

CHAPTER 22

FINANCIAL ASSISTANCE PROGRAMS FOR ENVIRONMENTAL INFRASTRUCTURE FACILITIES

Authority

Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181); the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.306); the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88); the Water Supply Bond Act of 1981 (P.L. 1981, c.261); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:1A-1 et seq.; N.J.S.A. 58:10A-1 et seq.; N.J.S.A. 58:11A-1 et seq.; N.J.S.A. 58:12A-1 et seq.; Executive Order No. 215(1989) and future laws authorizing the Department of Environmental Protection to provide assistance for construction of environmental infrastructure projects, as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10, and the New Jersey Environmental Infrastructure Trust Act (N.J.S.A. 58:11B-1 et seq.); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act Amendments (P.L. 1997, c.225); the Water Supply Bond Act Amendments (P.L. 1997, c.223); and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88) and future laws authorizing the New Jersey Environmental Infrastructure Trust to provide assistance for construction of environmental infrastructure projects as to N.J.A.C. 7:22-4, 5 and 9.

Source and Effective Date

R.2000 d.284, effective June 12, 2000.
See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

Executive Order No. 66(1978) Expiration Date

Chapter 22, Financial Assistance Programs for Environmental Infrastructure Facilities, expires on June 12, 2005.

Chapter Historical Note

Chapter 22, Construction Grants for Wastewater Treatment Facilities, was adopted as R.1977 d.356, effective September 21, 1977. See: 9 N.J.R. 262(a), 9 N.J.R. 465(b).

Subchapters 1 and 2 were repealed and Subchapter 2, Matching Grant Procedures and Requirements, and Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of Wastewater Utilities, were adopted as new rules by R.1987 d.38, effective January 5, 1987. See: 18 N.J.R. 1869(a), 19 N.J.R. 77(a).

Subchapter 3, Fund Procedures and Requirements, was adopted as R.1987 d.37, effective January 5, 1987. See: 18 N.J.R. 1875(a), 19 N.J.R. 84(a).

Subchapter 4 was repealed and Subchapter 4, Wastewater Treatment Trust Procedures and Requirements, was adopted as new rules by R.1987 d.40, effective January 5, 1987. See: 18 N.J.R. 1883(a), 19 N.J.R. 95(a).

Subchapter 5, Determination of Allowable Costs: Fund and Trust, was adopted as R.1987 d.39, effective January 5, 1987. See: 18 N.J.R. 1891(a), 19 N.J.R. 105(a).

Subchapter 6, Pinelands Procedures and Requirements, was adopted as R.1987 d.41, effective January 5, 1987. See: 18 N.J.R. 1644(a), 19 N.J.R. 110(a).

Subchapter 7, Determination of Allowable Costs: Pinelands, was adopted as R.1987 d.208, effective May 4, 1987. See: 18 N.J.R. 1904(a), 19 N.J.R. 766(a).

Subchapter 9, Awarding Contracts for State Assisted Projects for Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, was adopted as R.1988 d.263, effective June 6, 1988. See: 19 N.J.R. 1604(a), 20 N.J.R. 1287(a).

Subchapter 10, Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities, was adopted as R.1989 d.53, effective January 17, 1989. See: 20 N.J.R. 1983(a), 21 N.J.R. 179(a).

Pursuant to Executive Order No. 66(1978), Chapter 22, Construction Grants for Wastewater Treatment Facilities, was readopted as R.1992 d.42, effective December 27, 1991. See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Pursuant to Executive Order No. 66(1978), Chapter 22, Financial Assistance Programs for Wastewater Treatment Facilities, was readopted as R.1995 d.494, effective August 11, 1995. See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Pursuant to Executive Order No. 66(1978), Chapter 22, Financial Assistance Programs for Environmental Infrastructure Facilities, was readopted as R.2000 d.284, effective June 12, 2000. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

7:22-2.1 Scope and construction
7:22-2.2 Definitions
7:22-2.3 State matching grants
7:22-2.4 Pre-application procedures
7:22-2.5 Application procedures
7:22-2.6 Use and disclosure of information
7:22-2.7 Evaluation of application
7:22-2.8 Supplemental information
7:22-2.9 Department approval/disapproval
7:22-2.10 Amount of a grant
7:22-2.11 State share
7:22-2.12 Grant agreement
7:22-2.13 Effect of the grant award
7:22-2.14 Eligibility and criteria
7:22-2.15 Allowable project costs
7:22-2.16 Unused funds
7:22-2.17 Fraud and other unlawful or corrupt practices
7:22-2.18 Grant conditions
7:22-2.19 Administration and performance of grants
7:22-2.20 Access
7:22-2.21 State payment
7:22-2.22 Assignment
7:22-2.23 Publicity and signs
7:22-2.24 Debarment
7:22-2.25 Project changes and grant modifications
7:22-2.26 Formal grant amendments
7:22-2.27 Administrative grant changes
7:22-2.28 Other changes
7:22-2.29 Noncompliance
7:22-2.30 Notice of noncompliance
7:22-2.31 Withholding of funds
7:22-2.32 Stop-work orders
7:22-2.33 Termination of grants
7:22-2.34 Rescission of grants
7:22-2.35 Administrative order of enforcement
7:22-2.36 Administrative hearings
7:22-2.37 Severability

SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

- 7:22-3.1 Scope
- 7:22-3.2 Construction of rules
- 7:22-3.3 Purpose
- 7:22-3.4 Definitions
- 7:22-3.5 Bond Act Funds
- 7:22-3.6 Terms of the Fund loans
- 7:22-3.7 Criteria for project loan priority
- 7:22-3.8 Eligibility for State and Federal funding
- 7:22-3.9 Project bypassing
- 7:22-3.10 Pre-application procedures
- 7:22-3.11 Application procedures
- 7:22-3.12 Use and disclosure of information
- 7:22-3.13 Evaluation of application
- 7:22-3.14 Supplemental information
- 7:22-3.15 Fund loan agreement
- 7:22-3.16 Fund loan award and closing
- 7:22-3.17 Loan conditions
- 7:22-3.18 Administration and performance of loan
- 7:22-3.19 Project changes and loan modifications
- 7:22-3.20 Fund loan agreement amendments
- 7:22-3.21 Administrative loan changes
- 7:22-3.22 Other changes
- 7:22-3.23 Access
- 7:22-3.24 State disbursement
- 7:22-3.25 Assignment
- 7:22-3.26 Unused funds
- 7:22-3.27 Publicity and signs
- 7:22-3.28 Land acquisition
- 7:22-3.29 Project initiation
- 7:22-3.30 Project performance
- 7:22-3.31 Allowable project costs
- 7:22-3.32 Preaward costs
- 7:22-3.33 Force account work
- 7:22-3.34 Planning and design
- 7:22-3.35 Infiltration/inflow for wastewater treatment facilities
- 7:22-3.36 Reserve capacity
- 7:22-3.37 Value engineering for wastewater treatment facilities
- 7:22-3.38 Fraud and other unlawful or corrupt practices
- 7:22-3.39 Debarment
- 7:22-3.40 Noncompliance
- 7:22-3.41 Notice of noncompliance
- 7:22-3.42 Withholding of funds
- 7:22-3.43 Stop-work orders
- 7:22-3.44 Termination of loans
- 7:22-3.45 Administrative hearings
- 7:22-3.46 Severability

SUBCHAPTER 4. ENVIRONMENTAL INFRASTRUCTURE TRUST PROCEDURES AND REQUIREMENTS

- 7:22-4.1 Scope
- 7:22-4.2 Construction of rules
- 7:22-4.3 Purpose
- 7:22-4.4 Definitions
- 7:22-4.5 Trust funds and accounts
- 7:22-4.6 Terms of the loans from the Trust
- 7:22-4.7 Criteria for project loan priority
- 7:22-4.8 Eligibility for State and Federal funding
- 7:22-4.9 Project bypassing
- 7:22-4.10 Pre-application procedures
- 7:22-4.11 Application procedures
- 7:22-4.12 Use and disclosure of information
- 7:22-4.13 Evaluation of application
- 7:22-4.14 Supplemental information
- 7:22-4.15 Trust loan agreement
- 7:22-4.16 Trust loan award and closing
- 7:22-4.17 Loan conditions
- 7:22-4.18 Administration and performance of loan
- 7:22-4.19 Project changes and loan modifications
- 7:22-4.20 Trust loan agreement amendments
- 7:22-4.21 Administrative loan changes

- 7:22-4.22 Other changes
- 7:22-4.23 Access
- 7:22-4.24 Trust disbursement
- 7:22-4.25 Assignment
- 7:22-4.26 Unused funds
- 7:22-4.27 Publicity and signs
- 7:22-4.28 Land acquisition
- 7:22-4.29 Project initiation
- 7:22-4.30 Project performance
- 7:22-4.31 Allowable project costs
- 7:22-4.32 Preaward costs
- 7:22-4.33 Force account work
- 7:22-4.34 Planning and design
- 7:22-4.35 Infiltration/inflow for wastewater treatment facilities
- 7:22-4.36 Reserve capacity
- 7:22-4.37 Value engineering for wastewater treatment facilities
- 7:22-4.38 Fraud and other unlawful or corrupt practices
- 7:22-4.39 Debarment
- 7:22-4.40 Noncompliance
- 7:22-4.41 Notice of noncompliance
- 7:22-4.42 Withholding of funds
- 7:22-4.43 Stop-work orders
- 7:22-4.44 Termination of loans
- 7:22-4.45 Administrative hearings
- 7:22-4.46 Assistance in the administration of Trust rules
- 7:22-4.47 Severability

SUBCHAPTER 5. ALLOWABLE COSTS: FUND AND TRUST

- 7:22-5.1 Purpose
- 7:22-5.2 Applicability
- 7:22-5.3 Definitions
- 7:22-5.4 Costs related to subagreements
- 7:22-5.5 Mitigation
- 7:22-5.6 Publicly owned small and on-site wastewater treatment systems
- 7:22-5.7 Real property
- 7:22-5.8 Equipment, materials and supplies
- 7:22-5.9 Industrial and Federal users of wastewater treatment facilities
- 7:22-5.10 Infiltration/inflow and reserve capacity
- 7:22-5.11 Miscellaneous costs
- 7:22-5.12 Allowance for planning and design
- 7:22-5.13 Planning and design costs for Level 3 projects
- 7:22-5.14 Waivers

SUBCHAPTER 6. PINELANDS PROCEDURES AND REQUIREMENTS

- 7:22-6.1 Scope
- 7:22-6.2 Construction of rules
- 7:22-6.3 Purpose
- 7:22-6.4 Definitions
- 7:22-6.5 Pinelands Infrastructure Trust Fund
- 7:22-6.6 Terms of grants and loans from the Pinelands Infrastructure Trust Fund
- 7:22-6.7 Criteria for project funding priority
- 7:22-6.8 Pinelands Infrastructure Trust, State and Federal funding
- 7:22-6.9 Notice of project eligibility
- 7:22-6.10 Pre-application procedures
- 7:22-6.11 Application procedures
- 7:22-6.12 Use and disclosure of information
- 7:22-6.13 Evaluation of application
- 7:22-6.14 Supplemental information
- 7:22-6.15 Pinelands Infrastructure Trust Fund grant and loan agreements
- 7:22-6.16 Grant and loan awards and closing
- 7:22-6.17 Grant and loan conditions
- 7:22-6.18 Administration and performance of funds
- 7:22-6.19 Project changes and grant or loan modifications
- 7:22-6.20 Pinelands grant or loan agreement amendments
- 7:22-6.21 Administrative grant or loan changes
- 7:22-6.22 Other changes
- 7:22-6.23 Access

- 7:22-6.24 State disbursement
- 7:22-6.25 Assignment
- 7:22-6.26 Unused funds
- 7:22-6.27 Publicity and signs
- 7:22-6.28 Land acquisition
- 7:22-6.29 Project initiation
- 7:22-6.30 Project performance
- 7:22-6.31 Allowable project costs
- 7:22-6.32 Preaward costs
- 7:22-6.33 Force account work
- 7:22-6.34 Planning and design
- 7:22-6.35 Infiltration/Inflow
- 7:22-6.36 Reserve capacity
- 7:22-6.37 Fraud and other unlawful or corrupt practices
- 7:22-6.38 Debarment
- 7:22-6.39 Noncompliance
- 7:22-6.40 Notice of noncompliance
- 7:22-6.41 Withholding of funds
- 7:22-6.42 Stop-work orders
- 7:22-6.43 Termination of grants or loans
- 7:22-6.44 Rescission of Pinelands grants
- 7:22-6.45 Administrative hearings
- 7:22-6.46 Severability

SUBCHAPTER 7. DETERMINATION OF ALLOWABLE COSTS: PINELANDS

- 7:22-7.1 Purpose
- 7:22-7.2 Applicability
- 7:22-7.3 Definitions
- 7:22-7.4 Costs related to subagreements
- 7:22-7.5 Mitigation
- 7:22-7.6 (Reserved)
- 7:22-7.7 Real property
- 7:22-7.8 Equipment, materials and supplies
- 7:22-7.9 Industrial and Federal users
- 7:22-7.10 Infiltration/inflow and reserve capacity
- 7:22-7.11 Miscellaneous costs
- 7:22-7.12 Allowance for planning and design
- 7:22-7.13 Planning and design costs for Level 3 projects

SUBCHAPTER 8. MINIMUM STANDARDS OF CONDUCT FOR OFFICERS, EMPLOYEES, AGENTS AND MEMBERS OF AUTHORITIES PARTICIPATING IN STATE FINANCIAL ASSISTANCE PROGRAMS FOR ENVIRONMENTAL INFRASTRUCTURE FACILITIES

- 7:22-8.1 Scope and purpose
- 7:22-8.2 Definitions
- 7:22-8.3 Public accountability
- 7:22-8.4 (Reserved)
- 7:22-8.5 Disclosure by other persons providing services
- 7:22-8.6 Conduct in office
- 7:22-8.7 through 7:22-8.10 (Reserved)

SUBCHAPTER 9. AWARDING CONTRACTS FOR STATE ASSISTED PROJECTS TO SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

- 7:22-9.1 Scope and purpose
- 7:22-9.2 Definitions
- 7:22-9.3 SED utilization requirements for projects
- 7:22-9.4 Requirement to develop SED Utilization Plan
- 7:22-9.5 Bidding for contracts or subcontracts through set-asides
- 7:22-9.6 Notice of SED utilization opportunities
- 7:22-9.7 Advertisements for SED utilization
- 7:22-9.8 Cancellation of set-aside designation
- 7:22-9.9 Acceptance of set-aside bids
- 7:22-9.10 Lowest bid resulting in payment of unreasonable price

- 7:22-9.11 Project compliance officer
- 7:22-9.12 Reports
- 7:22-9.13 Assessment of compliance
- 7:22-9.14 Penalties
- 7:22-9.15 Administrative hearings
- 7:22-9.16 Severability

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED ENVIRONMENTAL INFRASTRUCTURE FACILITIES

- 7:22-10.1 Scope and construction
- 7:22-10.2 Additional definitions
- 7:22-10.3 Establishing the level and scope of environmental review
- 7:22-10.4 Level 1 environmental review
- 7:22-10.5 Level 2 environmental review
- 7:22-10.6 Level 3 environmental review
- 7:22-10.7 Re-evaluation of environmental decision statements
- 7:22-10.8 Cultural resource survey requirements
- 7:22-10.9 Environmental coordination
- 7:22-10.10 Public participation
- 7:22-10.11 Design requirements
- 7:22-10.12 Construction phase requirements

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

7:22-2.1 Scope and construction

(a) This subchapter constitutes the rules governing disposition of appropriations for the purposes of planning, design, and construction of wastewater treatment facilities. State matching grants (to match Federal grant awards) will be made pursuant to the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; and N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Environmental Protection for the purpose of providing a State matching share to projects funded under the Federal Clean Water Act and its subsequent amendments.

(b) These rules shall be liberally construed to permit the Department to effectuate the purposes of the law.

(c) The rules in this subchapter are promulgated for the following purposes:

1. To implement the purposes and objectives of the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Water Conservation Bond Act of 1969 (P.L. 1969, c.127); the Natural Resources Bond Act of 1980 (P.L. 1980, c.70); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq., and any appropriations to the Department of Environmental Protection for the purpose of providing a State

matching share to projects funded under the Federal Clean Water Act and its subsequent amendments;

2. To establish policies and procedures for distribution of funds for the planning, design and construction of wastewater treatment facilities;

3. To protect the public and the State of New Jersey by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State of New Jersey;

5. To establish accounting procedures for the administration of grants; and

6. To establish standards for the construction of wastewater treatment facilities.

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

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

Updated Department title.

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

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

Case Notes

Department was without authority under Bond Act to provide assistance in the form of loans rather than grants; decision to reduce federal funding level proper. *Rockaway Valley Regional Sewerage Authority v. Dept. of Environmental Protection*, 194 N.J.Super. 52, 476 A.2d 281 (App.Div.1984).

7:22-2.2 Definitions

The following words and terms when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise.

“Applicant” means any political subdivision or special district of the State or agency thereof having jurisdiction over disposal of sewage, industrial waste or other wastes, or a designated and approved management agency under Section 208 of the Federal Act that applies for a grant pursuant to the provisions of this subchapter.

“Certified mail” means any means of delivery where proof of receipt is obtained and date of receipt is recorded.

“Construction” means the preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the construction of wastewater treatment facilities; the erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment facilities; and the inspection and supervision of the construction of wastewater treatment facilities.

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

“Eligible costs” means costs which are determined to be eligible for Federal grant funds in accordance with 40 CFR Part 35.

“Federal Act” means the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.) and any amendatory or supplementary acts thereto.

“Federal grant” means a grant awarded pursuant to section 201 of the Federal Act.

“Final building cost” means the actual eligible cost of the final work in place for the project, the scope of which is defined in the grant agreement.

“Grant” means a State matching grant of the eligible costs of a project receiving a Federal grant.

“Grant agreement” means the legal instrument executed between the State of New Jersey and the recipient for the construction of wastewater treatment facilities. The agreement will specify: budget and project periods; the State share of eligible project costs; a description of the project scope of services to be performed; and any special conditions.

“Low bid building cost” means the actual eligible cost associated with the award of all contracts within a project scope to the lowest responsible and responsive bidder(s).

“NJPDES” means the New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A.

“Project” means the defined scope of services for the construction of specified facilities as approved by the Department in the grant agreement.

“Recipient” means an applicant who has received a State grant.

“Step 3” means the Step 3 activities as defined in 40 C.F.R. 35.2005.

“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.

“Wastewater treatment facilities” includes, but is not limited to, the plants, structures and personal property acquired, constructed or operated, or to be acquired, constructed or operated in whole or in part by or on behalf of the State or a political subdivision or subdivisions thereof, including pumping and ventilating stations, sewage treatment systems, plants and works, connections, outfalls, combined sewer overflows, interceptors, trunklines, collection systems and other personal property and appurtenances necessary or useful and convenient for the treatment, purification, or disposal in a sanitary manner of any sewage liquid or solid wastes, night soil, or industrial wastes to preserve and protect natural water resources and facilities.

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

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

Updated Department title; amended “Federal Act” and stylistic changes.

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

7:22-2.3 State matching grants

(a) The Department shall request that the Legislature appropriate funds for the purpose of awarding matching

grants under the Clean Waters Bond Act of 1976 (P.L. 1976, c.92), the Water Conservation Bond Act of 1969 (P.L. 1969, c.127), and the Natural Resources Bond Act of 1980 (P.L. 1980, c.70).

- iii. A determination that the Fund loan was obtained by fraud;
- iv. Without good cause therefor, substantial performance of the project work has not occurred;
- v. Gross abuse or corrupt practices in the administration of the project have occurred; or
- vi. Fund moneys have been used for non-allowable costs.

2. The Department shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Fund loan, in whole or in part, at least 30 days prior to the intended date of termination.

3. The Department shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested), terminate the Fund loan in whole or in part.

(b) Project termination by the recipient shall be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Fund loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work by the recipient.

2. If the Department determines that there is good cause for the termination of all or any portion of a project for which the Fund loan has been awarded, the Department may enter into a termination agreement or unilaterally terminate the Fund loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Fund loan shall be solely within the discretion of the Department. If the Department determines not to terminate, the recipient shall remain bound by the terms and conditions of the Fund loan agreement.

3. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the Fund loan pursuant to this section.

(c) The Department and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Fund loan.

(d) Upon termination, the recipient may be required to immediately refund or repay to the State the entire amount of the Fund loan moneys received. If the loan is guaranteed by a security/deficiency agreement, such agreement may have to be brought into effect to ensure the entire

repayment of the Fund loan. The Department may, at its discretion, authorize the immediate repayment of a specific portion of the Fund loan and allow the remaining balance to be repaid in accordance with a revised Fund loan repayment schedule.

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of Fund moneys awarded under the Fund loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(f) In addition to any termination action, the Department retains the right to pursue other legal remedies as may be available under federal, State and local law as warranted.

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

References to "Director" and "Assistant Director" changed to "Department".

7:22-3.45 Administrative hearings

(a) The Department shall make the initial decision regarding all disputes arising under a loan. The recipient shall specifically detail in writing the basis for its appeal. When a recipient so requests, the Department shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) If a recipient wishes to appeal the Department's decision under (a) above, the recipient shall request an administrative hearing within 15 calendar days of a decision by the Department. The request for an administrative hearing must specify in detail the basis for the appeal.

(c) Following receipt of a request for a hearing pursuant to (b) above, the Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(d) If the recipient raises a substantial and meritorious issue and such efforts at settlement fail, the Department shall file the request for an administrative hearing with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1H et seq. promulgated pursuant to those Acts.

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

Clarified that time frame in (b) is "calendar" days; editorial changes.

7:22-3.46 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a

court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

SUBCHAPTER 4. ENVIRONMENTAL INFRASTRUCTURE TRUST PROCEDURES AND REQUIREMENTS

7:22-4.1 Scope

This subchapter constitutes the rules of the Trust established pursuant to the Trust Act governing the disposition of appropriations made available pursuant to the Bond Acts, or any other moneys available to the Trust including future bond acts or other appropriations to provide financial assistance for construction of environmental infrastructure facilities.

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

Stylistic changes.

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 the section.

7:22-4.2 Construction of rules

This subchapter shall be construed so as to permit the Trust to discharge its statutory functions and to effectuate the purposes of the law.

7:22-4.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Trust Act;
2. To establish policies and procedures for the distribution of funds appropriated or otherwise available to the Trust for the purpose of providing financial assistance to project sponsors through the issuance of Trust loans for the costs of the construction of environmental infrastructure facilities;
3. To protect the public, the State and the Trust's bondholders by ensuring that Trust moneys appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of Trust moneys is consistent with the laws and policies of the State;
5. To establish minimum standards of conduct to prevent conflicts of interest and to ensure proper administration of funds;
6. To establish accounting procedures for the administration of Trust moneys;

7. To establish Trust loan repayment requirements; and

8. To establish standards for the construction of environmental infrastructure facilities.

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

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

Editorial changes only.

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 "project sponsor" for "local government unit".

7:22-4.4 Definitions

In addition to the words and terms defined at N.J.A.C. 7:22-3.4, the following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise:

"Allowable costs" means those costs that are eligible, reasonable, necessary and allocable to the project; permitted by generally accepted accounting principles; and approved by the Trust in the Trust loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C. 7:22-5.

"Applicant" means any project sponsor that applies for a Trust loan pursuant to the provisions of these rules and regulations.

"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. 7:22-4.11(d)7; and
2. Were not known to the applicant at the time the building contracts were executed.

"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 Trust loan agreement.

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

"Private entity" means the owner(s) of a nongovernmental community water system, a nonprofit noncommunity water system or a person that sponsors a project to prevent, reduce or treat runoff from agricultural cropland activities, including farming operations, animal feeding operations and other animal-related sources.

"Project" means the defined services for the construction of specified operable facilities as approved by the Trust in the Trust loan agreement.

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

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

“Recipient” means any project sponsor which has received preaward approval pursuant to N.J.A.C. 7:22-4.32 or a Trust loan pursuant to this subchapter.

“Responsible bidder” means a bidder that satisfactorily demonstrates to the Trust 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.

“Trust loan agreement” means a legal instrument executed between the Trust and the recipient for the construction of environmental infrastructure facilities.

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 26 new definitions and deleted six.
 Amended by R.1993 d.242, effective June 7, 1993.
 See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).
 Added, most notably, definitions for “differing site conditions” and “low bid building costs”.
 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).
 Rewrote the section.

7:22-4.5 Trust funds and accounts

(a) The Trust shall establish one or more general loan fund(s) into which may be deposited all revenues and receipts of the Trust, including moneys received as payment of principal and interest on loans made by the Trust, earnings on the moneys in any fund or account of the Trust,

any grants or appropriations, other than those specified in (b) below, and all other moneys from any source available for the purpose of making Trust loans to applicants for the construction of environmental infrastructure facilities.

(b) The Trust shall establish reserve and guarantee funds into which will be deposited the proceeds from any State bonds authorized for deposit in the Trust or other funds appropriated by law to the Trust for deposit in the reserve and guarantee funds. The reserve funds will be used by the Trust to secure debt issued by the Trust. The guarantee funds will be used by the Trust to secure debt issued by a project sponsor.

(c) The Trust shall not expend any moneys for loans during a fiscal year unless the expenditure is authorized pursuant to a project specific appropriations act by the Legislature in accordance with the Trust Act.

Amended by R.1992 d.42, effective January 21, 1992.
 See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).
 Editorial corrections.
 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 “applicants” for “local government units” and “environmental infrastructure” for “wastewater treatment”; and in (c), substituted “project sponsor” for “local government unit”.

7:22-4.6 Terms of the loans from the Trust

(a) The Trust 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 Trust loans will not exceed 20 years or as indicated in the Trust loan agreement. Trust loan repayments shall be made by the recipient in accordance with the repayment schedule indicated in the Trust loan agreement. Principal and accrued interest with respect to a particular Trust loan may, however, be prepaid in accordance with the provisions of the relevant Trust loan agreement. Interest on the Trust loan will accrue as indicated in the financial plan submitted to the Legislature pursuant to Section 21 of the Trust Act.

(c) Applicants shall secure all Trust loans in a manner acceptable to the Trust. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, service/deficiency agreement(s) with other local 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 Trust.

(d) Trust loan proceeds will be disbursed to recipients in accordance with N.J.A.C. 7:22-4.24.

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

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 from the date of the Trust loan disbursement" and inserted new "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).

Stylistic changes and N.J.A.C. reference added at (d).

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", and deleted a reference to the Department.

7:22-4.7 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 non-point 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. Criteria for project loan priority shall be developed by the Department in accordance with the provisions of N.J.A.C. 7:22-3.7.

(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 Trust shall consider a project eligible for funding in the specified State fiscal year(s) only where the project sponsor commits in writing to 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 Trust 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 Trust shall give funding priority over projects on the Project Priority List to a project which has previously received a Trust loan in any previous funding cycle in instances where the allowable loan amount due to low bid building costs as determined by the Trust exceeds the Trust loan amount previously awarded or in instances where a project has been certified by the Trust for Trust financial assistance for costs related to reserve capacity under the provisions of N.J.A.C. 7:22-4.36 or in instances where the allowable loan amount as determined by the Trust 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 "continue to pursue ..."; substituted "commit to the ...".

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

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

Criteria expanded at (a) and new (b) through (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).

Modified to indicate the Trust's intent to provide priority to projects seeking a post-construction supplemental Trust loan for increased allowable costs due to differing site conditions, consistent with the priority now given to projects seeking a supplemental Trust loan for increased allowable costs due to the low bid building cost.

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 throughout.

7:22-4.8 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 shall be based, in all substantial respects, upon the applicable sections of the Priority System, Intended Use Plan and Project Priority 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 language regarding the Trust loan agreement.
Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Substituted "recipient" for "local government unit" in the first sentence.

7:22-4.25 Assignment

The right of a recipient to receive disbursements from the Trust under a Trust loan may not be assigned, nor may repayments due under a Trust loan be similarly encumbered unless such assignment or encumbrance shall have been approved in writing pursuant to the conditions set forth in the Trust loan agreement.

7:22-4.26 Unused funds

Where the total amount disbursed under a Trust loan due to the low bid building cost is less than the initial Trust loan award, and/or where the total amount disbursed under a Trust loan due to the final building cost is less than the Trust loan amount due to the low bid building cost, the difference shall be retained by the Trust to be used for making a recipient's debt service payments until exhausted or for any other purpose as determined by the Trust in accordance with the applicable Trust loan agreement and Trust bond resolution. The difference may also be used to cover a recipient's increased costs due to differing site conditions, as approved by the Trust. Line item adjustments for allowable project costs may be made at the request of the recipient as long as the Trust loan amount in the Trust loan agreement is not exceeded and provided all project related contracts have been awarded. The Trust may allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope in order to cover costs due to differing site conditions.

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

Clarified operating procedures and the parameters under which a recipient may request a line item adjustment within a Trust loan agreement.

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 clarify that increased allowable costs due to differing site conditions may be funded from a recipient's initial or supplemental Trust loan in instances where cost underruns have occurred.

7:22-4.27 Publicity and signs

(a) Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge Trust loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Trust, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, Trust loan support, and other information as required by the Trust.

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

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

7:22-4.28 Land acquisition

The cost for land may be determined to be an allowable cost by the Department in accordance with N.J.A.C. 7:22-5.7. The recipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646 (84 Stat. 1894) approved January 2, 1971).

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

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

Substituted "recipient" for "local government unit" in the first sentence.

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

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

Deleted a reference to Federal law requirements in the second sentence and deleted the third sentence.

7:22-4.29 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the Trust loan agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions under this subchapter.

(b) The recipient shall not advertise any contract or any addendum thereto for the building of the project until authorization to advertise the contract or any addendum thereto has been granted by the Department.

(c) Once bids for building the project are received, the recipient shall not award any subagreement(s) until authorization to award has been given by the Department.

(d) The recipient and the contractor to whom the subagreement(s) has been awarded shall attend a preconstruction conference with Department personnel prior to the issuance of a notice to proceed.

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project no later than 12 months after the loan closing, unless a specific extension has been approved by the Trust.

(f) Failure to promptly award all subagreement(s) for building the project shall result in a limitation on allowable costs in accordance with N.J.A.C. 7:22-5.4(d)5.

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

Required the Department's approval of addenda to project-related contracts prior to their issuance by a recipient or prospective recipient and eligible entities required to execute the Department-approved engineering agreement for building services prior to, or concurrently with, the receipt of authorization to advertise their first project-related building contract.

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

Editorial change only.

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

In (f), amended N.J.A.C. reference.

7:22-4.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the project the recipient shall, in writing, notify the Trust.

(b) On the date one year after the initiation of operation, the recipient shall certify to the Trust the performance record of the project. If the Trust or the recipient concludes that the project does not meet the environmental infrastructure facilities' performance standards as specified in the Trust loan agreement, the recipient shall submit the following:

1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;
2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and
3. The scheduled date for certifying to the Trust that the project is meeting the specified performance standards.

(c) The recipient shall take corrective action necessary to bring a project into compliance with the specified performance standards at its own expense.

(d) Nothing in this section:

1. Prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or
2. Affects the Trust's right to take remedial action, including enforcement, against a recipient that fails to carry out its obligations.

(e) At a minimum, unless further specified, the project performance standards for wastewater treatment facilities consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the project, including the quantity of excessive infiltration and inflow which the project is designed to eliminate. The project performance standards for water supply projects consist 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. The project performance standards for landfill closure facilities consist of the landfill's approved Closure and Post-Closure Plan submitted in accordance with N.J.A.C. 7:26-2A.9. The project performance standards for new landfill facilities consist of the solid waste facility permit issued pursuant to N.J.A.C. 7:26-2. The project performance standards for remedial action activities consist of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, approved by the Department. The project performance standards for well sealing projects consist of N.J.A.C. 7:9-9.

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 clearly indicate that, at a minimum, project performance standards will include the NJPDES permit effluent discharge limitations as well as the design criteria within the Technical Design Report for the wastewater treatment facilities project.

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 "environmental infrastructure" for "wastewater treatment" in the introductory paragraph; and rewrote (e).

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

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

In (e), added the third through sixth sentences.

7:22-4.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-5, Determination of Allowable Costs: Fund and Trust.

(b) Notwithstanding (a) above, the Trust shall not provide Trust loan moneys for costs of work that the Trust determines is not in compliance with specifications or requirements of project contracts or Trust loan agreements. Costs for work not in compliance with the contracts or agreement unallowable.

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), amended N.J.A.C. reference.

7:22-4.32 Preaward costs

(a) The Trust shall not consider allowable those costs incurred for building performed prior to closing the loan for the project, unless the project sponsor has met the requirements as specified in (a)1, 2 or 3, below:

1. The project sponsor has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19 to the Department prior to the advertisement of any contract for which cost reimbursement is being sought; the project sponsor has not advertised any contract or any addendum thereto, for which cost reimbursement is being sought, without the authorization to advertise the contracts or any addendum thereto being given by the Department in writing; the project sponsor has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department and the Trust in writing; and the project sponsor has taken all required actions consistent with applicable Internal Revenue Service laws, rules and regulations, and provided evidence of such actions in a manner acceptable to the Trust.

2. The project sponsor has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19 to the Department and has received the Department's and the Trust's written approval thereof prior to the issuance of a notice to proceed with building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.), the Water Supply Privatization Act (N.J.S.A. 58:26-1 et seq.) or other applicable procurement method authorized under State law.

3. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Trust may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation or rehabilitation of transmission facilities, acquisition of allowable land or advance building of minor portions of the environmental infrastructure facilities. However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and the Trust approves any specific documents necessary to adequately evaluate the proposed action, including compliance with (a)1 or 2 above.

(b) If the Trust approves preliminary building activities, such approval is not an actual or implied commitment of Trust loan moneys and the project sponsor proceeds at its own financial risk. The project sponsor shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act and closing a Trust loan for the project.

(c) Any procurement is subject to the requirements of applicable State law.

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

Substantially amended (a)1 and substituted "Trust" for "Department".

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

Cross references corrected and references made to Priority System and Intended Use Plan.

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 allow the top 100 (previously limited to the top 70) projects on the Project Priority List to be considered eligible for preaward approval, also modified to indicate that all items necessary to satisfy Internal Revenue Service requirements must be reviewed by the Trust in order to ensure that the Trust will be able to reimburse these costs under current tax law and documents must be reviewed and approved by the Department and the Trust.

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), inserted "in writing" in 1, inserted "the Water Supply Privatization Act" in 2, and inserted "or rehabilitation of transmission facilities" and "substituted "the environmental infrastructure" for "wastewater treatment" in 3; and substituted "project sponsor" for "local government unit" throughout the section.

7:22-4.33 Force account work

(a) A recipient must secure the Trust's prior written approval for use of force account work for construction, construction-related activities or for repairs or improvements to a facility where costs exceed \$25,000.

(b) The recipient shall demonstrate that:

1. The work can be accomplished cost effectively by the use of force account; or
2. Emergency circumstances necessitate its use.

7:22-4.34 Planning and design

(a) For projects for which a Level 1 or Level 2 environmental review is required in accordance with N.J.A.C. 7:22-10.4 and 10.5, respectively, the costs associated with the planning and design of environmental infrastructure facilities are not allowable for reimbursement from the Trust. However, an allowance to assist in defraying the planning and design costs will be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, or the Sewage Infrastructure Improvement Act for costs associated with any portion of the project scope or for costs to address the project need, will not be eligible to receive an allowance for planning and/or design as appropriate in accordance with N.J.A.C. 7:22-5.12. An allowance for planning and/or design costs will not be provided as part of a post-construction supplemental Trust loan to address differing site conditions.

(b) For projects for which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recipient's costs actually incurred for planning and design activities and for which financial assistance has not been received from the sources of funding cited in (a) above are allowable for a Trust loan.

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

Ineligibility to receive allowance for planning and/or design described.

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

Modified to indicate that an adjustment in the planning and/or design allowance will not be made for increased building costs to address differing site conditions.

Amended by R.1997 d.346, effective August 18, 1997.
See: 29 N.J.R. 2207(a), 29 N.J.R. 3723(a).

Subdivided section; in (a), inserted "For projects for which . . . 10.5, respectively,"; and added (b).

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"

7:22-4.35 Infiltration/inflow for wastewater treatment facilities

(a) An infiltration/inflow analysis is required for sanitary sewer rehabilitation projects as part of the Project Report/Facilities Plan.

(b) The applicant shall demonstrate to the Department's satisfaction that each sewer system discharging into the wastewater treatment facility is not or will not be subject to excessive infiltration/inflow. For combined sewer overflow projects, in no case shall inflow be considered excessive.

(c) If the rainfall induced peak inflow rate results or will result in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey

including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the applicant shall design the project including sufficient capacity to transport and treat any existing infiltration. If the applicant demonstrates that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration.

(e) The provisions of (a) through (d) above are not intended to apply to stormwater runoff collection systems. However, a similar analysis regarding the quality and quantity of infiltration/inflow into a stormwater runoff collection system may be required.

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 reflect that an infiltration/inflow analysis is required for all wastewater treatment facilities project, and to clarify that the capacity necessary to transport and treat existing infiltration where wastewater flow rates of less than 120 gallons per capita per day during periods of high groundwater are involved must be used as a basis for design by the local government unit and identified that an infiltration/inflow analysis may be required for stormwater management facilities projects.

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), inserted "for sanitary sewer rehabilitation projects".

7:22-4.36 Reserve capacity

(a) For those wastewater treatment facilities eligible for Trust loans in State fiscal year 1993 and beyond whose project sponsor indicates in its initial loan application that it does not want to exercise its option to receive Trust loan assistance for those costs related to reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36, the Trust shall limit the recipient's Trust loan assistance to the cost of the project, to address the wastewater needs for which the planning requirements at N.J.A.C. 7:22-10 have been met, with a capacity based upon flow records, existing unsewered needs and flows anticipated as of the date of initiation of operation as established in the Trust loan agreement.

(d) The effects of a stop-work order are as follows:

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Trust shall either:

- i. Rescind the stop-work order, in full or in part;
- ii. Terminate the work covered by such order as provided in N.J.A.C. 7:22-4.44; or
- iii. Authorize resumption of work.

2. If a stop-work order is cancelled or the period of the order or any extension thereof expires, the recipient shall promptly resume the previously suspended work. An equitable adjustment shall be made in the Trust loan period, and/or the project, and the Trust loan agreement shall be modified if necessary. However, additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-4.44 Termination of loans

(a) Termination of Trust loans by the Trust shall be conducted as follows:

1. The Trust may terminate a Trust loan in whole or in part for good cause. The term "good cause" shall include but not be limited to:

- i. Substantial failure to comply with the terms and conditions of the Trust loan agreement;
- ii. Default by the recipient;
- iii. A determination that the Trust loan was obtained by fraud;
- iv. Without good cause therefor, substantial performance of the project work has not occurred;
- v. Gross abuse or corrupt practices in the administration of the project have occurred; or
- vi. Trust funds have been used for non-allowable costs.

2. The Trust shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Trust loan, in whole or in part, at least 30 days prior to the intended date of termination.

3. The Trust shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Trust may, in writing (certified mail, return receipt requested), terminate the Trust loan in whole or in part.

(b) Project termination by the recipient shall be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Trust loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Trust of any complete or partial termination of the project work by the recipient.

2. If the Trust determines that there is good cause for the termination of all or any portion of a project for which the Trust loan has been awarded, the Trust may enter into a termination agreement or unilaterally terminate the Trust loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Trust loan shall be solely within the discretion of the Trust. If the Trust determines not to terminate, the recipient shall remain bound by the terms and conditions of the Trust loan agreement.

3. If the Trust determines that a recipient has ceased work on a project without good cause, the Trust may unilaterally terminate the Trust loan pursuant to this section.

(c) The Trust and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Trust loan.

(d) Upon termination, the recipient may be required to immediately refund or repay the entire amount of the Trust loan moneys received from the Trust. If the Trust loan is guaranteed by a security/deficiency agreement, such agreement may have to be brought into effect to ensure the entire repayment of the Trust loan. The Trust may, at its discretion, authorize the immediate repayment of a specific portion of the Trust loan and allow the remaining balance to be repaid in accordance with a revised Trust loan repayment schedule.

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Trust the uncommitted balance of funds awarded under the Trust loan. The recipient shall make no new commitments without the Trust's specific approval thereof. The Trust shall make the final determination of the allowability of termination costs.

(f) In addition to any termination action, the Trust retains the right to pursue other legal remedies as may be available under federal, State and local law as warranted.

7:22-4.45 Administrative hearings

(a) The Trust shall make the initial decision regarding all disputes arising under a Trust loan. The recipient shall specifically detail in writing the basis for its appeal. When a recipient so requests, the Trust shall produce a decision in

writing and mail or otherwise furnish a copy thereof to the recipient.

(b) If a recipient wishes to appeal the Department's decision under (a) above, the recipient shall request an administrative hearing within 15 calendar days of a decision by the Trust. The request for an administrative hearing must specify in detail the basis for the appeal.

(c) Following receipt of a request for a hearing pursuant to (b) above, the Trust may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(d) If the recipient raises a substantial and meritorious issue and such efforts at settlement fail, the Trust shall file the request for an administrative hearing with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. promulgated pursuant to those Acts.

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

Clarified need to request hearing and that it is "calendar" days used as a time frame.

7:22-4.46 Assistance in the administration of Trust rules

In evaluating whether a project has complied with or satisfied any requirement or criteria under these New Jersey Wastewater Treatment Trust Rules, including, but not limited to, N.J.A.C. 7:22-4.11, 4.13, 4.17, 4.29, 4.31, 4.35, 4.36, 4.37, 4.43 or 4.45, or in determining what course of action the Trust may decide upon regarding those sections, the Trust shall be entitled to rely upon any advice, certifications or opinions which may be provided to it by the engineering, professional or legal staff of the Department or of any other State governmental unit upon which it may call for assistance pursuant to N.J.S.A. 58:11B-5(f).

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

Added cross reference to 7:22-4.45.
Amended by R.1993 d.242, effective June 7, 1993.
See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

Amended by adding the word "Trust" to clarify that the Trust may rely on advice, certifications or opinions of other State governmental units to ensure that an applicant has complied with the New Jersey Wastewater Treatment Trust Rules.

7:22-4.47 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

SUBCHAPTER 5. ALLOWABLE COSTS: FUND AND TRUST

7:22-5.1 Purpose

The rules in this subchapter represent the policies and procedures for determining the allowability of project costs for environmental infrastructure facilities based on Department and Trust policy, appropriate State cost principles and reasonableness.

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

Inserted "for environmental infrastructure facilities" following "project costs".

7:22-5.2 Applicability

The cost information contained in this subchapter applies to Fund loan and Trust loan assistance awarded on or after the effective date of this subchapter. Project cost determinations are not limited to the items listed in this subchapter. Additional cost determinations based on applicable law and regulations not otherwise addressed herein shall be made on a project-by-project basis. Further, costs that become allowable as a result of adoption after June 30, 1995 of amendments to this chapter are not allowable costs for a supplemental loan if the project sponsor has received final payment under a Fund or a Trust loan agreement prior to the effective date of such amendments.

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

7:22-5.3 Definitions

Terms used in this subchapter are defined in accordance with N.J.A.C. 7:22-3.4 and 7:22-4.4, as appropriate.

7:22-5.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. For loan awards made in State Fiscal Year 1996 and later and for loan awards made in State Fiscal Year 1995 and earlier for which final payment has not been received under Fund or Trust loan agreements, the costs of subagreements for building the project, which may include a contingency line item of up to five percent of the building costs. The funds allocated in the contingency line item must first be used for allowable change orders associated with building activities. The contingency funds can be used for activities other than building provided the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26. A supplemental loan for differing site conditions will not include contingency funds;

2. The costs for establishing or using liaison services for small business concerns owned and controlled by socially and economically disadvantaged individuals pursuant to N.J.S.A. 7:22-9;