

# Funding for Environmental Projects in New Jersey: An Update

By Stephen E. Fauer

March 12, 2013



This issue contains the latest information regarding New Jersey's remedial grant programs. I last reported on New Jersey's grant and loan program in my e-newsletter of September 5, 2012. The information presented herein was obtained from a course I attended at Rutgers University on January 30 called *Environmental Funding: Creative Financing Resources Available for Remediation and Renewable Energy Projects*. The course offered the latest information on a series of environmental funding mechanisms. This e-newsletter addresses the current status of both the Hazardous Discharge Site Remediation Fund (HDSRF) and the UST Petroleum Closure, Upgrade & Site Remediation Fund (UST Fund).

Note: These programs are in flux. As NJDEP or EDA information is updated, ESA will provide notices so you have the latest information on these essential programs.

## **First, a Word about Your Application**

If you do not have your application submitted to the HDSRF or UST Fund, submit your applications TODAY! Get your application into the queue now: first in, first out. Might you wait two or three years for application approval? Probably, but you'll wait even longer if you delay (and remember, not all applications are accepted.) So, if you have a legitimate situation that merits funding, fill out your application now.

Note: Many readers may not know if they have a "legitimate situation that merits funding". We can discuss it and let you know if pays to apply.

## **Hazardous Discharge Site Remediation Fund (HDSRF) Basics**

The HDSRF is a program managed jointly by NJDEP and the NJEDA. DEP checks the eligibility of each applicant, the appropriateness of the work contemplated, the completeness of each proposal, and they determine if the proposed price is commensurate with similar projects. The DEP also ensures that the proposal is priced in accordance with their internal price guidelines. The EDA conducts a financial review, then when all items are in order they will grant board approval and provide closing documents. Payments are based upon the DEP's review of each consultant's invoices.

In ESA's experience, we have determined that follow-up is needed to be sure that each application flows through the State system efficiently. Even after an application has been approved, we have found it necessary to stay on top of each project to be sure that it does not get

lost on someone's desk. While we wish this weren't true, it does happen. Thus, ESA believes that a continual degree of scrutiny and follow-up is well worth the effort.

The HDSRF program continually evolves. Prior to 2005, the HDSRF consisted of assessment grants and investigation grants, but no remediation grants. Remediation grants eventually became part of the program. Thus between 2005 and 2012, HDSRF grew to include assessment grants, investigation grants, remedial action grants, Brownfield Development Area (BDA) grants, recreation and conservation grants, and affordable housing grants. Moving forward, HDSRF will dispense assessment grants, investigation grants, and reduced remedial action grants.

### **Current Status of the HDSRF**

The HDSRF has been replenished and is dispensing funds again. As of January 30, 2013, the HDSRF had \$85,000,000 on hand and they have 260 new applications pending review. (Do not let this number of applications deter you from submitting your application!)

1. The program is funded with \$13-15 million annually. Most of this money is going to larger remediations on commercial properties.
2. This amount is insufficient to fund current demand, leaving some new projects unfunded.
3. Applications from all parties are still being accepted. Currently 2,000 applications are backlogged. NJDEP predicts that applications submitted now will not be addressed until sometime in 2016.
4. Getting your application submitted ASAP is important, and here's why: The timing of your application's approval dictates your degree of priority for supplemental funding (this is funding that goes beyond the original appropriation due to changed site conditions). If you must rely upon a grant, getting your approval ASAP is the only way to do it!
5. Regulated (privately held) sites have funding priority over homeowners. However, under the current situation even applications for regulated sites are being backlogged.
6. People eligible for reimbursement (including homeowners) can execute their projects now with their own money then submit their receipts and invoices for potential reimbursement. While the following may be obvious, I will nonetheless state that reimbursement is predicated upon having your grant request approved. Moreover, fronting the money for remediation will not accelerate reimbursement from the fund. You will enter a queue along with all other applicants. Thus, reimbursement will not happen for several years.

HDSRF may soon undergo some statutory changes relevant to all applicants. State Assembly Bill A2395 was introduced in the 2011-2012 session and, if passed, will change the priority ranking of HDSRF funds. The following types of projects would receive funding in the following order of priority: sites that pose an "imminent threat" will always come first, second are municipal Brownfield Redevelopment Areas (BDAs), and third are requests for supplemental funding. Supplemental funding is important because it allows the State to finish projects that

have already begun. All other projects will be next in the priority ranking, which means that the average person's HDSRF application will be bumped as priority situations manifest themselves.

### **Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund (UST Fund)**

The UST Fund was created by the Underground Storage Tank Finance Act of 1997. Like the HDSRF, it is administered jointly by the DEP and the EDA. The UST Fund has dispersed more than \$190 million in grants and loans to date. Certain net worth and taxable income limits determine one's ability to qualify for a grant. Certain costs are ineligible such as DEP and EDA application fees, legal fees except those directly required for remediation, all aboveground storage tank (AST)-related costs, etc. There are also limits on restoration costs for such items as landscaping, hardscaping, decks, etc.

So who is eligible for UST Fund money?

- Owners and operators of petroleum USTs storing heating oil for onsite consumption in a residential building. An "operator" is defined as having responsibility for maintenance of the tank.
- Any owner or operator of regulated USTs in New Jersey (currently the fund is only open to certain regulated USTs). For regulated tank closure, the applicant has to have owned the tank as of December 1, 2002 and continually thereafter, or shall have inherited it from a person who owned it as of that date.
- Duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad.
- 501 (c)(3) non-profits with fewer than 100 paid employees
- Public entities (zero interest loans only)
- Independent institutions of higher education

What is the current status of the UST Fund?

- The monetary value of current backlogged applications in DEP and EDA combined is approximately \$50 million.
- Roughly \$14 million is added to the fund each fiscal year, beginning on July 1.
- The EDA is currently funding applications with fiscal year 2013 money. When this money is exhausted, no further awards will be made until fiscal year 2014 money is available, sometime after July 1, 2013.
- The UST Fund is currently open to new applications for leaking tanks. New applications are date stamped and filed and will not be reviewed until sufficient monies are available. It is estimated that new applications received today, if determined to be eligible, will not receive funding until at least fiscal year 2016 (after July 1, 2015). This assumes that no new funding sources are identified and does not consider any legislative changes made in the future.

- The UST Fund is closed to all regulated tank applications except for newly discovered non-operational regulated tanks, and supplemental funding requests for regulated tank applications previously awarded funding. Applications for newly discovered non-operational regulated tanks must be submitted within 18 months from the date of discovery.
- The non-leaking, unregulated residential heating oil tank program solely administered by the EDA is currently closed to new applications.
- There are certain statutory requirements. Regulated applications take priority over unregulated applications. Supplemental funding requests are also a priority. Finally, applications where the discharge poses a threat to a drinking water source, human health, or to a sensitive or significant ecological area are priorities over all categories described above.

Here are some other things you must know:

- All work must be performed by a NJDEP-certified UST firm, like ESA.
- Money from Insurance and/or Tank Service Agreements is to be utilized before UST Fund money.
- All costs must be properly documented. ESA provides this service at no additional charge.
- All work must comply with all applicable regulations.
- Applications must be received prior to commencement of remedial work; costs incurred prior to receipt of the application are not eligible. Exceptions to this rule include non-profits, duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue companies, and homeowners remediating at their primary residence.
- Commercial properties, as well as residential properties used for investment or rental purposes, will have a 5-year repayable lien applied to their property by EDA in the amount of financial assistance awarded. If the property is sold, or the use of the property changes within that 5-year period, the balance of the lien at that time becomes instantly repayable.

I will readily admit that some of this information is not cheer-worthy, but some is. Several of ESA's clients are seeing long-stagnant projects move forward again because of the influx of new monies. The multi-year waiting period for grant applications may seem untenable, but you won't feel that way after the time elapses and your application is accepted and work can begin using the State's money. So...file your application now! If you prefer, for a modest fee, ESA can file the application for you.

Please call me at 732-469-8888 if you have further questions.