NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

HAZARDOUS DISCHARGE SITE REMEDIATION FUND

1995 ANNUAL REPORT

Presented to:

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CHAIR, ASSEMBLY SOLID AND HAZARDOUS WASTE COMMITTEE
In accordance with P.L. 1993, c. 139, the New Jersey Economic Development Authority (the "EDA") hereby submits the Hazardous Discharge Site Remediation Fund (the "Fund") Annual Report outlining the Fund's financing activity for 1995. In addition to providing a summary of the Fund's 1995 activity, this report identifies the amount of funds available for 1996, and provides suggestions for legislative action which will enable the Fund to respond better to its constituents' needs.

1995 Activity

The EDA is pleased to report that the Hazardous Discharge Site Remediation Fund experienced a significant increase in activity during 1995, its second year of operation. Due to marketing efforts by the Department of Environmental Protection (the "DEP") and the EDA, the approval rate for financial assistance and grants to private individuals and municipal governmental entities doubled from $8 million in 1994 to approximately $16 million in 1995 to clean up contaminated sites around New Jersey. It should be noted that municipal approvals increased dramatically in the last quarter of 1995 with 49 applications for financial assistance and grants being approved for a total of $4.7 million. If this approval rate continues, the Fund's available resources will be exhausted within the next two years and funds in Categories 2 and 3 which serve municipal entities will be depleted prior to the year end.

Of the 1995 Fund commitments, approximately $7 million were disbursed and used to commence work at contaminated sites. The chart below illustrates the amount of funds
available in each category of eligibility for 1995, total disbursements that were actually made from each of these categories during the year, as well as outstanding commitments of the Fund by category.

<table>
<thead>
<tr>
<th>Funding Category</th>
<th>Annual Obligations</th>
<th>1995 Allocations</th>
<th>1995 Disbursements</th>
<th>Outstanding Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15 %</td>
<td>$7.8 mm</td>
<td>$1,025,368</td>
<td>$20,608</td>
</tr>
<tr>
<td>2</td>
<td>10 %</td>
<td>$5.2 mm</td>
<td>$4,406,328</td>
<td>$3,319,014</td>
</tr>
<tr>
<td>3</td>
<td>15 %</td>
<td>$7.8 mm</td>
<td>$250,598</td>
<td>$6,321,298</td>
</tr>
<tr>
<td>4</td>
<td>10 %</td>
<td>$5.2 mm</td>
<td>$115,176</td>
<td>$3,134,501</td>
</tr>
<tr>
<td>5</td>
<td>20 %</td>
<td>$10.4 mm</td>
<td>$77,662</td>
<td>$1,803,385</td>
</tr>
<tr>
<td>6</td>
<td>20 %</td>
<td>$10.4 mm</td>
<td>$1,356,111</td>
<td>$1,426,255</td>
</tr>
<tr>
<td>7</td>
<td>10 %</td>
<td>$5.2 mm</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$52.0 mm</strong></td>
<td><strong>$7,231,242</strong></td>
<td><strong>$16,025,061</strong></td>
</tr>
</tbody>
</table>

For your convenience, Exhibit A provides a more detailed summary of the Fund's historical activity, breaking down commitments by year and category, and Exhibit B details the Fund's approvals to private individuals, corporations and municipal governmental entities since its inception. It should be noted that the $7.2 million in disbursements made in 1995 represent outstanding commitments from 1994 as well as new approvals in 1995. In addition to these disbursements, you will note that current outstanding commitments of the Fund total approximately $16 million. We anticipate that these outstanding commitments will be disbursed by the Fund in 1996.

The statute prescribes a specific method for determining the funding priority of projects that receive approvals from the DEP and EDA. Upon receiving EDA Board approval, applicants have a certain period of time to submit an executed contract for remediation services on the site in order to draw down on the available funds. Private individuals have 90 days to submit this evidence, while municipal governmental entities have 180 days. If the defined period of time should elapse for any reason, the commitment loses funding priority to that of newer applicants. However, it should be noted that this lower funding priority does not cancel the Fund's commitment to the applicant. If the applicant submits the required evidence at some point after the defined time period has elapsed, the Fund is obligated to honor the commitment if monies are available in the Fund.

1996 Available Funds

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1 See Addendum for description of the 7 funding categories of eligibility for 1995.
Pursuant to N.J.S.A. 58:10B-6, the available monies in the Fund are annually obligated to each category of eligibility based on a defined percentage. At the close of 1995, the Fund had disbursed approximately $7 million in financial assistance and grants to eligible parties as illustrated in the chart above. Based on these actual disbursements, the Fund currently has approximately $44 million available for 1996 activity which will include honoring the Fund's outstanding commitments. The following chart illustrates the obligation of available funds for 1996 into the eight categories\(^2\) of eligibility and their respective annual percentage shares of the Fund as defined in the Statute.

<table>
<thead>
<tr>
<th>Funding Category</th>
<th>Annual Percentage Obligations</th>
<th>1996 Allocations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15 %</td>
<td>$ 6,710,559</td>
</tr>
<tr>
<td>2</td>
<td>10 %</td>
<td>$ 4,473,705</td>
</tr>
<tr>
<td>3</td>
<td>15 %</td>
<td>$ 6,710,559</td>
</tr>
<tr>
<td>4</td>
<td>10 %</td>
<td>$ 4,473,705</td>
</tr>
<tr>
<td>5</td>
<td>20 %</td>
<td>$ 8,947,412</td>
</tr>
<tr>
<td>6</td>
<td>20 %</td>
<td>$ 8,947,412</td>
</tr>
<tr>
<td>7</td>
<td>5 %</td>
<td>$ 2,236,853</td>
</tr>
<tr>
<td>8</td>
<td>5 %</td>
<td>$ 2,236,853</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 44,737,059</td>
</tr>
</tbody>
</table>

Again, we feel that it is imperative for us to note that at the close of 1995, the Fund had outstanding commitments of approximately $16 million as illustrated in the first table. As these monies have not yet been drawn upon by our applicants, they are therefore not illustrated in the table above which is limited to denoting actual disbursements pursuant to the Statue. The outstanding commitments however are active claims against the $44 million remaining in the Fund for 1996 and leave an effective balance of only $28 million in the Fund for 1996 and beyond.

Potential Legislative Action

As noted throughout this report, the EDA is very enthusiastic about the activity that the Fund has seen to date. During the past two years, the EDA has sought to implement the Fund in a customer-oriented manner and is constantly looking for new ways to improve the

\(^2\) During 1995 a new category of eligibility was approved by the Legislature to designate that 5% of total available monies be allocated for use by private individuals who pursue remediation of contaminated sites in Environmental Opportunity Zones. N.J.S.A.
Fund's administration.

As the Statute mandates that the EDA offer the Legislature recommendations for legislative action that would improve the Fund, we would like to highlight three potential actions that we believe will enhance the Fund's ability to respond to its constituents:

(1) Shift Funds Among Categories: The Act currently provides that the EDA and the DEP have the ability to shift funds among the first three categories of eligibility in any given year to meet overflow demand. The sum of these three categories total 40% of the Fund. As you can see from the various charts and exhibits throughout this report however, these three categories are the most heavily utilized in the Fund in comparison to the rest of the Fund. According to Exhibit A for instance, the municipal category for tax sale certificate properties will only have $1 million available in 1996, while it experienced a demand of close to $8 million in 1995. Under these circumstances, municipal applicants would need to be rejected because the EDA and DEP's inability to shift funds from other, less utilized categories.

The EDA therefore recommends that Section 28a of the act be amended to allow the EDA and the DEP to shift funds among all eight eligibility categories as may be needed to meet the public interest. Such an amendment could read:

"Upon a written determination by the Authority and the Department that it is in the public interest, financial assistance and grants dedicated for the purposes and in the percentages set forth in paragraph (1), (2), (3), (4), (5), (6), or (7) of the subsection, may, for any particular year, be obligated to other purposes set forth in this subsection. The written determination shall be sent to the Senate Environment Committee and the Assembly Energy and Hazardous Waste Committee, or their successors."

Such an action would enable the Fund to be flexible enough to meet the needs of the market and better respond to its constituents.

(2) Expand Municipal Grant Eligible Activities: In order to enhance the legislative intent behind providing grant funds to municipalities for the purpose of determining the extent of contamination on abandoned properties in hopes of returning them to the property tax rolls, the EDA recommends that the scope of municipal grant eligible activities be expanded to include remedial investigations. Preliminary assessments and site investigations are currently eligible, however the next step, remedial investigations, are not. This step is vitally important to municipalities as it usually provides more conclusive information as to the identity of the responsible party or parties for the contamination as well as determines a more realistic cost estimate for the necessary remedial action. By allowing municipalities to utilize grant funds, even in the form of recoverable grants, to conduct remedial investigations, they would be better able to use the information gathered to determine if they should proceed with remediating the site, work with the responsible party to clean up the site, and/or market the site to a private developer.
(3) Lower Municipal Interest Rate: In order to enhance the legislative intent of providing financial assistance from this Fund to provide borrowers at below-market interest rates to facilitate the remediation of contaminated sites, the EDA recommends that the municipal interest rate be lowered to be competitive with the municipal bond market. All financial assistance from this Fund currently carries an interest rate of 5%. While this rate is extremely attractive to private individuals and corporations, it is not attractive to municipal government entities which can currently issue ten year AA rated bonds for approximately 5.35% in the open market. Due to the lack of a significant cost savings to municipalities, the Fund has not yet closed any loans to municipalities even though it has approved 11 loans to date. In fact, four municipal government entities have rejected their loan awards based on cost factors, leaving only 7 active loan awards which total $4,469,353. Such an amendment could read:

"The municipal interest rate is hereby set to be on a sliding scale at 200 basis points (or 2 percentage points) below a AA-rated municipal bond for a comparable term at the time of approval or closing, whichever is lower, and with a floor of 3%, as listed in a daily newspaper which daily publishes municipal bond prices, such as The Bond Buyer".

Under current market conditions, this measure would allow municipalities to close a ten year loan at an interest rate of approximately 4%.

Conclusion

A brief Addendum is attached which highlights the history of the Fund and the various categories of eligibility. Should you need any additional information about any of the contents of this report, please do not hesitate to contact the EDA or DEP.

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ADDENDUM

Fund History

In 1993, the Legislature amended and supplemented P.L. 1983, c.330, formerly known as the "Environmental Cleanup and Responsibility Act" to become the "Industrial Site Recovery Act". The Legislature sought these changes to promote certainty in the regulatory process which would serve to facilitate the remediation of contaminated sites and promote the redevelopment of existing industrial sites around the State. In addition to regulatory reform, the Legislature sought to alleviate the financial burdens that have been imposed on individuals, corporations and municipal government entities that have either voluntarily or involuntarily remediated contaminated sites. This assistance came in the form of a $45 million appropriation from the Hazardous Discharge Bond Act of 1986 to a new fund entitled the Hazardous Discharge Site Remediation Fund (the "Fund") which the EDA jointly administers with (the Department of Environmental Protection "DEP"). The Fund received an additional $10 million from the Economic Recovery Fund, in its initial capitalization, making a total of $55 million available for financial assistance in the remediation of contaminated sites.

The responsibilities associated with administering the Fund have been divided between the EDA and the DEP. Initial contact and proposals for funding are made through the DEP, which has streamlined the environmental review process to provide timely approvals. Once environmental approvals and eligible project costs have been determined by the DEP, the applications are forwarded to the EDA so that eligible parties may access the financing available to them through this Fund.

Upon receiving these applications, the EDA conducts a financial review and forwards them to the Board of Director with a recommendation for funding. It should be noted that the DEP and EDA have adhered to a strict interpretation of the law in implementing this Fund. As a consequence of this interpretation, the HDSRF is truly the fund of last resort to finance potential remediations. Applicants do not possess insurance and in most cases have little or no collateral to secure loans made by the Fund. Under normal circumstances, these applications would not meet the EDA's Credit Criteria for funding. Each HDSRF application is reviewed therefore in light of the legislative intent behind the program which dictates to the EDA that these more risky loans should be made for the general public good that will be achieved through such remediations.

Funding Categories

As defined in the Act, financial assistance and grants from the Fund are provided for the following purposes and obligated on an annual basis in the defined percentages.

(1) Private Loans in Qualifying Municipalities: At least 15% of the moneys shall be allocated for financial assistance to persons, other than municipal governmental
entities, for the remediation of real property located in a qualifying municipality as defined in section 1 of P.L. 1978, c.14 (C.52:27D-178);

(2) Municipal Grants and Loans: At least 10% of the moneys shall be allocated for financial assistance and grants to municipal governmental entities that own or hold a tax sale certificate on real property on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants shall be used for performing preliminary assessments and site investigations on property owned by a municipal governmental entity, or on which the municipality holds a tax sale certificate, in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity that has performed a preliminary assessment and site investigation on a property it owns may obtain a loan for the purpose of continuing the remediation as necessary to comply with standards adopted by the DEP;

(3) Private and Municipal Loans for Imminent Threat: At least 15% of the moneys shall be allocated for financial assistance to persons or municipal governmental entities for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health or to a sensitive or significant ecological area;

(4) Private Loans for Voluntary Remediation: At least 10% of the moneys shall be allocated for financial assistance to persons, other than municipal governmental entities, who voluntarily undertake the remediation of a hazardous substance or hazardous waste discharge, and who have not been ordered to undertake the remediation by the DEP or by a court;

(5) Private Loans for Required Remediation: At least 20% of the moneys shall be allocated for financial assistance to persons, other than municipal governmental entities, who are required to perform remediation activities at an industrial establishment pursuant to P.L. 1983, c.330 (c.13:1K-6 et al.), as a condition of the closure, transfer, or termination of operations at that industrial establishment;

(6) Private Innocent Party Grants: At least 20% of the moneys shall be allocated for grants to persons, other than municipal governmental entities, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at the site, and that person certifies that s/he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant pursuant to this paragraph may be for up to 50%
of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded to any person may exceed $1 million; and

(7) Catch All (Private and Municipal Loans and Grants): The remaining 10% of the moneys in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraph (1) through (6) of this subsection.

During 1995, the Act was amended to create a new category of eligibility which the EDA and DEP have implemented to proceed with the start of 1996. Categories 1 through 6 have remained the same. The new categories 7 and 8 are described below:

(7) Environmental Opportunity Zones: At least 5% of the moneys shall be allocated for loans to persons, other than municipal governmental entities, who own and plan to remediate an environmental opportunity zone, for which an exemption from real property taxes has been granted; and

(8) Catch All (Private and Municipal Loans and Grants): The remaining 5% of the moneys in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraph (1) through (7) of this subsection.