NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

HAZARDOUS DISCHARGE SITE REMEDIATION FUND

1998 ANNUAL REPORT

Presented to:

THE HONORABLE HENRY P. McNAMARA
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& NATURAL RESOURCES COMMITTEE
Hazardous Discharge Site Remediation Fund

1998 Annual Report

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 1998 and the amount of funds available for 1999.

1998 Activity

The EDA is pleased to report on the progress of the Hazardous Discharge Site Remediation Fund. In its 5th year of activity, approximately $8.5 million in loans and grants to businesses, private individuals and municipal governmental entities were approved by the New Jersey Department of Environmental Protection (the “DEP”) and the EDA for the investigation and clean up of 113 contaminated sites around New Jersey.

The chart on the following page illustrates the amount of funds available in each category of eligibility\(^1\) for 1998, total disbursements that were actually made from each of these categories during the year, as well as outstanding commitments of the Fund by category.

\(^1\)See addendum for description of the funding categories of eligibility
<table>
<thead>
<tr>
<th>Funding Category</th>
<th>Annual Obligations</th>
<th>1998 Allocations</th>
<th>1998 Disbursements</th>
<th>Outstanding Commitments</th>
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<td>$5,541,365</td>
<td>$13,390,798</td>
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</table>

It should be noted that the $5.5 million in disbursements made in 1998 includes outstanding commitments from previous years as well as new approvals in 1998. In addition to these disbursements, the outstanding commitments of the Fund as of December 31, 1998 total approximately $13.4 million. It is anticipated that these outstanding commitments will be disbursed by the EDA in 1999.

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 closing documents including 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 these documents and close their loan or grant award, 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. 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.
Project Examples

The clean-up and redevelopment of sites will provide municipalities with an increased tax base, renewed interest in the municipality and employment opportunities. For example, through a $74,750 grant the Fund enabled the Town of Kearny to conduct a remedial investigation at the former site of Hudson Lamp/Sylvania. The investigation found metal contamination in the soil and groundwater contamination caused by an off-site heating oil spill. To further prepare the site for use, the town sold a bond and used the bond proceeds to demolish the factory building. As part of the redevelopment process it is anticipated the site will be remediated through capping when new construction takes place. The site is under consideration for redevelopment as a medium-sized senior citizen housing facility. The town is currently seeking a developer for the project.

The Fund has also been useful to private entities in providing vital financial assistance for clean up required to meet DEP standards. Welsh Farms, Inc., a producer of dairy products located in Red Bank, is an example of a private enterprise accessing a Fund loan for clean up. In 1996, it was discovered that the company-owned filling station, leased to an independent gas station operator, was leaking gasoline into an adjacent ravine. As the owner of the real estate, Welsh Farms retained the services of an environmental consultant to evaluate this urgent matter. The company received $1.3 million in loans through the Fund to finance the evaluation, clean-up and on-going remediation. Without support of the Fund, the cost of the project would have resulted in a major financial burden and jeopardized the 300 jobs maintained by this long-standing New Jersey business. Through a loan from the Fund, the company obtained a total of $1.3 million toward the $1.4 million needed to correct the problem and continue the business it started in 1891. Welsh Farms repaid the loans in full in 1998. Because the loan was repaid quickly, the capital is returned to the Fund and made readily available to other businesses.

Impact of 1997 Amendments to Act

In 1997, the Act was amended to create two new categories of eligibility which the EDA and DEP implemented in the beginning of 1998. The two new categories: Category 8 provides matching grants for individuals using innovative technology for remediation and Category 9 provides matching grants or loan guarantees for persons or businesses that implement limited restricted use or unrestricted use remedial actions. As a result, Category 10 is now the “catch all” category, which was formerly Category 8. No funds were disbursed from the two new categories during 1998. These new categories were created by allocating 5% each from Category 5 and Category 6.

Annual allocations were adjusted based on the addition of Categories 8 and 9. Funds for these two categories, each accounting for 5% of the total allocations, were created by moving 5% of the allocations from both Category 5 and Category 6.
1999 Available Funds

Exhibit A illustrates the obligation of available funds for 1999 into the 10 categories of eligibility and their respective annual percentage shares of the Fund as defined in the statute. At the close of 1998, the Fund had outstanding commitments of almost $13.4 million that had not been drawn upon by applicants as of December 31, 1998. The outstanding commitments, however, are active claims against the $40 million remaining in the Fund for 1998, leaving a principal balance of $26.6 million in the Fund for 1999 and beyond. The historic fund summary is also presented in Exhibit A.

Legislative Action

Legislation is still pending which would further enhance the effect of the Hazardous Discharge Site Remediation Fund Program. The Governor, DEP and EDA support the intent of Senate Bill 775 which would require all applicants, including municipalities, to relate their projects to municipal redevelopment plans or be able to demonstrate that the site has a realistic opportunity to be redeveloped and returned to productive use.

Recommendation

DEP and EDA jointly recommended that the Legislature consider adjusting the percentage allocated to Category 2 from 10% to 15%, and Category 10 from 5% to 10%, based on the historic utilization of the program. Presently, there are ten categories of eligibility of which four have fund allocations of 15%, two have fund allocations of 10%, and four have fund allocations of 5%. Of the four 15% categories, two are the least utilized yet they represent 30% of annual fund allocations and approximately 43.6% of overall available fund balance. These categories are Category 1, currently set aside for “financial assistance to persons other than municipal government entities for remediation of real property located in a qualifying municipality” and Category 5, currently set aside for “financial assistance to persons other than municipal governmental entities who are required to perform remediation activities at an industrial establishment.”

Conclusion

A brief Addendum is attached which highlights the history of the Fund and the various categories of eligibility along with Exhibit A. Should you need any additional information about the contents of this report, please contact the EDA at (609) 292-1800 or the DEP at (609) 633-0719.
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, and in 1997, the Legislature appropriated an additional $20 million from the Hazardous Discharge Bond Act of 1986 to the Fund making a total of $75 million available for 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 its Board of Directors with a recommendation for funding. The DEP and EDA have adhered to a strict interpretation of the law in implementing this Fund. As a consequence of this interpretation, the Fund is truly the 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 Fund 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 were 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 are 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 are 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 through foreclosure or other similar means, 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, site investigation and if necessary, a remedial investigation on a property, 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 are 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 are 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 are 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 are 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 he/she 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) **Environmental Opportunity Zones:** At least 5% of the moneys are 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) **Private Grants for Innovative Technology Cleanup:** At least 5% of the moneys are allocated for matching grants for up to 25% of the project costs for persons or businesses with less than $2 million in net worth who propose to use an innovative technology for a remedial action. Grants may not exceed $100,000;

(9) **Private Grants for Limited Restricted or Unrestricted Cleanup:** At least 5% of the moneys are allocated for matching grants for up to 25% of the project costs for the implementation of a limited restricted use remedial action or an unrestricted use remedial action\(^2\) for persons or businesses with less than $2 million in net worth. Grants may not exceed $100,000. The EDA may use monies allocated in this category to provide loan guarantees to encourage financial institutions to provide loans to persons who may receive financial assistance from the Fund and plan to implement a limited restricted use remedial action or an unrestricted use remedial action; and

(10) **Catch All (Private and Municipal Loans and Grants):** The remaining 5% of monies in the Fund are allocated for financial assistance or grants for any of the purposes enumerated in categories 1-9.

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\(^2\) *Limited restricted use remedial action:* Any remedial action that requires the continued use of institutional controls but does not require the use of an engineering control.

*Unrestricted use remedial action:* Any remedial action that does not require the continued use of engineering or institutional controls in order to meet the established health risk or environmental standards.
## EXHIBIT A

### HAZARDOUS DISCHARGE SITE REMEDIATION FUND SUMMARY
#### ALLOCATIONS 1994 - 1999

<table>
<thead>
<tr>
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<td>5,493,862 6,864,645**</td>
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<td><strong>$40,015,010 $13,390,798</strong></td>
<td><strong>$26,624,212</strong></td>
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1 Numbers are rounded
2 Category 2 disbursements
3 Excess funded from Category 8
4 Excess to be funded from Category 10

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**Category Key:**
1 - Private Loans in qualifying municipalities - 15%
2 - Municipal grants and loans - 10%
3 - Private & municipal loans for imminent threat - 15%
4 - Private loans for voluntary remediation - 10%
5 - Private loans for required remediation - 20% through 1997, 15% in 1998 & 1999
6 - Private loan to party grantee - 20% through 1997, 15% in 1998 & 1999
7 - Catch all -10% through 1995
8 - Catch all -5% in 1996 & 1997
9 - Private matching grants for innovative technology clean up - 5% in 1998 & 1999
10 - Catch all -5% in 1998 & 1999

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1 1995 allocations are based on the original fund appropriation in 1994 minus all disbursements
2 1996 allocations are based on the original fund appropriation in 1994 minus all disbursements
3 1997 allocations are based on the original fund appropriation in 1994 minus all disbursements plus $20 million appropriation
4 1998 allocations are based on the original fund appropriation in 1994, plus $30 million appropriated in 1997 and returned unexpended funds, minus all disbursements
5 Outstanding commitments means amounts not yet disbursed on closed financings and approved financings not yet closed