



Licensed Site Remediation Professionals Association

October 11, 2012



NJ Licensed Site Remediation Professionals Association

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LSRPA Future Events

- Oct. 22 – LSRP Ethics – Burlington C.C. - 7 CECs for LSRP license credit 8 – 5 pm
- Oct. 30 - LSRPA Exam Review Course
- Nov 15 - 3rd LSRP Exam
- Dec. 5 – Business Practice Seminar
LSRP Liability, Insurance & Contract Language
- Jan. 3 – LSRPA Exam Review Course
- Jan. ? - 4th LSRP Exam
- Jan. 10 – LSRPA Annual Meeting
- Planning Technical Courses for LSRP credit in 2013



Thank you for your support!



Remediation Funding Source and Financial Assurance

**Linda Grayson, Bureau Chief
(BEI)
Karen Jentis, Supervisor
RFS Unit**



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There will be a slide at the end of the presentation that contains contact information.

I suggest that you use the slides that you got as a handout as an easy reference concerning RFS and FA matters.



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



This presentation was developed based on questions the RFS unit has been receiving.

This is not a beginner level course for those unfamiliar with the remediation process. For example, I am assuming most of you know about the ISRA process. Most of the RFS stuff we're going to talk about relates to ISRA sites.

Process for changing the RFS: increasing/decreasing; disbursing and release when RAO'd

With FA we're not going to go into details about what unrestricted, limited restricted and unrestricted remedial actions are.

For bankers and insurers, you don't have to know about these types of details. Just focus on the requirements specific to the RFS and FA.

Not going to cover cases in Direct Oversight – will when we get there



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



RFS

Required by the Brownfield Act at N.J.S.A. 58:10C-3

Implemented by ISRA rules at N.J.A.C. 7:26B-3.4, and the ARRCs rules at N.J.A.C. 7:26C-5

FA

Required by SRRA at N.J.S.A. 58C-19.

Implemented by ARRCs at N.J.A.C. 7:26C-7.10



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



There seems to be much confusion about how RFS and FA 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



- For innovative or limited restricted, may still have to post for portion of the site not using innovative tech or not being remediated to unrestricted or ltd restricted
- The rules allow a party other than the person responsible for conducting the remediation to post the RFS and FA for the person responsible EXCEPT if SG
- If multiple parties must post RFS and one party is exempt other parties who are not exempt must post the full amount of RFS.
- And now I'm going to turn it over to the fabulous Karen Jentis who will talk in more detail about the RFS process



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



Nice to put a face with the name.

Behind every great woman are 4 other great women doing the real work.

Audacious Audrey Williams

Incredible Comfort Caulker

Great Gina Tonti

Super Shawna Baldwin



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



- If it's initial submission due to an ISRA trigger, must also submit the Remediation Certification
- The RFS instrument certification – much confusion. Sometimes bank sign it or nobody signs it. (NEXT SLIDE)

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]

This is the certification that I'm talking about. It's the last page of the instrument (e.g., the RTF).

We have modified the instructions for the Remediation Cost Review and RFS/FA form to clarify that this certification must be signed by the person responsible for posting the RFS

Suggest the person responsible for establishing the RFS or the LSRP print it out separately from the rest of the instrument, ensure that the person required to establish the RFS signs it, and submit it with the RFS package.



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



- We have changed, the Remediation Cost Review and RFS/FA form to provide check off boxes for claiming an exemption. CONFIRM THAT ITS POSTED

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

This is the section of the Remediation Cost Review and RFS/FA form you need to complete to claim an exemption.

If you are claiming an exemption, you don't have to fill out sections C thru G (fill out sections A, B, H, I and J)



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



- Exemptions only apply to that part of the site that is in the EOZ.
- Also provides for a tax break for these properties. Environmental opp Zone Act N.J.S.A. 54:4-151
- In order to get the tax break, the property owner has to submit a form which describes the ordinance that designates the property as an EOZ, so the property owner should have this info.
- If they don't it would behoove them to get it, since they can't get their tax break without it. (i.e., it is not a burden to get this info).



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.



- Exemption only apply to that part of the site where the innovative technology is being applied.
- There is no list of innovation technologies.
- The Department will determine whether this exemption applies by evaluating the innovative technology being used or the use of a conventional technology in an innovative way on a site-specific basis.



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



New ones are mostly ISRA cases, so that is what I'm going to focus on

	New Jersey Department of Environmental Protection Site Remediation Program 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: _____ <input type="checkbox"/> 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 <input checked="" type="checkbox"/> Initial Remediation Funding Source pursuant to N.J.A.C. 7:26C-5 <input type="checkbox"/> Initial Financial Assurance for a Remedial Action Permit pursuant to N.J.A.C. 7:26C-7 <input type="checkbox"/> Annual Remediation Cost Review pursuant to N.J.A.C. 7:26C-5.10		

Tell them on resource slide the links to forms

This is an example of filing out the form when it is an initial submission.

SECTION D. TYPE AND AMOUNT OF REMEDIATION FUNDING SOURCE OR FINANCIAL ASSURANCE POSTED	
Initial or Existing Mechanism (Check all that apply)	Replacement Mechanism (Check all that apply & indicate provider (lender) for each)
<input type="checkbox"/> Letter of Credit	<input type="checkbox"/> Letter of Credit: _____
<input type="checkbox"/> Environmental Insurance Policy	<input type="checkbox"/> Remediation Trust Fund: _____
<input type="checkbox"/> Performance Bond	<input type="checkbox"/> Self Guarantee
<input type="checkbox"/> Line of Credit	<input type="checkbox"/> Line of Credit: _____
<input type="checkbox"/> Self Guarantee	<input type="checkbox"/> Environmental Insurance Policy: _____
<input checked="" type="checkbox"/> Fully Funded Trust	<input type="checkbox"/> Direct Oversight Remediation Trust Fund: _____
<input type="checkbox"/> Remediation Trust Fund	_____
<input type="checkbox"/> Surety Bond	
Remediation Cost Review and RFS/FA Form Version 1.3 07/23/12	
Page 1 of 4	
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	

You also check one of these boxes if it is an annual submittal and you are not changing the RFS mechanism (e.g., going from RTF to Line of Credit).

This is an example of how to complete the form if you are using the surrogate amount because you have not done the PA/SI yet.

- E.g, a real estate closing to sell the industrial establishment is scheduled and there is not time prior to the closing to do any remedial investigation (PA/SI).
- You have to submit the Remediation Certification and the Remediation Cost Review and RFS/FA form prior to the closing.
- Section D of the Remediation Certification allows you to use a surrogate amount of \$100,000 if only soil contam is suspected or \$250,000 if g/w contam is suspected.
- In this example, only soil contam is suspected so the RFS amount is \$100,000.



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

RACER® (attach documentation for estimate)

Cost-Pro® (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

In section E of the Remediation Cost Review and RFS/FA form, when indicating the method of the remediation cost estimate, you would choose “other” and specify that the PA/SI has not been completed and that you are using the surrogate amount of \$100,000.

And you would show \$100,000 as the estimate to complete remediation.

Then, within 30 days of the completion of the PA/SI, you would resubmit the Remediation Cost Review and RFS/FA form with the more accurate estimate and adjust the RFS accordingly.

To recap, the initial submission must include:

- The Remed cert
- The Remediation Cost Review and RFS/FA form
- The original of the RFS instrument
- The 1% surcharge check



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% surcharge to RGF - Moneys in the RGF will be used by the DEP to remediate any contaminated site where the person responsible for conducting the remediation fails to conduct or properly conduct that remediation. The money can also be disbursed by the DEP as technical assistance grants to nonprofit groups to assist them in evaluating remediation methods and monitor site conditions at specific sites of public concern in the local community.

Do not need to pay surcharge if SG

Do not need to pay surcharge for FA



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



By the way, we will be changing the process for invoicing related to surcharges. Reminders will no longer be sent. Instead invoices will go out with 30 days to pay. Payment will go to treasury. Non payment will trigger 2nd notice and possible enforcement.

Want to stress that you cannot use the money posted for the RFS to pay the 1% surcharge. LSRPs/banks: stress this to your clients.

If the person responsible for conducting the remediation did use that money to pay for the surcharge, the amount of the RFS would have to be increased to meet the cost of completing the remediation, or the person responsible for conducting the remediation would be in violation of sub 5 of the ARRCs rules.

However, if enough interest has accrued on the instrument that it could pay the surcharge without dipping into the amount required to pay for the remediation, the interest on the account may be used to pay the surcharge.



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!!!



Include identifier on ALL mailings to the Department (checks, letters, when banks submit your verification)

How much mail did we get in Sept? Give stat

How many cases with RFS do we have? 1200.

We have to have identifier in order to process it.

The screenshot shows the NJEMS search interface. The search criteria are: By Name: APM Terminals North America, Program: [All]. The search results table is as follows:

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"/>

The 'Type' column for the first row is circled in red. The interface also includes search filters for 'Search by Block and Lot', 'Program Interests', 'Sites', and 'People Masterfile'. At the bottom, there are options for 'Show All', 'Show Active Only', 'Display PI Alternate IDs', 'In State', 'Out of State', and 'Both'.

This is what comes up in NJEMS when I type in APM Terminals N America – an Air site and a Pollution Prevention site. Nothing from SRP.

I cannot record that this company posted a \$1 million Letter of Credit to some program in SRP.

It took many phone calls, and many hours, trying to track down what this letter of credit was being posted for. IT turns out it was an UST FA.

- No such case in NJEMS. It turns out I wasn't for RFS at all, but for UST FA. I get stuff for RCRA FA and Solid Waste FA
- Must include case name, PI number and ISRA case number if applicable on EVERY thing you send. Checks, RTFs, LOCs, forms, etc!!!
- I want to highlight something in the 10/2 listserv message – starting 11/1 We are sending back any document that doesn't include a PI# or an ISRA case number.
- Could result in enforcement for non-compliance
- RPs and LSRPs have to talk to banks, insurers, attorneys and anyone else who might be making submissions on your behalf and make sure they know what the name and numbers are!!

RPs work with your LSRPs, banks, attorneys or anyone else that regularly sends in correspondence for you and stress the importance of the identifier. It is ultimately your responsibility.



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



It's important to understand why amount of the RFS can be changed:

1. Money can be disbursed from the RFS to pay for actual remediation costs (going to talk about how the money is disbursed in a minute).
2. The amount of money in the RFS can be increased or decreased:
 - It **must** be increased any time the LSRP determines that it will cost more to complete the remediation of the site than what is posted – submit a Remediation Cost Review and RFS/FA form and increase the amount of money posted
 - It can be decreased if a revised Remediation Cost Review and RFS/FA form shows that it will cost less money than what is posted
3. The money in an RFS can be returned to the person responsible for conducting the remediation after the RAO is issued.



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



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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



Person and LSRP must certify



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

- **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

- The Department is no longer in the business of authorizing disbursements from Lines of Credit or RTFs. Listserv message about this went out in September so hopefully you are all compliant with this. ???
- Must copy DEP of the disbursement authorization so we can update our records as to the amount of money in the RFS. If wrong amount in the RFS, the 1% surcharge bill that we generate will not be accurate



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



NOTE: for Letters of Credit and Environmental insurance Policies, the LSRP cannot authorize disbursement – DEP is the beneficiary and only the beneficiary can either present drafts (for Letters of Credit) or make claims (in the case of Environmental Insurance Policies).

- These types of instruments are not meant to be “working” funds to pay for remediation, but as a type of surety or insurance to DEP that there would be money available for remediation if the person responsible for conducting the remediation defaults.

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

Remediation Cost Review and RFSIFA Form
Version 1.3 07/23/12 Page 3 of 4

Another quiz: can the Department authorize the disbursement of these funds?

Hint: has to do with the date

Answer: yes, because the date was more than 3 months prior (N.J.A.C. 7:26C- says can't make request to disburse more frequently than every 3 months).



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)



Decrease is different than disbursement – did cost estimate and found out remaining cost is less than what's in RFS

Remediation Cost Review and RFS/FA form must be submitted - must be certified by LSRP **and** person responsible for conducting the remediation

DOES DEP HAVE TO AUTHORIZE DECREASE IF LETTER OF CREDIT OR EIP – IE. WILL BANK DO IT ON LSRP SAY SO?



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.



- LSRP may determine costs have increased at any time, not just as part of annual cost review. If they do, RP must increase the RFS amount to equal the updated estimated cost of completing remediation.
- The LSRP must copy the Department on the written cert of increase that is sent to the person responsible for conducting the remediation.



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



We do not yet have internal process whereby when we receive the RAO, the RFS unit is notified and automatically releases RFS.

Recommend you write letter or email me, telling me date that RFS filed and requesting us to release the RFS.



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



DEP will send form letter to bank saying we authorize the release with copy to RP and LSRP (KJ: set this up.)

We'll send a listserv message when this is available and where.



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



Can't release RFS unless RAO and get can't RAO until all fees are paid

Use data miner to get this info

The screenshot shows the DEP website home page with the following elements:

- Navigation Menu (Left):**
 - Air Information
 - Water Information
 - Land & Open Space
 - Site Cleanups
 - Waste Management
 - Parks & Forests
 - Fish & Wildlife
 - Climate Change
 - Education
 - Enforcement
 - Environmental Justice
 - Highlands
 - Historic Preservation
 - Pesticides
 - Radiation Protection
 - Recycling
 - School Facilities
 - Stewardship
 - Sustainable Planning
 - Citizen
 - Business
 - Event Calendars
 - Information Tools**
 - DEP Online
 - N1-GeoWeb/i-MapNJ
 - Data Miner** (circled in red)
 - Public Records (OPRA)
 - DEP Bulletin
 - Rules & Regulations
 - Environmental Standards
- Top Navigation:** About DEP, Index by Topic, Programs & Units
- Main Content:**
 - DEP Fall Forestry Festival in Jackson on Saturday...** (highlighted with a red box)
 - 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 12](#)
 - 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](#)
- Right Side Sidebar:**
 - 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
 - Featured Topics
 - DEP Vision and Priorities (pdf)

This is the DEP home page

LINDA WILL TAKE IT HOME.



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



Proof: a letter from the bank/attorney setting up the RFS that it will be established on X date.



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.



N.J.A.C. 7:26C-5.13(d)



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).



Decrease per rule as just described



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



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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



You cannot use SG as FA



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



Exemptions in more detail in a minute....



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



When developing cost estimate LSRP should include costs to inspect, maintain, operate and repair engineering control, cost to prepare biennial certification, & annual permit fee.



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



For example, the pump and treat system has achieved treatment of gw to levels where natural attenuation can proceed without.....?????Rob!!!! Permit and CEA still needed.



Exemptions for FA

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



- At sites with multiple permittees and 1 or more are exempt, the nonexempt permittee shall establish the full amount of FA.



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



TINA'S NOTE ABOUT "UPON WIRING OF MONEY TO NEW TRUSTEE, DEP AUTHORIZES RELEASE FROM OLD. WE WILL AUTHORIZE TRANSFER

The evidence can be a letter from the financial institution or trustee.

The initial submission may be by email but must be followed up with a hard copy.



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Links/Resources

- Quick Reference Guide RFS and FA
www.nj.gov/dep/srp/srra/training/matrix/new_responsibilities/rfs_fa.pdf
- Forms
www.nj.gov/dep/srp/srra/forms/
- RFS/FA financial instruments document
www.nj.gov/dep/srp/guidance/rfsguide/#model_documents





Questions?

