or greater than the estimated cost of remediation to be performed in the next 12-month period? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Gross Receipts (revenues) (approx.)	\$
Gross Payments (approx.)	\$
Gross Receipts less Gross Payments	\$
<small>Chief Financial Officer or Similar Officer Certification I hereby certify under penalty of perjury that I am fully aware of the requirements of N.J.A.C. 7:26C-5.8 as they pertain to remediation financing source. Additionally, I acknowledge that the remediation financing source as required by N.J.A.C. 7:26C-5.8 shall be maintained in the appropriate amount and form until such time as an alternative remediation financing source is authorized in 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 financing source. I am aware that any agreement not to provide for remediation financing source, including any amendments thereto, shall be in writing and shall be subject to the approval of the Department. I am also aware that if I am convicted of a crime of the fourth degree or if I make a written false statement pertaining to this form for an existing permit, I am also aware that I acknowledge and authorize the revocation of my permit, and that all my obligations to be true, I am also aware that I acknowledge and authorize the revocation of my permit, and that all my obligations to be true for all remediation permits.</small>	
Date: _____	By: _____ Signature Print Full Name (Typed Name)



Self-Guarantee (cont'd)

- Renewal dates are based on FY End

FY End	Expiration Date	Renewal Date
December 31 st	May 1 st	April 1 st
February 28 th	July 1 st	June 1 st
June 30 th	November 1 st	October 1 st
October 31 st	March 1 st	February 1 st

- If the SG is denied, you will be required to submit an alternate mechanism, revised RCR, and 1% surcharge check
- Can re-apply following year



Loan or Grant

- Hazardous Discharge Site Remediation Fund (HDSRF)
- Petroleum Underground Storage Tank Remediation, Upgrade & Closure Fund (UST FUND)

Awarded by the Department upfront



Direct Oversight (DO) Types of Mechanisms

Before, for Sites Subject to Direct Oversight (DO):

1. **Direct Oversight version of the Remediation Trust Fund**

Now after SRRA 2.0:

1. **Remediation Trust Fund** – standard version, cash held in trust account
2. **Line of Credit** - open line of cash available
3. **Letter of Credit** -promise of cash to beneficiary (DEP)
4. **Environmental Insurance Policy** - claims based available funds to DEP

No Self-Guarantee for DO!



Financial Assurance (FA) Types of Mechanisms

1. **Remediation Trust Fund** - cash held in trust account
2. **Line of Credit** - open line of cash available
3. **Letter of Credit** - promise of cash to beneficiary (DEP)
4. **Environmental Insurance Policy** - claims based available funds to DEP
5. **Included in Annual Budget for a Residential Homeowner or Condominium Association**

No Self-Guarantee for FA!



FA and Residential Homeowner or Condominium Association

If Current Property Owner per the Remedial Action Permit:

- Has Primary Responsibility for Permit Compliance; and
- Is either a homeowner association or condominium association pursuant to the New Jersey Common Interest Association Act, N.J.S.A. 46:8A-1 et seq.

Then:

- FA mechanism is not required to be secured
- Provide documentation of annual association budget that reflects funds dedicated to operation, maintenance, and monitoring of engineering controls equal to estimated amount required for FA



Using RFS as FA

- RFS can be used as FA when establishing a remedial action permit
 - The Department recommends securing a separate financial mechanism for FA
- See June 18, 2019 "Updates to Soil and Ground Water Remedial Action Permit Forms, Regulations and Processes" training available at:



<https://www.nj.gov/dep/srp/srra/training/>



Mechanism Summary Table

Mechanism	Remediation Funding Source (RFS)	Direct Oversight (DO)	Financial Assurance (FA)
Remediation Trust Fund (RTF)	X	X	X
Line of Credit (LOC)	X	X	X
Letter of Credit (LIRC)	X	X	X
Environmental Insurance Policy (EIP)	X	X	X
Self-Guarantee (SG)	X		
Loan or Grant	X		
Homeowner's Association Budget			X

Surety Bonds coming soon!
Different versions of each mechanism for RFS and FA

<https://www.nj.gov/dep/srp/guidance/rfsguide/>

What are acceptable RFS and Financial Assurance (FA) mechanisms?

All RFS and FA mechanisms must comport with the format and language of the model documents found at the links below.

Remediation Funding Source (RFS)

- [Remediation Trust Fund Agreement](#) - Please see N.J.A.C. 7:26C-5.4 for specific requirements.
- [Line of Credit Agreement](#) - Please see N.J.A.C. 7:26C-5.6 for specific requirements.
- [Letter of Credit](#) - Please see N.J.A.C. 7:26C-5.7 for specific requirements.
- [Environmental Insurance Policy](#) - Please see DEP's regulatory requirements at N.J.A.C. 7:26C-5.5.
- [Self-Guarantee Application](#) - Please see the Self-Guarantee Application Instructions for more information and N.J.A.C. 7:26C-5.8 for specific requirements. **(Not for use as Financial Assurance.)**
- Loan or Grant from the [Hazardous Discharge Remediation Fund](#) - Please see N.J.A.C. 7:26C-5.2 for specific requirements.


Financial Assurance (FA) - (To be used for Remedial Action Permits only)

- [Remediation Trust Fund Agreement for FA](#) - Please see N.J.A.C. 7:26C-5.4 for specific requirements.
- [Line of Credit Agreements for FA](#) - Please see N.J.A.C. 7:26C-5.6 for specific requirements.
- [Letter of Credit for FA](#) - Please see N.J.A.C. 7:26C-5.7 for specific requirements.
- [Environmental Insurance Policy](#) - Please see DEP's regulatory requirements at N.J.A.C. 7:26C-5.5.
- Loan or Grant from the [Hazardous Discharge Remediation Fund](#) - Please see N.J.A.C. 7:26C-5.2 for specific requirements.

Direct Oversight



- [Remediation Trust Fund Agreement for Direct Oversight](#) - Please see N.J.A.C. 7:26C-14.2(b) for specific requirements.

Mechanism Templates



- Do NOT modify any language!
–No changes or modifications are reviewed or acceptable
–Only adding site-specific case-identifying information and the contact information for the RFS RP/PRCR/Applicant/Trustee
- Do include all PI Numbers, ISRA Case Numbers, Incident Numbers
–Especially if mechanism is for more than one
–RFS PI number is different than SRP PI number
- No template for Environmental Insurance Policy

The templates for RFS, FA and DO are **different**

Annual Valuation and Verification

- For Remediation Trust Funds (all), Lines of Credit and Environmental Insurance Policies
 - Current valuation (amount) of mechanism
 - Confirms mechanism will be in effect for the next 12 months
 - For FA mechanisms, still provide valuation/verification **annually**
- Letters of Credit have auto-renewal clauses
- Self-Guarantee Applications renewed annually



From RFS Guide Webpage

Annual RFS Renewal and Verification of the Amount in the RFS

- The person responsible for conducting the remediation who has established RFS shall notify the Department annually of the value of the RFS and that the RFS will continue to exist for the next consecutive 12 months as follows:
- Self-guarantee: 30 calendar days prior to the current approved expiration date, a new application is to be submitted based on the most current fiscal year and financials.
 - Remediation Trust Funds, Lines of Credit and Environmental Insurance Policies: 30 calendar days prior to the anniversary date of establishment of the RFS, a written statement must be submitted to the Department from the holder or issuer of the RFS confirming the value of the funding source and renewal of the funding source for the next 12-month period. Please see the [2018 Annual Remediation Strategy](#).
 - Letters of Credit: This mechanism stipulates self-renewal clauses (i.e., the letter of credit will be automatically renewed) unless 120 days prior to the expiration date the lender notifies DEP of the nonrenewal. If the lender does not renew the letter of credit, the person responsible for conducting the remediation must obtain a replacement RFS mechanism prior to the expiration date of the existing letter of credit.

Annual Valuation and Verification Model Document also available on website

<https://www.nj.gov/dep/srp/guidance/rfsguide/>



ISSUER, LENDER OR TRUSTEE LETTERHEAD*
(Including Address Telephone Information)

To: _____ Date: _____
 Attn: Remediation Funding Source Coordinator
 New Jersey Department of Environmental Protection
 Site Remediation and Waste Management Program
 Remediation Funding Source Unit
 Mail Code 95-1009
 P.O. Box 4204
 955 East State Street
 Trenton, NJ 08621-0424

RE: → NJDEP Program Interest # _____
 → SRA/CASE # or applicable # _____
 → Site Name Location # _____

→ Annual Renewal Verification # _____
 → Letter of Credit or Environmental Insurance Policy or Trust Account # _____

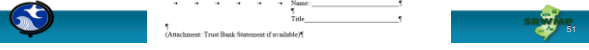
To Whom It May Concern:

In accordance with N.J.A.C. 7:26C-1.4(e), please accept this notification that the [Line of Credit, Environmental Insurance Policy or Remediation Trust Fund Agreement], dated _____, remains in effect and will continue to be in effect for the next 12-month period.

The current value of the [Environmental Insurance Policy, Line of Credit or Remediation Trust Fund] is \$ _____

Signature: _____
 Name: _____
 Title: _____

(Attachment: Trust Bank Statement if available)





Questions?





RFS & FA Exemptions

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Please Be Advised

Sites that are subject to direct oversight, pursuant to N.J.A.C. 7:26C-14, are NOT eligible for a remediation funding source exemption provided at N.J.A.C. 7:26C-5.2(b)

See Guidance at <https://www.nj.gov/dep/srp/rfs/>



RFS Exemptions

Who Must:

- ISRA
- ACO
- Directive
- Court Order
- Direct Oversight

Who Does Not (exempt):

- Environmental Opportunity Zone (EOZ)
- Innovative Technology
- Remediation to Unrestricted or Limited restricted use remedial action in a timely manner
- Government entity
- Residences
- Child Care/School



EOZ Eligibility Requirements N.J.S.A. 54:4-3.153

Environmental Opportunity Zone (EOZ)

- N.J.S.A. 54:4-3.153 EOZ Act, a municipality may designate one or more qualified real properties as an environmental opportunity zone by passing a municipal ordinance
 - The ordinance is required to specifically list those real properties
- To be eligible for the exemption the site or a portion of the site must be located within the municipal ordinance designated zone
- Exemption shall ONLY apply to the area(s) of the site designated as an EOZ



EOZ Application Process

- A Remediation Cost Review RFS/FA form
- Include detailed cost estimate that depicts:
 - Total cost to complete the remediation inclusive of the exemption;
 - Costs that will be exempted; and
 - Costs for any remaining Areas of Concern (AOCs)
- Include a copy of the municipal ordinance



Innovative Remedial Action Technology Eligibility Requirements

- See Definition at N.J.A.C. 7:26C-1.3; "Innovative remedial action technology"
- Remedial Action Workplan (RAW) completed and submitted to Department. RAW needs to reflect the use of the innovative technology
 - Exemption only applied to cost of the remediation involving the innovative technology
- If innovative remedial action technology requires a Discharge to Ground Water Permit-By-Rule Authorization Request, the request shall be submitted prior to applying for the exemption



Innovative Remedial Action Technology Application Process

- A Remediation Cost Review RFS/FA form
- Include detailed cost estimate that depicts:
 - Total cost to complete the remediation inclusive of the exemption;
 - Costs that will be exempted; and
 - Costs for any remaining AOCs

AND



Innovative Remedial Action Technology Application Process (cont'd)

- Detailed description of the innovative technology that also includes:
 - Proposed Use (AOC or entire site) with targeted results (restricted, limited or unrestricted)
 - Summary of implementation process; and
- Justification as to why 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 Eligibility Requirements

- Implementation of an Unrestricted or Limited Restricted Use Remedial Action in a timely manner
 - Remedial Investigation completed and submitted to Department;
 - A RAW completed and submitted to Department;
 - Site MUST be in compliance with all applicable remediation requirements/time frames at the time exemption request is submitted; and
 - Remedial action must be completed within designated regulatory time frame
- Exemption shall only be applied to the cost of the remediation involving the unrestricted or limited restricted use



Unrestricted Limited Restricted Application Process

- A Remediation Cost Review RFS/FA form
- Include detailed cost estimate that depicts:
 - Total cost to complete the remediation inclusive of the exemption;
 - Costs that will be exempted; and
 - Costs for any remaining AOCs
- Include a summary of the proposed remedial action, including the dates in which the RIR and RAW were submitted



RFS Exemptions – The Rest

- Government Entity – Federal, State, or Local government
- Primary or Secondary Residence – PRCR conducting remediation at his/her primary or secondary residence
- Owner or Operator of a Licensed Child Care Center
- Public, Private or Charter School – Defined by N.J.S.A. 18A:1-1 (Title 18A – Education)



RFS Exemption – Wrap Up

- Department reviews each request on a case-by-case basis
- Upon approval or denial, the Department will provide written notification
- Annual RFS reporting requirements are still required if exemption was not applied to the entire site
- If conditions change, Department must be notified and RFS established in accordance with N.J.A.C. 7:26C-5



Financial Assurance Exemptions

Who Must:

- Sites Securing a Remedial Action Permit with an Engineering Control

Who Does Not (exempt):

- Government entity
- Child care/school
- Residences
- Owner or operator of a small business
- Spill Act Exempt



Owner or Operator of a Small Business FA Exemption

Small Business means:

- Business entity that does not acquire property for development or redevelopment;
- Prior three tax years does not employ more than 50 full-time employees; and
- Qualifies as a small business concern within "Small Business Act," 15 U.S.C. §§ 631 et seq.



Spill Act FA Exemption

A person who is not otherwise liable for cleanup and removal costs pursuant to Spill Act (N.J.S.A. 58:10-23.11)

- Purchased 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



FA Exemption Application

Provide the Remedial Action Permit Initial Application

- Section I "Financial Assurance" list exemption
- Section K "Other Information Provided" – list justification, rationale, or proof of exemption



Questions?





Developing Detailed Cost Estimates for RFS and FA

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Why Do We Prepare RFS?

- Keep our clients in compliance with NJDEP statutes and regulations
- Ensure that funds are available to complete the remediation
 - Protect taxpayers of New Jersey
- Certify that the PRCR establishes and maintains the estimated funds necessary to complete the remediation
- "An LSRP's highest priority in the performance of professional services shall be the protection of public health and safety and the environment." (N.J.A.C. 7:261-6.2)
 - If there is not enough funding, contaminated sites could go unremediated





Why Do We Prepare RFS?

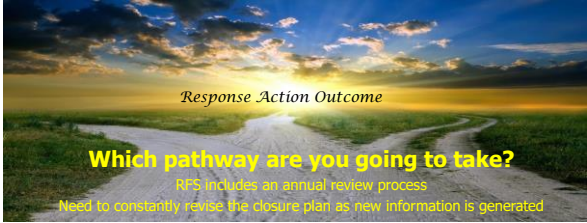
N.J.A.C. 7:26C-5.3: The person responsible for conducting the remediation shall establish and maintain RFS that is equal to or greater than:

"The amount calculated in a cost estimate for the remediation, including the estimated cost to operate, maintain and inspect engineering controls, and the Department's fees and oversight costs, as certified by the licensed site remediation professional and the person responsible for conducting the remediation";

- Amount agreed in ACO, remediation agreement, or remediation certification;
- Amount required by NJDEP in order or directive;
- Amount required by NJDEP under direct oversight; or
- Amount that a court has required



Closure Pathway



Determining RFS Amount



- Project Management
- Public Notice
- Legal Assistance
- NJDEP Fees
- Oversight
- Reporting (QAPP, PA/SI, RE, RIR, RAW, RAR)
- RI and Sampling (all matrices)
- VCs / IEGs
- LNAPL
- RA design (PBR, Permits)
- RAO
- Engineering Controls (FA), O&M
- Biennial Certifications



Non-Detailed v. Detailed Cost Estimates

Non-Detailed RFS Estimate

- Some soil & GW sampling
- Report
- Some more soil & GW sampling
- Report
- Some remediation
- Report
- Some thinking
- RAO!!!!

Detailed RFS Estimate

- Est. 10 SBs / Est. 6 MWs
- No SG or IA needed
- RIR / RAW
- Est. 100 tons soil excavation
 - No engineering supports
- Est. 8 quarterly GW rounds
- RAP GW / RAR / RAO
- Biennial sampling for 10 years
- Biennial certifications



Calculating RFS Amount

Remediation Cost Review RFS/FA Form

https://www.state.nj.us/dep/srp/srra/forms/rem_funding_source_form.pdf?version_2_1

- RACER®
- Cost-Pro®
- Surrogate Cost (ISRA Remediation Certifications)
- Calculated independently by LSRP/Consultant using:
 - Actual competitive bid(s)
 - Internal company data
 - Other commercially available software
 - Other: Specify
 - Professional knowledge and experience



Calculating RFS Amount

The Remedial Action Cost Engineering and Requirements (RACER) ®

- Developed specifically for environmental investigations and cleanup projects
- Developed for U.S. Air Force in 1992 for the annual budgeting and appropriations process

Cost-Pro ®

- Generic cost estimation tool
- Environmental restoration projects, including other life-cycle environmental costs
- Originally developed in 1973 for Dept of Energy (DOE) and released as COSTPRO in 1984
- Geared toward DOE applications
- **May not exist anymore**



Calculating RFS Amount

Surrogate Amounts

ISRA Remediation Certification Form

https://www.state.nj.us/dep/srp/srra/forms/remediation_certification_form.pdf?version_1_9

- If PA/SI completed
 - Detailed estimate of remediation cost prepared and certified by LSRP
- If PA/SI not completed, may use surrogate amounts but can use site-specific cost estimate (LSRP has confidence to certify estimate)
 - Minimum of \$100,000 when no contamination information is known
 - Minimum of \$250,000 when GW impact is known
 - **Still need to revise the cost estimate within 30 calendar days after completion of PA/SI**



NJDEP Tools & Guidance

NJDEP resources for assisting in the calculation of RFS/FA

- <https://www.nj.gov/dep/srp/guidance/rfsguide/>
- <https://www.nj.gov/dep/srp/rfs/index.htm>

Checklist for the Development of Detailed Remediation Cost Estimates for Remediation Funding Sources

- https://www.nj.gov/dep/srp/rfs/rfs_cost_estimate_checklist.pdf
- Detailed Remediation Cost Estimate Spreadsheet
- FAQ (https://www.nj.gov/dep/srp/rfs/remediation_cost_estimates_faqs.pdf)



Items to Include RFS

- All remediation phases for all AOCs through issuance of RAO
- Each media investigation should be represented
 - Soil / GW / Sediment / Ecological / Air
- O&M must be incorporated until FA has been established with RAP
- Not all remediation-related activities or phases will be applicable to each remediation
- Additional site-specific remediation costs, not listed in NJDEP checklist, should still be represented, if appropriate



Items to Include RFS

- General/Miscellaneous: PM, Legal Costs, and PN
- NJDEP Fees (1 Year): Annual Remediation Fee, Initial Remedial Action Permit Fee, Annual 1% RFS Surcharge Fee, Direct Oversight Costs
- PA/SI/RI/RAW: QAPP, Development of Field Investigations (Access), Sample Collection, Surveying, Wastes, Laboratory Analytical, DKQ, Updated RE, Modeling, Pilot Study, Permits, CEA, ERA
- RA/RAO/RAP: For All Media: Construction, Excavation, Backfill, Injection, etc., Land Purchase, System Installation, Monitoring/Sampling, Wastes, Engineering Control(s), RE Update, RAR



Items to Include RFS

- IECs & VCs: Initial Notification, Interim Response Actions, and Monitoring and Confirmatory Sampling
- LNAPL: 60-Day LNAPL Reporting and IRM
- Direct Oversight: Public Participation Plan and Feasibility Study
- Post-RAO: Engineering Controls, O&M
 - Soil: Cap Repair, Fence maintenance, Inspections, Biennial Certifications
 - GW: Sampling & Analysis of GW Treatment System, POTW, Maintenance, Inspections
 - Vapor O&M of Vapor Controls
 - Decommissioning and Monitoring Well Abandonment



Professional Knowledge & Experience



I AM AN LSRP, NOT A...

- ...Lawyer...
- ...Structural engineer...
- ...Contractor...
- ...Chemist...
- ...EHS manager...
- ...Accountant...
- ...Financial planner...

...D@SN IT!!!!



Professional Knowledge & Experience

Some say, "an LSRP never takes off their hat"
I SAY, "WHICH HAT"?

- LSRPs can't know everything
- Consult with knowledgeable parties
- Talk to your contractor and engineer
 - Soil excavation – have to support building
 - How many piers?
 - How deep are the installed?
 - How much does each cost?
 - How much time to install?



Discount Factor/Present Value

From the Department's RFS webpage FAQs:

- RFS/FA needs to include costs that are incurred in the future
- "Present value" can be utilized for RFS/FA:
 - All assumptions are to be disclosed
 - Justification/explanation of the applied assumptions must be attached to the cost estimate
 - NJDEP will review each present value discounting on a case-by-case basis



Where Do I Find a Discount Factor?

OMB Circular No. A-94, Appendix C: Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

- <https://www.whitehouse.gov/wp-content/uploads/2018/12/Appendix-C.pdf>
- Real interest: the interest rate that has been adjusted to remove the effects of inflation
- Nominal interest rate refers to the interest rate before taking inflation into account

Current 30-Year Rates: Real (1.5%) v. Nominal (3.6%)

These change every year



Where Do I Find a Discount Factor?

- NJDEP Technical Guidance on the *Capping of Sites Undergoing Remediation* – Appendix C: Cost and Discount Rate
 - Referenced for FA (engineered caps)
 - Includes example calculation sheet
 - "...accounting for a 3% discount factor"
- Other sources (needs to be supported)



Where Do I Find a Discount Factor?

A Guide to Developing and Documenting Cost Estimates During the Feasibility Study (EPA 2000)

- Real discount rate of 7% used for all non-Federal facility sites
- Real discount rates from Appendix C of OMB Circular used for all Federal facility sites
- Capping Guidance references the EPA document and the 7% discount factor

THIS 7% REFERENCE IS 19 YEARS OLD AND IS NO LONGER ACCEPTED BY THE NJDEP!



What Discount Factors are the NJDEP Currently Accepting?

- **0% to 3%**
 - With Professional Judgment; AND
 - Citation and Justification

The maximum discount factor that the NJDEP is currently accepting is 3.6%

These will change over time!



Assumptions, Assumptions, Assumptions

- **Anticipated dates of milestone activities:**
 - Number of years of activities – 30-years if non-determinant
 - Anticipated date of RAO (unrestricted, limited restricted, or **restricted**)
 - Number of years for CEA
- **Magnitude and type of RI:**
 - Anticipated AOCs and media
 - Number of SBs, MWs, etc.
- **Presence of LNAPL, VCs, and/or IECs:**
 - Vapor sampling
 - Vapor mitigation
 - Alternate water supplies



Assumptions, Assumptions, Assumptions

- Final remedy type and magnitude
 - Soil excavation/tonnage
 - Injections/area and depth
 - Engineering control
 - Discount factor
 - List source
 - Expected accuracy range over time
 - Year 1 should be reasonably accurate
 - Subsequent years get less accurate over time
- Are your assumptions supportable?



Credible Cost Estimate

- There is no definitive "Right" amount for RFS
 - Is the amount credible?
- Example:**
- There is a gas station with a automobile repair shop. There is a 10,000-gallon gasoline UST. There is one GW sample from a TWP with benzene at 19 ug/l. Which RFS amount is credible?

\$5,000 \$25,000 \$150,000 \$1,000,000



Common Pitfalls

Discussing RFS can be a very difficult and contentious conversation

- Client goals v. LSRP requirements
 - "I don't want to put any money into RFS"
 - "Does it have to be that high?"
- RFS v. Proposal to Client
 - Communicate, communicate, communicate
- RFS v. Internal Company Cost Reserves v. Insurance Reserves, etc.
 - Can they be different?
- PRCR v. Person Establishing and Maintaining RFS/FA
 - What if those parties get into conflict?



QUESTIONS



Break



Complete RFS and FA Packages

Atwood Davis
Supervisor, Remediation Funding Source Unit
Atwood.Davis@dep.nj.gov



RFS and FA Submissions

- Initial RFS with a Remediation Certification
- Initial RFS with a LSRP Certified RAW
- Adjusted Direct Oversight – Initial RFS
- Annual RFS Cost Review – Valuation

- Initial FA with Permit Application
- Biennial FA Cost Review - Valuation



Remediation Certification What is It?

RC is a mechanism that allows an ISRA transaction to proceed before a RAW or RAO is issued

- Replaced ISRA Remediation Agreements
- Owner/Operator/PRCR certifies that they are liable for ISRA compliance
- Requires posting of RFS



Remediation Certification Form

- Site location
- ISRA subject owner(s) and operator(s)
- ISRA subject transaction occurring
- Party(ies) agreeing to be responsible to conduct the remediation



Remediation Certification Who Can be Responsible?

- Owner, operator, buyer, developer, parent corporation, etc. who accepts liability and responsibility to conduct remediation under ISRA and SRRA
- ISRA subject owner/operator is never released from liability



Initial RFS Remediation Certification

Prior to the transaction/closing a complete package must be submitted and include:

- Remediation Certification form
- Remediation Cost Review and RFS/FA form
- **Original** RFS Financial Mechanism
- 1% surcharge check (not for Self-Guarantees)



Initial RFS - RAW Submission

The ISRA Transaction has not occurred LSRP certified RAW submitted to the Department – within 14-days submit:

- Remediation Cost Review and RFS/FA form
- **Original** RFS financial mechanism
- 1% surcharge check (not for Self-Guarantees)



Adjusted Direct Oversight Initial RFS

For sites subject to the provisions of direct oversight and are seeking an adjustment to direct oversight within 90 days submit:

- A public participation plan
- Remediation Cost Review and RFS/FA form
 - Detailed cost estimate must include direct oversight specific costs
- **Original** RFS financial mechanism (No SGs)
- 1% surcharge check

Guidance for Adjust Direct Oversight available at:
https://www.ni.gov/dep/srp/enforcement/earning_adjustments_do_arrcs.pdf



Annual RFS Cost Review

Remediation Cost Review (all mechanisms)

- Submit Remediation Cost Review and RFS/FA Form
- Provides for costs of remediation spent and updated, ESTIMATED future costs to complete the remediation
- 1% Surcharge will be issued by Department

Valuations/Verifications (Line of Credit, Remediation Trust Fund and Environmental Insurance Policy)

- Provides current value of the mechanism
- Verifies mechanism is still valid and will be in effect for next 12 months
- Model renewal valuation/verification document available online



Initial FA with Remedial Action Permit Application

- Remedial Action Permit Initial Application – Ground Water or Soil
- Remediation Cost Review and RFS/FA form
- **Original** Financial Assurance (FA) mechanism

No 1% Surcharge Fees on FA



Biennial FA Cost Review

Remediation Cost Review – Due Biennially

- Submit Remediation Cost Review and RFS/FA Form
- Documents and reaffirms the amount of FA that is being maintained

Valuations/Verifications (Line of Credit, Remediation Trust Fund and Environmental Insurance Policy) – Due Annually

- Provides current value of mechanism
- Verifies mechanism is still valid and will be in effect for next 12 months
- Model renewal valuation/verification document available online



Questions?



Adjusting RFS & FA

Jennifer MacLeod
 NJDEP Remediation Funding Source Unit
Jennifer.MacLeod@dep.nj.gov



Definitions

Reduce

- Changes from the previous estimate result in a decrease to the cost estimate total and RFS/FA is now over-funded
- Requires DEP approval

Disburse

- RFS ONLY
- From Remediation Trust Fund or Line of Credit ONLY
- Payment for remediation costs incurred or to be incurred
- Disbursement as directed by LSRP
- Disbursement Approval requested from DEP



Release

- RFS/FA no longer mandated (RAO, Alt mechanism, RAP Termination)



Remediation Cost Review and RFS/FA Form

Annual/Biennial Remediation Cost Review – ALL MECHANISMS

- Updates monies spent to date
- Updates ESTIMATED future costs to complete the remediation and/or to operate, maintain and inspect the engineering control
- Explanation of any changes from previous estimate is detailed on form

Documents Reduction, Increase or Disbursement

- "Change in Amount" – Reduction or Increase, also Disbursements
- Disbursements as directed by LSRP
- Disbursement Approval requested from DEP

Documents Change in Mechanism

- From one mechanism type to another mechanism type
- From one mechanism type to a new mechanism *of the same type*



RFS or FA Change in Amount

Reduction/Increase

- RFS must be equal to *or greater than* cost estimate
- FA must be equal to *or greater than* cost to operate, maintain, and inspect engineering controls
- RFS/FA may be reduced, but **must be increased** based on:
 - Annual cost review (RFS) or biennial certification (FA)
 - LSRP determination that cost of remediation or O&M has increased
 - As required by the Department upon review if estimate is deemed incomplete, inaccurate or deficient
 - 30 days to revise estimate and increase RFS/FA



RFS or FA Change in Amount

Reduction/Increase

- Reduction must be approved by the Department
- Responsible Party (RP) can increase RFS/FA without prior approval

Does NOT require a Soil/Ground Water Permit Modification!



RFS or FA Change in Amount

How do you document the Change in Amount on the RCR?

- **Changes in Remediation Funding Source or Financial Assurance Amount:** Check the box to notify the NJDEP of a decrease or increase in the amount of remediation funding source or financial assurance established, pursuant to N.J.A.C. 7:26C-5.11. For example, if the LSRP determines that the cost estimate to complete remediation of the site is less than what is currently posted as RFS. Or if the person responsible for conducting the remediation wants to use the RFS as FA and the amount of what is currently posted as RFS needs to be adjusted up or down in order to equal the amount that's needed for FA. Complete Sections A, B, C, D, E, I, J, and K (as appropriate).



RFS or FA Change in Amount

RCR Section C

- Change in Amount

SECTION C. PURPOSE OF SUBMISSION

Check all that apply

Initial Remediation Funding Source pursuant to N.J.A.C. 7:26C-5.2(a) (attach original RFS instrument and 1% surcharge payment, as applicable)

Initial Financial Assurance for a Remedial Action Permit pursuant to N.J.A.C. 7:26C-7 (attach original FA instrument)

Initial Direct Oversight Remediation Trust Fund Agreement pursuant to N.J.A.C. 7:26C-14.2(b)(5) (attach original RTF instrument and 1% surcharge payment)

Initial Direct Oversight Remediation Cost Review pursuant to N.J.A.C. 7:26C-14.2(b)(4)

Annual Remediation Cost Review pursuant to N.J.A.C. 7:26C-5.10 (attach RFS instrument verification and valuation)

Biennial Cost Review pursuant to N.J.A.C. 7:26C-7.10 (Remedial Action Permit)

Change in Remediation Funding Source or Financial Assurance Amount pursuant to N.J.A.C. 7:26C-5.11

Change in Remediation Funding Source or Financial Assurance Mechanism pursuant to N.J.A. 7:26C-5.11(d)

Remediation Funding Source Disbursement Notification pursuant to N.J.A.C. 7:26C-5.12(a)

Remediation Funding Source Disbursement Request pursuant to N.J.A.C. 7:26C-5.12(b) - Direct Oversight only

Remediation Funding Source/Financial Assurance Disbursement Request pursuant to N.J.A.C. 7:26C-5.13(d) - Department field RFS/FA

Request Release of the Remediation Funding Source or Financial Assurance pursuant to N.J.A.C. 7:26C-5.11(e)

Using a Remediation Funding Source as Financial Assurance



RFS or FA Change in Amount

RCR Section D

- Check RFS or FA box
- Check appropriate RFS/FA Type
- Provide Expiration Date to this change
- Provide Amount prior to this change
- Check Yes
- Check Reduce or Increase RFS
- Provide Amount RFS/FA increasing or reducing by

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

Initial or Existing Mechanism for RFS or FA

Replacement Mechanism for RFS or FA

Check all that apply

<input type="checkbox"/> Letter of Credit	<input type="checkbox"/> Letter of Credit
<input type="checkbox"/> Remediation Trust Fund	<input type="checkbox"/> Remediation Trust Fund
<input type="checkbox"/> Self Guarantee	<input type="checkbox"/> Self Guarantee
<input checked="" type="checkbox"/> Line of Credit	<input type="checkbox"/> Line of Credit
<input type="checkbox"/> Environmental Insurance Policy	<input type="checkbox"/> Environmental Insurance Policy
<input type="checkbox"/> Direct Oversight Remediation Trust Fund	<input type="checkbox"/> Direct Oversight Remediation Trust Fund
<input type="checkbox"/> Fully Funded Trust (existing only pre-June 1993)	
<input type="checkbox"/> Performance Bond (existing only pre-June 1993)	
<input type="checkbox"/> Surety Bond (existing only pre-June 1993)	

1. Expiration Date of Remediation Funding Source or Financial Assurance Posted: 12/31/2019

2. Amount of Remediation Funding Source or Financial Assurance posted prior to any increase, reduction, or disbursement addressed in this submission: \$48,000.00

3. Do you want to disburse, reduce, or increase the amount of the Remediation Funding Source? Yes No
If "Yes," specify below:

Disburse RFS Reduce RFS Increase RFS by (amount) \$12,000.00



RFS or FA Change in Amount

RCR Section E

- Method to Calculate Cost Estimate
- Estimated Cost:
 - To complete Remediation (RFS) OR
 - For Financial Assurance (FA/RAP)
- Name of person who prepared the cost estimate

SECTION E. REMEDIATION COST ESTIMATION

1. Indicate the method(s) used to calculate the remediation cost review/estimate: (Check all that apply)

RACER® (attach documentation for estimate)

Cost-Plus® (attach documentation for estimate)

Surrogate Cost (ISRA Remediation Certifications, see for instructions for further clarification)
A Preliminary Assessment/Site Investigation has NOT been completed for the site. The surrogate remediation funding source has been established in the amount of \$100,000 or \$250,000.

Calculated independently by LSRP/Consultant using (attach documentation used to generate calculation):
 Actual competitive bids)

Internal company data

Other commercially available software. Specify: _____

Other. Specify: _____

2. Estimated cost:

To complete remediation: _____

or

For Financial Assurance: \$86,000.00

3. Full legal name of person who prepared the cost estimate: Ima G. Okajst



Disbursements

- Applicable to RFS ONLY, not FA
- From Remediation Trust Fund or Line of Credit ONLY
- Directed by LSRP or DEP Approval
- Once every three months for remedial costs incurred or to be incurred

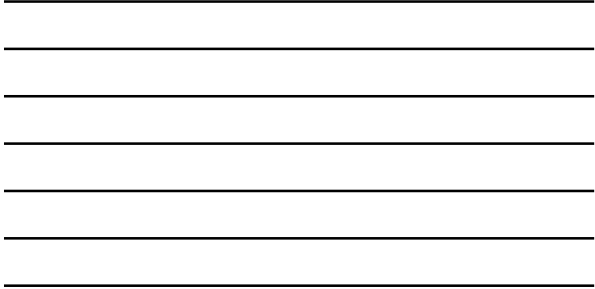


Disbursements

2 Part Process!

1. Letter notifying Lender of amount to be disbursed, certified by both the LSRP and PRCR (copy to DEP)
 2. Remediation Cost Review form submitted to DEP within 30 days after disbursement
- Remediation Funding Source Disbursement Notification pursuant to N.J.A.C. 7:26C-5.12(a): Check the box to notify the NJDEP that a disbursement has been made from the remediation funding source and that the remediation funding source amount has changed, pursuant to N.J.A.C. 7:26C-5.12. Complete Sections A, B, C, D, G, I, J, and K (as appropriate).

Model Form Letter for Disbursement available on website
<https://www.nj.gov/dep/srp/guidance/rfsguide/>



LSRP LETTERHEAD

DATE: _____

NAME AND ADDRESS OF REMEDIATION TRUST FUND LOAN CREDIT: _____

TO: NAME OF LENDER _____

FROM: NAME OF REMEDIATION TRUST FUND = LOAN CREDIT _____

RE: _____

This is to certify that the LSRP has received the Remediation Professional report for the site. Pursuant to paragraph _____ of the REMEDIATION TRUST FUND LOAN CREDIT, I am authorized to request that you disburse funds from the REMEDIATION TRUST FUND LOAN CREDIT in the amount of \$ _____ for the cost of remediation of the site pursuant to N.J.A.C. 7:26C-5.12(a).

Please disburse funds held in the REMEDIATION TRUST FUND LOAN CREDIT on behalf of (NAME OF CARET) as follows: \$ _____

I _____ with personal IDENTITY TO WITHHOLD PAYMENTS SHOULD BE DELETED(S) _____

I _____ with personal IDENTITY TO WITHHOLD PAYMENTS SHOULD BE DELETED(S) _____

I _____ with personal IDENTITY TO WITHHOLD PAYMENTS SHOULD BE DELETED(S) _____

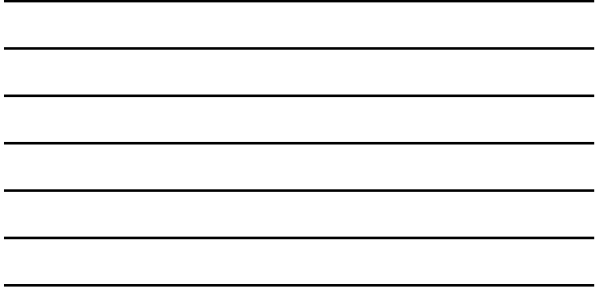
I certify that these sums represent unpaid remediation costs of the site which have been incurred or which will be incurred. I further certify that there are no funds on deposit in the trust fund.

Amount: \$ _____

Signature of LSRP: _____

Signature of Person Responsible for Remediation: _____

CC: Attn: Remediation Funding Source Coordinator
 One Nine Department of Environmental Protection
 Site Remediation and Waste Management Program
 Remediation Funding Source Unit
 Mail Code 400-0675
 P.O. Box 908
 P.O. Box 908
 Trenton, NJ 08646-0908



Disbursements

RCR Section C

- Change in Amount
 - Disbursement Notification pursuant to N.J.A.C. 7:26C-5.12(a) for LSRP-directed disbursement
- SECTION C. PURPOSE OF SUBMISSION**
 Check all that apply
- Initial Remediation Funding Source pursuant to N.J.A.C. 7:26C-5.2(a) (attach original RFIS instrument and 1% surcharge payment, as applicable)
- Initial Financial Assurance for a Remedial Action Permit pursuant to N.J.A.C. 7:26C-7 (attach original FA instrument)
- Initial Direct Oversight Remediation Trust Fund Agreement pursuant to N.J.A.C. 7:26C-14.2(b)(5) (attach original RTF instrument and 1% surcharge payment)
- Initial Direct Oversight Remediation Cost Review pursuant to N.J.A.C. 7:26C-14.2(b)(4)
- Annual Remediation Cost Review pursuant to N.J.A.C. 7:26C-5.10 (attach RFIS instrument verification and valuation)
- Biennial Cost Review pursuant to N.J.A.C. 7:26C-7.10 (Remedial Action Permits)
- Change in Remediation Funding Source or Financial Assurance Amount pursuant to N.J.A.C. 7:26C-5.11
- Change in Remediation Funding Source or Financial Assurance Mechanism pursuant to N.J.A.C. 7:26C-5.11(e)
- Remediation Funding Source Disbursement Notification pursuant to N.J.A.C. 7:26C-5.12(a)
- Remediation Funding Source Disbursement Request pursuant to N.J.A.C. 7:26C-5.12(b) – Direct Oversight only
- Remediation Funding Source Financial Assurance Disbursement Request pursuant to N.J.A.C. 7:26C-5.13(e) – Department held RFIS/FA
- Request Release of the Remediation Funding Source or Financial Assurance pursuant to N.J.A.C. 7:26C-5.11(e)
- Using a Remediation Funding Source as Financial Assurance



Disbursements

- RCR Section D**
- Check RFS box
 - Check appropriate RFS Type
 - Provide Expiration Date
 - Provide Amount prior to this change
 - Check Yes
 - Check Disburse RFS
 - Provide Amount

SECTION D. TYPE AND AMOUNT OF REMEDIATION FUNDING SOURCE OR FINANCIAL ASSURANCE POSTED	
Initial or Existing Mechanism for <input checked="" type="checkbox"/> RFS or <input type="checkbox"/> FA Check all that apply	Replacement Mechanism for <input type="checkbox"/> RFS or <input type="checkbox"/> FA Check all that apply
<input type="checkbox"/> Letter of Credit <input checked="" type="checkbox"/> Remediation Trust Fund <input type="checkbox"/> Self Guarantee <input type="checkbox"/> Line of Credit <input type="checkbox"/> Environmental Insurance Policy <input type="checkbox"/> Direct Oversight Remediation Trust Fund <input type="checkbox"/> Fully Funded Trust (existing only pre-June 1993) <input type="checkbox"/> Performance Bond (existing only pre-June 1993) <input type="checkbox"/> Surety Bond (existing only pre-June 1993)	<input type="checkbox"/> Letter of Credit <input type="checkbox"/> Remediation Trust Fund <input type="checkbox"/> Self Guarantee <input type="checkbox"/> Line of Credit <input type="checkbox"/> Environmental Insurance Policy <input type="checkbox"/> Direct Oversight Remediation Trust Fund
1. Expiration Date of Remediation Funding Source or Financial Assurance Posted: 05/01/2020	
2. Amount of Remediation Funding Source or Financial Assurance posted prior to any increase, reduction, or disbursement addressed in this submission: \$200,000.00	
3. Do you want to disburse, reduce, or increase the amount of the Remediation Funding Source? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," specify below:	
<input checked="" type="checkbox"/> Disburse RFS <input type="checkbox"/> Reduce RFS <input type="checkbox"/> Increase RFS by (amount) \$40,000.00	



Disbursements

- RCR Section G**
- Date of last Disbursement
 - Date Disbursement letter was sent to Lender
 - Disbursement Amount
 - Date Lender Disbursed
 - Amount Remaining in RFS AFTER Disbursement

SECTION G. LSRP AUTHORIZED DISBURSEMENTS NOTIFICATION AND REQUEST FOR NJDEP REDUCTION APPROVAL	
1. Date previous notification/request submitted:	08/01/2019
2. For Remediation Trust Funds and Lines of Credit:	
a. Date the LSRP authorized disbursement (Attach copy of authorization):	12/01/2019
b. Total amount of the authorized disbursement:	\$40,000.00
c. Date the holder of the RFS mechanism disbursed the funds:	12/08/2019
d. Amount of RFS remaining after disbursement:	\$200,000.00
3. For NJDEP authorized reductions:	
a. Amount of funds you are requesting the NJDEP authorize for reduction:	
b. Provide RFS account information (e.g., bank name, account number, etc.):	



RFS/FA Change in Mechanism

- RFS/FA Change in Mechanism Package:
- Remediation Cost Review Form
 - New, original RFS/FA Mechanism
 - 1% RFS surcharge, if applicable / not already paid for the year
 - Replacement FA mechanism in a consistent amount
- Does not require a Soil/Ground Water Permit Modification!**
- Existing RFS/FA Mechanism released upon approval



RFS/FA Change in Mechanism

RCR Section C

- Change in Mechanism pursuant to N.J.A.C. 7:26C-5.11(d)

SECTION C. PURPOSE OF SUBMISSION
 Check all that apply:

Initial Remediation Funding Source pursuant to N.J.A.C. 7:26C-5.2(a) (attach original RFS instrument and 1% surcharge payment, as applicable)

Initial Financial Assurance for a Remedial Action Permit pursuant to N.J.A.C. 7:26C-7 (attach original FA instrument)

Initial Direct Oversight Remediation Trust Fund Agreement pursuant to N.J.A.C. 7:26C-14.2(b) (attach original RTF instrument and 1% surcharge payment)

Initial Direct Oversight Remediation Cost Review pursuant to N.J.A.C. 7:26C-14.2(b)(4)

Annual Remediation Cost Review pursuant to N.J.A.C. 7:26C-5.10 (attach RFS instrument verification and valuation)

Biennial Cost Review pursuant to N.J.A.C. 7:26C-7.10 (Remedial Action Permits)

Change in Remediation Funding Source or Financial Assurance Amount pursuant to N.J.A.C. 7:26C-5.11

Change in Remediation Funding Source or Financial Assurance Mechanism pursuant to N.J.A.C. 7:26C-5.11(i)

Remediation Funding Source Disbursement Notification pursuant to N.J.A.C. 7:26C-5.12(a)

Remediation Funding Source Disbursement Request pursuant to N.J.A.C. 7:26C-5.12(b) - Direct Oversight only

Remediation Funding Source/Financial Assurance Disbursement Request pursuant to N.J.A.C. 7:26C-5.13(a) - Department held RF-SFA

Request Release of the Remediation Funding Source or Financial Assurance pursuant to N.J.A.C. 7:26C-5.11(e)

Using a Remediation Funding Source as Financial Assurance



RFS/FA Change in Mechanism

RCR Section D

- Check RFS or FA box
- Check appropriate EXISTING RFS/FA Type (left column)
- Check appropriate NEW RFS/FA Type (right column)
- Provide Expiration Date of EXISTING RFS/FA
- Provide Amount prior to this change (EXISTING)
- Check No OR complete Item 3 as appropriate (see also amount change)

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

Initial or Existing Mechanism for RFS or FA

Replacement Mechanism for RFS or FA

Check all that apply:

<p><input type="checkbox"/> Letter of Credit</p> <p><input type="checkbox"/> Remediation Trust Fund</p> <p><input checked="" type="checkbox"/> Self Guarantee</p> <p><input type="checkbox"/> Line of Credit</p> <p><input type="checkbox"/> Environmental Insurance Policy</p> <p><input type="checkbox"/> Direct Oversight Remediation Trust Fund</p> <p><input type="checkbox"/> Fully Funded Trust (Existing only pre-June 1993)</p> <p><input type="checkbox"/> Performance Bond (Existing only pre-June 1993)</p> <p><input type="checkbox"/> Surety Bond (Existing only pre-June 1993)</p>	<p><input type="checkbox"/> Letter of Credit</p> <p><input type="checkbox"/> Remediation Trust Fund</p> <p><input type="checkbox"/> Self Guarantee</p> <p><input type="checkbox"/> Line of Credit</p> <p><input checked="" type="checkbox"/> Environmental Insurance Policy</p> <p><input type="checkbox"/> Direct Oversight Remediation Trust Fund</p>
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1. Expiration Date of Remediation Funding Source or Financial Assurance Posted:

2. Amount of Remediation Funding Source or Financial Assurance posted prior to any increase, reduction, or disbursement addressed in this submission:

3. Do you want to disburse, reduce, or increase the amount of the Remediation Funding Source? Yes No
 If "Yes," specify below:

Disburse RFS Reduce RFS Increase RFS by (amount):



RFS/FA Change in Provider, RFS RP or Permittee

RFS/FA Change in RFS Provider, PRCR, RFS RP or Permittee Package:

- Remediation Cost Review Form (all)
- As applicable:
- ISRA Remediation Certification
 - Site and Contact Update Form to BCAIN
 - Remedial Action Permit Transfer/Change of Property Ownership Application
 - RAP Modification Application



**RFS/FA
Change in Provider, PRCR, RFS RP or Permittee**

Remediation Cost Review and RFS/FA Form

**Does NOT (fully) Document Change in
RFS/FA Provider, PRCR, RFS RP or Permittee**

- Updates to RFS contact information can be documented
- Changes to a new RFS contact within the same entity can be documented
- Site and Contact Update Form will not update RFS contacts or transfer ISRA and RFS liability
- Remediation Certification **required** to transfer ISRA and RFS liability



RFS/FA Change Permittee

RAP Transfer/Change of Property Ownership Application:

- Transfer of an effective RAP to a new Property Owner of the site (new Permittee)
- Within 60 calendar days after the sale or transfer of the property
- Pursuant to N.J.A.C. 7:26C-11

RAP Modification Application:

- To make changes in the address of the PRCR or the Property Owner (Permittees)
- Current PRCR identified on an existing RAP can only be changed/modified if the entity no longer exists and documentation is submitted; requires a RAP Modification Application



Transfer RFS to FA

- Intend to use RFS Mechanism as FA, not a SG
- No further active remediation on any CAOCs required
- Permit Application is submitted
- Check "Use Remediation Funding Source as Financial Assurance" under Section C of RCR
- Amount can be reduced/increased to FA Amount
- Mechanism amended to FA language

See June 18, 2019 "Updates to Soil and Ground Water Remedial Action Permit Forms, Regulations and Processes" training available at:

<https://www.nj.gov/dep/srp/srra/training/>



Adjusting RFS and FA

- Annual Review or Biennial Certifications
- Change in Amount – annually or when determined
- Disbursements – quarterly/every 3 months
- Change in Mechanism
- Change in Contact Info
- Change in RFS Provider, PRCR, RFS RP or Permittee

Changes are typically not stand alone
 For Combination: provide all appropriate documentation



Questions?



RFS & FA Release

Atwood Davis
 Supervisor, Remediation Funding Source Unit
Atwood.Davis@dep.nj.gov



Release Pursuant to ARRCs

Pursuant to N.J.A.C. 7:26C-5.11(e)1. – The Department shall return the remediation funding source when:

- A person has substituted another form of remediation funding source; or
- When another person has established a remediation funding source; or
- The Department or LSRP has issued final remediation document



Release Pursuant to ARRCs

Pursuant to N.J.A.C. 7:26C-5.11(e)2. – The Department shall return the financial assurance when:

- A permittee has substituted another form of FA; or
- Another permittee has established FA; or
- The Department has modified the remedial action permit to reflect the determination by the LSRP that the remedy no longer requires an engineering control; or
- The Department has terminated the remedial action permit



Filing for RFS Release

Focusing on Release associated with final remediation document

- Remediation Cost Review and RFS/FA form – Section C "Release"
- **Copy** of final remediation document
- Ensure all Department fees are paid, which is **required** prior issuance of final remediation document



Filing for FA Release

Focusing on the Department's determination that an engineering control is no longer required or permit has been terminated

After determination or termination submit:

- Remediation Cost Review and RFS/FA form – Section C "Release"
- **Copy** of determination or termination



Releasing

Department will issue a release letter to lender, trustee, or an e-mail to self-guarantor (RFS only):

- Copy PRCR, LSRP and known Attorneys
- Letter of Credit requires Department to return original L/C to lender

Department prioritizes releases!



Questions?

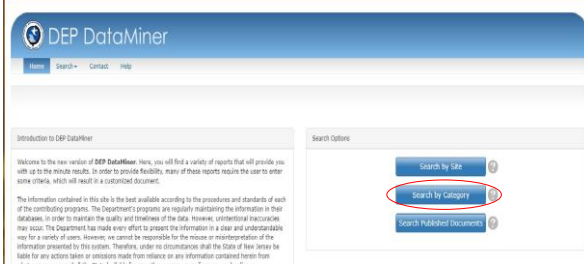


Using Data Miner for RFS & FA

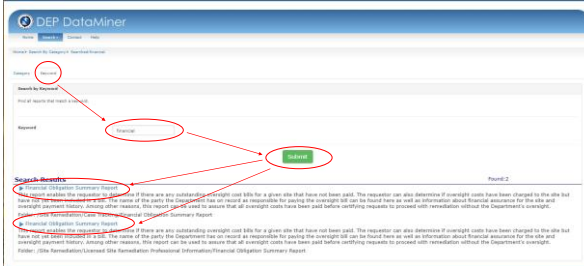
Jonathan "Joe" Perse
LSRP, GEI Consultants, Inc.
jperse@geiconsultants.com



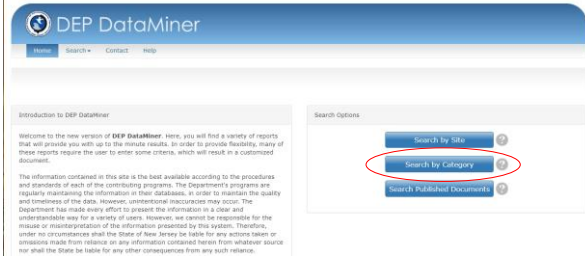
Data Miner – RFS (Method 1)



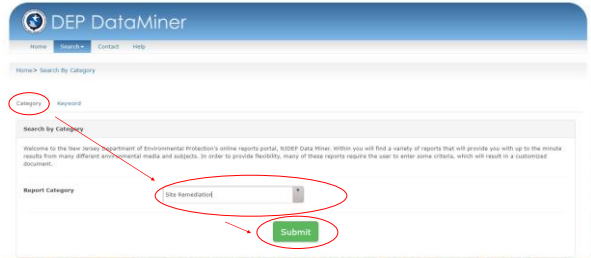
Data Miner – RFS (Method 1)



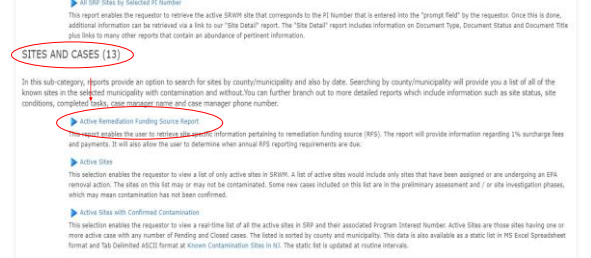
Data Miner – RFS (Method 2)



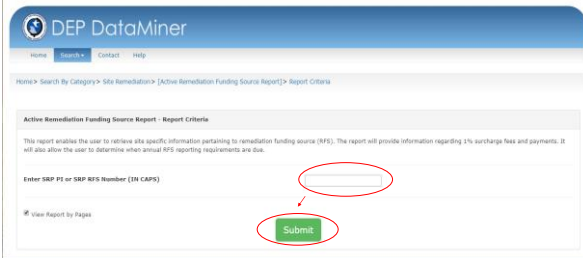
Data Miner – RFS (Method 2)



Data Miner – RFS (Method 2)



Data Miner – RFS (Method 2)



Data Miner – RFS (Method 2)



Data Miner - FA

- You are (currently!) out of luck
- FA amounts currently unavailable on Data Miner
- Need to do an OPRA request to find this information



Questions?



Seven horizontal lines for writing notes.

Frequently Asked Questions

Atwood Davis & Jennifer MacLeod
NJDEP Remediation Funding Source Unit

Jonathan "Joe" Perse
LSRP, GEI Consultants, Inc.



Seven horizontal lines for writing notes.

Frequently Asked Questions

Question 1:

The site has a CEA, do I have to use the \$250,000 surrogate amount?

Answer:

Yes, if you are using a surrogate amount, you must use the \$250,000 for known ground water contamination.



Seven horizontal lines for writing notes.

Frequently Asked Questions

Question 2:

We have multiple or multi-tenant ISRA transactions occurring. Can I post only \$100,000?

Answer:

No. You must post \$100,000 for each occurrence.



Frequently Asked Questions

Question 3:

The "developer" plans on constructing what will be the cap. So, installation of the engineering control costs do not need to be included. Correct?

Answer:

No. The cost to install an engineering control must be included in the RFS cost estimate.



Frequently Asked Questions

Question 4:

The purchaser will be responsible for the permit OR the permittee will be exempt from FA. So, O&M costs can be excluded, correct?

Answer:

No. The O&M costs must be included in RFS until the permit is in place.



Frequently Asked Questions

Question 5:

The annual 1% surcharge invoice was already issued but my cost estimate has changed. Can my invoice be adjusted?

Answer:

Yes. Submit the RCR form documenting the change prior to the surcharge due date and request a revised invoice. If the change is approved, a new invoice will be issued.



Frequently Asked Questions

Question 6:

I am not eligible to self-guarantee based on my fiscal year end financial statements. Can I use my most recent quarterly statement instead?

Answer:

No. Self-guarantee eligibility is based only on audited financial statements for the preceding fiscal year.



Frequently Asked Questions

Question 7:

In theory, the amount of RFS required to be maintained decreases over time. Is it possible for FA to decrease over time and if so, how?

Answer:

Yes, it is possible for an FA amount to decrease over time in instances involving a non-permanent engineering control. A non-permanent engineering control will have an LSRP calculated duration and each year that passes will reduce one year's worth of O&M costs.

Remember: permanent engineering controls require that 30 years of O&M be represented in perpetuity



Frequently Asked Questions

Question 8:

Will biennial ground water sampling need to be included in my RFS when targeting monitored natural attenuation (MNA) as the ground water remedial action? Upon securing a GW RAP, will FA be necessary for this remedy?

Answer:

All remedial costs that are necessary to support the selection of MNA need to be included as part of the RFS being maintained.

After securing the GW RAP, biennial ground water sampling does not need to be accounted for as part of the RFS. MNA does not require the use of an engineering control and does not require the establishment of FA.



RFS Website

Information may found on the RFS website which includes FAQs at:

www.nj.gov/dep/srp/rfs

Atwood.Davis@dep.nj.gov or 609-777-1398



Questions?





Thank you and Goodnight!

Email your course evaluations to
srwm_training@dep.nj.gov

