

engineering feasibility of environmental infrastructure facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary for building environmental infrastructure facilities; the purchase of land for and the building of environmental infrastructure facilities; and the inspection and supervision of the building of environmental infrastructure facilities.

“Contract” means a subagreement as defined in this subchapter.

“Conventional technology” means the processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

“Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act” means the Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act of 2003 (P.L. 2003, c. 162), as amended and/or supplemented.

“Department” means the New Jersey Department of Environmental Protection and its successors and assigns.

“Design life” means the length of time during which an environmental infrastructure facility is planned and designed to be operated.

“Differing site conditions” means conditions at the project site, which:

1. Differ materially from physical conditions (including subsurface and latent conditions) referred to in the plans, specifications and reports submitted under N.J.A.C. 7:22-3.11(d)7; and
2. Were not known to the applicant at the time the building contracts were executed.

“Economically disadvantaged individuals” as defined in 15 U.S.C. § 637(a)(6) means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

“Environmental infrastructure facilities” means wastewater treatment facilities, stormwater management facilities, water supply facilities or nonpoint source management facilities.

“EPA” means the United States Environmental Protection Agency.

“Excessive infiltration/inflow” means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

“Federal grant” means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments.

“Federal Safe Drinking Water Act Amendments” means the Federal Safe Drinking Water Act Amendments of 1996 (42 U.S.C. §§ 300f et seq.), as amended and/or supplemented.

“Federal Water Pollution Control Act Amendments” means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. §§ 1251 et seq.), as amended and/or supplemented.

“Final building cost” means the total actual allowable cost of the final work in place for the project in accordance with the project scope as defined in the Fund loan agreement.

“Force account work” means the use of the recipient’s own employees or equipment for construction, construction related activities, or for repair or improvements to a facility.

“Fund” means the Wastewater Treatment Fund, the 1992 Wastewater Treatment Fund, the Stormwater Management and Combined Sewer Overflow Abatement Fund, or the Water Supply Fund established pursuant to the applicable Bond Acts, and any funds available through future bond acts or appropriations for the purpose of providing funds for the construction of environmental infrastructure projects, including ancillary accounts established to administer a revolving fund program in accordance with the Federal Water Pollution Control Act Amendments or the Federal Safe Drinking Water Act Amendments. As such bond acts are enacted, reference to such funds shall be added to this definition through a notice of administrative change published in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7.

“Fund loan” means a loan from one or more of the applicable Funds for the allowable costs of an environmental infrastructure project.

“Fund loan agreement” means the legal instrument executed between the State of New Jersey and the recipient for the construction of environmental infrastructure facilities.

“Green Acres, Clean Water, Farmland and Historic Preservation Bond Act” means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88), as amended and/or supplemented.

“Infiltration” means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

“Inflow” means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage.

Inflow does not include, and is distinguished from, infiltration.

“Initiation of operation” means the date specified by the recipient in the Fund loan agreement on which use of the project begins for the purposes that it was planned, designed and built.

“ISRA” means the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.

“Land acquisition and conservation” means the fee simple purchase or easement acquisition by a local government unit of land that is deemed by the Department as appropriate for water quality protection.

“Landfill closure facilities” means the construction and implementation of all water quality-related safeguards required by law or by the sanitary landfill’s approved Closure and Post Closure Plan submitted pursuant to N.J.A.C. 7:26-2A.9 and the facility’s approved engineering design subsequent to the termination of operations at any portion of that facility. This includes, but is not limited to, landfill capping systems, leachate collection, storage and treatment systems, side slope seepage prevention and controls, gas condensate systems, active and passive gas collection systems (up to the point of sale or conversion), groundwater pumping, monitoring wells and equipment, landfill reclamation/reduction in lieu of landfill capping, stormwater runoff controls and intermediate cover prior to final closure.

“Local government unit” means a State authority, a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting, improvement authority or any other political subdivision of the State authorized to construct, operate and maintain wastewater treatment, stormwater management or nonpoint source management facilities, or a State authority, district water supply commission, county, municipality, municipal or county utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate or maintain water supply facilities or otherwise provide water for human consumption.

“Low bid building cost” means the total allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). Excluded from this cost is any cost due to change orders and any costs due to the award of contracts necessary to address differing site conditions.

“New Jersey Pollutant Discharge Elimination System” or “NJPDES” means the New Jersey system for the issuance of point source permits pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., as amended and defined at N.J.A.C. 7:14A-1.2.

“New landfill facilities” means the construction of the water quality components of a new landfill or the expansion of an existing landfill to abate or prevent the occurrence of an environmentally unsound condition and one that requires a

solid waste facility permit pursuant to N.J.A.C. 7:26-2. This includes, but is not limited to, landfill liner systems, including drainage blankets, geomembranes, and alternative construction materials; leachate removal or collection systems; leachate collection/removal system maintenance equipment; toe-drains and cut-off walls; leachate recirculation in composite-lined facilities and innovative gas control technologies if meant to treat leachate or improve leachate management (for example, leachate evaporation using the thermal destruction of landfill gas); leachate storage lagoons, tanks, tank covers and aeration systems; leachate evaporation systems; pre-treatment facilities at landfill site (physical, chemical, biological); on-site leachate treatment facilities (structural and vegetative); leachate transfer stations (collection/storage) and protective loading areas; tank trucks to transport leachate to treatment plant, sewer system manhole, or a composting facility; sewer connection to municipal sewer system; facilities for storage and additional treatment of leachate at municipal treatment plant; barge shelters, containment booms, litter fences and other means to prevent municipal solid waste from blowing off the landfill site and polluting surface waters, and stormwater runoff controls.

“Nonpoint source management facilities” include, but are not limited to, any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit to prevent, reduce, store or treat stormwater runoff and other water pollution that is not collected, conveyed and/or discharged through a municipal separate storm sewer system. Examples of nonpoint source management facilities include, but are not limited to, such activities as landfill closure facilities, new landfill facilities, remedial action activities, land purchase and conservation, well sealing, the purchase of maintenance equipment, such as street sweepers, leaf collection equipment and aquatic weed harvesters and the implementation/construction of other systems that will result in water quality benefits, such as salt storage structures/runoff control systems, feedlot manure/runoff control systems, streambank/lake stabilization/restoration projects which are consistent with habitat protection and others.

“Nonprofit noncommunity water system” means a public water system that is owned and operated by a nonprofit group or organization, is not a public community water system and either regularly serves at least 25 of the same persons for more than six months in any given calendar year or serves at least 25 transient individuals for at least 60 days in any given calendar year.

“Operation and maintenance” means the following activities required to assure the dependable and economical functioning of environmental infrastructure facilities:

1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.

2. Operation: Control of the unit processes and equipment which make up the environmental infrastructure facilities, including, but not limited to, financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

“Priority System, Intended Use Plan and Project Priority List” means the document through which projects are evaluated and ranked for funding eligibility by the Department in conformance with the Federal Water Pollution Control Act Amendments or the Federal Safe Drinking Water Act Amendments, as applicable, and State law. The Priority System establishes the ranking methodology. The Intended Use Plan establishes various funding policies and provides general information regarding the use of Federal funds for financing environmental infrastructure facilities. The Project Priority List presents the eligible projects in rank order.

“Private entity” means the owner(s) of a nongovernmental community water system or a nonprofit noncommunity water system.

“Professional services” means services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Examples include services provided by an accountant, archaeologist, attorney, auditor, bond counsel, engineer, environmentalist and financial advisor.

“Project” means the defined services for the construction of specified operable facilities as approved by the Department in the Fund loan agreement.

“Project performance standards” means the performance and operations requirements applicable to a project, including the enforceable requirements of the Federal Water Pollution Control Act Amendments or the Federal Safe Drinking Water Act Amendments, as applicable.

“Project scope” or “scope of work” means the scope of services and/or activities for which a Fund loan agreement has been executed by the Department and a recipient.

“Project sponsor” means any local government unit or private entity that seeks a Fund loan pursuant to this subchapter.

“Public water system” means a system for the provision to the public of piped water for human consumption, if such a system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes:

1. Any collection, treatment, storage and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and

2. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

“Qualified inspector” means a person in the building trades or who has construction experience and who is knowledgeable regarding acceptable construction practices and terminology related to pipe installation, concrete placement and mechanical equipment installation.

“Recipient” means any project sponsor which has received preaward approval pursuant to N.J.A.C. 7:22-3.32 or a Fund loan pursuant to this subchapter.

“Remedial action activities” means all actions that are required in a remedial action workplan developed pursuant to N.J.A.C. 7:26E and approved by the Department that are considered water quality-related.

“Responsible bidder” means a bidder that satisfactorily demonstrates to the Department that it has:

1. Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or a demonstrated ability to obtain these;
2. Resources to meet the completion schedule contained in the subagreement;
3. A satisfactory performance record for completion of subagreements;
4. Accounting and auditing procedures adequate to control property, funds and assets; and
5. A demonstrated record of compliance or willingness to comply with the civil rights, equal employment opportunity, labor law and other statutory requirements under this subchapter.

“Responsible engineer” means the engineer or engineering firm who is contracted by the recipient to ensure that the construction work is performed in accordance with the approved contract documents.

“Right-of-way” means a strip of land or route acquired by the project sponsor in which a conveyance pipe will be installed.

“Sewage Infrastructure Improvement Act” means the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.), as amended and/or supplemented.

“Socially disadvantaged individuals” as defined in 15 U.S.C. § 637(a)(5) means those individuals who have been subjected to racial and ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. 15 U.S.C. §§ 637(d)(3) presumes that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities.

“State” means the State of New Jersey.

“Stormwater Management and Combined Sewer Overflow Abatement Bond Act” means the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181), as amended and/or supplemented.

“Stormwater management facilities” include, but are not limited to, any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit to prevent, reduce, store or treat stormwater runoff, correct interconnections or cross-connections, or otherwise address adverse impacts of stormwater runoff that enters a municipal separate storm sewer system or any combination thereof.

“Subagreement” means a written agreement between a recipient and another party (other than another public agency) and may include the prime building agreement for the project, a lower tier agreement for services, supplies, or construction necessary to complete the project; an agreement for personal and professional services with consultants; a purchase agreement for the acquisition of land; and a purchase order.

“Substantial alteration” means any change which results in an alteration of the project costs or a change of 90 days or more in the project schedule.

“Transmission facilities” means pipes and appurtenances for water supply facilities including, but not limited to, pump stations, valves, fire hydrants, water meters, service connections, curb stops, surge chambers, interconnections and storage tanks.

“Trust” means the New Jersey Environmental Infrastructure Trust created pursuant to the Trust Act, or its duly authorized agent.

“Trust Act” means the New Jersey Environmental Infrastructure Trust Act (N.J.S.A. 58:11B-1 et seq.), as amended and/or supplemented.

“Trust loan” means a loan from the Trust for the allowable costs of an environmental infrastructure project.

“Value engineering” means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

“Wastewater” means residential, commercial, industrial or agricultural liquid waste, sewage, septage, stormwater runoff or any combination thereof, or other residue discharged or collected into a sewer system, stormwater runoff system or any combination thereof.

“Wastewater Treatment Bond Act” means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329), as amended and/or supplemented.

“Wastewater treatment facilities” include, but are not limited to, any equipment, plants, structures, machinery, apparatus, land that will be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired,

used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including, but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage collection systems, and other equipment, personal property and appurtenances necessary thereto.

“Water Quality Management Plans” means the plans prepared pursuant to Sections 208 and 303 of the Clean Water Act (33 U.S.C. §§ 1251 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

“Water Supply Bond Act” means the Water Supply Bond Act of 1981 (P.L. 1981, c. 261), as amended and/or supplemented.

“Water supply demand” means the water supply usage, based upon existing metering records and/or calculated in accordance with the provisions of N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems, or N.J.A.C. 7:10-12, Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems, as applicable.

“Water supply facilities” means and refers to the plants, structures, service and house connections, well sealings, interconnections between existing water supply facilities, machinery, equipment and other property, personal and mixed, constructed or operated, or to be constructed or operated, in whole or in part by or on behalf of a project sponsor, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, and any and all appurtenances necessary, useful and convenient for collecting, impounding, storing, improving, treating, filtering or transmitting of water, and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources, and facilitating incidental recreational uses thereof.

“Well sealing” means the permanent closure or sealing of any well in accordance with the procedures set forth in N.J.A.C. 7:9-9, Sealing of Abandoned Wells.

Amended by R.1988 d.210, effective May 16, 1988.

See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Deleted definition “State Funding List”.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Added definitions of “Ad valorem tax”, “alternative technology”, “best management practices”, “BPWTT”, “change order”, “combined sewer”, “contract”, “conventional technology”, “design life”, “EPA”, “Federal Water Pollution Control Act Amendments”, “innovative technology”, “operation and maintenance”, “project performance standards”, “project scope”, “responsible bidder”, “Sewage Infrastructure Improvement Act”, “State”, “Stormwater Management and Combined Sewer Overflow Abatement Bond Act”, “Stormwater management facilities”, “subagreement”, “user charge” and “Wastewater Treatment Bond Act”.

Amended by R.1993 d.242, effective June 7, 1993.

See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

New and amended definitions; particularly the definition of “differing site conditions”.

Amended by R.1995 d.494, effective September 5, 1995.
See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).
Amended by R.1997 d.346, effective August 18, 1997.
See: 29 N.J.R. 2207(a), 29 N.J.R. 3723(a).

Amended "Fund" and "Fund loan".
Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Rewrote the section.
Amended by R.2000 d.284, effective July 3, 2000.
See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

Deleted "DAC" and "Discharge Allocation Certificate"; inserted "ISRA", "Land acquisition and conservation", "Landfill closure facilities", "New Jersey Pollutant Discharge Elimination System", "New landfill facilities", "Nonpoint source management facilities", "Remedial action activities" and "Well sealing"; in "Environmental infrastructure facilities" and "Local government unit", inserted references to nonpoint source management facilities, and rewrote "Stormwater management facilities".

Amended by R.2003 d.401, effective October 6, 2003.
See: 35 N.J.R. 1475(a), 35 N.J.R. 4719(a).

Amended "Subagreement".
Amended by R.2006 d.22, effective January 3, 2006.
See: 37 N.J.R. 2645(a), 38 N.J.R. 139(a).

Deleted "Ad valorem tax", "Alternative technology", "Certified mail", "Innovative technology", and "User charge"; inserted "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act"; in "Bond Acts", inserted reference to Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act.

7:22-3.5 Bond Act Funds

(a) The proceeds from the sale of bonds, allocated and issued pursuant to the Bond Acts, shall be paid to the State Treasurer and held thereby in separate interest bearing accounts specifically dedicated to making zero or low interest Fund loans to applicants for financing the cost of the construction of environmental infrastructure facilities.

(b) Any Federal or State funds which may be made available to the State for loans to applicants for the construction of environmental infrastructure facilities may be deposited into the appropriate Fund(s).

(c) The moneys in the Fund are specifically dedicated and shall be used for the purposes identified in N.J.A.C. 7:22-3.3; however, no moneys shall be expended from the Fund for those purposes without the specific appropriation thereof by the Legislature.

(d) Payments of principal and interest on loans awarded from the Fund shall be made to the Fund.

Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Reference to Stormwater Management and Combined Overflow Abatement Fund added.

Amended by R.1995 d.494, effective September 5, 1995.
See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).
Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

In (a) and (b), substituted "applicants" for "local government units" and "environmental infrastructure" for "wastewater treatment"; and in (b), substituted "appropriate" for "Wastewater Treatment" preceding "Fund(s)".

7:22-3.6 Terms of the Fund loans

(a) The Fund may offer loans for up to 100 percent of allowable project costs for the construction of environmental

infrastructure facilities but may offer a range of options regarding the term, interest rate and level of loan funding.

(b) The term of the Fund loans will generally be 20 years or as indicated in the Fund loan agreement. Fund loan repayments shall be made by the recipient in accordance with the repayment schedule indicated in the Fund loan agreement. Principal and accrued interest, if any, with respect to a particular Fund loan may, however, be prepaid in accordance with the provisions of the relevant Fund loan agreement. Interest, if any, on the Fund loan will accrue as indicated in the Fund loan agreement.

(c) Applicants shall secure all Fund loans in a manner acceptable to the Department. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, service/deficiency agreement(s) with government units with general taxing power, bond insurance, surety bonds, revenue bonds, debt service reserve funds, letters of credit and other arrangements acceptable to the Department.

(d) Fund loan proceeds will be disbursed to recipients in accordance with N.J.A.C. 7:22-3.24.

(e) The specific terms and conditions of the Fund loan shall be incorporated in the Fund loan agreement to be executed by the recipient and the State.

Amended by R.1988 d.210, effective May 16, 1988.
See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Deleted text in (b) "Interest shall accrue... Fund Loan Agreement" and substituted "Interest on the...".

Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

At (d) added N.J.A.C. reference.
Amended by R.1995 d.494, effective September 5, 1995.
See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

In (a), substituted "environmental infrastructure" for "wastewater treatment"; and in (c), substituted "Applicants" for "Local government units", deleted "municipal" preceding "bond insurance, and inserted "revenue bonds, debt service reserve funds" at the end of the second sentence.

Amended by R.2000 d.284, effective July 3, 2000.
See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

In (c), inserted ", letters of credit" following "funds" in the second sentence.

7:22-3.7 Criteria for project loan priority

(a) Each year, the Department shall develop a Priority System, Intended Use Plan and Project Priority List for wastewater treatment, stormwater management and nonpoint source management facilities and a Priority System, Intended Use Plan and Project Priority List for water supply facilities for the specified Federal fiscal year(s). The Priority System establishes the ranking methodology. For wastewater treatment, stormwater management and nonpoint source management facilities, the ranking methodology evaluates projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. For water supply facilities, the ranking methodology evaluates projects individually for their anticipated impacts on existing water supply needs to achieve or maintain compliance with the Federal and State Safe

Drinking Water Acts. The Intended Use Plan includes information on the timing, use and distribution of Federal funds anticipated to be made available to New Jersey for financing the construction of environmental infrastructure facilities. The Project Priority List presents the projects initially eligible for funding according to their cumulative scores derived from application of the Priority System.

(b) Each year, each proposed Priority System, Intended Use Plan and Project Priority List will be the subject of at least one public hearing and a public comment period. Each Priority System, Intended Use Plan and Project Priority List proposal shall specify the procedures by which sponsors may request inclusion of their project(s) on the Project Priority List and the document submittal schedule (including commitment letter, planning, design and loan application deadlines) for the specified Federal fiscal year(s). The project sponsor shall submit the following when requesting inclusion in the Project Priority List:

1. Brief description of the environmental infrastructure project;
2. Brief description of existing water quality deficiencies or water supply needs; and
3. Estimated costs associated with building the project, excluding planning and design expenses.

(c) The Department shall consider a project eligible for funding in the specified State fiscal year(s) only where the project sponsor commits in writing to meet the project document submittal schedule as identified in the annual Priority System, Intended Use Plan and Project Priority List.

(d) For wastewater treatment facilities, the Department shall give a project funding priority over other projects on the Project Priority List in instances where existing on-site wastewater treatment system failures are determined to constitute a public health hazard.

(e) The Department shall give funding priority over projects on the Project Priority List to a project which has previously received a Fund loan in any previous funding cycle in instances where the allowable loan amount due to low bid building costs as determined by the Department exceeds the Fund loan amount previously awarded or in instances where the allowable loan amount as determined by the Department has increased due to differing site conditions.

Amended by R.1988 d.210, effective May 16, 1988.
See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Deleted text in (a) "will continue to... N.J.A.C. 7:22-3.8" and inserted "commit to the... Priority List proposal".

Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

New (b)-(e) added.

Amended by R.1993 d.242, effective June 7, 1993.
See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Amended to indicate the Department's intent to provide priority to projects seeking a post-construction supplemental Fund loan for increased allowable costs due to differing site conditions.

Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Rewrote the section.

Amended by R.2000 d.284, effective July 3, 2000.
See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

In (a), inserted references to nonpoint source management facilities.

7:22-3.8 Eligibility for State and Federal funding

(a) The Department, in conjunction with the Trust, shall develop and submit to the Legislature for the forthcoming State fiscal year a priority system and project priority list as required by the Trust Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, which is based, in all substantial respects, upon the applicable sections of the Priority System, Intended Use Plan and Project Priority List.

(b) If a project sponsor is awarded a Fund loan in addition to funding from any other Federal or State grant or loan, the total amount of such other funding and the Fund loan shall not exceed the allowable costs of the project. If a project sponsor is awarded funding from any other Federal or State grant or loan after the Department has awarded a Fund loan to the project sponsor, the Department shall reduce the Fund loan in the amount of such other funding. If a project sponsor is awarded funding from any other Federal or State grant or loan after the Department has made disbursement from the Fund loan, the project sponsor shall, within 60 days of notice of the award of such other funding, reimburse the Fund in the amount of such other funding. If both a Fund loan (pursuant to this subchapter) and a Trust loan (pursuant to N.J.A.C. 7:22-4) are received in combination with funding from any other Federal or State grant or loan, the Fund and Trust loans will be proportionally reduced.

Amended by R.1988 d.210, effective May 16, 1988.

See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Subsections (b) and (c) were substantially amended.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Deleted (b)-(c); added new (a) and amended old (a) as (b).

Amended by R.1993 d.242, effective June 7, 1993.

See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Amended to reflect that if both Fund and Trust loans are received, both loans will be proportionally reduced.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Rewrote (b).

7:22-3.9 Project bypassing

(a) Failure of the project sponsor to advise the Department, in writing, of the project sponsor's commitment to meet the project document submittal schedule by the deadline identified in the proposed Priority System, Intended Use Plan and Project Priority List will, without further notice by the Department, result in the project becoming ineligible for a Fund loan for the specified State fiscal year(s).

(b) Failure of the project sponsor to submit complete planning documents, design documents and applications within the time periods specified in the Priority System, Intended Use Plan and Project Priority List for the specified State fiscal year(s) will result in the Department's bypassing of the project sponsor's project unless the Department, at its

- (4) A preliminary assessment report or site investigation report prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, that evaluates the potential contamination of the land to be acquired;
- vi. For landfill closure facilities, a copy of the Department's approval of the sanitary landfill's Closure and Post-Closure Plan submitted pursuant to N.J.A.C. 7:26-2A;
- vii. For new landfill facilities, a copy of the applicable solid waste facility permit issued pursuant to N.J.A.C. 7:26-2;
- viii. For remedial action activities, the following items shall also be submitted:
- (1) A statement by the applicant whether or not the applicant is currently conducting remediation pursuant to the ISRA or the Underground Storage Tank programs or otherwise conducting a remediation pursuant to an oversight document, including, as applicable, case number, Known Contaminated Site List number and the name of the Department case manager for the case; and
 - (2) A copy of the applicable Department approvals issued pursuant to N.J.A.C. 7:26E-6.1(b)1 that identifies remedial actions proposed to be implemented at a contaminated site; and
- ix. For well sealing projects, a description of the project area, the well(s) proposed to be sealed and a certification that the method proposed to be used to seal the well(s) complies with N.J.A.C. 7:9D.
6. For sewer rehabilitation projects, a Sewer System Evaluation Survey in accordance with N.J.A.C. 7:22-3.35;
7. Department-approvable plans, specifications and technical design report, including documentation regarding the evaluation of existing site conditions;
8. A description of the public participation process to date. Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible;
9. A report on the participation by socially and economically disadvantaged individuals during planning and design as required by N.J.A.C. 7:22-9.12(a);
10. Project cost breakdown for each subagreement;
11. Projected cash flow schedule to be used to establish the Fund loan disbursement schedule;
12. Project construction schedule. A court-sanctioned order or a Department-issued Administrative Consent Order indicating a compliance schedule shall be required where applicable;
13. (Reserved)
14. Certificate (legal opinion) from counsel as to title or mechanism to obtain title necessary for project sites and easements;
15. An affidavit (Form LP-7) certifying that required permits and approvals for building the environmental infrastructure facilities were received from applicable Federal, State and local agencies;
16. A statement from the applicant indicating that it has not violated any federal, State or local law pertaining to fraud, bribery, graft, kickback, collusion or conflicts of interest relating to or in connection with the planning and design of the project;
17. A statement from the applicant which indicates if it used the services of a person for planning or design of the project whose name appears on the State Treasurer's list of debarments, suspensions and voluntary exclusions;
18. Executed service, joint and/or deficiency or other intermunicipal agreements, if applicable. If the project will serve two or more project sponsors, the applicant shall submit the executed service agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed environmental infrastructure facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered;
19. Draft engineering agreements for building services;
20. A statement by the applicant indicating whether the project sponsor is currently in default on any State loan. A Fund loan agreement will not be executed between the Department and the project sponsor unless the Department determines that repayment of the defaulted loan will be received.
21. A description of how the applicant plans to repay the Fund loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Fund loan that shall guarantee that at the time of the signing of the Fund loan agreement it shall be irrevocably committed to repay the Fund loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all Fund loans in a manner acceptable to the State, pledging to provide funds to repay the debt, even if the Fund loan is terminated pursuant to N.J.A.C. 7:22-3.44. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, service/deficiency agreement(s) with government units with general taxing power, bond

insurance, revenue bonds, debt service reserve funds and surety bonds.

22. For water supply facilities, a description of the technical, managerial, and financial capabilities of the public water system. This description shall include, but is not limited to, financial capability to ensure loan repayment, credit analysis of the applicant, compliance with N.J.A.C. 7:10, Safe Drinking Water Act rules, operator licensing in accordance with N.J.A.C. 7:10A, Licensing of Water Supply and Wastewater Treatment Operators, adequacy of infrastructure, and clear ownership of the water system.

23. For water main extension projects, a mandatory connection ordinance acceptable to the Department. In addition, when the Department determines well sealings are necessary to prevent migration of contaminants regulated by the Department under the Safe Drinking Water Act rules (N.J.A.C. 7:10), or the potential exists for contamination from wells that remain unused and are not sealed, a mandatory well sealing ordinance acceptable to the Department.

24. Such other information as the Department may require.

(e) Applicants shall obtain all necessary Federal, State and local permits and approvals prior to the award of a loan unless prior approval for an extension for one or more specific permits has been granted by the Department that does not significantly affect the loan award. Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award (for example, road opening permit, blasting permit, etc.).

(f) The Department shall not accept a recipient's supplemental Fund loan application for increased allowable costs in instances where the low bid building cost is higher than the original Fund loan award unless bids on all project-related contracts have been received.

(g) The Department shall only accept a recipient's post-construction supplemental Fund loan application if all of the following actions have occurred:

1. The Department has approved payment requests whose total equals the allowable project costs based on the low bid building cost, exclusive of payment requests for construction management services related to project start-up and one year project performance certification;
2. The project's building activities are complete;
3. All applicable administrative and legal appeals have been resolved;
4. All costs related to differing site conditions for which cost reimbursement is sought have been incurred; and
5. All documentation for the costs in (g)4 above has been submitted to the Department or submitted

concurrently with the post-construction supplemental Fund loan application.

Amended by R.1988 d.210, effective May 16, 1988.

See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Requirements for Project Report/Facilities Plan and draft plan of operation and requirements at (d)18 if project serves two or more local government units.

Amended by R.1993 d.242, effective June 7, 1993.

See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Amended to specifically identify evaluation of existing site conditions as a requirement of application for Fund loan.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Rewrote (d).

Amended by R.2000 d.284, effective July 3, 2000.

See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

In (d), rewrote 4 and 5.

Amended by R.2003 d.401, effective October 6, 2003.

See: 35 N.J.R. 1475(a), 35 N.J.R. 4719(a).

In (d), added a new 23 and recodified former 23 as 24.

Amended by R.2006 d.22, effective January 3, 2006.

See: 37 N.J.R. 2645(a), 38 N.J.R. 139(a).

In (d), rewrote 5; reserved 13; amended 22 to add "compliance with N.J.A.C. 7:10, Safe Drinking Water Act rules," and "clear ownership of the water system" to the items required for the description of capabilities.

7:22-3.12 Use and disclosure of information

All loan applications and other submissions, when received by the Department, constitute public records. The Department shall make them available to persons who request their release to the extent required by New Jersey and/or Federal law.

7:22-3.13 Evaluation of application

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;
2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Department's program objectives;
3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and
4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Department shall either certify the project for funding or bypass the project for funding in the State fiscal year for which the application was submitted.

(c) The Department shall promptly notify an applicant if its project has been bypassed. As a result of a project bypass action, the next highest ranked project on the Project Priority List may fall within the fundable range.

(1) Construction or placing of buildings, roads, signs, billboards or other advertising or other structures in, on or above the ground (except for the project sign required by N.J.A.C. 7:22-3.27(b) or as needed to address public health or safety issues);

(2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing trash, waste or unsightly or offensive materials;

(3) Removal or destruction of trees, shrubs, or other vegetation (except as needed to address public health or safety issues);

(4) Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other mineral substance vegetation (except as needed to address public health or safety issues);

(5) Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition, such as hiking trails for non-motorized vehicles;

(6) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; or

(7) Other acts or uses detrimental to the retention of land or water areas for conservation purposes.

ii. The recipient shall include any parcels acquired pursuant to this subchapter in its Recreation and Open Space Inventory submitted to Green Acres pursuant to N.J.A.C. 7:36-6.4(a)3 when and if the recipient applies for Green Acres funding under N.J.A.C. 7:36.

iii. The recipient shall provide evidence to the Department that a properly executed real estate deed has been recorded with the clerk of the county in which the parcel is located. A conservation restriction shall also be recorded and referenced in the real estate deed which, at a minimum, prohibits the activities identified in (a)33i above in perpetuity.

iv. The recipient shall submit a no further action letter issued by the Department pursuant to N.J.A.C. 7:26C-2.6, if a preliminary assessment report or site investigation report prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, identifies contamination at or migrating from the parcel.

v. The recipient shall submit a site survey signed and sealed by a land surveyor licensed to practice in the State of New Jersey that appropriately identifies the parcel or portion of the parcel financed pursuant to this subchapter.

vi. The recipient shall only transfer or convey its interest in the parcel(s) upon receipt of prior written approval by the Department. The Department will only approve transfer of fee simple ownership in the parcel where the transfer of title is to another local government unit.

34. For water main extensions, the recipient shall maintain for the term of the Fund loan, or execute an agreement with the appropriate local government unit in which the project is located requiring the local government unit to maintain for the term of the Fund loan, mandatory connection ordinances and mandatory well sealing ordinances as required under N.J.A.C. 7:22-3.11(d) 23.

(b) The recipient shall certify that it is in compliance with all other requirements and conditions of the Fund loan agreement.

(c) The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Bond Acts.

(d) Neither the State of New Jersey nor the Trust will be a party to any contracts and subcontracts awarded pursuant to this subchapter. All such contracts and subcontracts shall include the following statement:

“This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust. Neither the State of New Jersey, the New Jersey Environmental Infrastructure Trust nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the provisions of N.J.A.C. 7:22-3, 4, 5, 9 and 10.”

(e) The recipient shall insert into the contracts for building the project EPA Form 5720-4 (5-13), Labor Standards Provisions for Federally Assisted Construction Contracts.

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their subcontract(s), the following statement:

“In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.17(a)24 and 4.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9.”

(g) All applicable surety bonds required in connection with the advertisement and award of building contracts or subagreements must be written by a surety company listed on the Federal Treasury List (Department Circular 570-Surety Companies Acceptable on Federal Bonds), incorporated herein by reference. Copies of this document may be obtained from the Department.

Amended by R.1988 d.210, effective May 16, 1988.
See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Added (d).

Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Changes at (a)2, 3, 4, 5, 8, 13, 16, 19, 21, 22, 23, 24 and 25; (d) deleted and new (d)-(g) added.

Amended by R.1993 d.242, effective June 7, 1993.
See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Amended to include specific requirements for the construction of wastewater treatment facilities; also amended to delete the requirement

for recipients to provide a Subcontractor Certification Form to the Department.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1997 d.346, effective August 18, 1997.

See: 29 N.J.R. 2207(a), 29 N.J.R. 3723(a).

In (a)31i, inserted "at which time ... and other factors"; in (a)31ii, deleted "when requested" following "to the Department"; in (a)31iv(1) and (3), inserted ", if determined necessary under (a)31i above,;"; in (a)31iv(1), inserted "clean" following "and flushed"; and in (a)31ii and iv(3), deleted reference to a request regarding forwarding results to the Department.

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Rewrote (a); and in (d), substituted "Environmental Infrastructure" for "Wastewater Treatment" throughout.

Administrative change.

See: 32 N.J.R. 1796(a).

Amended by R.2000 d.284, effective July 3, 2000.

See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

In (a), inserted a reference to permits in the introductory paragraph, changed Federal and State OMB circular references in 2, added exceptions at the beginning of 10 and 16, inserted a reference to nonpoint source management facilities in 25, and added 33.

Amended by R.2003 d.401, effective October 6, 2003.

See: 35 N.J.R. 1475(a), 35 N.J.R. 4719(a).

Added (a)34.

Amended by R.2006 d.22, effective January 3, 2006.

See: 37 N.J.R. 2645(a), 38 N.J.R. 139(a).

In (a), reserved 5 and 10; rewrote 2 and 25; substituted "may" for "must" at 31iv(6) and (7); rewrote 33i and iii; added 33iv-vi.

7:22-3.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Fund loan objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice does not shift the responsibility for final decisions from the recipient to the Department.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Deleted sentence regarding the "primary concern of the Department ...".

7:22-3.19 Project changes and loan modifications

(a) A Fund loan modification means any written alteration of the terms or conditions, budget or project method or other administrative, technical or financial provisions of the Fund loan agreement.

(b) The recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of events or proposed changes which may require a Fund loan modification, including, but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of the project;
4. Significant, changed conditions at the project site;

5. Acceleration or deceleration in the time for performance of the project or any major phase thereof; and

6. Changes which may increase or substantially decrease the total cost of a project.

(c) If the Department determines that a Fund loan modification by means of a Fund loan agreement amendment is necessary in accordance with N.J.A.C. 7:22-3.20, the recipient shall be notified and a Fund loan agreement amendment shall be processed. If the Department determines that a Fund loan agreement amendment is not necessary, the Department and the recipient shall follow the procedures of N.J.A.C. 7:22-3.21 or 3.22, as applicable.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Deleted (b); recodified (c) to (b) and (d) to (c).

7:22-3.20 Fund loan agreement amendments

(a) The Department shall require a Fund loan agreement amendment to change principal provisions of a Fund loan agreement where the Department determines that project changes substantially alter the objective or scope of the project or time of performance of the project or any major phase thereof, or to change substantially a term or condition of the Fund loan agreement.

(b) In the event that additional moneys are needed due to the low bid building cost being higher than the original Fund loan amount, the recipient may request a supplemental Fund loan. The Department may execute a supplemental Fund loan agreement only after passage of a subsequent legislative appropriations act providing moneys for the specific project of concern. The recipient shall be responsible for all other increased costs.

(c) In the event that additional moneys are needed due to differing site conditions, the recipient may request a post-construction supplemental Fund loan. The Department may execute a post-construction supplemental Fund loan agreement only after passage of a subsequent legislative appropriations act providing moneys for the specific project of concern. The recipient shall be responsible for all other increased costs.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Deleted and replaced (b).

Amended by R.1993 d.242, effective June 7, 1993.

See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Amendments add provision governing circumstances in which additional money is required for a project as a result of differing site conditions.

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

In (b), substituted "recipient" for "local government unit" throughout.

7:22-3.21 Administrative loan changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the recipient, or a non-substantial alteration of the disbursement

operational. This includes letters of intent from significant industrial or commercial users and all establishments intending to increase their wastewater flows or water supply demand or relocate in the area documenting capacity needs and characteristics for existing or projected wastewater flows or water supply demand;

(3) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process; and

(4) Cost information on total capital costs, and annual operation, maintenance and replacement costs, as well as estimated annual or monthly costs to residential, commercial and industrial users;

iv. For wastewater treatment facilities, an infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-4.35, or for water supply facilities, an analysis of the amount of water withdrawn at the source(s) and not accounted for as being delivered to customers in measured amounts;

v. For land acquisition and conservation projects, the following items must be submitted:

(1) An evaluation of the land to be acquired, including the water quality basis for the proposed land acquisition that addresses the existing land use patterns, potential threats to water quality, and other existing problems and appropriate documentation demonstrating compliance with the Environmental Assessment Requirements for State Assisted Environmental Infrastructure Facilities, N.J.A.C. 7:22-10;

(2) An executed purchase agreement or, in the case of condemnation, evidence of the filing of a declaration of taking for the parcel(s);

(3) The appraisal(s) of the parcel(s). For a parcel with an estimated land value of less than \$250,000, the local government unit shall obtain at least one appraisal. For a parcel with an estimated land value of \$250,000 or more, two appraisals shall be obtained. For easement acquisitions, appraisals shall be submitted that identify the fair market value of the parcel with and without the conservation restriction. Any appraisals required herein shall be prepared by a real estate appraiser licensed by the State's Division of Consumer Affairs to perform such appraisals; and

(4) A preliminary assessment report or site investigation report prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, that evaluates the potential contamination of the land to be acquired;

vi. For landfill closure facilities, a copy of the Department's approval of the sanitary landfill's Closure

and Post-Closure Plan submitted pursuant to N.J.A.C. 7:26-2A;

vii. For new landfill facilities, a copy of the applicable solid waste facility permit issued pursuant to N.J.A.C. 7:26-2;

viii. For remedial action activities, the following items must also be submitted:

(1) A statement by the applicant whether or not the applicant is currently conducting remediation pursuant to the ISRA or the Underground Storage Tank programs or otherwise conducting a remediation pursuant to an oversight document, including, as applicable, case number, Known Contaminated Site List number and the name of the Department case manager for the case; and

(2) A copy of the applicable Department approvals issued pursuant to N.J.A.C. 7:26E-6.1(b)1 that identifies remedial actions proposed to be implemented at a contaminated site; and

ix. For well sealing projects, a description of the project area, the well(s) proposed to be sealed and a certification that the method proposed to be used to seal the well(s) complies with N.J.A.C. 7:9D.

6. For sewer rehabilitation projects, a Sewer System Evaluation Survey in accordance with N.J.A.C. 7:22-4.35;

7. Department-approvable plans, specifications and technical design report, including documentation regarding the evaluation of existing site conditions;

8. A description of the public participation process to date. Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible;

9. A report on the participation by socially and economically disadvantaged individuals during planning and design as required by N.J.A.C. 7:22-9.12(a);

10. Project cost breakdown for each subagreement;

11. Projected cash flow schedule to be used to establish the Trust loan disbursement schedule;

12. Project construction schedule. A court-sanctioned order or a Department-issued Administrative Consent Order indicating a compliance schedule will be required where applicable;

13. (Reserved)

14. Certificate (legal opinion) from counsel as to title or mechanism to obtain title necessary for project sites and easements;

15. An affidavit (Form LP-7) certifying that required permits and approvals for building the environmental

infrastructure facilities were received from applicable Federal, State and local agencies;

16. A statement from the applicant indicating that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickback, collusion or conflicts of interest relating to or in connection with the planning and design of the project;

17. A statement from the applicant which indicates if it used the services of a person for planning or design of the project whose name appears on the State Treasurer's list of debarments, suspensions and voluntary exclusions;

18. Executed service, joint and/or deficiency or other intermunicipal agreements, if applicable. If the project will serve two or more project sponsors, the applicant shall submit the executed service agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed environmental infrastructure facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered;

19. Draft engineering agreements for building services;

20. A statement by the applicant indicating whether the project sponsor is currently in default on any State loan. A Trust loan agreement will not be executed between the Trust and the project sponsor unless the Trust determines that repayment of the defaulted loan will be received.

21. A description of how the applicant plans to repay the Trust loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Trust loan that shall guarantee that at the time of the signing of the Trust loan agreement it shall be irrevocably committed to repay the Trust loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Trust loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all Trust loans in a manner acceptable to the Trust, pledging to provide funds to repay the debt, even if the Trust loan is terminated pursuant to N.J.A.C. 7:22-4.44. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, service/deficiency agreement(s) with government units with general taxing power, bond insurance, revenue bonds, debt service reserve funds and surety bonds.

22. For water supply facilities, a description of the technical, managerial, and financial capabilities of the public water system. This description shall include, but is

not limited to, financial capability to ensure loan repayment, credit analysis of the applicant, compliance with N.J.A.C. 7:10, Safe Drinking Water Act rules, operator licensing in accordance with N.J.A.C. 7:10A, Licensing of Water Supply and Wastewater Treatment Operators, adequacy of infrastructure, and clear ownership of the water system.

23. For water main extension projects, a mandatory connection ordinance acceptable to the Department. In addition, when the Department determines well sealings are necessary to prevent migration of contaminants regulated by the Department under the Safe Drinking Water Act rules (N.J.A.C. 7:10), or the potential exists for contamination from wells that remain unused and not sealed, a mandatory well sealing ordinance acceptable to the Department.

24. Such other information as the Trust may require.

(e) Applicants shall obtain all necessary Federal, State and local permits and approvals prior to the award of a loan unless prior approval for an extension for one or more specific permits has been granted by the Trust that does not significantly affect the loan award. Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award (for example, road opening permit, blasting permit, etc.).

(f) The Trust shall not accept a recipient's supplemental Trust loan application for increased allowable costs in instances where the low bid building cost is higher than the original Trust loan award unless bids on all project-related contracts have been received.

(g) The Trust shall only accept a recipient's post-construction supplemental Trust loan application if all of the following actions have occurred:

1. The Trust has approved payment requests whose total equals the Trust loan amount, exclusive of payment requests for construction management services related to project start-up and one-year project performance certification;
2. The project's building activities are complete;
3. All applicable administrative and legal appeals have been resolved;
4. All costs related to differing site conditions for which cost reimbursement is sought have been incurred; and
5. All documentation for the costs in (g)4 above has been submitted to the Trust or submitted concurrently with the post-construction supplemental Trust loan application.

Amended by R.1988 d.210, effective May 16, 1988.

See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Deleted old (d)20 and inserted new.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Amended to provide greater detail as to the components of a Project Report/Facilities Plan and as to what constitutes a Department-approved user charge system and sewer use ordinance.

Amended by R.1993 d.242, effective June 7, 1993.

See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Specifically required to evaluate existing site conditions as a component of their application for a Trust loan; added two new provisions (subsections (f) and (g)) which identify those activities which the recipient and the Trust must complete in order for the Trust to process a recipient's supplemental Trust loan application.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Rewrote (d).

Amended by R.2000 d.284, effective July 3, 2000.

See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

In (d), rewrote 4 and 5.

Amended by R.2003 d.401, effective October 6, 2003.

See: 35 N.J.R. 1475(a), 35 N.J.R. 4719(a).

In (d), added a new 23 and recodified former 23 as 24.

Amended by R.2006 d.22, effective January 3, 2006.

See: 37 N.J.R. 2645(a), 38 N.J.R. 139(a).

In (d), rewrote 5; reserved 13; amended 22 to add "compliance with N.J.A.C. 7:10, Safe Drinking Water Act rules," and "clear ownership of the water system" to the items required for the description of capabilities.

7:22-4.12 Use and disclosure of information

All loan applications and other submissions, when received by the Trust, constitute public records. The Trust shall make them available to persons who request their release to the extent required by New Jersey and/or Federal law.

7:22-4.13 Evaluation of application

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;
2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Trust's program objectives;
3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and
4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Trust shall either certify the project for funding or bypass the project for funding in the State fiscal year for which the application was submitted.

(c) The Trust shall promptly notify an applicant if its project has been bypassed. As a result of a project bypass action, the next highest ranked project on the Project Priority List may fall within the fundable range.

Amended by R.1988 d.210, effective May 16, 1988.

See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Substituted "Project Priority" for "State Funding".

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Deleted (c), recodified (d) as (c).

Amended by R.1993 d.242, effective June 7, 1993.

See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Clarified to indicate that Trust loan applications will be reviewed to determine if the project scope identified in the application is consistent with the Trust's program's, and not the project's objectives.

Amended by R.2006 d.22, effective January 3, 2006.

See: 37 N.J.R. 2645(a), 38 N.J.R. 139(a).

In (c), deleted "by certified mail" following "The Trust shall promptly notify an applicant".

7:22-4.14 Supplemental information

At any stage during the evaluation process, the Trust may require supplemental documents or information necessary to complete full review of the application. The Trust may suspend its evaluation until such additional information or documents have been received.

7:22-4.15 Trust loan agreement

(a) The Trust shall prepare and transmit the Trust loan agreement to the applicant. The Trust loan agreement shall set forth the terms and conditions of the Trust loan, approved project scope, allowable and unallowable project costs, estimated Trust loan disbursement schedule, estimated loan repayment schedule and the approved commencement and completion dates for the project or major phases thereof.

(b) The Trust loan agreement shall be executed by the applicant within such period of time and pursuant to such terms and conditions as the Trust may determine.

(c) The Trust, pursuant to such terms and conditions as it may determine, may require the applicant to irrevocably commit itself through a loan commitment letter, escrow agreement or other similar document to borrow the amount for which it has made application under the terms and conditions of the Trust loan agreement transmitted to the applicant.

(d) The Trust loan agreement and/or loan commitment letter, escrow agreement or other similar document shall be executed by a person authorized to obligate the applicant to the terms and conditions of the particular document for the project specified therein. For local government units, a certified copy of the authorizing resolution shall be delivered to the Trust at the time that the executed Trust loan agreement, loan commitment letter, escrow agreement or similar document is delivered to the Trust. If the applicant is a private entity, a letter from the private entity authorizing the execution of the Trust loan agreement and specifying the individual authorized to represent the private entity shall be delivered to the Trust at the time that the executed Trust loan agreement, loan commitment letter, escrow agreement or other similar document is delivered to the Trust.

(e) The Trust loan agreement is deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Trust in the application process.

(f) The Trust loan agreement shall not be executed by the Trust if the applicant is in current default on any State loan.

Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Modified to identify the procedures related to the execution of the Trust loan agreement, including the requirements for the applicant to provide a loan commitment letter, escrow agreement or other similar document to irrevocably commit itself to borrow the amount included within the Trust loan agreement, if such commitment is required by the Trust, in accordance with current program practice.

Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

In (d), inserted "For local government units, a" at the beginning of the second sentence and added a new last sentence.

7:22-4.16 Trust loan award and closing

(a) Upon the execution of the Trust loan agreement by the Trust and the recipient, the Trust loan is awarded and the agreement becomes effective and constitutes an obligation of the Trust in accordance with its terms and conditions. The obligation of the Trust under a Trust loan agreement is contingent upon the availability of funds from which disbursements can be made. The Trust loan is considered closed as indicated in the Trust loan agreement.

(b) The award or closing of the Trust loan does not commit or obligate the Trust to award any continuation or supplemental Trust loan to cover cost overruns of the project. Cost overruns for any project or portion thereof are the sole responsibility of the recipient.

(c) The award or closing of a Trust loan by the Trust shall not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates for its respective projects.

Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Added language regarding contingency upon availability of funds.

7:22-4.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-4.18 through 4.30, as well as such statutes, rules, permits, terms and conditions which may be applicable to particular loans, are conditions to each Trust loan, and conditions to each disbursement under a Trust loan agreement:

1. Local government units shall comply with the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or other applicable procurement method authorized under State law;

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. §§7501-7507) and Federal OMB Circular A-133,

both incorporated herein by reference, and State OMB Circular 04-04-OMB, incorporated herein by reference, as amended and supplemented. Copies of these documents may be obtained from the Department;

3. Local government units shall comply with the Minimum Standards of Conduct for Officers, Employees, Agents and Members of Authorities Participating in State Financial Assistance Programs for Environmental Infrastructure Facilities (N.J.A.C. 7:22-8) and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);

4. For wastewater treatment facilities, the recipient shall comply with the requirements of N.J.A.C. 7:14-2, Construction of Wastewater Treatment Facilities, and the provisions of the NJPDES rules at N.J.A.C. 7:14A. For water supply facilities, the recipient shall comply with N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems, or N.J.A.C. 7:10-12, Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems, as applicable. Water supply facilities shall not conflict with the recommendations of the New Jersey Statewide Water Supply Plan.

5. (Reserved)

6. For wastewater treatment facilities, the recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 40 CFR Part 403;

7. The recipient shall comply with all applicable requirements of Federal, State and local laws;

8. The recipient shall pay the unallowable costs of the construction of the project (that is, facilities planning, design, building and related costs) and shall pay the allowable costs not covered by the Trust loan, or supplemental Trust loan, if any;

9. The Trust loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Trust requirements. The recipient shall comply with any special conditions which the Trust requires in the Trust loan agreement or any amendment thereto;

10. (Reserved)

11. Construction of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of Federal, State, and local laws, ordinances, rules and regulations and to contract specifications and requirements;

12. No Trust loan moneys shall be disbursed to a recipient who is in current default on any Trust loan. The Trust may, at its discretion, make a Trust loan disbursement where it determines that the recipient will repay the defaulted loan obligation and associated

applicable shall be performed by the contractor. The test must be witnessed by the recipient and/or the responsible engineer (or representative), the contractor, and, if determined necessary under (a)31i above, a representative from the Trust. Upon completion of the test, a copy of the test results must be forwarded to the Trust;

(4) Infiltration tests of gravity lines shall be limited to 2000 linear feet per test;

(5) Force mains shall be tested to two times the maximum operating pressure, but not greater than the pipe pressure rating, whichever is less. The length of pipe tested during a force main pressure test is not restricted; however, it is recommended that it be limited for ease in locating leaks if present;

(6) Testing of all mechanical equipment at treatment plants and pump stations may be witnessed by a representative of the Trust; and

(7) If required, actual flow tests may be conducted in accordance with parameters established by the Trust and performed in the presence of a representative of the Trust; and

v. All disinfection of water system components shall be done in accordance with the Standards for the Construction of Public Community Water Systems at N.J.A.C. 7:10-11.6(d) and 11.10(e)4 and the Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems at N.J.A.C. 7:10-12.11, as applicable.

vi. All testing of water supply facilities shall be done in accordance with the American Water Works Association (AWWA) standards for testing included in ANSI/AWWA-C600 and C605, incorporated herein by reference as amended and/or supplemented, or as otherwise approved by the Department. AWWA standards may be obtained from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235.

32. The recipient shall forward a letter to the Trust upon completion of all construction and restoration of each contract of a project, stating that the project (or contract) is ready for final inspection. No final inspection will be scheduled until formal notification is received. The final inspection will be a joint inspection with the recipient and/or the responsible engineer, the recipient's inspector(s), the contractor, and one or more representatives of the Trust in attendance.

33. For land acquisition and conservation projects, the recipient shall also comply with the following:

i. The recipient, or the local government unit to which a parcel is transferred in conformance with (a)33vi below, shall perpetually maintain a fee simple interest in the parcel(s) that excludes future sale considerations or an interest stated in the form of a right,

restriction, easement, covenant or condition in any deed, will, or other instrument executed by, or on behalf of the owner of the parcel(s) and the local government unit that does not allow any of the following:

(1) Construction or placing of buildings, roads, signs, billboards or other advertising or other structures in, on or above the ground (except for the project sign required by N.J.A.C. 7:22-4.27(b) or as needed to address public health or safety issues);

(2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing trash, waste or unsightly or offensive materials;

(3) Removal or destruction of trees, shrubs, or other vegetation (except as needed to address public health or safety issues);

(4) Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other mineral substance vegetation (except as needed to address public health or safety issues);

(5) Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition, such as hiking trails for non-motorized vehicles;

(6) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; or

(7) Other acts or uses detrimental to the retention of land or water areas for conservation purposes.

ii. The recipient shall include any parcels acquired pursuant to this subchapter in its Recreation and Open Space Inventory submitted to Green Acres pursuant to N.J.A.C. 7:36-6.4(a)3 when and if the recipient applies for Green Acres funding under N.J.A.C. 7:36.

iii. The recipient shall provide evidence to the Department that a properly executed real estate deed has been recorded with the clerk of the county in which the parcel is located. A conservation restriction shall also be recorded and referenced in the real estate deed which, at a minimum, prohibits the activities identified in (a)33i above in perpetuity.

iv. The recipient shall submit a no further action letter issued by the Department pursuant to N.J.A.C. 7:26C-2.6, if a preliminary assessment report or site assessment prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, identifies contamination at or migrating from the parcel.

v. The recipient shall submit a site survey signed and sealed by a land surveyor licensed to practice in the State of New Jersey that appropriately identifies the

parcel or portion of the parcel financed pursuant to this subchapter.

vi. The recipient shall only transfer or convey its interest in the parcel(s) upon receipt of prior written approval by the Trust. The Trust will only approve transfer of fee simple ownership in the parcel where the transfer of title is to another local government unit.

34. For water main extensions, the recipient shall maintain for the term of the Trust loan, or execute an agreement with the appropriate local government unit in which the project is located requiring the local government unit to maintain for the term of the Trust loan, mandatory connection ordinances and mandatory well sealing ordinances as required under N.J.A.C. 7:22-4.11(d) 23.

(b) The recipient shall certify that it is in compliance with all other requirements and conditions of the Trust loan agreement.

(c) The Trust may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Trust Act.

(d) Neither the State of New Jersey nor the Trust will be a party to any contracts and subcontracts awarded pursuant to this subchapter. All such contracts and subcontracts shall include the following statement:

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust. Neither the State of New Jersey, the New Jersey Environmental Infrastructure Trust nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the provisions of N.J.A.C. 7:22-3, 4, 5, 9 and 10."

(e) The recipient shall insert into the contracts for building the project EPA Form 5720-4(5-13), Labor Standards Provisions for Federally Assisted Construction Contracts.

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their sub-contract(s), the following statement:

"In accordance with the provisions of N.J.S.A. 58:11B-26, N.J.A.C. 7:22-3.17(a)24 and 4.17(a)24, the contractor (sub-contractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

(g) All applicable surety bonds required in connection with the advertisement and award of building contracts or subagreements must be written by a surety company listed on the Federal Treasury List (Department Circular 570-Surety Companies Acceptable on Federal Bonds), incorporated herein by reference. Copies of this document may be obtained from the Department.

Amended by R.1988 d.210, effective May 16, 1988.

See: 19 N.J.R. 1600(a), 20 N.J.R. 1076(a).

Added (d).

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Modified to conform with Federal requirements as a result of the deposit of Federal monies into the Wastewater Treatment Financing Program and amended to incorporate standards regarding auditing and to ensure consistent practices by local government units receiving a loan pursuant to this subchapter.

Amended by R.1993 d.242, effective June 7, 1993.

See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Amended to include specific requirements for the construction of wastewater treatment facilities; also amended to delete the requirement for recipients to provide a Subcontractor Certification form.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1997 d.346, effective August 18, 1997.

See: 29 N.J.R. 2207(a), 29 N.J.R. 3723(a).

In (a)31i, inserted "at which time ... and other factors"; in (a)31iv(1) and (3), inserted ", if determined necessary under (a)31i above."; in (a)31iv(1), inserted "clean" following "and flushed"; and in (a)31ii and iv(3), deleted reference to a request regarding forwarding results to the Department.

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Rewrote (a); and in (d), substituted "Environmental Infrastructure" for "Wastewater Treatment" throughout.

Administrative change.

See: 32 N.J.R. 1796(a).

Amended by R.2000 d.284, effective July 3, 2000.

See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

In (a), inserted a reference to permits in the introductory paragraph, changed Federal and State OMB circular references in 2, added exceptions at the beginning of 10 and 16, inserted a reference to nonpoint source management facilities in 25, and added 33.

Amended by R.2003 d.401, effective October 6, 2003.

See: 35 N.J.R. 1475(a), 35 N.J.R. 4719(a).

Added (a)34.

Amended by R.2006 d.22, effective January 3, 2006.

See: 37 N.J.R. 2645(a), 38 N.J.R. 139(a).

In (a), reserved 5 and 10; rewrote 2 and 25; substituted "may" for "must" at 31iv(6) and (7); substituted "conducted" for "done" at 31iv(7); rewrote 33i and iii; added 33iv-vi.

7:22-4.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Trust loan objectives. Although recipients are encouraged to seek the advice and opinion of the Trust on problems that may arise, the giving of such advice does not shift the responsibility for final decisions from the recipient to the Trust.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Last sentence, non-regulatory language deleted.

7:22-4.19 Project changes and loan modifications

(a) A Trust loan modification means any written alteration of the terms or conditions, budget or project method or other administrative, technical or financial provisions of the Trust loan agreement.

(b) The recipient shall promptly notify the Trust in writing (certified mail, return receipt requested) of events or proposed