

(b) The Department shall limit the use of stop-work orders to those situations where it is advisable to suspend work on the project or portion or phase of the project for important Department considerations.

(c) Prior to issuance of a stop-work order, the Department shall afford the recipient an opportunity to discuss the stop-work order with the Department. The Department shall consider such discussions in preparing the order.

(d) Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the recipient for materials or services;
4. The duration of the stop-work order; and
5. Other suggestions from the Department to the recipient for minimizing costs.

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

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

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and shall minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the period of the stop-work order or within any extension of that period to which the parties shall have agreed, the Department shall either:
 - i. Rescind the stop-work order, in full or in part;
 - ii. Terminate the work covered by such order as provided in N.J.A.C. 7:22A-1.12; or
 - iii. Authorize resumption of work.
2. If a stop-work order is rescinded or the period of the order or any extension thereof expires, the recipient shall promptly resume the previously suspended work. An equitable adjustment shall be made in the project schedule, and/or the project, and the grant agreement shall be modified if necessary. However, additional project costs as a result of the stop-work order shall be the responsibility of the recipient.

7:22A-1.12 Termination of the grant agreement

(a) Termination of the grant agreement by the Department shall be conducted as follows:

1. The Department may terminate the grant agreement in whole or in part for good cause, which shall include but not be limited to:

- i. Substantial failure to comply with the terms and conditions of the grant agreement;
- ii. Default by the recipient;
- iii. A determination that the grant moneys were obtained by fraud;
- iv. Substantial performance of the project work has not occurred;
- v. Gross abuse or corrupt practices in the administration of the project have occurred; or
- vi. Grant moneys have been used for unallowable costs.

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

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

(b) Termination of the grant agreement by the recipient shall be conducted as follows:

1. A recipient shall not unilaterally terminate the project work for which grant moneys have been awarded except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work by the recipient or intent thereof. The term "good cause" shall include, but not be limited to, circumstances beyond the control of the recipient such as fire, flood, riot or strike.

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

3. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the grant agreement pursuant to this section or rescind the grant pursuant to N.J.A.C. 7:22A-1.13.

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

(d) Upon termination by either the Department or the recipient, the recipient may be required to immediately refund or repay the entire amount of the grant moneys received from the State and waive the undistributed balance. The Department may, at its discretion, require the immediate repayment of a specific portion of the grant and allow the remainder to be repaid in accordance with a repayment schedule. The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of grant moneys awarded under the grant agreement. The recipient, upon termination, shall make no new commitment without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

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

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22A-1.13 Rescission of grant funds

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

1. Without good cause therefor, 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 30 days prior to the intended date of rescission, the Department shall give a written notice to the recipient (certified mail, return receipt requested) of its 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 State law.

7:22A-1.14 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer moneys pursuant to this chapter and the grant agreement and award subagreements pursuant to those funds free from bribery, graft and corrupt practices. The recipient has 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.

7:22A-1.15 Debarment

(a) No recipient shall enter into a subagreement for work on a 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 subagreement for work on a project a clause stating that any party to any subagreement may be debarred, suspended or disqualified from contracting on any project financially assisted by the State or the Department if the party commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) The recipient, after executing the grant agreement but prior to the acceptance of grant moneys, shall certify that no party to any subagreement 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. If the grant moneys are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate the grant agreement pursuant to N.J.A.C. 7:22A-1.12 and/or to take such other action pursuant to this subchapter as may be appropriate.

(d) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any subagreement which is or shall be funded from the Fund under this chapter, may present information to the Department why this section should not apply to such a person. If the Department determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the Department may grant an exception from the application of this section with respect to a particular contractor in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22A-1.16 Administrative hearings

(a) To request an administrative hearing on a contested case, an affected municipality, local government unit or other municipality aggrieved by a decision or action of the Department may, within 20 calendar days from receipt of the decision or action, submit a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the party requesting the hearing and its authorized representative, if any;
2. The position of the requester on each question of law and fact at issue and its relevance to the Department's decision;
3. Information supporting the requester's position and copies of other written documents relied upon to support the request for a hearing;
4. An estimate of the time required for the hearing (in days and/or hours); and
5. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the requester of the decision or within 20 days of the Department's action being challenged shall be denied by the Department.

(c) If the requester fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) During the pendency of the review and hearing, the challenged Department decision or action shall remain in full force and effect, unless a stay has been requested in writing and granted by the Department.

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

(f) If it grants the request for a hearing, the Department will file the request for a hearing with the Office of Administrative Law. The hearing shall be conducted in accordance with 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.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22A-1.17 Use and disclosure

All applications and submissions, when received by the Department, constitute public records of the Department. The Department shall make them available to persons who request their release to the extent required by State law.

7:22A-1.18 Access

(a) The recipient and any party to a subagreement shall provide to the Department and any authorized representative of the Department access to the facilities, premises and records related to the project. All subagreements executed by the recipient shall contain provisions allowing the Department access to the facilities, premises and records related to the project.

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

(c) The recipient, and all parties to a subagreement which contract directly with the recipient to receive a portion of State moneys, may be subject to a financial audit.

(d) All records pertinent to the grant agreement shall be retained and available to the Department for a minimum of three years after issuance of the final payment by the Department, until the final audit has been made by the Department or until otherwise required by law.

7:22A-1.19 Publicity

Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge State financial assistance.

7:22A-1.20 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this chapter are declared to be severable.

SUBCHAPTER 2. GRANT AGREEMENT PROCEDURES AND REQUIREMENTS

7:22A-2.1 Applicability

This subchapter establishes the Department's procedures and requirements governing the execution of every grant agreement pursuant to the Act. Any affected municipality or local government unit applying for a grant or having received a grant pursuant to the Act shall at a minimum conform with the requirements of this subchapter, as applicable.

7:22A-2.2 Grant award agreements

(a) Subsequent to the receipt of an application, the Department shall prepare and transmit the grant agreement for the grant award to the applicant.

(b) The grant agreement shall set forth the terms and conditions of the grant award, approved project scope, allowable costs, disbursement schedule, and approved commencement and completion dates for the project.

(c) The applicant shall execute the grant agreement within such period of time and pursuant to such terms and conditions as the Department may determine in its sole discretion.

(d) The grant agreement shall be executed by a person authorized by resolution to obligate the applicant to the terms and conditions of the grant agreement. A certified, true sealed copy of the authorizing resolution shall also be submitted to the Department at this time.

(e) The grant agreement shall be deemed to incorporate all requirements, provisions and information in documents or papers submitted to the Department in the application process.

(f) After the State has completed its internal processing and execution of the grant agreement, the Department shall transmit a copy of the executed grant agreement to the recipient.

(g) The State shall not execute a grant agreement if the applicant is in current default on any State loan.

7:22A-2.3 Effect of grant awards

(a) At the time of the execution of the grant agreement by the Department and the recipient, the grant award for the project shall become effective and shall constitute an obligation of moneys in the amount and for the purposes stated in the grant agreement.

(b) Cost overruns shall be the sole responsibility of the recipient. The award of funds shall not commit or obligate the Department to award any continuation or supplemental funds to cover cost overruns of the project.

(c) The award of funds by the State shall not be used as a defense by the recipient to any action by any agency for the recipient's failure to comply with the Act or to obtain all requisite permits, licenses and operating certificates.

7:22A-2.4 Grant conditions

(a) The following requirements, as well as such statutes, rules, terms and conditions which may be applicable, are conditions of each grant, and conditions to each disbursement under the grant agreement:

1. The recipient shall comply with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.;

2. The recipient shall certify that it and any party to a subagreement maintain their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

3. The recipient of grants for combined sewer overflow and interconnection/cross-connection abatement projects shall comply with the rules entitled 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;

4. The recipient shall comply with the permit requirements of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., N.J.A.C. 7:14A and any applicable New Jersey Pollutant Discharge Elimination System permit;

5. The Department shall not be liable for and the recipient shall pay the unallowable costs of the project and shall pay the allowable costs not covered by the grant agreement;

6. The grant 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 grant agreement or any amendment thereto;

7. The recipient shall comply with all applicable requirements of federal, State, and local laws, ordinances, rules and with the requirements of the grant agreement;

8. An amount of any grant disbursement equal to 100 percent of any unpaid portion of a finally determined State assessed civil administrative penalty pursuant to N.J.A.C. 7:14-8 shall be withheld until said penalty is paid in full;

9. The recipient shall certify that it has not and shall not enter into any subagreement with, nor has any subagreement 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;

10. 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 grant agreement or approved amendments thereto;

11. The recipient must submit proof that it and any party to a subagreement shall comply with all insurance requirements of the grant agreement and, when appropriate, certify that the insurance is in full force and effect and that the premiums have been paid;

12. The recipient shall certify that it and any party to a subagreement 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 promulgated pursuant thereto including but not limited to N.J.A.C. 17:27;

13. 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; and

14. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any grant agreement 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.;

15. The recipient shall comply with the Department's standards of conduct (N.J.A.C. 7:22-8) governing public bodies or utilities created pursuant to New Jersey law to treat wastewater within the territorial boundaries of a service area and the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22);

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

17. No Fund moneys shall be disbursed to a local government unit which 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 Fund disbursement where it determines that the affected municipality or 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.

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

(d) Recipients shall include the following statement in each subagreement awarded pursuant to this chapter:

"This contract or subcontract is or may be funded in part with funds from the New Jersey Department of Environmental Protection. Neither the State of New Jersey nor any of its 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 requirements contained in N.J.A.C. 7:22A."

(e) The recipient shall insert into any subagreements, and shall ensure that their contractor includes within their subcontracts, the following statement:

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

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.47, effective January 17, 1995.
See: 26 N.J.R. 3793(a), 27 N.J.R. 324(b).

7:22A-2.5 Project changes and modifications to grant agreements

(a) Due to the limited amount of funds available, there shall be no grant modification increasing the grant amount. Increased costs resulting from a grant modification shall be the responsibility of the recipient.

(b) The recipient shall promptly notify the Department in writing (certified mail, return receipt requested) of events or proposed changes which may require modifications, 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 decrease the total cost of a project.

(c) If the Department decides an amendment is necessary, the recipient shall be notified and a grant amendment shall be processed in accordance with N.J.A.C. 7:22A-2.6. If the Department decides a grant amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22A-2.7 or 2.8, as applicable.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22A-2.6 Grant amendments

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

(b) The State and recipient shall effect a grant amendment only by a written amendment to the grant agreement executed by the State and the recipient.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22A-2.7 Administrative changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the recipient, or a nonsubstantial alteration of the disbursement schedule for grant moneys, constitute changes to the grant agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient from the Department as specified in the grant agreement.

7:22A-2.8 Other changes

All other project changes, which do not require a grant amendment as stated in N.J.A.C. 7:22A-2.6, shall be undertaken only upon written approval of the Department.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22A-2.9 State disbursements

Disbursement of grant funds shall be made as indicated in the grant agreement at intervals as work progresses and expenses are incurred by the recipient and approved by the Department. Total disbursements shall not exceed the cumulative grant moneys indicated in the disbursement schedule of the grant agreement or the allowable costs which have been incurred at that time. No disbursement, other than an advanced payment for preliminary mapping and inventory pursuant to N.J.A.C. 7:22A-3, shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department.

7:22A-2.10 Assignment

The right of a recipient to receive disbursements from the State under a grant agreement may not be assigned.

7:22A-2.11 Unused funds

Where the total amount disbursed under a grant agreement is less than the initial grant award, the grant agreement amount shall be adjusted and the difference retained by the Fund to be reallocated to other projects.

SUBCHAPTER 3. PRELIMINARY MAPPING AND INVENTORY
7:22A-3.1 Applicability

(a) All affected municipalities shall adopt a final map as required by N.J.S.A. 58:25-25 and N.J.A.C. 7:22A-4.

(b) To facilitate the preparation of a final map, any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory. As required by N.J.A.C. 7:22A-4.2(c), all affected municipalities shall prepare and submit a preliminary map in accordance with N.J.A.C. 7:22A-3.10 and 3.11, regardless of whether they received a grant to prepare a preliminary map and inventory.

Amended by R.1991 d.307, effective June 17, 1991.
See: 22 N.J.R. 2870(a), 23 N.J.R. 1926(a).
Added "and N.J.A.C. 7:22A-4." in (a).

Added "As required by N.J.A.C. 7:22A-4.2(c), all affected municipalities shall prepare and submit a preliminary map in accordance with N.J.A.C. 7:22A-3.10 and 3.11, regardless of whether they received a grant to prepare a preliminary map and inventory." in (b).

7:22A-3.2 Applicant eligibility

(a) Subject to (b) below, any affected municipality, a list of which is included in Appendix A, may apply for a grant to prepare a preliminary map and inventory.

(b) Any municipality may petition the Department's inclusion or omission from Appendix A by submitting documentary evidence which proves to the Department's satisfaction that the municipality's stormwater sewer system either does or does not directly discharge into the salt waters of Atlantic, Cape May, Monmouth or Ocean counties. A municipality may contest the Department's decision on the petition in accordance with N.J.A.C. 7:22A-1.16(b).

7:22A-3.3 Funding

Grant amounts from the Department for preliminary mapping and inventory are based on the applicant's estimated project costs and shall not exceed the maximum amounts listed in Appendix A. The Department may agree to provide up to 90 percent of the allowable project costs (subject to the maximum grant amounts set forth in Appendix A) and the applicant shall provide at least 10 percent of the allowable project costs.

7:22A-3.4 Pre-application procedures

Applicants may request a pre-application conference to discuss application procedures, prior to submission of a grant application. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

Amended by R.1993 d.409, effective August 16, 1993.
See: 25 N.J.R. 1643(a), 25 N.J.R. 3760(a).

7:22A-3.5 Application procedures

(a) Each application for preliminary mapping and inventory grant moneys shall be received by the Department by February 19, 1990 or as otherwise extended by the Department.

(b) Each applicant shall include full and complete documentation in the application, including but not limited to:

1. A brief description of how the grant shall be used and the method of accomplishing those purposes;
2. A description of how the applicant plans to pay for its share of the project costs, including those costs in excess of the grant award necessary to fully complete the project;