

## NEW JERSEY STATE LIBRARY

## CHAPTER 24

## DAM RESTORATION GRANT REGULATIONS

## Authority

N.J.S.A. 13:1D-9, 13:1D-15, 58:4-1 et seq. and P.L. 1980, c.70.

## Source and Effective Date

R.1991 d.256, effective April 22, 1991.  
See: 23 N.J.R. 650(a), 23 N.J.R. 1665(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 24, Dam Restoration Grant Regulations, expires on April 22, 1996.

## Historical Note

Chapter 24, Dam Restoration Grant Regulations was filed as R.1981 d.104 and became effective April 9, 1981. See: 13 N.J.R. 9(a), 13 N.J.R. 195(b). This chapter expired March 12, 1986 pursuant to Executive Order 66(1978). Chapter 24 was adopted as new rules by R.1986 d.186 and became effective May 19, 1986. See: 18 N.J.R. 395(a), 18 N.J.R. 1101(a).

See section annotations for specific rulemaking activity.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 7:24-1.1 Scope and construction of rules

(a) This chapter shall constitute the rules governing disposition of appropriations for the purpose of restoring New Jersey Dams pursuant to the Natural Resources Bond Act, P.L. 1980, c.70. This chapter prescribes procedures for application, award, and administration of dam restoration grants.

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

## 7:24-1.2 Purpose of the rules

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

1. To implement the purposes and objectives of the National Resources Bond Act, P.L. 1980, c.70;
2. To establish policies and procedures for distribution of funds appropriated pursuant to the Act for the purpose of making State grants for dam restoration;
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 minimum standards of conduct to prevent conflicts of interest and insure proper administration of grants;
6. To establish accounting procedures for the administration of grants.

## 7:24-1.3 Authority

This chapter is promulgated pursuant to section 5 of the Natural Resources Bond Act, (P.L. 1980, c.70).

**7:24-1.4 Practice where rules do not govern**

The Commissioner may amend, repeal or rescind this chapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

**7:24-1.5 Dam Restoration Grant Program outline**

(a) The Dam Restoration Grant Program shall consist of three distinct phases.

1. The Application Phase shall consist of the following:
  - i. Pre-application conference;
  - ii. Application submittal;
  - iii. Eligibility determination;
  - iv. Priority list establishment; and
  - v. Notice of Condition Grant Award.
2. The Project Development Phase shall consist of the following:
  - i. Pre-design conference;
  - ii. The submittal and review of the materials required by N.J.A.C. 7:24-2.11; and
  - iii. The preparation and execution of the grant award document.
3. The Implementation Phase shall consist of the completion of the dam restoration project in accordance with the terms of the grant award document and this chapter and review and acceptance of the project by the Department.

**7:24-1.6 Procedure for obtaining a dam restoration grant**

(a) Each potential applicant for a dam restoration grant shall:

1. Determine if it meets the eligibility criteria of N.J.A.C. 7:24-2.3.
2. Arrange for a pre-application conference as required by N.J.A.C. 7:24-2.4.
3. Complete the application procedures required by N.J.A.C. 7:24-2.5.

(b) Each applicant receiving a Notice of Conditional Grant Award shall:

1. Arrange for a pre-design conference as required by N.J.A.C. 7:24-2.11.
2. Submit the design, construction plans and specifications, the cost proposal, Environmental Assessment and other materials for the dam restoration project as required by N.J.A.C. 7:24-2.11.

(c) Each applicant receiving a Notice of Grant Award shall comply with the requirements of N.J.A.C. 7:24-2.14 and 2.19 to receive the Grant.

**7:24-1.7 Severability**

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

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**SUBCHAPTER 2. GRANT PROCEDURES AND REQUIREMENTS**
**7:24-2.1 Scope**

This subchapter shall prescribe procedures and requirements for the award of State grants pursuant to section 4.C(2) of the Natural Resources Bond Act, P.L. 1980, c.70.

**7:24-2.2 Definitions**

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

“Act” means the Natural Resources Bond Act, P.L. 1980, c.70.

“Allowable project costs” means costs which are determined under the Natural Resources Bond Act, and this chapter to be eligible for a dam restoration grant.

“Applicant” or “local unit” means any municipality or county that owns a dam as of the time specified in N.J.A.C. 7:24-2.3(a)1, and applies for a grant pursuant to the provisions of this chapter.

“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection or any person designated by the Commissioner.

“Costs” means the cost of acquisition or construction of all or any part of a dam restoration project and of all or any real or personal property, agreements and franchises deemed by the Department to be necessary or useful and convenient therefor or in connection therewith, including costs of geological and hydrological services, administrative costs, engineering and inspection and legal expenses, costs of financial, professional and other estimates and advice, organization, operating and other expenses prior to and during such acquisition or construction, and all such other expenses as may be necessary or incident to the financing, acquisition, construction and completion of such project or part thereof and the placing of the same in operation.

“Dam restoration project” or “project” means the demolition, reconstruction, rehabilitation, or restoration of publicly owned high hazard structures that impound water for water supply, flood control or public recreation purposes.

“Department” means the New Jersey Department of Environmental Protection.

“Development and construction grant” means State financial assistance for demolition construction, reconstruction, replacement, extension, improvement, rehabilitation, restoration or betterment of dam structures.

“Grant” means a grant awarded pursuant to the Act and this chapter.

“Grantee” means an applicant which has received a grant pursuant to the Natural Resources Bond Act, P.L. 1980, c.70 and this chapter and which has executed a grant award document.

“High hazard structures” mean those dams whose failure may cause the probable loss of life of more than a few people or extensive property damage. Extensive property damage for these purposes is defined as the destructive loss of residential, industrial or commercial facilities, essential public utilities, main highways, railroads, or bridges.

“Probable maximum flood” or “PMF” means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from probable maximum precipitation (PMP), which information is generally available from the National Weather Service.

“True value of property” shall be determined by use of the current State equalization table adopted by the Director of the information Division of Taxation pursuant to N.J.S.A. 54:1-35.1.

### 7:24-2.3 Eligibility and criteria

(a) Any applicant with a dam restoration project is eligible for a grant in any year where it applies for a grant in a timely manner, meets the eligibility criteria set out in this subchapter, receives the minimum priority score, ranks high enough on the priority list to be funded and submits its project design, construction specifications and cost proposals in a timely manner. To receive a grant the project shall meet the following criteria:

1. The dam for which the applicant is applying for a dam restoration grant shall be publicly owned as of the date the Project Development Phase materials are to be submitted to the Department.
2. The minimum priority score set out in N.J.A.C. 7:24-2.9.
3. The applicant shall have sought all other Federal and State funds for the project and shall submit with its

application copies of the application documents and submit with its Project Development Phase materials copies of the documents from the agency applied to showing its decision and reasons therefor.

4. The project shall be an independent and complete dam restoration project. An independent and complete dam restoration project shall restore a dam so that it will safely pass the design flood, make the dam structurally sound, and incorporate necessary appurtenant facilities, or shall provide for the removal of the structure.

5. The project shall not be excessively expensive or cause unacceptably high environmental damage.

6. The project shall not conflict with any U.S. Army Corps of Engineer or U.S. Soil Conservation Service plans or projects or any other plans adopted by the State.

7. Prior to receiving a grant the applicant shall submit to the Department certified copies of documents stating how it is going to pay for its share of the dam restoration project and evidence, satisfactory to the Department, of its irrevocable commitment to fund the project.

8. The project shall conform with and further all environmental and land use plans adopted at the time the grant is made.

9. The application documents shall clearly state and document how the grant will accomplish the goal set out in the application.

10. The applicant shall not request a grant in excess of \$1,000,000.

11. No dam restoration project is eligible for a grant if construction on the project commenced prior to November 4, 1980, the day the voters approved the Natural Resources Bond Act.

(b) Due to the limited amount of available funds, the Department may, when two or more applicants have equal total priority points, take geographic distribution into consideration when making grants.

### 7:24-2.4 Pre-application procedures

(a) Every applicant shall request an informal conference prior to making formal application for a grant. The Department may waive the pre-application conference requirement when it determines it will not serve a useful purpose.

1. During the conference the Department shall identify and explain all grant application procedures and requirements. It shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a grant.

(b) This conference is for informational purposes only and is not part of the application procedure and neither written nor verbal statements made during the conference shall bind the Department.

(c) Questions concerning the grant program and requests for a pre-application conference should be directed to:

Chief  
Dam Safety Section  
Division of Coastal Resources  
CN 401  
Trenton, N.J. 08625

Amended by R.1991 d.256, effective May 20, 1991.  
See: 23 N.J.R. 650(a), 23 N.J.R. 1665(a).  
Address change in (c).

#### 7:24-2.5 Application procedures

(a) To apply for a dam restoration grant, an applicant shall comply with all the pertinent requirements of this section. The application shall be submitted to the Department on the forms provided for that purpose.

(b) An applicant for a dam restoration grant shall submit:

1. A completed dam restoration grant application;
2. A description of how it plans to pay its share of the project, the steps it has taken to implement this plan, and the steps it plans to take before receiving a grant that will guarantee that at the time of the signing of the grant award document it will be irrevocably committed to pay its share of the project;
3. Evidence that all Federal, State, regional and local agencies with jurisdiction over the area have been notified of the project;
4. Proof that the applicant has applied for any other available Federal and State funds for the project;
5. A map showing, the project location and boundaries of the area to be protected by the dam restoration project, the specific location of the project, and all existing structures and facilities located in the area to be protected by the project.

i. The area to be protected by the project shall be determined by the use of a HEC-1DB computer model in accordance with the instructions to be provided during the pre-application conference. The analysis by the computer model shall provide estimates of peak discharge, time to peak and maximum water surface elevation likely to be experienced at downstream locations in a case of dam failure.

(c) Signature:

1. Applications shall be signed for the applicant by a person authorized by resolution or ordinance to obligate the applicant to the terms and conditions of the grant.
2. Each application shall constitute an undertaking to accept the requirements of this subchapter and the terms and conditions of the grant award document.

(d) Applications should be submitted well in advance of the application closing date for the year in which the applicant wishes to be awarded a grant. The application closing date for 1981 shall be 90 days after the effective date of this chapter. For all subsequent application years the application closing date shall be the same month and day as the 1981 application closing date.

(e) Generally, processing of a completed application by the Department will be completed 60 calendar days after the application closing date and processing of completed Project Development Phase materials will be completed 90 calendar days after the Project Development Phase submittal closing date. No grant shall be made until a State appropriation is made.

(f) Applications shall be sent to:

Chief  
Dam Safety Section  
Division of Coastal Resources  
CN 401  
Trenton, N.J. 08625

(g) The following additional completed forms and documents shall be submitted with an application:

1. Resolution of the applicant authorizing the filing of an application for State Aid;
2. All other forms, agreements and subagreements the Department may require.

(h) At the time the applicant submits its application to the Department the applicant shall notify the municipal environmental commission and the county environmental commission that it has applied for a dam restoration grant for a specified dam.

Amended by R.1991 d.256, effective May 20, 1991.  
See: 23 N.J.R. 650(a), 23 N.J.R. 1665(a).  
Address change in (f).

#### 7:24-2.6 Use and disclosure of application

All grant applications, and other submittals, when received by the Department, constitute public records of the Department. The Department shall make them available to persons who request their release, to the extent allowed by New Jersey law.

#### 7:24-2.7 Evaluation of application and Project Development Phase materials

(a) The Department shall notify the applicant that it has received the application and Project Development Phase materials and is evaluating them pursuant to this section. Applications and Project Development Phase materials shall be subjected to:

1. Preliminary administrative review to determine the completeness of the documents;

- 2. Program, technical, scientific and environmental evaluation to determine the merit, effectiveness and relevance of the project to the Department of Environmental Protection program objectives;
- 3. Budget evaluation to determine whether proposed project costs are eligible, reasonable, applicable, and allowable; and
- 4. Final administrative evaluation.

**7:24-2.8 Department approval/disapproval**

(a) After a full review and evaluation of an application, the Department shall take one of the following actions:

- 1. Approve for priority ranking and possible grant; or
- 2. Disapprove the application.

(b) The applicant shall be promptly notified in writing of any application approval or disapproval. A disapproval of an application shall not preclude its reconsideration or resubmittal for the next application year.

**7:24-2.9 Priority determination**

(a) A project shall be eligible for a grant if it receives at least 10 priority points as determined by this section and meets all other requirements of this chapter. Basic eligibility does not mean an applicant shall receive a grant. A project shall be ranked by the number of priority points it receives. The points shall be awarded in accordance with the provisions of this section. Applicants are reminded that they shall meet the criteria set forth in N.J.A.C. 7:24-2.3.

(b) Priority points shall be given for the following factors and in the amount shown.

- 1. Where impoundment created by the dam structure is presently used as a domestic water supply;
  - i. One point is awarded for an impoundment supplying 10 through 500 people;
  - ii. Two points are awarded for an impoundment supplying 501 through 1,000 people;
  - iii. Three points are awarded for an impoundment supplying 1,001 through 5,000 people;
  - iv. Four points are awarded for an impoundment supplying 5,001 through 10,000 people;
  - v. Five points are awarded for an impoundment supplying 10,001 through 20,000 people;
  - vi. Six points are awarded for an impoundment supplying 20,001 through 50,000 people;
  - vii. Seven points are awarded for an impoundment supplying 50,001 through 100,000 people;
  - viii. Eight points are awarded for an impoundment supplying 100,001 through 150,000 people;

- ix. Nine points are awarded for an impoundment supplying 150,001 through 200,000 people;
- x. Ten points are awarded for an impoundment supplying 200,001 or more people.

2. Where impoundment created by the dam structure is presently used as an industrial water supply;

- i. One point is awarded for an impoundment supplying water to industries which combined employ 20 through 250 people;
- ii. Two points are awarded for an impoundment supplying water to industries which combined employ 251 through 1,000 people;
- iii. Three points are awarded for an impoundment supplying water to industries which combined employ 1,001 through 2,000 people;
- iv. Four points are awarded for an impoundment supplying water to industries which combined employ 2,001 through 5,000 people;
- v. Five points are awarded for an impoundment supplying water to industries which combined employ 5,001 or more people.

3. One point is awarded for an impoundment actively used for public recreational swimming.

4. One point is awarded for an impoundment actively used for public recreational fishing.

5. One point is awarded for an impoundment actively used for public recreational boating.

6. Points for the percentage of flood peak attenuation due to the stormwater storage provided by the dam for various storm events are awarded in accordance with the following table.

|             |                          | POINTS                               |       |       |        |
|-------------|--------------------------|--------------------------------------|-------|-------|--------|
|             |                          | Percentage of Flood Peak Attenuation |       |       |        |
|             |                          | 5-10                                 | 10-25 | 25-50 | 50-100 |
| Storm Event | 50 Year Storm            | 0                                    | 0     | 1     | 2      |
|             | 100 Year Storm           | 0                                    | 1     | 2     | 4      |
|             | ½ Probable Maximum Flood | 1                                    | 2     | 4     | 6      |

7. The percentage by which the spillway fails to safely pass the spillway's design flood. The spillway design flood shall be determined in accordance with the criteria set forth in N.J.A.C. 7:24-2.10.

- i. One point for zero through 25 percent inadequacy of the spillway;
- ii. Three points for 26 percent through 50 percent inadequacy of the spillway;
- iii. Five points for 51 percent through 75 percent inadequacy of the spillway;

iv. Seven points for 76 or more percent inadequacy of the spillway.

8. Where people are residing and/or working in the area to be protected by the dam restoration project as determined from the dam break analysis required by N.J.A.C. 7:24-2.5(b)5, points are awarded as follows:

i. For people residing in this area:

- (1) One point is awarded for 1 through 25 people;
- (2) Two points are awarded for 26 through 50 people;
- (3) Three points are awarded for 51 through 100 people;
- (4) Four points are awarded for 101 through 200 people;
- (5) Five points are awarded for 201 through 500 people;
- (6) Six points are awarded for 501 through 1,000 people;
- (7) Seven points are awarded for 1,001 through 2,000 people;
- (8) Eight points are awarded for 2,001 through 5,000 people;
- (9) Nine points are awarded for 5,001 through 8,000 people;
- (10) Ten points are awarded for 8,001 or more people.

ii. For people working in this area:

- (1) One point is awarded for 25 through 100 people;
- (2) Two points are awarded for 101 through 500 people;
- (3) Three points are awarded for 501 through 1,000 people;
- (4) Four points are awarded for 1,001 through 2,000 people;
- (5) Five points are awarded for 2,001 or more people.

9. Where property is located in the area to be protected by the dam restoration project as determined from the dam break analysis required by N.J.A.C. 7:24-2.5(b)5. Points shall be awarded based on the true value of property located in the area to be protected by the dam restoration project as follows:

i. For residential property:

- (1) One point is awarded for \$250,000 through \$500,000 true value of property;

(2) Two points are awarded for \$500,001 through \$1,000,000 true value of property;

(3) Three points are awarded for \$1,000,001 through \$5,000,000 true value of property;

(4) Four points are awarded for \$5,000,001 through \$10,000,000 true value of property;

(5) Five points are awarded for \$10,000,001 through \$20,000,000 true value of property;

(6) Six points for over \$20,000,000 true value of property.

ii. For commercial, public and industrial property:

(1) One point is awarded for \$250,000 through \$500,000 true value of property;

(2) Two points are awarded for \$500,001 through \$1,000,000 true value of property;

(3) Three points are awarded for \$1,000,001 through \$5,000,000 true value of property;

(4) Four points are awarded for \$5,000,001 through \$10,000,000 true value of property;

(5) Five points are awarded for \$10,000,001 through \$20,000,000 true value of property;

(6) Six points for over \$20,000,000 true value of property.

10. Where major transportation systems are likely to be disrupted by flooding due to a dam failure and the major transportation system is within the limits of inundation determined by the dam break analysis required by N.J.A.C. 7:24-2.5(b)5:

i. Two points are awarded for each Federal or State highway likely to be disrupted by flooding;

ii. One point is awarded for each county highway likely to be disrupted by flooding;

iii. Two points are awarded for each passenger railroad line likely to be disrupted by flooding;

iv. One point is awarded for each freight railroad line likely to be disrupted by flooding.

(c) Total priority points shall be determined by totalling all the points awarded an applicant by (b) above.

(d) The Department shall establish and maintain a priority list in accordance with the number of priority points awarded each project pursuant to this section.

(e) The Department shall send a Notice of Conditional Grant Award to those approved applicants ranking high enough on the priority list to receive funds.

(f) The applicants receiving a Notice of Conditional Grant Award shall obtain and submit certified copies of all necessary Federal, State and local permits to the Department within six months after the date of the Notice of Conditional Grant Award. Failure to obtain and submit the required permits within the required time period shall make the project ineligible for a grant for that year unless prior approval for an extension has been granted by the Department pursuant to N.J.A.C. 7:24-2.11(9).

(g) The priority list established shall be for the first year of the program. A new priority list shall be established for local units that apply for the second year of the program.

(h) The Department shall award a grant to those applicants sent a Notice of Conditional Grant Award who within six months, or any extension thereof granted pursuant to N.J.A.C. 7:24-2.11(9), of the date of the Notice of Conditional Grant Award submit to the Department all the documents, properly completed, required by N.J.A.C. 7:24-2.11.

1. Applicants with approved projects on a priority list that are not awarded grants in a year, who wish to apply for a position in a subsequent year, may apply by a timely filing of a new Dam Restoration Application form and by updating the other application documents required by N.J.A.C. 7:24-2.5. This application will be treated as a new application for a dam restoration grant and evaluated and approved in accordance with this chapter.

#### 7:24-2.10 Spillway design flood determination

(a) The spillway design flood shall be determined on the basis of dam height and storage capacity.

(b) The spillway design flood for all high hazard dams 40 feet or more in height or impounding more than 1,000 acre-feet shall equal the Probable Maximum Flood (PMF). The spillway design flood for all other high hazard dams shall equal  $\frac{1}{2}$  PMF.

(c) The height of the dam shall be established with respect to the maximum storage potential measured from the natural bed of the stream or water courses at the downstream toe of the dam. In case of structures not across a stream or water course, the height shall be established from the lowest elevation of the outside limit of the structure, to the maximum water storage elevation. In determining dam height and its storage capacity the maximum storage elevation shall be considered equal to the top of dam elevation.

#### 7:24-2.11 Project Development Phase of Dam Restoration Program

(a) Each applicant receiving a Notice of Conditional Grant Award shall arrange to have a pre-design conference, within 30 days after receipt of the notice, with personnel of the Department and shall submit all materials required by

this section to the Department within six months after receipt of the notice of within the time limits of any extension granted in pursuant to (g) below.

(b) During the pre-design conference the Department shall identify and explain the requirements of this section, including design criteria and review the requirements of the Environmental Assessment specified in (d) below.

(c) The applicant shall submit all material required by this subsection, prepared in accordance with accepted engineering practice within the specified time period:

1. A design report prepared by a New Jersey licensed professional engineer containing but not limited to:

i. A report of the field and laboratory subsurface investigations which reveals the engineering characteristics of the existing embankment, its foundation and any borrow materials which will be used in the restoration of the dam. These shall include:

- (1) The logs of borings in the embankment;
- (2) Foundation and borrow areas;
- (3) The determination of existing phreatic conditions; and
- (4) Results of tests of typical soil samples to determine design strength and permeability.

ii. The engineering assumptions, references, calculations, and conclusions relative to hydrologic studies and design of the spillway. The hydrologic assumptions and design calculations used in spillway designs shall include:

- (1) Drainage area;
- (2) Rainfall and runoff data;
- (3) Reservoir inflow hydrographs;
- (4) Reservoir area-capacity-elevation data;
- (5) Spillway elevation-discharge data; and
- (6) Reservoir flood routings.

iii. Structural and hydraulic design studies which shall include all information, narrative, data, and computations necessary to support and describe the design developed and shall be in such detail as to permit complete understanding of the project design.

iv. A detailed cost estimate of engineering, design, land acquisition, and construction of the structure and appurtenances thereto. The breakdown of the cost estimates shall be by unit prices covering estimated labor, payroll additives, equipment, materials, supplies and contractor overhead and profit. Background sheets will be furnished detailing the computation of the unit price. A summary form showing Item Number, Description, Estimated Quantity, Unit, Unit Price, and Estimated amount is required.

2. The Plans for the dam restoration project which shall be prepared by an engineer licensed by the State of New Jersey. Each drawing shall be signed and sealed and shall have a title giving the name and location of the project, the scale or scales used, date, the name of the engineer and his license number. Plans shall show clearly the datum to which elevations shown are referred. The U.S. Coast and Geodetic Survey datum (mean tide at Sandy Hook) should be used wherever possible, or the equation to that datum given. The plans shall clearly reflect and label all existing and proposed features and shall include but not be limited to:

i. A vicinity map showing the location of the dam restoration project. A U.S.G.S. 7½ Minute Quadrangle map shall be used for this purpose;

ii. A map showing the outline and topography of the impoundment; the ownership of abutting property; the locations of utilities, i.e. pipe lines, transmission, telegraph and telephone lines; and any other structure or facility affected by the dam restoration project;

iii. Detailed construction plans clearly showing the extent and complexity of the dam restoration project and including:

(1) General plans. The general plan of the dam, drawn to a scale not smaller than 30 feet to one inch, shall show accurately the position of all essential details, such as the spillway, its point of discharge into the stream, pipes through the dam, inlets, outlets, screen chamber, gate or valve house, and downstream bridges which may cause backwater on the dam.

(2) Longitudinal section of dam site. The longitudinal section of the dam or cross-section of the valley at the site of the dam shall show the elevations of the crest of the dam, the elevation of the flow line of the pond or reservoir, the location and elevation of all pipes or conduits passing through the dam, core wall, if any, and the spillway structure.

(3) Cross-sections of dam and spillway. The typical cross-sections shall include the minimum section of the dam and of the spillway section. They shall show subsurface conditions as disclosed by test pits or borings, the elevations of the top of the dam, the crest of the spillway and the normal flow line or water surface in the reservoir.

(4) Details of the spillway or overflow shall be provided if not clearly indicated on one or more of the drawings listed above and shall show the length and depth of opening, together with the width and shape of the approach and discharge channels, if any, methods of protecting the toe of the dam or end of the discharge channel from erosion, and shall give the dimensions of all walls, floors and paving.

(5) Details of the outlet or control works shall be provided if not clearly indicated on one or more of the drawings listed above and shall show the location and dimensions of all valves or sluice gates, intakes, screen chambers, racks, outlet towers, and gate houses and appurtenances.

3. The construction specification for the dam restoration project shall include but not be limited to:

i. The general provisions, which shall specify the rights, duties, and responsibilities of the Owner, Applicant, Engineer, builder and the prescribed order of work.

ii. The technical provisions, which shall describe carefully and in detail the approved work methods, equipment, materials to be used, the results to be obtained and the project schedule.

4. A land acquisition plan, if acquiring any interest in land, which shall include:

i. A Title Insurance Report;

ii. A survey of the property.

5. A report from the applicant's governing body detailing the action it has taken to irrevocably commit the applicant to pay its share of the project costs and the steps it intends to take to guarantee that the applicant will be irrevocably committed to pay its share of the project costs before it receives a grant.

6. Copies of the applications to, and answer from all other Federal and State agencies it has applied to for funds for the project.

7. An Environmental Assessment meeting the requirements prescribed in (d) below.

(d) All applicants except those excluded by (e) below shall submit with the materials required by this section an Environmental Assessment which shall include but not be limited to:

1. A written explanation of the need for the grant including:

i. The current number of people residing in the area to be protected by the project;

ii. The current number of people working in the area to be protected by the project;

iii. The true value of residential, commercial and industrial property in the area to be protected by the project.

2. A map showing the location and boundaries of the area to be protected by the project; the specific location of the project; all existing structures, filling and excavation, all known proposed structures, filling and excavations.

3. A statement describing and analyzing possible direct and indirect effects of the proposed activity on the site itself as well as on adjacent and non-contiguous areas both above and below the dam with particular reference to the effect of the project on public safety, health and welfare, the protection of public and private property, the effect on water quality and quantity, the preservation of areas, sites, structures and objects determined to have significant historical, archaeological, architectural or cultural value, the public trust in wetlands and wildlife and fisheries, the protection, preservation and enhancement of the natural environment. It shall describe and analyze:

- i. The reasons why this plan and design are the most appropriate for the project;
- ii. Temporary and permanent physical changes which would be caused by the proposed activity and the impact of these changes on the activity area and immediate environs;
- iii. Alternatives to the proposed project which would reduce or avoid environmental damage. This includes an assessment of demolition of the dam and of no project;
- iv. All measures to be taken during and after the completion of the project to reduce detrimental onsite and offsite effects;
- v. Adverse environmental impacts which cannot be avoided and why they cannot be awarded;
- vi. The specific benefits of the project.

(e) At the pre-design conference the Department will specify for each project those aspects of the Environmental Assessment it wants emphasized. The Department reserves the right to waive the Environmental Assessment requirement for those projects having no significant impact on the environment.

(f) The Department shall award a grant to those applicants receiving a Notice of Conditional Grant Award who obtain and submit all required permits and all materials, prepared to the satisfaction of the Department, within six months after the Notice of Conditional Grant Award.

(g) Any applicant who fails to submit the required materials prepared in a proper manner within the six month period shall lose its eligibility for a grant during that year unless the time period is extended by the Department. However, no extension shall be granted which will extend the total time period beyond one year from the Notice of Conditional Grant Award.

Amended by R.1991 d.256, effective May 20, 1991.

See: 23 N.J.R. 650(a), 23 N.J.R. 1665(a).

Changed all references to "Bureau" in (a) and (b) to "Department".  
Changed "7:24-2.11(a) of this action" to "(g) below" in (a).

#### 7:24-2.12 Amount and terms of grant

The amount and term of a grant shall be determined at the time of grant. The amount of the grant shall be based upon allowable project costs as defined in N.J.A.C. 7:24-2.2 and 2.16.

#### 7:24-2.13 State share

The State share shall be set forth in the grant award document expressed both as a dollar amount and as a percentage of allowable project costs. The dollar amount shall represent the grant ceiling. The State share shall not exceed \$1,000,000 or 50 percent of the allowable project costs whichever is less, not funded by Federal or other State programs.

#### 7:24-2.14 Grant award document

(a) The Department shall prepare and transmit four copies of the grant award document to the applicant. The applicant shall execute the grant award document and return it with a resolution of the governing body authorizing the signing of the document, naming the person authorized to sign the document and committing the local unit to complete the project in accordance with the terms and conditions of the grant award document, within 30 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The grant award document shall set forth the approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

(b) The grant award document shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application and Project Development Phase process.

(c) After the Department has completed its internal processing of the grant award document it shall transmit a copy of the executed grant award document to the grantee.

#### 7:24-2.15 Effect of grant award

(a) At the time of execution of the grant award document by the Department and the applicant, the grant shall become effective and shall constitute an obligation of the Natural Resources Fund in the amount and for the purposes stated in the grant award document.

(b) The award of the grant shall not commit or obligate the Department to award any continuation grant to cover cost overruns of the project. The Department's policy is that cost overruns for any project or portion thereof are solely the responsibility of the grantee.

#### 7:24-2.16 Allowable project costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant award document.

(b) Dam Restoration project contracts shall be awarded in accordance with Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. and the rules and regulations adopted pursuant thereto, N.J.A.C. 5:30-14.1 et seq.

(c) Grantees shall be paid the actual costs incurred and properly documented for dam restoration projects up to the maximum specified in the grant award document. The salaries of regular governmental employees and expenses for governmentally owned equipment are not allowable project costs.

(d) Costs of land acquired by a local unit prior to the execution of a grant award document by the department shall not be an allowable project cost.

(e) In determining land acquisition costs the applicant shall follow the New Jersey Department of Transportation (DOT) appraisal procedures as outlined in DOT/DEP memorandum of Agreement dated July 12, 1976.

#### 7:24-2.17 Unused funds

When the actual total project cost is less than the amount allowed as total project cost in the grant award document, the grant shall be reduced so that the State only pays the same percentage of the actual total project cost it was scheduled to pay of the amount allowed as total project cost in the grant award document. The difference between the actual total project cost and allowed total project cost shall be retained by the State and applied to new dam restoration projects pursuant to the Natural Resources Bond Act, P.L. 1980 c.70 and this chapter.

#### 7:24-2.18 Fraud and other unlawful or corrupt practices

(a) The grantee shall administer grants, acquire property pursuant to the grant award document, award contracts and subcontracts under those grants free from bribery, graft, and other corrupt practices. The grantee bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State shall also pursue administrative or other legally available remedies.

(b) The grantee shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The grantee shall notify the Department immediately when such allegation or evidence comes to its attention, and shall periodically advise the Department of the status and ultimate disposition of any matter.

Amended by R.1991 d.256, effective May 20, 1991.

See: 23 N.J.R. 650(a), 23 N.J.R. 1665(a).

Changed all references of "Chief, Bureau of Floodplain Management" to "Department" in (b).

#### 7:24-2.19 Grant conditions

(a) The following requirements, in addition to such other statutes and rules as may be applicable to particular grants, are conditions of each grant and conditions precedent to each payment under a grant award document.

1. The project shall be initiated and completed in accordance with the time schedule specified in the grant award document and shall conform to the approved construction plans and specifications.

2. The grantee shall submit proof of its own and its contractors and subcontractors, compliance with all hazard insurance requirements of the grant award document and certify that the insurance is in full force and effect and that the premiums have been paid.

3. The grantee shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with standard accounting procedures.

4. The grantee shall certify it and its contractors and their subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the rules and regulations promulgated pursuant thereto.

5. The grantee shall include in all its construction or development contracts for the dam restoration project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project. This performance bond or guarantee shall remain in effect until the Department's final inspection of the project and determination in writing that the project is satisfactorily completed. The performance bond or performance guarantee shall be both nondiscriminatory and financially satisfactory to the Department.

6. The grantee shall certify it is in compliance with all other requirements and conditions of the grant award document.

7. The grantee shall certify that in the construction of the project, including letting of contracts in connection therewith, it has conformed to all applicable requirements of Federal, State and local laws, ordinances, rules and regulations.

#### 7:24-2.20 Administration and performance of grant

(a) The grantee bears primary responsibility for the administration and success of the dam restoration project, including any subagreements made by the grantee for accomplishing grant objectives. Although grantees are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to the Department.

(b) The primary concern of the Department is that grant funds awarded be used in conformance with this chapter and the grant award document to achieve grant objectives and to insure the public safety through dam restoration in ways which are cost effective, environmentally acceptable and implementable.

**7:24-2.21 Access**

(a) The grantee and its contractor and subcontractors shall provide access to the Department personnel and any authorized representatives of the Department to the facilities, premises and records related to the project.

(b) The grantee shall submit to the Department such documents and information as requested by the Department.

(c) All grantees, contractors and subcontractors may be subject to a financial audit.

(d) Records shall be retained and available to the Department for a minimum of three years after the final payment by the Department.

**7:24-2.22 State payment**

(a) State funds shall be released to the grantee upon completion of the entire project to the satisfaction of the Department, or on an interim basis.

1. If interim payments are made they will be equal to the State's share of the percent of the total project completed.

2. Ten percent of all payments shall be withheld until the whole project has been completed to the satisfaction of the Department.

(b) No payments shall be made until the Department receives satisfactory cost documentation which shall include all forms required by the Department and completed in a manner satisfactory to the Department.

**7:24-2.23 Assignment**

The right to receive payment from the State under a grant may not be assigned, nor may payments due under a grant be similarly encumbered.

**7:24-2.24 Publicity and signs**

(a) Press releases and other public dissemination of information by the grantee concerning the project work shall acknowledge State grant support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Department of Environmental Protection shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project and State grant support.

**7:24-2.25 Debarment**

(a) No grantee shall enter into a contract for work on a dam restoration project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.

(b) Grantees shall insert in every contract for work on a dam restoration project a clause stating that the contractor may be debarred, suspended or disqualified from contracting with the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) Bid Specifications prepared by the grantee shall require bidders to submit a sworn statement of the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified bidders as a result of action by any state agency other than the Department of Environmental Protection.

(d) Bid Specifications shall also state that the grantee will immediately notify the Department whenever it appears that a bidder is on the Treasurer's List. The Department reserves the right, in such circumstances, to immediately suspend such bidder from Department contracting and to take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(e) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the grantee may take into account the loss of Department grant funds under this chapter which would result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsible bidder pursuant to law; and the grantee may advise prospective bidders that this procedure will be followed.

(f) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a grant under this chapter may present information to the Department why this section should not apply to such person.

1. If the Commissioner of the Department determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9.

2. In the alternative, the Department may suspend or debar any such person, or take such other action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

**7:24-2.26 Project changes and grant modifications**

(a) A grant modification means any written alteration of the grant terms or conditions, budget or project method or other administrative, technical or financial terms of the grant award document.

(b) Due to the limited amount of funds available for dam restoration projects there shall be no grant modification increasing the grant amount. Increasing costs resulting

from a grant modification shall be the responsibility of the grantee.

(c) The grantee shall promptly notify the Chief, Bureau of Flood Plain Management, in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant 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 objective of a project;
4. Significant, changed conditions at the project site;
5. Changes in the time for the performance of the project or any major phase thereof;
6. Changes which may increase or substantially decrease the total cost of a project;
7. Changes in key personnel identified in the grant award document or a reduction in time or effort devoted to the project by such personnel.

(d) If the Department decides a formal grant amendment is necessary, it shall notify the grantee and a formal grant amendment shall be prepared in accordance with N.J.A.C. 7:24-2.27. If the Department decides a formal grant amendment is not necessary, it shall follow procedures of N.J.A.C. 7:24-2.29.

#### 7:24-2.27 Formal grant amendments

(a) The Department shall require a formal grant amendment to change principal provisions of a grant where project changes substantially alter the cost or time of performance of the project or any major phase thereof.

(b) The Department and grantee shall effect a formal grant amendment only by a written amendment to the grant award document.

#### 7:24-2.28 Administrative grant 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 grantee, or a change in the payment schedule for grants for planning, design, and construction of dam restoration facilities, constitute changes to the grant award document (but not necessarily to the project work) and do not affect the substantive rights of the Department or the grantee. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the grantee.

#### 7:24-2.29 Other changes

All other project changes, which do not require a formal grant amendment, require written approval of the Chief, Bureau of Flood Plain Management.

#### 7:24-2.30 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of noncompliance with any grant condition, requirement of this chapter, or grant award document requirement or specification, the Department may take any of the following actions or combination thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:24-2.31;
2. Withhold grant funds pursuant to N.J.A.C. 7:24-2.32;
3. Order suspension of project work pursuant to N.J.A.C. 7:24-2.33;
4. Terminate a grant pursuant to N.J.A.C. 7:24-2.34.

#### 7:24-2.31 Notice of noncompliance

When the Department determines that the grantee is in noncompliance with any condition or requirement of the Natural Resources Bond Act, P.L. 1980, v. 70, this chapter, or any provision, term, condition or requirement of the grant award document, or any other applicable State laws and regulations, it shall notify the grantee, its engineer, and/or the contractor of the noncompliance. The Department may require the grantee, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the grantee, its engineer, and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop-work order or withhold payment. The Department may, however, withhold payment pursuant to N.J.A.C. 7:24-2.32 without issuing a notice pursuant to this section.

#### 7:24-2.32 Withholding of funds

The Department may withhold a grant payment or any portion thereof when it determines in writing that a grantee has failed to comply with any grant condition, provision of this chapter or grant award document specification or requirement.

#### 7:24-2.33 Stop-work orders

(a) Use of Stop-Work Order: The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the grantee or noncompliance with the terms and conditions of the grant. The Department shall limit use of a stop-work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department consideration.

(b) Contents of stop-work orders: Prior to issuance, the Department shall afford the grantee an opportunity to discuss the stop-work order with the Department personnel. The Department shall consider such discussions in preparing the order. Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;
2. A clear description of the work to be suspended;
3. Instruction as to the issuance of further orders by the grantee for materials or services;
4. Guidance as to action being taken on sub-agreements;
5. Other suggestions to the grantee for minimizing costs.

(c) Issuance of stop-work order: The Department may, by written order to the grantee (certified mail, return receipt requested) require the grantee to stop all, or any part of, the project work for a period of not more than 45 days after the grantee receives the order, and for any further period to which the parties may agree.

(d) Effect of stop-work order:

1. Upon receipt of a stop-work order, the grantee shall immediately comply with the order to minimize the incurrence of costs allowable 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 Department shall either:

- i. Rescind the stop-work order, in full or in part;
- ii. Terminate the work covered by such order;
- 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 grantee shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, the project, or both of these, and the grant award document shall be modified accordingly within the discretion of the Department.

#### 7:24-2.34 Termination of grants

(a) Termination by Department:

1. The Department may terminate a grant in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include but not be limited to:

- i. Substantial failure to comply with the terms and conditions of the grant;
- ii. Default by the grantee; or
- iii. The grant was obtained by fraud.

2. The Department shall give written notice to the grantee (certified mail, return receipt requested) of intent to terminate a grant in whole or in part at least 10 days prior to the intended date of termination.

3. The Department shall afford the grantee 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 grant in whole or in part.

(b) Project termination by grantee: The grantee shall not terminate the project work except with the consent of the Department. The grantee must show good cause and give prompt written notice to the Department of any proposed complete or partial termination of the grant project by the grantee.

1. If the Department determines there is good cause for the termination of all or part of the grant project the Department may enter into a termination agreement or unilaterally terminate the grant, effective with the date of cessation. The determination to terminate the grant shall be solely within the discretion of the Department and if the Department determines not to terminate the grant, the grantee shall remain bound by the terms and conditions of the grant award document.

2. If the Department determines that a grantee has ceased work on a project without good cause, the Department may unilaterally terminate the grant pursuant to this section.

(c) Termination by mutual agreement: The Department and grantee may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and grant, basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party.

(d) Effect of termination:

1. Upon termination, the grantee shall refund or credit to the State of New Jersey that portion of grant funds paid to the grantee and allowable to the terminated project work, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination and as may be otherwise allowable. The grantee shall make no new commitments without Department approval.

2. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the Department the balance of funds awarded under the grant. The Department shall make the final determination of the allowability of termination costs.

#### 7:24-2.35 Administrative hearings

(a) The Commissioner shall decide all disputes arising under a grant. When a grantee so requests, the Department shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the grantee.

(b) A grantee may request a hearing within 15 days of a decision by the Commissioner. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402. Where required by law the Department shall grant a hearing based upon such request.

(c) The Commissioner shall grant and conduct such hearings in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and any rules promulgated pursuant to those Acts.

Administrative change in (b).  
See: 23 N.J.R. 3325(b).

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