

CHAPTER 22

FINANCIAL ASSISTANCE PROGRAMS
FOR WASTEWATER TREATMENT
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 Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.); the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq.; N.J.S.A. 58:10A-1 et seq.; Executive Order No. 215(1989) and future laws authorizing the Department of Environmental Protection to provide assistance for construction of wastewater treatment facilities as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10 and New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.); 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 Wastewater Treatment Trust to provide assistance for construction of wastewater treatment facilities as to N.J.A.C. 7:22-4, 5 and 9.

Source and Effective Date

R.1995 d.494, effective August 11, 1995.
See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Executive Order No. 66(1978) Expiration Date

Chapter 22, Financial Assistance Programs for Wastewater Treatment Facilities, expires on August 11, 2000.

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). Amendments throughout Chapter 22 became effective December 7, 1981 as R.1981 d.456. See: 13 N.J.R. 481(d), 13 N.J.R. 886(d). Subchapters 1 and 2 were repealed and new Subchapter 2, Matching Grant Procedures and Requirements; and Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of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 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 Subchapter 4 was repealed and a new Subchapter 4, Wastewater Treatment Trust Procedures and Requirements, was adopted by R.1987 d.40, effective January 5, 1987.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 to 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). Chapter 22 was redesignated Financial Assistance Programs for Wastewater Treatment Facilities, by R.1993 d.242, effective June 7, 1993. See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(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: 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
 7:22-3.36 Reserve capacity
 7:22-3.37 Value engineering
 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. WASTEWATER TREATMENT 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 New Jersey Wastewater Treatment Trust
 7:22-4.6 Terms of the loans from the New Jersey Wastewater Treatment 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
 7:22-4.36 Reserve capacity
 7:22-4.37 Value engineering
 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. DETERMINATION OF 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 onsite systems
 7:22-5.7 Real property
 7:22-5.8 Equipment, materials and supplies
 7:22-5.9 Industrial and Federal users
 7:22-5.10 Infiltration/inflow and reserve capacity
 7:22-5.11 Miscellaneous costs
 7:22-5.12 Allowance for planning and design

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

- 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 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

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

SUBCHAPTER 8. MINIMUM STANDARDS OF CONDUCT FOR OFFICERS, EMPLOYEES, AGENTS AND MEMBERS OF WASTEWATER UTILITIES

- 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 Representations
- 7:22-8.8 (Reserved)
- 7:22-8.9 (Reserved)
- 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 Public agency 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 WASTEWATER TREATMENT FACILITIES

- 7:22-10.1 Scope and construction
- 7:22-10.2 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

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).

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Director the uncommitted balance of funds awarded under the grant. The Department shall make the final determination of the allowability of termination costs.

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

At (b) deleted "director" replaced with "Department".

7:22-2.34 Rescission of grants

(a) The Department may, in writing, rescind the grant if it determines that:

1. Without good cause, substantial performance of the project work has not occurred;
2. The grant was obtained by fraud; or
3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 10 days prior to the intended date of rescission, the Department shall give written notice to the recipient (certified mail, return receipt requested) of intent to rescind the grant. The Department shall afford the recipient an opportunity for consultation prior to rescission of the grant. Upon rescission of the grant, the recipient shall return all grant funds previously paid to the recipient. The Department shall make no further payments to the recipient. In addition, the Department retains the right to pursue such remedies as may be available under Federal, State and local law.

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

Grammatical change only.

7:22-2.35 Administrative order of enforcement

(a) Under the authority of N.J.S.A. 58:10A-5d and N.J.S.A. 58:10A-6b, the Department may:

1. Issue an order to "cease and desist" unpermitted construction, pursuant to N.J.S.A. 58:10A-10b;
2. Issue an order revoking the permit to operate, pursuant to N.J.S.A. 58:10A-106 and N.J.A.C. 7:14-2.7;
3. Issue an order to "cease and desist" combined with an assessment of a civil administrative penalty, pursuant to N.J.A.C. 7:14-8.

7:22-2.36 Administrative hearings

(a) The Department shall attempt to decide all disputes arising under a grant. When a recipient so requests, the Department shall reduce a decision to 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 a hearing within 15 calendar days of a decision by the Department. Where required by law, the Department shall grant

an administrative hearing based upon such request and file the matter 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. 52:14D-1 et seq., N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, promulgated pursuant to those acts.

Administrative Change in (b).

See: 23 N.J.R. 3325(b).

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 division changed to Department.

7:22-2.37 Severability

If any provision of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the provisions of these rules.

SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

7:22-3.1 Scope

This subchapter constitutes the rules of the New Jersey Department of Environmental Protection governing the disposition of appropriations pursuant to the Wastewater Treatment Bond Act, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act, the Federal Water Pollution Control Act Amendments or any other monies available including future bond acts and appropriations to provide financial assistance for wastewater treatment facilities. As they are enacted, reference to such bond acts shall be added to this section through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.

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 appropriate laws added.

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

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

7:22-3.2 Construction of rules

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

7:22-3.3 Purpose

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

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Green Acres, Clean Water, Farmland and His-

toric Preservation Bond Act and future bond acts and appropriations. As they are enacted, reference to such bond acts shall be added to this paragraph through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7;

2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Bond Acts, the Federal Water Pollution Control Act Amendments and other moneys available to the Wastewater Treatment Fund or to the Stormwater Management and Combined Sewer Overflow Abatement Fund, for the purpose of providing financial assistance to local government units through the issuance of Fund loans for the costs of the construction of wastewater treatment facilities or stormwater management facilities;

3. To protect the public and the State by ensuring that Fund monies appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of Fund monies 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 Fund moneys;

6. To establish accounting procedures for the administration of Fund monies;

7. To establish Fund loan repayment requirements; and

8. 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).

References to appropriate laws added.

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

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

7:22-3.4 Definitions

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

“Ad valorem tax” means a tax based upon the value of real property.

“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 Department in the Fund loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C. 7:22-5.

“Allowance” means a loan amount for planning and design costs based on a percentage of the project’s allowable building cost, computed in accordance with N.J.A.C. 7:22-5.12.

“Alternative technology” means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and onsite systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

“Applicant” means any local government unit that applies for a Fund loan pursuant to the provisions of these rules and regulations.

“Best Management Practices” means proven procedures for reducing nonpoint source pollution through both structural and nonstructural controls, including improvements to operation and maintenance procedures.

“Best Practicable Waste Treatment Technology” (BPWTT) means the most cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133—secondary treatment of wastewater;
2. 40 CFR Part 125, Subpart G—marine discharge waivers;
3. 40 CFR 122.44(d)—more stringent water quality standards and State standards; and/or
4. 41 CFR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

“Bond Acts” means the Wastewater Treatment Bond Act, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts passed for the purpose of providing funds for the construction of wastewater treatment facilities. As they are enacted, reference to such bond acts shall be added to this definition through a notice of administrative change in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.

“Bonds” means the bonds authorized to be issued, or issued, under the Bond Acts.

“Building cost” means the cost for the acquisition, erection, alteration, remodeling, improvement or extension of wastewater treatment facilities. This definition excludes administration, legal, fiscal and engineering costs and costs associated with the planning and design of the project.

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

“Change order” means an alteration of the cost, scope or time of performance of a subagreement occurring subsequent to the execution of that subagreement.

“Collection system” means the sewers which are primarily installed to receive wastewaters directly from individual systems or from private property and which include service “Y” connections designed for connection with those private facilities when owned, operated and maintained by or on behalf of the local government unit. Included in this definition are crossover sewers connecting more than one property on one side of a major street, road or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective.

“Combined sewer” means a sewer that is designed to function as both a sanitary sewer and a storm sewer.

“Commission” means the New Jersey Commission on Capital Budgeting and Planning.

“Construction” includes, but is not limited to, 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 for the construction of wastewater treatment facilities; the purchase of land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment; the erection, building, alteration, remodeling, improvement, or extension of wastewater treatment facilities; and the inspection and supervision of the construction of wastewater treatment facilities.

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

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

“DAC” means “Discharge Allocation Certificate.”

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

“Design life” means the length of time during which a wastewater treatment facility is planned and designed to be operated.

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

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

“Discharge Allocation Certificate” (DAC) means the certificate issued by the Department pursuant to N.J.A.C. 7:14A which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which will result in a discharge to surface water or a substantial modification in a discharge to surface water.

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

“EPA” means the United States Environmental Protection Agency.

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

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

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

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

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

“Fund”, “Stormwater Management and Combined Sewer Overflow Abatement Fund” or “Wastewater Treatment Fund” means the Wastewater Treatment Fund and/or the

Stormwater Management and Combined Sewer Overflow Abatement Fund established pursuant to the applicable Bond Acts.

“Fund loan” means a loan from the Wastewater Treatment Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund, both Funds or from other funds available through future bond acts or appropriations for the allowable costs of a wastewater treatment facilities project. As such bond acts are enacted, reference to such funds shall be added to this definition through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.

“Fund loan agreement” means the legal instrument executed between the State of New Jersey and the local government unit for the construction of wastewater treatment facilities.

“Green Acres, Clean Water, Farmland and Historic Preservation Bond Act” means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88) and any amendatory or supplementary acts thereto.

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

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

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

“Innovative technology” means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

“Local government unit” means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting or other political subdivision of the State authorized to construct and/or operate wastewater treatment facilities.

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

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

1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.
2. Operation: Control of the unit processes and equipment which make up the wastewater treatment facilities, including, but not limited to, financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

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

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

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

“Project performance standards” means the performance and operations requirements applicable to a project including the enforceable requirements of the Federal Water Pollution Control Act Amendments and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated which the project is planned and designed to meet.

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

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

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

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

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

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

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

“Sewage Infrastructure Improvement Act” means the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.) and any amendatory or supplementary acts thereto.

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

“State” means the State of New Jersey.

“Stormwater Management and Combined Sewer Overflow Abatement Bond Act” means the Stormwater Manage-

ment and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) and any amendatory or supplementary acts thereto.

“Stormwater management facilities” includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit to prevent non-point source pollution, minimize stormwater runoff, reduce soil erosion, correct interconnections or cross-connections, or induce groundwater recharge or any combination thereof.

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

“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.

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

“Trust Act” means the New Jersey Wastewater Treatment Act (N.J.S.A. 58:11B-1 et seq.) and any amendatory or supplementary acts thereto.

“Trust loan” means a loan from the New Jersey Wastewater Treatment Trust for the allowable costs of a project.

“User charge” means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user’s proportionate share of the cost of operation and maintenance (including replacement) of such facilities and may include debt service.

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

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

“Wastewater Treatment Bond Act” means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) and any amendatory or supplementary acts thereto.

“Wastewater treatment facilities” includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, land that will be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including, but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage collection systems, stormwater runoff collection systems, and other equipment, personal property and appurtenances necessary thereto. Included in this definition are stormwater management facilities.

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

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

Deleted definition “State Funding List”.
Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

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

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

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

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

7:22-3.5 Bond Act Funds

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

(b) Any Federal or State funds which may be made available to the State for loans to local government units for the construction of wastewater treatment facilities may be deposited into the Wastewater Treatment Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund, as appropriate.

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

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

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

Reference to Stormwater Management and Combined Overflow Abatement Fund added.

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

7:22-3.6 Terms of the Fund loans

(a) The Fund may offer loans for up to 100 percent of allowable project costs for the construction of wastewater treatment facilities but may offer a range of options regarding the term, interest rate and level of loan funding.

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

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

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

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

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

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

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

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

At (d) added N.J.A.C. reference.

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

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

7:22-3.7 Criteria for project loan priority

(a) Each year, the Department shall develop a Priority System, Intended Use Plan and Project Priority List for the forthcoming Federal fiscal year. The Priority System includes the ranking methodology which evaluates projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. 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 wastewater treatment facilities. The Project Priority List presents the projects initially eligible for funding according to their cumulative scores derived from application of the Priority System.

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

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

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

Language added at (a) regarding contingency of availability of funds.

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-3.18 through 3.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Fund loan, and conditions to each disbursement under a Fund loan agreement:

1. The recipient shall comply with the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other applicable procurement method authorized by State law;

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);

4. The recipient shall comply with the requirements of N.J.A.C. 7:14-2, Construction of Wastewater Treatment Facilities, and the provisions of the NJPDES rules at N.J.A.C. 7:14A.

5. The recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-3.11(d)13;

6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 40 C.F.R. Part 403;

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

8. The recipient shall pay the unallowable costs of the construction of the project and shall pay the allowable costs not covered by the Fund loan, or supplemental Fund loan, if any;

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

10. The recipient shall retain sufficient qualified operating and management personnel including a qualified chief operating officer or executive director, from the time of completion of construction or initiation of operation, whichever is earlier, until such time as the operation of the facility is discontinued;

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

12. No Fund loan moneys shall be disbursed to a local government unit who is in current default on any Fund loan or Trust loan. The Department may, at its discretion, make a Fund loan disbursement where it determines that the local government unit will repay the defaulted loan obligation and associated penalties. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such defaulted loan;

13. An amount of any Fund loan disbursement equal to any unpaid portion of a finally determined State assessed penalty pursuant to N.J.A.C. 7:14-8, Assessment of Civil Administrative Penalties, shall at the discretion of the Department, be held in escrow until said penalty is paid in full. In no case will the total amount withheld under this subsection exceed the unpaid amount of said penalty;

14. The Department may assess penalties to late loan repayments as appropriate as specified in the Fund loan agreements;

15. (Reserved)

16. The recipient shall certify to the Department that a final plan of operation, including an operations and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system acceptable to the local government unit, has been developed for the project;

17. The recipient shall certify that it has not and shall not enter into any contract with, nor has any subcontract been or shall be awarded to, any person debarred, sus-

pended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of project work;

18. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the Fund loan agreement;

19. The recipient shall certify that it and its contractors and subcontractors shall comply with all insurance requirements of the Fund loan agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The recipient shall provide the Department with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage must begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act of 1968, whichever is less. The recipient shall comply with each requirement of this subsection prior to the release of the initial Fund loan disbursement for building the project;

20. The recipient shall certify that it and its contractors and subcontractors shall comply 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, including but not limited to N.J.A.C. 17:27;

21. The recipient shall certify that it has established an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project, consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.);

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11;

23. The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);

24. The recipient shall make a good faith effort to award not less than 10 percent of the total amount of all contracts for building, materials or services (including planning, design and building related activities) for a project to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals will take precedence over State goals;

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater;

26. After the award of a contract and prior to the start of work, a preconstruction meeting shall be scheduled by the recipient. The recipient, the responsible engineer, the environmental and construction inspectors, the contractor and one or more representatives of the Department must be present at the preconstruction meeting;

27. Prior to starting construction, the recipient shall provide photographs or videotapes to the Department in conformance with the provisions of N.J.A.C. 7:22-10.11(q);

28. The recipient shall provide inspection coverage of the construction work using qualified personnel on a routine basis as follows:

i. A qualified inspector shall be provided at each construction site. There are times when a qualified individual can cover more than one site; however, this must be governed by on-site conditions which determine rate of progress;

ii. Inspection coverage at a treatment plant site shall be on a full-time basis at all times;

iii. For pipeline construction, full-time construction inspections shall be provided during the following operations:

- (1) Preparation of trench bottom for placement of bedding and to determine if bottom will support pipe or if additional support must be provided;
 - (2) Placing of pipe bedding material where required and in the quantity required in conformance with the approved specifications;
 - (3) Alignment and joining of pipe sections;
 - (4) Bedding, placement, and alignment of manholes and other appurtenances; and
 - (5) Placement and compaction of trench backfill material;
- iv. Inspection coverage at pump station and metering station sites shall be sufficient to ensure that the work satisfies specifications. The coverage shall include, but not be limited to, the following:
- (1) Excavation and spoils disposal;
 - (2) Checking of all elevations including footings, piles, slabs and equipment pads (this function may be performed by the responsible engineer);
 - (3) Installation of all concrete reinforcing bars;
 - (4) Installation of all electrical conduit, plumbing and piping; and
 - (5) Installation of all equipment;
- v. All concrete shall be checked for truck mix time and temperature prior to placing in forms. Periodic slump tests and test cylinders, per good construction practice, shall be taken. Cold weather and hot weather precautions shall be taken as appropriate. Any additions to the specified concrete mix must be approved by the responsible engineer; and
- vi. During the construction period, the construction inspector shall keep a job diary in which he will keep a record of progress, problems encountered, and corrective action taken to rectify any problems. The job diary shall be made available to the Department upon request;
29. The recipient shall provide environmental inspection coverage and ensure completion of environmental restoration in conformance with the provisions of N.J.A.C. 7:22-10.12;
30. During the construction phase of the projects, job meetings shall be held at frequent intervals to review construction and restoration progress and to resolve difficulties which might delay completion of the work. Attendees at these meetings shall include the recipient, the responsible engineer, the recipient's inspectors (construction and environmental), the contractor, and one or more representatives of the Department;
31. The recipient shall provide notification, information and conduct visual inspections and testing of projects as follows:
- i. The recipient shall notify the Department one week prior to all final visual inspections and tests of all sewer lines, force mains, mechanical equipment and treatment plant operation;
 - ii. Copies of all final visual inspections and test reports shall be forwarded to the Department when requested;
 - iii. Copies of record drawings shall be forwarded to the Department prior to the start of visual inspection and testing of all pipeline projects; and
 - iv. All visual inspections and testing shall be done in accordance with the following:
 - (1) All manholes and pipelines shall be completed and flushed prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and a representative from the Department present. All discrepancies must be noted and a reinspection performed to verify the corrective action;
 - (2) All manholes and pipelines shall be visually inspected and accepted prior to testing;
 - (3) Upon acceptance of the visual inspection by the Department, the necessary infiltration, exfiltration, or low pressure air test and deflection tests when applicable shall be performed by the contractor. The test must be witnessed by the recipient and/or the responsible engineer (or representative), the contractor, and a representative from the Department. Upon completion of the test, a copy of the test results must be forwarded to the Department if requested;
 - (4) Infiltration tests of gravity lines shall be limited to 2000 linear feet per test;
 - (5) Force mains shall be tested to two times the maximum operating pressure, but not greater than the pipe pressure rating, whichever is less. The length of pipe tested during a force main pressure test is not restricted; however, it is recommended that it be limited for ease in locating leaks if present;
 - (6) Testing of all mechanical equipment at treatment plants and pump stations must be witnessed by a representative of the Department; and
 - (7) If required, actual flow tests must be conducted in accordance with parameters established by the Department and performed in the presence of a representative of the Department; and
32. The recipient shall forward a letter to the Department upon completion of all construction and restoration

of each contract of a project, stating that the project (or contract) is ready for final inspection. No final inspection will be scheduled until formal notification is received. The final inspection will be a joint inspection with the recipient and/or the responsible engineer, the recipient's inspector(s), the contractor, and one or more representatives of the Department in attendance.

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

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

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

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

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

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

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

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

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

Added (d).

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

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

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

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

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

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

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

7:22-3.18 Administration and performance of loan

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

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

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

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

7:22-3.19 Project changes and loan modifications

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

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

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of the project;
4. Significant, changed conditions at the project site;
5. Acceleration or deceleration in the time for performance of the project or any major phase thereof; and
6. Changes which may increase or substantially decrease the total cost of a project.

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

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

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

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

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 Department 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 Department'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 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.

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

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

"Assistant Director" replaced by "Department"; new (e) added.

7:22-3.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-5.1 through 5.12.

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

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

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

7:22-3.32 Preaward costs

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

1. The local government unit has submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19, to the Department prior to the advertisement of any contract for which cost reimbursement is being sought; the local government unit 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 De-

partment; and the local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department.

2. The local government unit has submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19 to the Department 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.) or other applicable procurement method authorized by State law.

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

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

(a)1 substantially amended.

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

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

Cross reference added and "Assistant Director" replaced by "Department".

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.

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

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

7:22-3.33 Force account work

(a) A recipient must secure the Department'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.

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

7:22-3.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are not allowable for reimbursement from the Fund. 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, Pine-lands 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 Fund loan to address 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).

Ineligibility for allowances for planning and/or design.
Amended by R.1993 d.242, effective June 7, 1993.
See: 24 N.J.R. 4310(b), 25 N.J.R. 2271(a).

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

7:22-3.35 Infiltration/Inflow

(a) An infiltration/inflow analysis is required 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 management facilities projects. However, a similar analysis regarding the quality and quantity of infiltration/inflow into a stormwater sewer 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).

New language at (a), (b) and (d); new (e) added.

7:22-3.36 Reserve capacity

(a) The Department shall limit the recipient's Fund loan assistance to the cost of the project with a capacity based upon flow records, existing unsewered needs for which planning has been completed in conformance with N.J.A.C. 7:22-10 and flows anticipated prior to the date of initiation of operation as established in the Fund loan agreement. In no case, however, shall the allowable capacity for existing flows exceed 120 gallons per capita per day. Flow projections shall be calculated in accordance with N.J.A.C. 7:14A-23.3 and 7:15-5.18.

(b) For any project providing for capacity in excess of that provided by this section, incremental costs shall be unallowable costs under the Fund loan agreement, but may be allowable costs under a Trust loan agreement in accordance with N.J.A.C. 7:22-4.36. Incremental costs include all costs which would not have been incurred but for the additional excess capacity (that is, any cost in addition to the most cost effective alternative with allowable capacity as described in (a) above).

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

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

7:22-3.37 Value engineering

(a) The applicant shall conduct value engineering if the total estimated building cost exceeds the building cost threshold as established in the Federal Clean Water Act and any amendatory or supplementary acts thereto. As of March 1, 1995, value engineering must be performed if the estimated building cost exceeds \$10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

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

Applicant will be required to conduct value engineering for all projects with building costs greater than \$10 million even if Federal grant assistance has been approved; prior rule exempted those projects receiving Federal grant assistance.

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

(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. WASTEWATER TREATMENT TRUST PROCEDURES AND REQUIREMENTS

7:22-4.1 Scope

This subchapter constitutes the rules of the New Jersey Wastewater Treatment Trust established pursuant to the Trust Act governing the disposition of appropriations made available pursuant to the Wastewater Treatment Bond Act, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act or any other moneys available to the New Jersey Wastewater Treatment Trust including future bond acts or other appropriations to provide financial assistance for construction of wastewater treatment facilities projects. As they are enacted, reference to such bond acts shall be added to this section through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.

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).

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 New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.);

2. To establish policies and procedures for the distribution of funds appropriated or otherwise available to the New Jersey Wastewater Treatment Trust for the purpose of providing financial assistance to local government units through the issuance of Trust loans for the costs of the construction of wastewater treatment 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 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).

Editorial changes only.

7:22-4.4 Definitions

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

“Ad valorem tax” means a tax based upon the value of real property.

“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.

“Allowance” means a loan amount for planning and design costs based on a percentage of the project's allowable building cost, computed in accordance with N.J.A.C. 7:22-5.12.

“Alternative technology” means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and onsite systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

“Applicant” means any local government unit that applies for a Trust loan pursuant to the provisions of these rules and regulations.

“Best Management Practices” means proven procedures for reducing nonpoint source pollution through both structural and nonstructural controls, including improvements to operation and maintenance procedures.

“Best Practicable Waste Treatment Technology” (BPWTT) means the most cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133—secondary treatment of wastewater;

2. 40 CFR Part 125, Subpart G—marine discharge waivers;

3. 40 CFR 122.44(d)—more stringent water quality standards and State standards; and/or

4. 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

“Bond Act” means the Wastewater Treatment Bond Act.

“Bond Acts” means the Wastewater Treatment Bond Act of 1985, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts passed for the purpose of providing funds for the construction of wastewater treatment facilities. As they are enacted, reference to such bond acts shall be added to this definition through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.

“Bonds” means the bonds authorized to be issued, or issued, under the Trust Act.

“Building cost” means the cost for the acquisition, erection, alteration, remodeling, improvement or extension of wastewater treatment facilities. This definition excludes administration, legal, fiscal and engineering costs and costs associated with the planning and design of the project.

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

“Change order” means an alteration of the cost, scope or time of performance of a subagreement occurring subsequent to the execution of that subagreement.

“Collection system” means the sewers which are primarily installed to receive wastewaters directly from individual systems or from private property and which include service “Y” connections designed for connection with those private facilities when owned, operated and maintained by or on behalf of the local government unit. Included in this definition are crossover sewers connecting more than one property on one side of a major street, road or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective.

“Combined sewer” means a sewer that is designed to function as both a sanitary sewer and a storm sewer.

“Commission” means the New Jersey Commission on Capital Budgeting and Planning.

“Construction” includes, but is not limited to, 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 for the construction of wastewater treatment facilities; the purchase of land that shall be an integral part of the treatment process or used for the ultimate disposal of residues from such treatment; the erection, building, alteration, remodeling, improvement, or extension of wastewater treatment facilities; and the inspection and supervision of the construction of wastewater treatment facilities.

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

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

“DAC” means “Discharge Allocation Certificate.”

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

“Design life” means the length of time during which a wastewater treatment facility is planned and designed to be operated.

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

1. Differ materially from physical conditions (including subsurface and latent conditions) referred to in the plans, specifications and reports submitted under N.J.A.C. 7:22-4.11(d)7; and

2. Were not known to the applicant at the time the building contracts were executed.

“Discharge Allocation Certificate” (DAC) means the certificate issued by the Department pursuant to N.J.A.C. 7:14A which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which will result in a discharge to surface water or a substantial modification in a discharge to surface water.

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

“EPA” means the United States Environmental Protection Agency.

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

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

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

“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.

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

“Fund”, “Stormwater Management and Combined Sewer Overflow Abatement Fund” or “Wastewater Treatment Fund” means the Wastewater Treatment Fund and/or the Stormwater Management and Combined Sewer Overflow Abatement Fund established pursuant to the applicable Bond Acts.

“Fund loan” means a loan from the Wastewater Treatment Fund or the Stormwater Management and Combined Sewer Overflow Abatement Fund or both Funds for the allowable costs of the project.

“Fund loan agreement” means the legal instrument executed between the State of New Jersey and the local govern-

ment unit for the construction of wastewater treatment facilities.

“Green Acres, Clean Water, Farmland and Historic Preservation Bond Act” means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88) and any amendatory or supplementary acts thereto.

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

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

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

“Innovative technology” means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

“Local government unit” means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting, or any other political subdivision of the State authorized to construct and/or operate wastewater treatment facilities.

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

“Notes” means notes issued by the Trust pursuant to the Act.

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

1. Maintenance: Preservation of functional integrity and efficiency of equipment and structures, including, but not limited to, preventive maintenance, corrective maintenance, and replacement of equipment as needed.
2. Operation: Control of the unit processes and equipment which make up the wastewater treatment facilities, including, but not limited to, financial and personnel management, recordkeeping, laboratory control, process control, safety and emergency operation planning.

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

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

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

“Project performance standards” means the performance and operations requirements applicable to a project including the enforceable requirements of the Federal Water Pollution Control Act Amendments and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

“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.

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

“Recipient” means any local government unit 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.

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

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

“Sewage Infrastructure Improvement Act” means the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.) and any amendatory or supplementary acts thereto.

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

“State” means the State of New Jersey.

“Stormwater Management and Combined Sewer Overflow Abatement Bond Act” means the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) and any amendatory or supplementary acts thereto.

“Stormwater runoff collection systems” includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit to minimize stormwater runoff, correct

interconnections or cross-connections, or induce groundwater recharge or any combination thereof.

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

“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.

“Trust” or “New Jersey Wastewater Treatment Trust” means the New Jersey Wastewater Treatment Trust created pursuant to the New Jersey Wastewater Treatment Trust Act or its duly authorized agent.

“Trust Act” means the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) and any amendatory or supplementary acts thereto.

“Trust bond resolution” means any resolution together with any amendments or supplements, adopted by the Trust in accordance with the Trust Act, governing the issuance of Bonds.

“Trust Fund” means the New Jersey Wastewater Treatment Trust Fund created pursuant to the Wastewater Treatment Bond Act.

“Trust loan” means a loan from the New Jersey Wastewater Treatment Trust for the allowable cost of a project.

“Trust loan agreement” means a legal instrument executed between the Trust and the local government unit for the construction of wastewater treatment facilities.

“User charge” means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user’s proportionate share of the cost of operation and maintenance (including replacement) of such facilities and may include debt service.

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

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

“Wastewater Treatment Bond Act” means the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) and any amendatory or supplementary acts thereto.

“Wastewater treatment facilities” includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections extensions, outfall sewers, combined sewer overflows, intercepting sewers, trunklines, sewage collection systems, stormwater runoff collection systems and other equipment, personal property and appurtenances necessary thereto.

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

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).

7:22-4.5 New Jersey Wastewater Treatment Trust

(a) The Trust shall establish a general loan fund 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 local government units for the construction of wastewater treatment 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 local government unit.

(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).

7:22-4.6 Terms of the loans from the New Jersey Wastewater Treatment Trust

(a) The Trust may offer loans for up to 100 percent of allowable project costs for the construction of wastewater treatment 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) Local government units 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, municipal bond insurance, surety bonds and other arrangements acceptable to the Department and 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).

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

(d) The Trust loan agreement and/or loan commitment letter, escrow agreement or other similar document shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the particular document for the project specified therein. A certified copy of the authorizing resolution shall be delivered to the Trust at the time that the executed Trust loan agreement, loan commitment letter, escrow agreement or similar document is delivered to the Trust.

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

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

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

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

7:22-4.16 Trust loan award and closing

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

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

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

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

Added language regarding contingency upon availability of funds.

7:22-4.17 Loan conditions

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

1. The recipient shall comply with the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other applicable procurement method authorized by State law;

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);

4. The recipient shall comply with the requirements of N.J.A.C. 7:14-2, Construction of Wastewater Treatment Facilities, and the provisions of the NJPDES rules at N.J.A.C. 7:14A;

5. The recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-4.11(d)13;

6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pre-treatment standards which comply with 40 C.F.R. Part 403;

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

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

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

10. The recipient shall retain sufficient qualified operating and management personnel including a qualified chief operating officer or executive director, from the time of completion of construction or initiation of operation, whichever is earlier, until such time as the operation of the facility is discontinued;

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

12. No Trust loan moneys shall be disbursed to a local government unit who is in current default on any Trust loan. The Trust may, at its discretion, make a Trust loan disbursement where it determines that the local government unit will repay the defaulted loan obligation and associated penalties. Nothing in this paragraph shall in any way limit any right or duty of the Trust to demand and collect at any time the total due under any such defaulted loan;

13. (Reserved)

14. The Trust may assess penalties to late loan repayments as appropriate as specified in the Trust loan agreement;

15. (Reserved)

16. The recipient shall certify to the Department that a final plan of operation, including an operations and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system acceptable to the local government unit, has been developed for the project;

17. The recipient shall certify that it has not and shall not enter into any contract with nor has any subcontract been or shall be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of project work;

18. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the Trust loan agreement;

19. The recipient shall certify that it and its contractors and subcontractors shall comply with all insurance requirements of the Trust loan agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The recipient shall provide the trust with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Trust, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage must begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act, whichever is less. The recipient shall comply with every requirement of this subsection prior to the release of the initial Trust loan disbursement for building the project;

20. The recipient shall certify that it and its contractors and subcontractors shall comply 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, including but not limited to N.J.A.C. 17:27;

21. The recipient shall certify that it has established an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.);

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11;

23. The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);

24. The recipient shall make a good faith effort to award not less than 10 percent of the total amount of all contracts for building, materials or services (including planning, design and building related activities) for a project to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals will take precedence over State goals;

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater;

26. After the award of a contract and prior to the start of work, a preconstruction meeting shall be scheduled by the recipient. The recipient, the responsible engineer, the environmental and construction inspectors, the contractor and one or more representatives of the Trust must be present at the preconstruction meeting;

27. Prior to starting construction, the recipient shall provide photographs or videotapes to the Trust in conformance with the provisions of N.J.A.C. 7:22-10.11(q);

28. The recipient shall provide inspection coverage of the construction work using qualified personnel on a routine basis as follows:

i. A qualified inspector shall be provided at each construction site. There are times when a qualified individual can cover more than one site; however, this must be governed by on-site conditions which determine rate of progress;

ii. Inspection coverage at a treatment plant site shall be on a full-time basis at all times;

iii. For pipeline construction, full-time construction inspections shall be provided during the following operations:

(1) Preparation of trench bottom for placement of bedding and to determine if bottom will support pipe or if additional support must be provided;

(2) Placing of pipe bedding material where required and in the quantity required in conformance with the approved specifications;

(3) Alignment and joining of pipe sections;

(4) Bedding, placement, and alignment of man-holes and other appurtenances; and

(5) Placement and compaction of trench backfill material;

iv. Inspection coverage at pump station and metering station sites shall be sufficient to ensure that the work satisfies specifications. The coverage shall include, but not be limited to, the following:

(1) Excavation and spoils disposal;

(2) Checking of all elevations including footings, piles, slabs and equipment pads (this function may be performed by the responsible engineer);

(3) Installation of all concrete reinforcing bars;

(4) Installation of all electrical conduit, plumbing and piping; and

(5) Installation of all equipment;

v. All concrete shall be checked for truck mix time and temperature prior to placing in forms. Periodic slump tests and test cylinders, per good construction practice, shall be taken. Cold weather and hot weather precautions shall be taken as appropriate. Any additions to the specified concrete mix must be approved by the responsible engineer; and

vi. During the construction period, the construction inspector shall keep a job diary in which he will keep a record of progress, problems encountered, and corrective action taken to rectify any problems. The job diary shall be made available to the Trust upon request;

29. The recipient shall provide environmental inspection coverage and ensure completion of environmental restoration in conformance with the provisions of N.J.A.C. 7:22-10.12;

30. During the construction phase of the projects, job meetings shall be held at frequent intervals to review construction and restoration progress and to resolve difficulties which might delay completion of the work. Attendees at these meetings shall include the recipient, the responsible engineer, the recipient's inspectors (construction and environmental), the contractor, and one or more representatives of the Trust;

31. The recipient shall provide notification, information and conduct visual inspections and testing of projects as follows:

i. The recipient shall notify the Trust one week prior to all final visual inspections and tests of all sewer lines, force mains, mechanical equipment and treatment plant operation;

ii. Copies of all final visual inspections and test reports shall be forwarded to the Trust when requested;

iii. Copies of record drawings shall be forwarded to the Trust prior to the start of visual inspection and testing of all pipeline projects; and

iv. All visual inspections and testing shall be done in accordance with the following:

(1) All manholes and pipelines shall be completed and flushed prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and a representative from the Trust present. All discrepancies must be noted and a reinspection performed to verify the corrective action;

(2) All manholes and pipelines shall be visually inspected and accepted prior to testing;

(3) Upon acceptance of the visual inspection by the Trust, the necessary infiltration, exfiltration, or low pressure air test and deflection tests when applicable shall be performed by the contractor. The test must be witnessed by the recipient and/or the responsible engineer (or representative), the contractor, and a representative from the Trust. Upon completion of the test, a copy of the test results must be forwarded to the Trust if requested;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended to include specific requirements for the construction of wastewater treatment facilities; also amended to delete the requirement for recipients to provide a Subcontractor Certification form.
Amended by R.1995 d.494, effective September 5, 1995.
See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

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.

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 wastewater treatment 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 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.

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.

7:22-4.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-5.1 through 5.12.

(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).

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 local government unit has met the requirements as specified in (a)1, 2 or 3, below:

1. The local government unit 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 local government unit 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; the local government unit 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; and the local government unit 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 local government unit 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.) or other applicable procurement method authorized by 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, acquisition of allowable land or advance building of minor portions of wastewater treatment 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 local government unit proceeds at its own financial risk. The local government unit 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).

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

The costs associated with the planning and design of wastewater treatment 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, Pine-lands 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.

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.

7:22-4.35 Infiltration/inflow

(a) An infiltration/inflow analysis shall be required 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.

7:22-4.36 Reserve capacity

(a) For those projects eligible for Trust loans in State fiscal year 1993 and beyond whose sponsor indicates in their initial loan application that they do not want to exercise their 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 with a capacity based upon flow records, existing unsewered needs for which planning has been completed in conformance with N.J.A.C. 7:22-10 and flows anticipated prior to the date of initiation of operation as established in the Trust loan agreement.

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. DETERMINATION OF 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 based on Department and Trust policy, appropriate State cost principles and reasonableness.

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;

3. The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications;

4. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement, provided that:

i. The claim arises from work within the scope of the loan;

ii. Department and Trust approval has been received covering the costs before they are incurred;

iii. The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the recipient;

iv. The Department or Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

v. Meritorious claims are resolved in an expeditious manner.

5. Change orders for increased costs under subagreements as follows:

i. Change orders provided:

(1) The costs are within the scope of the project;

(2) The costs are not caused by the recipient's mismanagement;

(3) The costs are not caused by the recipient's vicarious liability for the improper action of others; and

(4) The costs, when added to the allowable costs due to the final building cost, do not exceed the allowable costs due to the low bid building cost. This limitation does not apply to increased allowable costs due to differing site conditions and such increased allowable cost may be eligible for reimbursement in accordance with the applicable Trust loan agreement and Trust bond resolution or in instances where a post-construction supplemental Fund or Trust loan is awarded.

ii. Provided the requirements of (a)5i above are met, the following is an example of allowable change orders and contractor claim costs:

(1) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.

iii. Settlements, arbitration awards, or court judgments, which resolve contractor claims shall be reviewed by the Department or the Trust, as appropriate, and are allowable only to the extent that they meet the requirements of (a)5i above, are reasonable, and do not attempt to pass on to the Department or the Trust the cost of events that were the responsibility of the recipient, the contractor, or others.

6. The costs of the recipient required by N.J.A.C. 7:22-3.30 or N.J.A.C. 7:22-4.30, as applicable, during the first year following initiation of operation of the project;

7. The cost of development of a plan of operation including an operation and maintenance manual;

8. Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.

(b) 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 actual costs for items (a)2 through 8 above will be allowable. For projects which received Fund or Trust loan awards in State Fiscal Year 1993, 1994 or 1995 and which have received the final payment under Fund and Trust loan agreements, the sum total of the allowable costs in (a)2 through 8 above, exclusive of building costs, is limited to 12 percent of the allowable building cost.

(c) Unallowable costs related to subagreements include:

1. The costs of architectural or engineering services or other services incurred in the planning and design of a project;

2. Except as provided in paragraph (a)5 above, architectural or engineering services or other services necessary to correct defects in a planning document, design drawings and specifications, or other subagreement documents;

3. The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

i. The claim arises from work within the scope of the loan;

ii. Department and Trust approval has been received covering the costs before they are incurred;

iii. The claim cannot be settled without arbitration or litigation;

iv. The claim does not result from the recipient's mismanagement;

v. The Department or the Trust, as appropriate, determines that there is a significant State interest in the issues involved in the claim; and

vi. In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.

4. Bonus payments for completion of building before a contractual completion date;

5. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the Fund or Trust loan closing unless an extension is specified in the project schedule approved by the Department or the Trust, as appropriate.

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

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

Revised to limit all costs related to subagreements (except for the subagreement(s) to plan, design or build the project) to 12 percent of the low bid building cost.

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 provide exemptions to the cap on the allowability of costs due to change orders.

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

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

7:22-5.5 Mitigation

(a) Allowable costs related to mitigation include:

1. Costs for measures necessary to mitigate direct, adverse, physical impacts resulting from building of the wastewater treatment facilities or measures necessary to mitigate indirect impacts of the project as specified in the Fund or Trust loan agreement as a special condition;

2. The costs of site screening necessary to comply with the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10), to complete related studies and plans, or necessary to screen adjacent properties;

3. The cost of monitoring facilities necessary to determine the possibility of water quality deterioration or other environmental impacts resulting from building the project as specified in the Fund or Trust loan agreement as a special condition.

(b) Unallowable costs related to mitigation include:

1. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the wastewater treatment facilities nor reflect regional architectural tradition; and

2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under the provisions of N.J.A.C. 7:22-10.

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 reflect allowability and unallowability of project costs related to the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10).

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

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

7:22-5.6 Publicly owned small and onsite systems

(a) Allowable costs for publicly owned small and onsite systems serving residences and small commercial establishments include:

1. The cost of major rehabilitation, upgrading, enlarging and installing publicly owned small and onsite systems;
2. Conveyance pipes from property line to offsite treatment unit which serves a cluster of buildings;
3. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices;
4. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer;
5. The cost of restoring individual system building sites to their original conditions.

(b) Unallowable costs for small and onsite systems include:

1. Modification to the physical structure of homes or commercial establishments;
2. Conveyance pipes from the house to the treatment unit located on user's property or from the house to the property line if the treatment unit is not located on that user's property;
3. Wastewater generating fixtures such as commodes, sinks, tubs, and drains; and
4. The cost of rehabilitation, upgrade, enlarging and installing privately owned small and onsite systems (unless the Department determines that such a system constitutes, or is included within, a septage management district, in which case the Department may deem the public ownership requirement to be satisfied).

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 clarify that only publicly owned small and on-site systems are eligible under the Program.

7:22-5.7 Real property

(a) Allowable costs for land and rights-of-way include:

1. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Department or the Trust, as appropriate, approves it and it is identified as such in the Fund or Trust loan agreement. These costs include:

i. The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

ii. The cost of land acquired for a soil absorption system for a group of two or more homes;

iii. The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

iv. The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

2. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services;

3. The cost associated with the preparation of the wastewater treatment facilities site before, during and, to the extent agreed on in the loan agreement, after building. These costs include:

i. The cost of demolition of existing structures on the wastewater treatment facilities site (including rights-of-way) if building cannot be undertaken without such demolition;

ii. The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the recipient is legally obligated to pay under State or local law; and

iii. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

4. The cost of acquiring all or part of existing publicly or privately owned wastewater treatment facilities provided all the following criteria are met:

i. The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;

ii. The acquired wastewater treatment facilities were not built with previous State, federal, New Jersey Wastewater Treatment Trust or Pinelands Infrastructure Trust financial assistance;

iii. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and

iv. The acquisition does not circumvent the requirements of these regulations, or other federal, State or local requirements.

(b) Unallowable costs for land and rights-of-way include:

1. The costs of acquisition (including associated legal, administrative and engineering, etc.) of sewer rights-of-way, wastewater treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas except as provided in (a)1 above.

2. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of negotiation or any condemnation proceeding, as determined by the Department or the Trust, as appropriate.

3. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

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

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

Changed "Assistant Director" to "Department".

7:22-5.8 Equipment, materials and supplies

(a) Allowable costs of equipment, materials and supplies include:

1. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation;

2. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation;

3. Cost of shop equipment installed at the wastewater treatment facility necessary to the operation of the facility;

4. The costs of necessary safety equipment, provided the equipment meets applicable federal, State, local or industry safety requirements;

5. A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded by the Fund or Trust loan. This calculation shall be based on:

i. The portion of the total collection system paid for by the loan;

ii. A demonstrable frequency of need; and

iii. The need for the requirement to preclude the discharge or bypassing of untreated wastewater.

6. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:

i. Portable stand-by generators;

ii. Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

iii. Septage tankers, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.

7. Replacement parts identified and approved in advance by the Department or the Trust, as appropriate, as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i. Not immediately available and/or whose procurement involves an extended "lead-time";

ii. Identified as critical by the equipment supplier(s); or

iii. Critical but not included in the inventory provided by the equipment supplier(s).

(b) Unallowable costs of equipment, materials and supplies include:

1. The costs of equipment or material procured in violation of the procurement requirements;

2. The cost of furnishings including draperies, furniture and office equipment;

3. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

4. The cost of vehicles for the transportation of the recipient's employees;

5. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

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

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

Changed "Assistant Director" to "Department".

7:22-5.9 Industrial and Federal users

(a) Except as provided in (b)1 below, allowable costs for wastewater treatment facilities serving industrial and federal facilities include development of a municipal pretreatment program approvable under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq. and purchase of monitoring equipment and

construction of facilities to be used by the municipal wastewater treatment facilities in the pretreatment program.

(b) Unallowable costs for wastewater treatment facilities serving industrial and Federal facilities include:

1. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq.;
2. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal wastewater treatment facilities;
3. All incremental costs for sludge management incurred as a result of the recipient providing removal credits to industrial users beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.
4. The cost of interceptor or collector sewers constructed exclusively, or almost exclusively, to serve industrial users; and
5. The cost for control or removal of pollutants in wastewater introduced into the wastewater treatment facilities by industrial users, unless the local government unit is required to remove such pollutants introduced from nonindustrial users.

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 provide additional detail regarding unallowable costs related to industrial and Federal users.

7:22-5.10 Infiltration/inflow and reserve capacity

(a) Allowable costs related to infiltration/inflow and reserve capacity include:

1. The cost of the wastewater treatment facilities' capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-3.35 or 4.35, as applicable, and reserve capacity in accordance with N.J.A.C. 7:22-3.36 or 4.36, as applicable.
2. The cost of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system evaluation survey under N.J.A.C. 7:22-3.35 or 7:22-4.35, as applicable.

(b) Unallowable costs related to infiltration/inflow and reserve capacity include:

1. For loan awards made in State Fiscal Year 1996 and later, the incremental cost of the wastewater treatment facilities capacity which is more than 120 gallons per capita per day for existing flows and flow projections calculated in accordance with N.J.A.C. 7:14A-23.3 or 7:15-5.18. The incremental cost of wastewater treatment facility capacity for future flows beyond the original date of initiation of operation as specified in the Fund loan agreement is also an unallowable cost under a Fund loan agreement.

2. All costs related to reserve capacity are unallowable except as provided for under the provisions of N.J.A.C. 7:22-4.36.

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 the allowability and unallowability of costs related to reserve capacity to clarify operating procedures as well as address the reserve capacity funding provisions at N.J.A.C. 7:22-4.36.

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

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

7:22-5.11 Miscellaneous costs

(a) Allowable miscellaneous costs 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 salaries, benefits and expendable materials the recipient incurs for the project. However, the allowable portion of these administrative costs, including the administrative costs listed in (a)3, 4, 5 and 6 below, will be limited to three percent of the low bid building cost. If a project receives a post-construction supplemental Fund or Trust loan for costs arising from differing site conditions, the allowable administrative costs for the portion of the project funded by the post-construction supplemental Fund or Trust loan is limited to three percent of the allowable building costs due to differing site conditions. The three percent limit may be exceeded only in instances where the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve a greater amount through line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26. For loan awards made prior to State Fiscal Year 1996 and for which final payment has been made to the project sponsor, administrative cost funding for this paragraph and (a)3 and 4 below for up to one percent is allowable.

2. The costs of additions to wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Wastewater Treatment Bond Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c. 302) or its amendments, or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act and that fails to meet its performance standards as specified in the Fund or Trust loan agreement, provided:
 - i. The project is identified on the Project Priority List as a project for additions to wastewater treatment facilities that have received previous State or Federal funds;
 - ii. The loan application for the additions includes an analysis of why the wastewater treatment facilities cannot meet its specified performance standards; and
 - iii. The additions could have been included in the original grant or loan award; and

(1) Are the result of one of the following:

(A) A change in the specified performance standards required by the State or the United States Environmental Protection Agency (EPA);

(B) A written understanding between the Regional Administrator of EPA and grantee prior to or included in the original Federal grant award;

(C) A written understanding between the Department and the recipient prior to or included in the original Fund loan award;

(D) A written understanding between the Trust and the recipient prior to or included in the original Trust loan award;

(E) A written understanding between the Pinelands Commission and the recipient prior to or included in the original Pinelands grant or loan award;

(F) A written direction by the Regional Administrator of EPA or the Department or the Pinelands Commission or the Trust to delay building part of the wastewater treatment facilities; or

(G) A major change in the wastewater treatment facilities' design criteria that the recipient cannot control; or

(2) Meet all of the following conditions:

(A) The wastewater treatment facilities have not completed its first full year of operation;

(B) The additions are not caused by the recipient's mismanagement or the improper actions of others;

(C) The costs of rework, delay, acceleration or disruption that are a result of building the additions are not included in the loan; and

(D) The loan does not include an allowance for facilities planning or design of the additions.

iv. This provision applies to failures that occur either before or after the initiation of operation. This provision does not cover wastewater treatment facilities that fail at the end of its design life.

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Department or the Trust, as appropriate.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the wastewater treatment facilities, if approved in advance by the Department or the Trust, as appropriate.

5. Costs of bond counsel, financial advisor, bond issuance and other expenses incidental to the approval, prep-

aration and sale of bonds, notes or obligations of the local government unit that are necessary to finance the project and the interest on the bonds, notes or obligations.

6. Costs of fees for permits required for the building of the project.

7. Costs for the construction of that portion of a house connection (service lateral) owned by the local government unit and to which the local government unit has access by easement for maintenance and repair.

(b) Unallowable miscellaneous costs include:

1. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies;

2. Preparation of applications and permits required by Federal, State or local regulations or procedures;

3. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government;

4. Costs of fees for permits required for the operation of the project, including the NJPDES permit pursuant to N.J.A.C. 7:14A;

5. The costs of replacing, through reconstruction or substitution, wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Wastewater Treatment Bond Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c. 302) or its amendments, or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act and that fail to meet its project performance standards. This provision applies to failures that occur either before or after the initiation of operation but does not apply to wastewater treatment facilities that fail at the end of its design life;

6. Personal injury compensation or damages arising out of the project;

7. Fines and penalties due to violations of, or failure to comply with, Federal, State or local laws, regulations or procedures;

8. Costs outside the scope of the approved project;

9. Costs for which grant or loan payment has been or will be received from another federal or State agency for the project;

10. The cost of wastewater treatment facilities that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land (See N.J.A.C. 7:22-10.5(b)7);

11. The costs of preparing a corrective action report required by N.J.A.C. 7:22-3.30(b)1 or 7:22-4.30(b)1, as applicable.

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

Substituted "Project Priority" for "State Funding".
Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Revised to reflect the policy of limiting the allowable costs for salaries, benefits and expendable materials (including legal, fiscal and administrative costs) to one percent of the low bid building cost.
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 project sponsors to receive up to one percent of the allowable costs due to differing site conditions for their own administrative expenses associated with the project.
Amended by R.1995 d.494, effective September 5, 1995.
See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

7:22-5.12 Allowance for planning and design

(a) This section provides the method the Department and the Trust will use to determine both the estimated and final allowance under N.J.A.C. 7:22-3.34 and 7:22-4.34, planning and design. The Fund or Trust loan agreement will include an estimate of the allowance.

(b) The Fund or Trust share of the allowance may be up to 100 percent of the allowance and shall be based upon the percentage of the Fund or Trust share of the low bid building cost. An increase in the planning and/or design allowance will not be made for increased building costs to address differing site conditions.

(c) The allowance is not intended to reimburse the recipient for costs actually incurred for planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (that is, reimbursement on a dollar-for-dollar basis) will not be appropriate.

(d) The estimated and final allowance will be determined in accordance with this section and Tables 1 and 2. Table 2 is to be used in the event that the recipient received a Federal grant, Sewage Infrastructure Improvement Act funding, or Pinelands funding for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

(e) The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending wastewater treatment facilities, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

1. The initial award amount of all prime subagreements for building the project;
2. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project;
3. The purchase price of eligible real property.

(f) The estimated allowance is to be based on the estimate of the initial allowable building cost.

(g) The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

(h) The recipient may request payment of 50 percent of the Fund or Trust share of the estimated allowance immediately after the Fund or Trust loan award. Final payment of the Fund or Trust share of the allowance may be requested in the first disbursement after the recipient has awarded all prime subagreements for building the project, received the Assistant Director's or the Trust's approval, as appropriate, for force account work, and completed the acquisition of all eligible real property.

(i) The allowance does not include architect or engineering services provided during the building of the project, for example, reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

TABLE 1—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building cost	Allowance as a percentage of building cost [†]
\$ 100,000 or less	27.5396
120,000	26.8177
150,000	25.9599
175,000	25.3834
200,000	24.8944
250,000	24.0981
300,000	23.4663
350,000	22.9452
400,000	22.5032
500,000	21.7833
600,000	21.2124
700,000	20.7413
800,000	20.3418
900,000	19.9956
1,000,000	19.6910
1,200,000	17.1564
1,500,000	16.6076
1,750,000	16.2389
2,000,000	15.9259
2,500,000	13.6029
3,000,000	13.2464
3,500,000	12.9522
4,000,000	12.7026
5,000,000	12.2963
6,000,000	10.7766
7,000,000	10.5373
8,000,000	10.3343
9,000,000	10.1585

Building cost	Allowance as a percentage of building cost [†]
10,000,000	10.0036
12,000,000	8.6591
15,000,000	8.3821
17,500,000	8.1960
20,000,000	8.0381
25,000,000	7.1325
30,000,000	6.9456
35,000,000	6.7913
40,000,000	6.6605
50,000,000	6.4474
60,000,000	6.2785
70,000,000	6.1390
80,000,000	6.0207
90,000,000	5.9183
100,000,000	5.8281
120,000,000	5.4174
150,000,000	5.2441
175,000,000	5.1277
200,000,000 (or more)	5.0289

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

[†] Interpolate between values.

TABLE 2—ALLOWANCE FOR DESIGN ONLY

Building cost	Allowance as a percentage of building cost [†]
\$ 100,000 or less	16.2798
120,000	15.9235
150,000	15.4983
175,000	15.2112
200,000	14.9667
250,000	14.5669
300,000	14.2483
350,000	13.9844
400,000	13.7596
500,000	13.3922
600,000	13.0992
700,000	12.8565
800,000	12.6498
900,000	12.4705
1,000,000	12.2170
1,200,000	10.7751
1,500,000	10.4873
1,750,000	10.2930
2,000,000	10.1276
2,500,000	8.6975
3,000,000	8.5071
3,500,000	8.3496
4,000,000	8.2154
5,000,000	7.9959
6,000,000	7.0389
7,000,000	6.9085
8,000,000	6.7975
9,000,000	6.7010
10,000,000	6.6159
12,000,000	5.7522
15,000,000	5.5986
17,500,000	5.4948

Building cost	Allowance as a percentage of building cost [†]
20,000,000	5.4065
25,000,000	4.8236
30,000,000	4.7181
35,000,000	4.6307
40,000,000	4.5563
50,000,000	4.4345
60,000,000	4.3375
70,000,000	4.2572
80,000,000	4.1888
90,000,000	4.1294
100,000,000	4.0769
120,000,000	3.8065
150,000,000	3.7048
175,000,000	3.6362
200,000,000 (or more)	3.5778

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

[†] Interpolate between values.

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

Final figure in Table 1 corrected.

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

Amended to reflect that no adjustment will be made since the planning and design effort required to address differing site conditions is not as extensive as the effort required to complete the initial planning and design activities for the project.

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

SUBCHAPTER 6. PINELANDS PROCEDURES AND REQUIREMENTS

7:22-6.1 Scope

This subchapter shall constitute the rules of the New Jersey Department of Environmental Protection governing the disposition of appropriations pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or other monies appropriated to the Pinelands Infrastructure Trust Fund, as well as future bond acts enacted for the purpose of awarding financial assistance to local government units through the issuance of Pinelands grants or loans for the planning, design, and construction of wastewater treatment facilities. As they are enacted, reference to such bond acts shall be added to this section through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7. These rules prescribe the procedures to be followed by the applicant and the Department, respectively, in the application for grants and loans from the Pinelands Infrastructure Trust as well as the administration of these funds, including accounting and record keeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and 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).

Changed to reflect new title of the Department.

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

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

7:22-6.2 Construction of rules

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

7:22-6.3 Purpose

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

1. To implement the purposes and objectives of the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) and future bond acts;

2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 and other monies appropriated to the Pinelands Infrastructure Trust Fund, as well as future bond acts passed, for the purpose of providing financial assistance to local government units through the issuance of Pinelands grants and loans for the costs planning and design, in accordance with N.J.A.C. 7:22-6.11(e), (f), and (g), and the construction of wastewater treatment facilities necessary to accommodate development in the regional growth areas as defined in the comprehensive management plan. As they are enacted, reference to such bond acts shall be added to this paragraph through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7;

3. To protect the public and the State by insuring that Pinelands Infrastructure Trust funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of Pinelands Infrastructure Trust funds is consistent with the laws and policies of the State;

5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of Pinelands Infrastructure Trust funds;

6. To establish accounting procedures for the administration of Pinelands Infrastructure Trust funds;

7. To establish Pinelands loan repayment requirements for projects receiving loans; and

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

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

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

7:22-6.4 Definitions

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

“Ad valorem tax” means a tax based upon the value of real property.

“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 Department in the Pinelands grant or loan agreement. Allowable costs will be determined on a project specific basis in accordance with N.J.A.C. 7:22-7.

“Allowance” means an eligible project cost for planning and design costs based on a percentage of the project’s allowable building cost, computed in accordance with N.J.A.C. 7:22-7.12, and awarded in conjunction with the Pinelands Fund grant or loan to build the project.

“Alternative technology” means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and on-site systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

“Applicant” means any local government unit that applies for a Pinelands grant or loan pursuant to the provisions of these rules and regulations.

“Best Practicable Waste Treatment Technology” (BPWTT) means the cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment facilities, to meet the applicable provisions of:

1. 40 CFR Part 133—secondary treatment of wastewater;
2. 40 CFR Part 125, Subpart G—marine discharge waivers;
3. 40 CFR 122.44(d)—more stringent water quality standards and State standards; and/or
4. 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

Modified to identify the procedures related to the execution of the Pinelands Infrastructure Trust Fund grant or loan agreement, including the requirements for the applicant to provide a loan commitment letter, escrow agreement or other similar document to irrevocably commit itself to borrow the amount included within the loan agreement, if such commitment is required by the Department.

7:22-6.16 Grant and loan awards and closing

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

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

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

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

Language added regarding the obligation of the state regarding grants is contingent upon availability of funds.

7:22-6.17 Grant and loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-6.18 through 6.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Pinelands grant and loan, and conditions to each disbursement under a Pinelands grant or loan agreement:

1. The recipient shall comply with the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other applicable procurement method authorized by State law;

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128 and State OMB Circular 87-11, incorporated herein by reference. Copies of these documents may be obtained from the Department;

3. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);

4. The recipient shall comply with the requirements of N.J.A.C. 7:14-2, Construction of Wastewater Treatment Facilities, and the provisions of the NJPDES rules at N.J.A.C. 7:14A;

5. The recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-6.11(d)13;

6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 40 C.F.R. Part 403;

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

8. The recipient shall pay the unallowable costs of the construction of the project and shall pay the allowable costs not covered by the Pinelands grant or loan, if any;

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

10. The recipient shall retain sufficient qualified operating and management personnel including a qualified chief operating officer or executive director, from the time of completion of construction or initiation of operation, whichever is earlier, until such time as the operation of the facility is discontinued;

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

12. No Pinelands grant or loan moneys shall be disbursed to a local government unit who is in current default on any State loan. In order to facilitate full or partial payment of such defaulted loan obligation the Department may, at its discretion, make a Pinelands grant or loan disbursement where it determines that the local government unit will repay the defaulted loan obligation and associated penalties. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such defaulted loan;

13. An amount of any Pinelands grant or loan disbursement equal to any unpaid portion of a finally determined State assessed penalty pursuant to N.J.A.C. 7:14-8, Assessment of Civil Administrative Penalties, shall, at the discretion of the Department, be held in escrow until said penalty is paid in full. In no case will the total amount withheld under this subsection exceed the unpaid amount of said penalty;

14. The Department may assess penalties to late loan repayments as appropriate as specified in the Pinelands grant or loan agreement;

15. The recipient shall comply with the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10);

16. The recipient shall certify to the Department that a final plan of operation, including an operations and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete wastewater treatment system acceptable to the local government unit, has been developed for the project;

17. The recipient shall certify that it has not and shall not enter into any contract with, nor has any subcontract been or shall be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of project work;

18. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the Pinelands grant or loan agreement or approved amendments thereto;

19. The recipient shall certify that it and its contractors and subcontractors shall comply with all insurance requirements of the Pinelands grant or loan agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance coverage of the contractor. The recipient shall provide the Department with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage shall begin with the period of building and continue for the entire period during which the wastewater treatment facility operates. The insurance must be in an amount at least equal to the allowable improvements or the maximum limit of coverage made available to the recipient under the National Flood Insurance Act, whichever is less. The recipient shall comply with each requirement of this subsection prior to the release of the initial disbursement for building the project;

20. The recipient shall certify that it and its contractors and subcontractors shall comply 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, including, but not limited to, N.J.A.C. 17:27;

21. The recipient shall certify that it has established an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project, consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.);

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5 and N.J.A.C. 7:22-9.11;

23. The recipient shall certify that it shall comply with the Rules and Regulations for Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);

24. The recipient shall make a good faith effort to award not less than 10 percent of the total amount of all contracts for building, materials or services (including planning, design and building related services) for a project to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals will take precedence over State goals;

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater;

26. After the award of a contract and prior to the start of work, a preconstruction meeting shall be scheduled by the recipient. The recipient, the responsible engineer, the environmental and construction inspectors, the contractor and one or more representatives of the Department must be present at the preconstruction meeting;

27. Prior to starting construction, the recipient shall provide photographs or videotapes to the Department in conformance with the provisions of N.J.A.C. 7:22-10.11(q);

28. The recipient shall provide inspection coverage of the construction work using qualified personnel on a routine basis as follows:

i. A qualified inspector shall be provided at each construction site. There are times when a qualified individual can cover more than one site; however, this must be governed by on-site conditions which determine rate of progress;

ii. Inspection coverage at a treatment plan site shall be on a full-time basis at all times;

iii. For pipeline construction, full-time construction inspections shall be provided during the following operations:

(1) Preparation of trench bottom for placement of bedding and to determine if bottom will support pipe or if additional support must be provided;

(2) Placing of pipe bedding material where required, as necessary, and in the quantity required in conformance with the approved specifications;

(3) Alignment and joining of pipe sections;

(4) Bedding, placement, and alignment of manholes and other appurtenances; and

(5) Placement and compaction of trench backfill material;

iv. Inspection coverage at pump station and metering station sites shall be sufficient to ensure that the work satisfies specifications. The coverage shall include, but not be limited to, the following:

(1) Excavation and spoils disposal;

(2) Checking of all elevations including footings, piles, slabs and equipment pads (this function may be performed by the responsible engineer);

(3) Installation of all concrete reinforcing bars;

(4) Installation of all electrical conduit, plumbing and piping; and

(5) Installation of all equipment;

v. All concrete shall be checked for truck mix time and temperature prior to placing in forms. Periodic slump tests and test cylinders, per good construction practice, shall be taken. Cold weather and hot weather precaution shall be taken as appropriate. Any additions to the specified concrete mix must be approved by the responsible engineer; and

vi. During the construction period, the construction inspector shall keep a job diary in which he will keep a record of progress, problems encountered, and corrective action taken to rectify any problems. The job diary shall be made available to the Department upon request;

29. The recipient shall provide environmental inspection coverage and ensure completion of environmental restoration in conformance with the provisions of N.J.A.C. 7:22-10.12;

30. During the construction phase of the projects, job meetings shall be held at frequent intervals to review construction and restoration progress and to resolve difficulties which might delay completion of the work. Attendees at these meetings shall include the recipient, the responsible engineer, the recipient's inspectors (construction and environmental), the contractor, and one or more representatives of the Department;

31. The recipient shall provide notification, information and conduct visual inspections and testing of projects as follows:

i. The recipient shall notify the Department one week prior to all final visual inspections and tests of all sewer lines, force mains, mechanical equipment and treatment plant operation;

ii. Copies of all final visual inspections and test reports shall be forwarded to the Department when requested;

iii. Copies of record drawings shall be forwarded to the Department prior to the start of visual inspection and testing of all pipeline projects; and

iv. All visual inspections and testing shall be done in accordance with the following:

(1) All manholes and pipelines shall be completed and flushed prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and a representative from the Department present. All discrepancies must be noted and a reinspection performed to verify the corrective action;

(2) All manholes and pipelines shall be visually inspected and accepted prior to testing;

(3) Upon acceptance of the visual inspection by the Department, the necessary infiltration, exfiltration, or low pressure air test and deflection tests when applicable shall be performed by the contractor. The test must be witnessed by the recipient and/or the responsible engineer (or representative), the contractor, and a representative from the Department. Upon completion of the test, a copy of the test results must be forwarded to the Department if requested;

(4) Infiltration tests of gravity lines shall be limited to 2,000 linear feet per test;

(5) Force mains shall be tested to two times the maximum operating pressure, but not greater than the pipe pressure rating, whichever is less. The

length of pipe tested during a force main pressure test is not restricted; however, it is recommended that it be limited for ease in locating leaks if present;

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

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

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

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

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

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

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and the Pinelands Commission. Neither the State of New Jersey, the Pinelands Commission nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to provisions of N.J.A.C. 7:22-6, 7, 9 and 10."

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

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

"In accordance with the provisions of N.J.S.A. 58:11B-26 and N.J.A.C. 7:22-6.17(a)24, the contractor (subcontractor) shall comply with all of the provisions of N.J.A.C. 7:22-9."

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

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

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

Modified to conform with program requirements applied to projects funded under the Wastewater Treatment Financing Program and generally reflect good management practices, to incorporate standards regarding auditing and to ensure consistent practices by local government units receiving a loan pursuant to this subchapter, clearly indicate that a local government unit is subject to the ethics standards of the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22) and modified to identify program requirements related to implementation of a user charge system, liability and flood insurance requirements, wage rates, labor standards, contractor/subcontractor certification provisions and surety companies acceptable under the program.

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

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

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

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

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

7:22-6.18 Administration and performance of funds

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

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

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

Deleted last sentence containing non-regulatory language.

7:22-6.19 Project changes and grant or loan modifications

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

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

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

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 Department 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 part performing project work; or

2. Affects the Department'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 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.

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.

7:22-6.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-7.1 through 7.12.

(b) Notwithstanding (a) above, the Department shall not participate in costs for work that the Department determines is not in compliance with specifications or requirements of project contracts or Pinelands grant or loan agreement. Costs for work not in compliance with the contracts or agreement are unallowable.

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

Grammatical correction.

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

7:22-6.32 Preaward costs

(a) The Department shall not consider allowable those costs incurred for building performed prior to closing the grant or loan for the project, unless the local government

unit has met the requirements as specified in (a)1 or 2 below:

1. For allowable building costs, if the local government unit has met (a)1i through iii or (a)1iv:

i. The local government unit has submitted items required at N.J.A.C. 7:22-6.11(d)3 through 20, to the Department prior to the advertisement of any contract for which cost reimbursement is being sought.

ii. The local government unit 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.

iii. The local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department.

iv. The local government unit has submitted items required at N.J.A.C. 7:22-6.11(d)3 through 20 to the Department prior to the issuance of a notice to proceed for 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.) or other applicable procurement method authorized by State law.

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

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

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

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

Clarifying language at (a) and (b).

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

7:22-6.33 Force account work

(a) A recipient must secure the Department'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 shall 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.

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

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

"Assistant Director" changed to "Department".

7:22-6.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are ineligible for reimbursement from the Pinelands Fund unless Pinelands Commission approval for separate planning and design costs has been obtained. However, an allowance to assist in defraying the planning and design costs shall be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-7.12.

7:22-6.35 Infiltration/Inflow

(a) An infiltration/inflow analysis shall be required 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 study of the sewer system 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.

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 projects, 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.

7:22-6.36 Reserve capacity

The Department shall limit the recipient's Pinelands grant or loan assistance to the cost of the project based on the ultimate build out capacity as defined by the Pinelands Commission. Design shall be based on up to 120 gallons per capita per day for existing flows and flow projections calculated in accordance with N.J.A.C. 7:14A-23.3 and 7:15-5.18.

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

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

Language regarding effective date of the regulation deleted.

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

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

7:22-6.37 Fraud and other unlawful or corrupt practices

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

(b) The recipient 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 recipient shall immediately notify the Department when such allegation or evidence comes to its attention, and shall periodically advise the Department of the status and ultimate disposition of any related matter.

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

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

"Assistant Director" replaced by "Department".

7:22-6.38 Debarment

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

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

(c) The recipient, prior to acceptance of Pinelands Infrastructure Trust funds, shall certify that no contractor or subcontractor is included on the State Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a State agency in addition to that of the Department of Environmental Protection. If Pinelands Infrastructure Trust funds are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate (N.J.A.C. 7:22-6.43) the Pinelands loan and/or take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

7:22-7.5 Mitigation**(a) Allowable costs related to mitigation include:**

1. Costs for measures necessary to mitigate direct, adverse, physical impacts resulting from building of the wastewater treatment facilities or measures necessary to mitigate indirect impacts of the project as specified in the Pinelands grant or loan agreement as a special condition;
2. The costs of site screening necessary to comply with the provisions of N.J.A.C. 7:22-10, to complete related studies and plans, or necessary to screen adjacent properties;
3. The cost of monitoring facilities necessary to determine the possibility of water quality deterioration or other environmental impacts resulting from building the project as specified in the Pinelands grant or loan agreement as a special condition.

(b) Unallowable costs related to mitigation include:

1. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the wastewater treatment facilities nor reflect regional architectural tradition;
2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under the provisions of N.J.A.C. 7:22-10.

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 reflect allowability and unallowability of project costs related to the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10).
Amended by R.1995 d.494, effective September 5, 1995.
See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

7:22-7.6 (Reserved)**7:22-7.7 Real property****(a) Allowable costs for land and rights-of-way include:**

1. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement of sewer right-of-ways, wastewater treatment plant sites, sanitary landfill sites and sludge disposal areas. These costs include:
 - i. The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;
 - ii. The cost of land acquired for a soil absorption system for a group of two or more homes;
 - iii. The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

- iv. The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

2. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services;

3. The cost associated with the preparation of the wastewater treatment facilities site before, during and, to the extent agreed on in the Pinelands grant or loan agreement, after building. These costs include:
 - i. The cost of demolition of existing structures on the wastewater treatment facilities site (including rights-of-way) if building cannot be undertaken without such demolition;
 - ii. The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the recipient is legally obligated to pay under State or local law; and
 - iii. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

4. The cost of acquiring all or part of existing publicly or privately owned wastewater treatment facilities provided all the following criteria are met:
 - i. The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;
 - ii. The acquired wastewater treatment facilities were not built with previous State, Federal, New Jersey Wastewater Treatment Trust or Pinelands Infrastructure Trust financial assistance;
 - iii. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and
 - iv. The acquisition does not circumvent the requirements of these regulations, or other federal, State or local requirements.

(b) Unallowable costs for land and rights-of-way include:

1. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of negotiation or any condemnation proceeding, as determined by the Department;
2. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

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

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

Term "Assistant Director" changed to "Department".

7:22-7.8 Equipment, materials and supplies

(a) Allowable costs of equipment, materials and supplies include:

1. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation;

2. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation;

3. Cost of shop equipment installed at the wastewater treatment facility necessary to the operation of the facility;

4. The costs of necessary safety equipment, provided the equipment meets applicable federal, State, local or industry safety requirements;

5. A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded by the Pinelands grant or loan. This calculation shall be based on:

i. The portion of the total collection system paid for by the Pinelands grant or loan;

ii. A demonstrable frequency of need; and

iii. The need for the requirement to preclude the discharge or bypassing of untreated wastewater.

6. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:

i. Portable stand-by generators;

ii. Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

iii. Septage tankers, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.

7. Replacement parts identified and approved in advance by the Department as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i. Not immediately available and/or whose procurement involves an extended "lead-time";

ii. Identified as critical by the equipment supplier(s); or

iii. Critical but not included in the inventory provided by the equipment supplier(s).

(b) Unallowable costs of equipment, materials and supplies include:

1. The costs of equipment or material procured in violation of the procurement requirements;

2. The cost of furnishings including draperies, furniture and office equipment;

3. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

4. The cost of vehicles for the transportation of the recipient's employees.

5. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

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

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

Corrections only.

7:22-7.9 Industrial and Federal users

(a) Except as provided in (b)1 below, allowable costs for wastewater treatment facilities serving industrial and Federal facilities include development of a municipal pretreatment program approvable under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq. and purchase of monitoring equipment and construction of facilities to be used by the municipal wastewater treatment facilities in the pretreatment program.

(b) Unallowable costs for wastewater treatment facilities serving industrial and Federal facilities include:

1. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq.;

2. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal wastewater treatment facilities;

3. All incremental costs for sludge management incurred as a result of the recipient providing removal credits to industrial users beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.

4. Costs for control or removal of pollutants in wastewater introduced into the wastewater treatment facilities by industrial users, unless the local government unit is required to remove such pollutants introduced from non-industrial users.

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 provide additional detail regarding unallowable costs related to industrial and Federal users.

7:22-7.10 Infiltration/inflow and reserve capacity

(a) Allowable costs related to infiltration/inflow and reserve capacity include:

1. The cost of the wastewater treatment facilities capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-6.35 and reserve capacity in accordance with N.J.A.C. 7:22-6.36.

2. The cost of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system study under N.J.A.C. 7:22-6.35.

(b) Unallowable costs related to infiltration/inflow and reserve capacity include:

1. The incremental cost of wastewater treatment facilities capacity which is more than 20 years reserve capacity using 120 gallons per capita per day for existing flows and flow projections calculated in accordance with N.J.A.C. 7:14A-23.3 or 7:15-5.18.

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 the allowability and unallowability of costs related to reserve capacity to clarify operating procedures.
Amended by R.1995 d.494, effective September 5, 1995.
See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

7:22-7.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. For Pinelands grant or loan awards made in State Fiscal Year 1996 and later and for Pinelands grant or loan awards made in State Fiscal Year 1995 and earlier for which final payment has not been received under a Pinelands grant or loan agreement, the costs of salaries, benefits and expendable materials the recipient incurs for the project. However, the allowable portion of these administrative costs, including the administrative costs listed in (a)3, 4, 5 and 6 below, will be limited to three percent of the low bid building cost. The three percent limit may be exceeded only in instances where the Department approves a greater amount through line item adjustments in accordance with N.J.A.C. 7:22-6.26. For grant or loan awards made prior to State Fiscal Year and for which final payment has been made to the project sponsor, administrative cost funding for this paragraph and (a)3 and 4 below for up to one percent is allowable.

2. The costs of additions to wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Wastewater Treatment Bond Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act and that fails to meet its performance standards provided:

i. The project is identified on the Pinelands Infrastructure Trust Funding List as a project for additions to wastewater treatment facilities that has received previous State or federal funds;

ii. The grant or loan application for the additions includes an analysis of why the wastewater treatment facilities cannot meet its specified performance standards; and

iii. The additions could have been included in the original Federal grant or State assistance award; and

(1) Are the results of one of the following:

(A) A change in the specified performance standards required by the State or the United States Environmental Protection Agency (EPA);

(B) A written understanding between the Regional Administrator of EPA and grantee prior to or included in the original Federal grant award;

(C) A written understanding between the Department and the recipient prior to or included in the original Fund loan award;

(D) A written understanding between the trust and the recipient prior to or included in the original Trust loan award.

(E) A written understanding between the Department and the recipient prior to or included in the original Pinelands grant or loan award:

(F) A written direction by the Regional Administrator of EPA or the Department to delay building part of the wastewater treatment facilities; or

(G) A major change in the wastewater treatment facilities' design criteria that the grantee cannot control; or

(2) Meet all of the following conditions:

(A) The wastewater treatment facilities have not completed its first full year of operation;

(B) The additions are not caused by the recipient's mismanagement or the improper actions of others;

(C) The costs of rework, delay, acceleration or disruption that are a result of building the additions are not included in the grant or loan; and

iv. This provision applies to failures that occur either before or after the initiation of operation. This provision does not cover wastewater treatment facilities that fail at the end of its design life.

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Department.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the wastewater treatment facilities, if approved in advance by the Department.

5. Costs of bond counsel, financial advisor, bond issuance and other expenses incidental to the approval, preparation and sale of bonds, notes or obligations of the local government unit that are required to finance the project and the interest on the bonds, notes or obligations.

6. Costs of fees for permits required for the building of the project.

7. Costs for the construction of that portion of a house connection (service lateral) owned by the local government unit and to which the local government unit has access by easement for maintenance and repair.

(b) Unallowable miscellaneous costs include:

1. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies;

2. Preparation of applications and permits required by federal, State or local regulations or procedures;

3. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissioners, regions, districts or other units of government;

4. Costs of fees for permits required for the operation of the project, including the NJPDES permit pursuant to N.J.A.C. 7:14A;

5. The costs of replacing, through reconstruction or substitution, wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Wastewater Treatment Bond Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments, or the Stormwater Management and Combined Sewer Overflow Abatement Bond Act and that fail to meet its project performance standards. This provision applies to failures that occur either before or after the initiation of operation but does not apply to wastewater treatment facilities that fail at the end of its design life;

6. Personal injury compensation or damages arising out of the project;

7. Fines and penalties due to violations of, or failure to comply with, Federal, State or local laws, regulations or procedures;

8. Costs outside the scope of the approved project;

9. Costs for which grant or loan disbursement has been or will be received from another federal or State agency for the project;

10. Costs of wastewater treatment facilities for control of pollutant discharges from a separate storm sewer system;

11. The cost of wastewater treatment facilities that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands or floodplains;

12. The costs of preparing a corrective action report required by N.J.A.C. 7:22-6.30(b)(1).

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

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

Revised to clearly identify the policy of limiting the allowable costs for salaries, benefits and expendable materials (including legal, fiscal and administrative costs) to one percent of the low bid building cost has been included in this section.

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

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

7:22-7.12 Allowance for planning and design

(a) This section provides the method the Department will use to determine both the estimated and final allowance under N.J.A.C. 7:22-6.34 planning and design. The Pinelands grant or loan agreement will include an estimate of the allowance.

(b) The Pinelands Infrastructure Trust share of the allowance may be up to 100 percent of the allowance and shall be based upon the percentage of the Pinelands Infrastructure Trust share of the allowable building cost.

(c) The allowance is not intended to reimburse the recipient for costs actually incurred for planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (that is, reimbursement on a dollar-for-dollar basis) will not be appropriate.

(d) The estimated and final allowance will be determined in accordance with this section and Tables 1 and 2. Table 2 is to be used in the event that the recipient received a federal grant or a Pinelands grant or loan for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

(e) The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending wastewater treatment facilities, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

1. The initial award amount of all prime subagreements for building the project;

2. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project;

3. The purchase price of eligible real property.

(f) The estimated allowance is to be based on the estimate of the initial allowable building cost.

(g) The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

(h) The recipient may request payment of 50 percent of the Pinelands Infrastructure Trust share of the estimated allowance immediately after the Pinelands Infrastructure Trust loan award. Final payment of the Pinelands Infrastructure Trust share of the allowance may be requested in the first disbursement after the recipient has awarded all prime subagreements for building the project, received the Department's approval for force account work, and completed the acquisition of all eligible real property.

(i) The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

Building cost	Allowance as a percentage of building cost †
4,000,000	12.7026
5,000,000	12.2963
6,000,000	10.7766
7,000,000	10.5373
8,000,000	10.3343
9,000,000	10.1585
10,000,000	10.0036
12,000,000	8.6591
15,000,000	8.3821
17,500,000	8.1960
20,000,000	8.0381
25,000,000	7.1325
30,000,000	6.9456
35,000,000	6.7913
40,000,000	6.6605
50,000,000	6.4474
60,000,000	6.2785
70,000,000	6.1390
80,000,000	6.0207
90,000,000	5.9183
100,000,000	5.8281
120,000,000	5.4174
150,000,000	5.2441
175,000,000	5.1277
200,000,000 (or more)	5.0289

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

† Interpolate between values.

TABLE 1—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building cost	Allowance as a percentage of building cost †
\$100,000 or less	27.5396
120,000	26.8177
150,000	25.9599
175,000	25.3834
200,000	24.8944
250,000	24.0981
300,000	23.4663
350,000	22.9452
400,000	22.5032
500,000	21.7833
600,000	21.2124
700,000	20.7413
800,000	20.3418
900,000	19.9956
1,000,000	19.6910
1,200,000	17.1564
1,500,000	16.6076
1,750,000	16.2389
2,000,000	15.9259
2,500,000	13.6029
3,000,000	13.2464
3,500,000	12.9522

TABLE 2—ALLOWANCE FOR DESIGN ONLY

Building cost	Allowance as a percentage of building cost †
\$100,000 or less	16.2798
120,000	15.9235
150,000	15.4983
175,000	15.2112
200,000	14.9667
250,000	14.5669
300,000	14.2483
350,000	13.9844
400,000	13.7596
500,000	13.3922
600,000	13.0992
700,000	12.8565
800,000	12.6498
900,000	12.4705
1,000,000	12.2170
1,200,000	10.7751
1,500,000	10.4873
1,750,000	10.2930
2,000,000	10.1276
2,500,000	8.6975
3,000,000	8.5071
3,500,000	8.3496
4,000,000	8.2154
5,000,000	7.9959
6,000,000	7.0389
7,000,000	6.9085

Building cost	Allowance as a percentage of building cost †
8,000,000	6.7975
9,000,000	6.7010
10,000,000	6.6159
12,000,000	5.7522
15,000,000	5.5986
17,500,000	5.4948
20,000,000	5.4065
25,000,000	4.8236
30,000,000	4.7181
35,000,000	4.6307
40,000,000	4.5563
50,000,000	4.4345
60,000,000	4.3375
70,000,000	4.2572
80,000,000	4.1888
90,000,000	4.1294
100,000,000	4.0769
120,000,000	3.8065
150,000,000	3.7048
175,000,000	3.6362
200,000,000 (or more)	3.5778

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

† Interpolate between values.

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

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

In (h) "Assistant Director" changed to "Department".

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

See: 27 N.J.R. 1356(a), 27 N.J.R. 3403(a).

SUBCHAPTER 8. MINIMUM STANDARDS OF CONDUCT FOR OFFICERS, EMPLOYEES, AGENTS AND MEMBERS OF WASTEWATER UTILITIES

7:22-8.1 Scope and purpose

This subchapter establishes the minimum standards of conduct for persons participating in any State or Federal wastewater treatment facility construction grant or loan program.

7:22-8.2 Definitions

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

"Agent" means any person hired to act for an Authority in the conduct of its business.

"Associated party" means any employee, officer, agent, or members of an Authority.

"Authority" means a public body or utility created pursuant to New Jersey to treat sewage within the identified territorial boundaries of a service area.

"Employee" means an individual employed on a regular basis by an Authority.

"Governing body" means the governmental unit(s) having the statutory authority and responsibility for the establishment of an Authority and/or the appointment of its members.

"Members" means those individuals appointed by a governing body to an Authority. The powers of an Authority are vested in these individuals.

"Officers" means those individuals selected by the members to serve in official capacities, such as chairman, vice chairman, secretary or treasurer. In some organizations, some full-time employees may be considered officers; for example, the executive director or chief engineer.

"Person" means any individual, association, partnership or corporation.

"Responsible associated party" means any associated party who by reason of the individual's position has, directly or indirectly through subordinates, the authority and responsibility for initiating, reviewing, approving, or disapproving policy, financial, personnel, or procurement actions of an Authority.

"Supervisor" means an employee responsible for planning, directing, or supervising the work of others in accomplishing the administration, construction, or operation and maintenance activities of an Authority, including, but not limited to:

1. Any individual serving in the capacity of executive director, chief engineer, and/or chief administrative officer, and members of their executive staff; and
2. Any employee responsible for key administrative functions such as personnel, procurement, finance and accounting.

7:22-8.3 Public accountability

(a) Each responsible associated party shall establish controls to safeguard the use of public funds and assure that such funds are not diverted to anyone's personal use.

(b) Each responsible associated party shall act to assure that qualified individuals are employed to operate the facilities of the Authority in accordance with established personnel procedures and practices or otherwise mandated by law.

(c) Each responsible associated party shall avoid noncompetitive procurement practices which restrict or eliminate competition or otherwise restrain trade, except where such noncompetitive practice is specifically and publicly declared by the members to be in the best interest of the public with reasons set forth. They shall review procurement actions to determine whether services and materials are needed, to assure adherence to applicable State and local procurement laws and procedures, and to confirm the adequacy and acceptability of the materials and services provided before authorizing payment.

(d) No associated party shall directly or indirectly use, or allow the use of, real or personal property of an Authority without proper authority. In addition, each associated party has a positive duty to protect and conserve all property, including equipment, materials and supplies entrusted to the individual.

7:22-8.4 (Reserved)

7:22-8.5 Disclosure by other persons providing services

Any other person providing professional services to an Authority shall be required to disclose in writing any business, financial or personal interests which might conflict in any way with the interests of that Authority, with regard to the services being rendered.

7:22-8.6 Conduct in office

(a) No associated party, other than agents, shall knowingly, themselves or by others on their account, be a party to a sale of materials, supplies, property or services to their employing Authority except for their own contract of personal equipment.

(b) No associated party may solicit or accept any compensation from anyone other than their employing Authority for any service, advice, assistance or other matter relating to their official duties.

(c) No associated party may be employed or act in any other capacity which would involve the acceptance of a fee, compensation or gift which could reasonably result in a conflict of interest or interfere with the efficient performance of their duties.

(d) No associated party shall, directly or indirectly by other persons, use information which comes to them as part of their duties, in any manner for personal or pecuniary gain; nor shall they violate any confidentiality with regard to such information.

7:22-8.7 Representations

(a) No associated party shall, directly or indirectly by others, appear before or negotiate with their employing Authority on behalf of any other person in connection with the following:

1. The acquisition or sale of any interest in real or personal property by their employing Authority.

2. Any cause, proceeding, application or other matter before their employing Authority.

(b) Subsequent to employment, no associated party shall, directly or indirectly by others, act as attorney, agent or representative for anyone other than their employing Authority in connection with any proceeding, application, contract, claim or other particular matter in which they participated personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, during their period of employment.

7:22-8.8 (Reserved)

7:22-8.9 (Reserved)

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

(a) This subchapter establishes procedures for providing opportunities for socially and economically disadvantaged ("SED") contractors and vendors to supply materials and services under State financed construction contracts for wastewater treatment facilities. To implement the policies established in N.J.S.A. 58:11B-26, N.J.S.A. 40:11A-41 et seq., and N.J.S.A. 52:32-17 et seq., this subchapter applies to wastewater treatment projects receiving financial assistance from the New Jersey Department of Environmental Protection and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-3, 7:22-4, 7:22-6, 7:22A-6 and 7:22A-7. Under the provisions of N.J.A.C. 7:22-3, 7:22-4, 7:22-6, 7:22A-6 and 7:22A-7, the Department and the Trust require recipients of Trust and Fund loans and other assistance to establish such programs for socially and economically disadvantaged small business concerns, to designate a public agency compliance officer, and to submit to the Department and Trust procurement plans for implementing the SED program. In addition, N.J.A.C. 7:22-3.17(a)24, 4.17(a)24, 6.17(a)24 and 7:22A-2.4(a) provide that a goal of not less than 10 percent be established for the award of contracts to small business concerns owned and controlled by one or more socially and economically disadvantaged individuals. The goal of 10 percent applies to the total amount of all contracts for building, materials and equipment, or services (including planning, design and building

related activities) for a construction project. Where a local government unit has a SED participation goal which exceeds 10 percent of the total amount of all contracts, the local government unit must comply with both the Department's rules and the local set-aside ordinance.

(b) This subchapter also establishes the standards and procedures that will apply to the contracting agencies of grant or loan recipients in the awarding and making of contracts under their SED programs.

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

Small language and cross-reference additions.

Amended by R.1993 d.409, effective August 16, 1993.

See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

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

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

7:22-9.2 Definitions

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

“Building” means the erection, alteration, remodeling, improvement or extension of a wastewater treatment facility.

“Construction” includes, but is not limited to:

1. 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, design, plans, working drawings, specifications, procedures, and other action necessary for the construction of wastewater treatment facilities;

2. The purchase of land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment; the erection, building, alteration, remodeling, improvement, or extension of wastewater treatment facilities; and

3. The inspection and supervision of the building of wastewater treatment facilities.

“Contract” means any written agreement with a professional service or construction contractor related to the construction of a wastewater treatment project.

“Contracting agency” means the governing body of a local government unit or any department, branch, board, commission, committee, authority, agency or officer of such local government unit possessing the authority to award and make contracts.

“Contractor” means any party entering into a contract to provide or offering to provide building, materials and equipment, or services to a local government unit for the construction of wastewater treatment facilities. This includes but is not limited to planning and design, as well as building related services such as engineering, inspection and accounting.

“Contractor’s plan” means the SED utilization plan submitted by the contractor to the local government unit and to the Department establishing subcontracting opportunities that will fulfill the requirements of this subchapter.

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

“Financial agreement” means the legal instrument, including a grant agreement or loan agreement, executed between either the State of New Jersey or the New Jersey Wastewater Treatment Trust and the local government unit for the construction of wastewater treatment facilities.

“Local government unit” means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting or other political subdivision of the State authorized to construct and/or operate wastewater treatment facilities.

“New Jersey wastewater treatment financing program” means financing provided to local government units pursuant to N.J.A.C. 7:22-3, 4 and 6, and 7:22A-6 and 7.

“Office” means the Office of Equal Opportunity and Public Contract Assistance or other program of the Department of Environmental Protection with the responsibility for administration of this subchapter.

“Project” means the defined services for the construction of specified operable wastewater treatment facilities as approved by the Department in the local government unit’s financial agreement.

“Project plan” means the proposal submitted at the time of application by the local government unit to the Department establishing the SED utilization plan and its requirements.

“Public agency compliance officer” means an officer or employee of the local government unit, who may be an existing officer or employee, who is designated by the local government unit to monitor and enforce compliance with the affirmative action and SED requirements of the applicable program rules and this subchapter.

“SED utilization plan” means a written document outlining the entire project work, the estimated length of time it will take to complete the project, each significant segment of the project on which SEDs will or may participate, and a description of how SEDs will be contacted.

“Set-aside contract” means:

1. A contract for building, materials and equipment, or services, which is designated as a contract for which bids are solicited on a restricted basis such that responses will be accepted only from qualified small business enterprises owned and controlled by socially and economically disadvantaged individuals; or

(b) All notices shall include a statement to the effect that the project or contract is funded in part by New Jersey wastewater treatment financing programs and the successful bidder must comply with all the provisions of N.J.A.C. 7:22-9.1 et seq. for the participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals.

7:22-9.7 Advertisements for SED utilization

(a) All advertisements for bids shall include a statement to the effect that the project or contract is funded in part by New Jersey wastewater treatment financing programs and the successful bidder must comply with the provisions of N.J.A.C. 7:22-9 for the participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals.

(b) The advertisement for bids shall indicate that the invitation to bid is on:

1. A set-aside contract or subcontract and that awards will be made only to small business concerns that are certified by the New Jersey Department of Commerce and Economic Development, the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, the New Jersey Transit or other agencies deemed appropriate by the Office as eligible minority businesses or female businesses; or

2. An unrestricted basis whereby the successful bidder must fulfill the SED utilization requirements. The agencies specified in N.J.A.C. 7:22-9.13(a)8 will have a list of eligible SED firms and shall, upon request, provide them to local government units. Local government units shall, during the advertisement phase, provide copies of the list to all contractors bidding on unrestricted contracts.

(c) The advertisement for bids shall be in such newspaper or newspapers and other periodicals identified by the agencies specified in N.J.A.C. 7:22-9.13 as will best give notice thereof to appropriate bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding. In no case shall the advertisement for bids be published less than 30 days prior to the date fixed for receiving bids on the purchase or contract.

(d) In the case of a set aside contract, the newspaper or newspapers in which the advertisement for bids appears shall be selected by the contracting agency in consultation with the Office.

(e) If there are no responses to the bid solicitation from SEDs or if the successful bidder's proposal does not meet the SED utilization requirements, the successful bidder shall advertise and continue the search for SED participants for a minimum of 30 days after the contract is awarded. The contract shall include a provision to this effect.

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

Deleted (e); recodified (f) as (e).
Amended by R.1995 d.494, effective September 5, 1995.
See: 27 N.J.R. 1356(a), 27 N.J.R. 3403(a).

7:22-9.8 Cancellation of set-aside designation

If, in consultation with the Office, the contracting agency determines that two bids from the appropriate qualified business enterprises cannot be obtained, the contracting agency may withdraw the designation of the set-aside contracts and resolicit bids on an unrestricted basis. The cancelled designation shall not be considered in determining the percentage of the total amount of contracts for a project awarded to SEDs. The project plan shall be modified accordingly.

7:22-9.9 Acceptance of set-aside bids

When a contract or portion thereof has been designated as a set-aside, or when the contractor is required to subcontract a portion of a contract to qualified SEDs, acceptance of set-aside bids shall be confined to small business concerns that are certified as a SED.

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

7:22-9.10 Lowest bid resulting in payment of unreasonable price

(a) If the contracting agency determines that the acceptance of the lowest responsible bid on a set-aside contract will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing public contracts, the contracting agency shall reject all bids.

(b) Bidders and the office shall be notified of the rejection of all bids, the reasons for the rejection, and the contracting agency's intent to solicit bids for a second time on a set-aside contract.

(c) If the contracting agency determines a second time that the acceptance of the lowest responsible bid on a set-aside contract will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing public contracts, the contracting agency shall reject all bids and withdraw the designation of the set-aside contract, notify the Office and, after receipt of the Office's approval, shall amend the project plan accordingly.

(d) Bidders shall be notified of the set-aside cancellation, the reasons for the cancellation and the contracting agency's intent to resolicit bids on an unrestricted basis. SEDs may participate in the bidding on an unrestricted basis.

(e) The cancelled solicitation shall not be counted as a set aside for the purpose of obtaining the required 10 percent participation by small businesses owned or controlled by socially or economically disadvantaged individuals ("SEDs").

7:22-9.11 Public agency compliance officer

(a) Each local government unit shall designate an officer or employee to serve as its public agency compliance officer.

(b) The public agency compliance officer shall be responsible for coordinating SED utilization efforts on the project and for monitoring and enforcing compliance with the affirmative action and SED requirements of the applicable program rules.

(c) SED utilization requirements shall be an agenda item at all contract award meetings and, wherever applicable, at preconstruction conference meetings regardless of whether a loan agreement has been executed or not. Each local government unit shall be responsible for notifying the Office of the time and place of such meetings.

(d) The public agency compliance officer shall attend all monthly construction progress meetings.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22-9.12 Reports

(a) The contracting agency shall submit its planning and design SED utilization report to the Office at the time of filing of its grant/loan application.

(b) Each public agency compliance officer shall submit the contracting agency's monthly progress reports to the Office. Once all SED contractors have been obtained, submittal of this report will no longer be required.

(c) Each public agency compliance officer shall submit a periodic report on behalf of the local government unit to the Office according to a schedule announced by the Office. At a minimum, this construction report shall be submitted quarterly; that is, January, April, July and October. Where appropriate, the Office may approve a variation in the frequency of reporting requirements specified in (b) through (d) of this section. This report shall include the following information:

1. The value of each contract and subcontract awarded to SEDs and the total dollar value and number of contracts and subcontracts awarded to SEDs;
2. The percentage of SED utilization in comparison to the cost of each contract, as well as the total percentage of SED utilization (including set aside contracts) in comparison to overall project costs;
3. The types and sizes of the participating SEDs and the nature of goods and services being provided; and
4. The efforts made to publicize and promote the local government unit's SED utilization plan.

(d) Contractors shall submit a quarterly construction report to the local government unit and to the Office. The public agency compliance officer may be contacted for assistance if needed.

(e) The report forms required by (a) through (d) above shall be obtained from the Office.

(f) The public agency compliance officer shall submit reports or information in addition to what is required by (a) through (c) above when requested to do so by the Office.

(g) Failure to comply with the reporting requirements of (a) through (d) and (f) above may subject the local government unit to the remedies for noncompliance with State and Trust loan or grant conditions specified in the applicable program rules.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22-9.13 Assessment of compliance

(a) Where the Office determines that a local government unit has failed or is failing to meet the 10 percent SED utilization requirement, the local government unit shall, upon the written request of the Office, submit the following:

1. Advertisements;
2. Signed contracts and subcontracts;
3. Documentation of solicitations of bids from SEDs;
4. Copies of Requests for Proposals;
5. Records of telephone quotations;
6. Established set-aside contracts;
7. Adequate and timely notice for encouraging SED participation; and
8. Proof that the assistance of State Agencies was solicited, including:

Office of Equal Opportunity and Public Contract Assistance
New Jersey Department of Environmental Protection and Energy
440 East State Street
Trenton, New Jersey 08625
Division for the Development of Small Businesses and Women Businesses and Minority Businesses
New Jersey Department of Commerce and Economic Development
CN-835
1 West State Street
Trenton, New Jersey 08625

(b) Where the local government unit determines that a contractor has failed or is failing to meet the 10 percent SED utilization requirement, the contractor shall, upon the written request of the local government unit, submit the documents specified in (a) above.

(c) The Office shall summarize in writing its evaluation of the reason given for noncompliance and the efforts made by the local government unit or contractor to comply with its plan for achieving the 10 percent SED utilization requirement. The Office shall take into consideration good faith efforts made by the local government unit or contractor to meet the goal to achieve the ten percent SED utilization requirement. These findings shall be submitted to the Department and, in the case of a Trust loan, to the Trust who, in conjunction with the Office, shall determine the nature and extent of the local government unit's or contractor's noncompliance.

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

Language added at (c) regarding the consideration of good-faith efforts on the part of local government units.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22-9.14 Penalties

Whenever a local government unit or a contractor has failed to comply with the requirements of this subchapter, including the 10 percent requirement for SED utilization, the Department, or the Department and the Trust, in the case of a Trust loan recipient, may withhold all of the loan or grant money, or a portion thereof, and may take any of the other actions or combinations thereof specified in N.J.A.C. 7:22-3.40 through 3.44, 7:22-4.40 through 4.44, 7:22-6.40 through 6.44 and 7:22A-1.8 through 1.13 which are remedies for noncompliance with any of the conditions of a loan or grant.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22-9.15 Administrative hearings

(a) The Department and, in the case of a Trust loan, the Trust, shall make a determination regarding all disputes arising under this subchapter. The local government unit shall specifically detail in writing the basis for its dispute. The Department and/or the Trust shall produce a decision in writing and mail or otherwise furnish a copy thereof to the local government unit.

(b) A local government unit may request an administrative hearing within 20 days of receipt of a decision by the Department and/or the Trust. 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. The request for an administrative hearing shall specify in detail the basis for the appeal. Administrative hearings shall be conducted in accordance with the

requirements of the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

Administrative change in (b).

See: 23 N.J.R. 3325(b).

Amended by R.1993 d.409, effective August 16, 1993.

See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22-9.16 Severability

If any of the provisions of this subchapter are found to be invalid, the remainder of the provisions of this subchapter shall not be affected thereby.

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED WASTEWATER TREATMENT FACILITIES

7:22-10.1 Scope and construction

(a) This subchapter constitutes the rules of the New Jersey Department of Environmental Protection regarding the environmental assessment requirements for projects receiving financial assistance pursuant to N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6 and 7.

(b) This subchapter shall be liberally construed to permit the Department to effectuate the purposes of the Wastewater Treatment Bond Act, the Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), the Pinelands Infrastructure Trust Bond Act (P.L. 1985, c.302), the Sewage Infrastructure Improvement Act, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts and appropriations passed to provide financial assistance for wastewater treatment facilities.

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

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act, the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), the Pinelands Infrastructure Trust Bond Act, the Sewage Infrastructure Improvement Act, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act and future bond acts and appropriations passed to provide financial assistance for wastewater treatment facilities;

2. To establish environmental assessment requirements which must be complied with in order to receive financial assistance provided pursuant to N.J.A.C. 7:22-3, 4 and 6, and N.J.A.C. 7:22A-6 and 7;

3. To protect the public and the State of New Jersey by ensuring that funds appropriated are spent in a proper manner for the intended purposes while avoiding or minimizing adverse environmental impacts; and

4. To identify in a comprehensive manner the environmental objectives and constraints, planning and design requirements, and construction inspection procedures which must be observed in order to achieve the goal of avoiding or minimizing direct and indirect adverse environmental impacts.

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

Revised to include references to the Sewage Infrastructure Improvement Act and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

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

7:22-10.2 Definitions

Unless otherwise specified, the terms used herein will have the same meanings as those terms are defined in N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-1. Additional definitions are as follows:

“Administrative action” means Department approval of planning or design documents or offer of award for loan assistance.

“Agricultural Development Areas” means those areas designated as such pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

“Cultural resource” means any prehistoric or historic district, site, building, structure, or object listed in or eligible for listing in the New Jersey Register of Historic Places established pursuant to N.J.S.A. 13:1B-15.128 et seq., or the National Register of Historic Places, established pursuant to 16 U.S.C. 470a(6) (1982). Eligibility criteria for listing on the New Jersey Register of Historic Places are set forth at N.J.A.C. 7:4-1. Eligibility criteria for listing on the National Register of Historic Places are set forth at 36 CFR Part 60.6.

“Designated habitat” means an area which has been designated as critical habitat for an endangered species in accordance with the Federal Endangered Species Act, 16 U.S.C. §§ 1531 et seq.

“Direct impact” means an impact that is associated with the location and construction of a proposed project.

“Endangered species” means a plant or animal species which has been designated as endangered pursuant to either the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Federal Endangered Species Act, 16 U.S.C. 1531 et seq. or the Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq.

“Environmentally constrained area” means areas in which development is in some way restricted including wetlands, floodplains, endangered species sites or designated habitats, parks and preserves and Agricultural Development Areas.

“Environmentally critical area” means an area or feature which is of significant environmental value, including but not limited to wetlands, floodplains, important farmlands, Agricultural Development Areas, steep slopes, endangered or threatened species and their designated habitats, important aquifer recharge areas, coastal areas, stream corridors, parks, and preserves.

“Floodplain” means the 100-year floodplain as delineated on Federal Emergency Management Agency maps or the area subject to regulation under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 and implementing rules at N.J.A.C. 7:13, whichever is greater.

“Important farmlands” are those areas mapped as such on the United States Department of Agriculture, Soil Conservation Service, Important Farmlands maps, subject to update to reflect conversion of use.

“Indirect impact” (also known as a “secondary impact”) means an impact that may be caused as a result of providing new or improved wastewater management facilities, but not generally as the result of constructing the facilities. Examples include new development made possible by improved wastewater infrastructure and the impacts to natural areas, environmentally critical areas, water supply, water quality from nonpoint sources of pollution and air quality.

“Planning area” means that area for which a wastewater management project is proposed, including the proposed service area, as well as the extent of the area which could be impacted, directly or indirectly, by the proposed project and its integrally related components, as determined by the Department, whether or not funding is sought for each individual component of the wastewater treatment facilities system.

“Professional qualified archaeologist” means an archaeologist whose credentials satisfy the criteria as set forth in the “Secretary of Interior’s Standards and Guidelines for Archeology and Historic Preservation,” 48 Fed. Reg. 44,716 (September 29, 1983).

“Provenience” means the cultural association of an object as well as its horizontal and vertical location at a site or surveyed area.