

CHAPTER 22

FINANCIAL ASSISTANCE PROGRAMS FOR ENVIRONMENTAL INFRASTRUCTURE FACILITIES

Authority

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

Source and Effective Date

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

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 22, Financial Assistance Programs for Environmental Infrastructure Facilities, expires on December 9, 2005. See: 37 N.J.R. 2645(a).

Chapter Historical Note

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

Subchapters 1 and 2 were repealed and Subchapter 2, Matching Grant Procedures and Requirements, and Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of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

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

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

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

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

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

Subchapter 9, Awarding Contracts for State Assisted Projects 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).

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

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

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SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

7:22-2.1 Scope and construction

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

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

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

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

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

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

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

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

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

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

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

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

Updated Department title.

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

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

Case Notes

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

7:22-2.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7:22-2.3 State matching grants

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

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

(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 Department governing the disposition of appropriations pursuant to the Bond Acts, the Federal Water Pollution Control Act Amendments, the Federal Safe Drinking Water Act Amendments, or any other monies available, including future bond acts and appropriations to provide financial assistance for environmental infrastructure facilities.

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

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

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).

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

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

Rewrote the section.

7:22-3.2 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 Bond Acts, and future bond acts and appropriations;
2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Bond Acts, the Federal Water Pollution Control Act Amendments, the Federal Safe Drinking Water Act Amendments and other moneys available to the Fund for the purpose of

providing financial assistance to project sponsors through the issuance of Fund loans for the costs of the construction of environmental infrastructure 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 environmental infrastructure facilities.

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

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

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).

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

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

In (a), rewrote 1, 2 and 8.

7:22-3.4 Definitions

The following words and terms, when used in this subchapter, will 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 project sponsor 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, the Water Supply Bond Act and future bond acts passed for the purpose of providing funds for the construction of environmental infrastructure 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 Bond Acts.

“Building” means the acquisition, erection, alteration, remodeling, improvement or extension of environmental infrastructure facilities.

“Building cost” means the cost for building environmental infrastructure 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.

"Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Construction" includes, but is not limited to, the preliminary planning to determine the economic and engineering feasibility of environmental infrastructure facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary for building environmental infrastructure facilities; the purchase of land for and the building of environmental infrastructure facilities; and the inspection and supervision of the building of environmental infrastructure facilities.

"Contract" means a subagreement as defined in this subchapter.

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

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

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

"Differing site conditions" means conditions at the project site, which:

1. Differ materially from physical conditions (including subsurface and latent conditions) referred to in the plans, specifications and reports submitted under N.J.A.C. 7:22-3.11(d)7; and

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

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

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

"EPA" means the United States Environmental Protection Agency.

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

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

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

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

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

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

"Fund" means the Wastewater Treatment Fund, the 1992 Wastewater Treatment Fund, the Stormwater Management and Combined Sewer Overflow Abatement Fund, or the Water Supply Fund established pursuant to the applicable Bond Acts, and any funds available through future bond acts or appropriations for the purpose of providing funds for the construction of environmental infrastructure projects, including ancillary accounts established to administer a revolving fund program in accordance with the Federal Water Pollution Control Act Amendments or the Federal Safe Drinking Water Act Amendments. As such bond acts are enacted, reference to such funds shall be added to this

definition through a notice of administrative change published in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7.

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

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

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

“Infiltration” means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or man-holes. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Public water system” means a system for the provision to the public of piped water for human consumption, if such a system has at least 15 service connections or regularly serves

at least 25 individuals daily at least 60 days out of the year. Such term includes:

1. Any collection, treatment, storage and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and
2. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

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

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

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

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

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

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

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

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

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

“State” means the State of New Jersey.

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

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

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

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

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

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

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

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

“User charge” means a charge levied on users of an environmental infrastructure 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), as amended and/or supplemented.

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

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

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

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

“Water supply facilities” means and refers to the plants, structures, service and house connections, well sealings, interconnections between existing water supply facilities, machinery, equipment and other property, personal and

mixed, constructed or operated, or to be constructed or operated, in whole or in part by or on behalf of a project sponsor, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, and any and all appurtenances necessary, useful and convenient for collecting, impounding, storing, improving, treating, filtering or transmitting of water, and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources, and facilitating incidental recreational uses thereof.

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

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

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

Deleted definition “State Funding List”.

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

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

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

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

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

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

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

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

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

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

Amended “Fund” and “Fund loan”.

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

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

Rewrote the section.

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

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

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

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

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

Amended “Subagreement”.

7:22-3.5 Bond Act Funds

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

(b) Any Federal or State funds which may be made available to the State for loans to applicants for the con-

struction of environmental infrastructure facilities may be deposited into the appropriate Fund(s).

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

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

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

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

Reference to Stormwater Management and Combined Overflow Abatement Fund added.

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

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

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

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

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

7:22-3.6 Terms of the Fund loans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7:22-3.7 Criteria for project loan priority

(a) Each year, the Department shall develop a Priority System, Intended Use Plan and Project Priority List for wastewater treatment, stormwater management and non-point source management facilities and a Priority System, Intended Use Plan and Project Priority List for water supply facilities for the specified Federal fiscal year(s). The Priority System establishes the ranking methodology. For wastewater treatment, stormwater management and nonpoint source management facilities, the ranking methodology evaluates projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. For water supply facilities, the ranking methodology evaluates projects individually for their anticipated impacts on existing water supply needs to achieve or maintain compliance with the Federal and State Safe Drinking Water Acts. The Intended Use Plan includes information on the timing, use and distribution of Federal funds anticipated to be made available to New Jersey for financing the construction of environmental infrastructure facilities. The Project Priority List presents the projects initially eligible for funding according to their cumulative scores derived from application of the Priority System.

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

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

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

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

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

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

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

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

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

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

New (b)-(e) added.

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

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

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

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

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

Rewrote the section.

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

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

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

7:22-3.8 Eligibility for State and Federal funding

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

(b) If a project sponsor is awarded a Fund loan in addition to funding from any other Federal or State grant or loan, the total amount of such other funding and the Fund loan shall not exceed the allowable costs of the project. If a project sponsor is awarded funding from any other Federal or State grant or loan after the Department has awarded a Fund loan to the project sponsor, the Department shall reduce the Fund loan in the amount of such other funding. If a project sponsor is awarded funding from any other Federal or State grant or loan after the Department has made disbursement from the Fund loan, the project sponsor

shall, within 60 days of notice of the award of such other funding, reimburse the Fund in the amount of such other funding. If both a Fund loan (pursuant to this subchapter) and a Trust loan (pursuant to N.J.A.C. 7:22-4) are received in combination with funding from any other Federal or State grant or loan, the Fund and Trust loans will be proportionally reduced.

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote (b).

7:22-3.9 Project bypassing

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

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

(c) Written notice of a bypass action shall be forwarded to the project sponsor by certified mail. As a result of such an action, the project on the Project Priority List shall become ineligible to receive a Fund loan in the specified State fiscal year(s). This may allow the next highest ranked project to fall within the fundable range on the Project Priority List.

(d) The Department shall bypass a project on the Project Priority List in cases where the Department has given priority to funding other projects on the Project Priority List in accordance with N.J.A.C. 7:22-3.7(d) or (e).

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.

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

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

New (d) 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 eliminate the concept of contingency projects to be consistent with the provisions of the existing rules.

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

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

In (a) through (c), substituted "project sponsor" for "local government unit" throughout; and in (d), deleted "local government unit" following "The Department shall bypass".

7:22-3.10 Pre-application procedures

(a) Project sponsors are urged to be familiar with the requirements of this subchapter and to contact the Department early in the planning process so that their projects are in a position to proceed (that is, planning and design completed) in a timely manner. Project sponsors should be aware that Department approvable plans and specifications are required as part of the application for a Fund loan.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for a Fund loan. During the conference the Department shall identify and explain all loan application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind 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).

Deleted text in (a) "at a time of Notice of Project Eligibility" and substituted "in a timely manner".

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

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

Deleted (c).

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

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

In (a), substituted "Project sponsors" for "Local government units" throughout.

7:22-3.11 Application procedures

(a) Each application for a Fund loan shall be submitted to the Department in conformance with the time period specified in the Proposed Priority System, Intended Use Plan and Project Priority List or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(b) Submissions which do not substantially comply with this subchapter will not be processed further and the applicant shall be so advised.

(c) Processing of a Fund loan application generally requires 60 calendar days after receipt of a complete application by the Department.

(d) The following must be submitted when applying for a Fund loan, as applicable:

1. An application (Form LP-2) for a Fund loan pursuant to this subchapter for the construction of environmental infrastructure facilities. Each application constitutes an agreement to accept the requirements of this subchapter;

2. If the applicant is a local government unit, a resolution passed by the local government unit authorizing the filing of an application for a Fund loan and specifying the individual authorized to sign the Fund loan application on behalf of the local government unit. If the applicant is a private entity, a letter from the private entity authorizing the filing of an application for a Fund loan and specifying the individual authorized to file the loan application on behalf of the private entity, as well as providing evidence of ownership of the water supply facilities. If two or more project sponsors are involved in the project, a resolution or letter indicating the lead applicant and the authorized representative is required from each;

3. Statement of Assurances (Form LP-3) from each applicant and, if the applicant is a local government unit, an executed Professional Services Affidavit (Form LP-11) for each person or firm whose professional services have been procured by the local government unit for the project for which cost reimbursement will be sought under this chapter. If the professional services for which cost reimbursement will be sought under this chapter have not been procured at the time of loan application, submittal by the local government unit of a letter of commitment to comply with the requirements of the Professional Services Affidavit, and to submit a copy of the executed Professional Services Affidavit to the Department immediately upon execution of the contract for the professional services, will satisfy this requirement. Submittal of the executed Professional Services Affidavit or letter of commitment is a requirement of the application process so that the Department will have written confirmation from the local government unit that it has procured or will procure any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or other applicable procurement method authorized under State law and the local government unit has reviewed or will review the proposed costs and activities and finds them acceptable. This Professional Services Affidavit requirement does not apply to professional services obtained for those planning and design activities which are covered through an allowance in accordance with N.J.A.C. 7:22-5.12 or to professional services obtained by private entities.

4. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) (Form LP-4);

5. A complete Project Report/Facilities Plan, which must include:

- i. For all environmental infrastructure facilities, the following items must be submitted:

- (1) A description of both the proposed environmental infrastructure facilities and the complete environmental infrastructure system of which it is a part;

(2) Cost information on total capital costs of the project, and annual operation and maintenance costs;

(3) A description of the potential open space and recreation opportunities associated with the project;

(4) Appropriate documentation demonstrating compliance with the Environmental Assessment Requirements for State Assisted Environmental Infrastructure Facilities (N.J.A.C. 7:22-10); and

(5) For the selected alternative, a concise description, at an appropriate level of detail, of at least the following:

(A) Relevant design parameters, including a description of the environmental infrastructure facilities to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(B) Cost impacts on system users; and

(C) Institutional and management arrangements necessary for successful implementation, such as service agreements, local ordinances, interagency agreements or intermunicipal agreements;

ii. For wastewater treatment and stormwater management facilities, a statement of consistency with the appropriate Water Quality Management Plans in accordance with the provisions of N.J.A.C. 7:15. For wastewater treatment facilities, a description of the Best Practicable Wastewater Treatment Technology or, for stormwater management facilities, a description of the Best Management Practices that will be utilized;

iii. For wastewater treatment, water supply and stormwater management facilities permitted as a municipal separate storm sewer system, a cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality, or drinking water standards and public health requirements over the design life of the facility while recognizing environmental and other nonmonetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan, the New Jersey Statewide Water Supply Plan or current census data. A cost effectiveness analysis must include:

(1) For wastewater treatment facilities, an evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBDF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evaluation is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the environmental infrastructure facilities become operational. This includes letters of intent from significant industrial or commercial users and all establishments intending to increase their wastewater flows or water supply demand or relocate in the area documenting capacity needs and characteristics for existing or projected wastewater flows or water supply demand;

(3) An evaluation of improved effluent or drinking water quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

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

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

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

iv. For wastewater treatment facilities, an infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-3.35, or for water supply facilities, an analysis of the amount of water withdrawn at the source(s) and not accounted for as being delivered to customers in measured amounts;

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

(1) An evaluation of the land to be acquired, including the water quality basis for the proposed land acquisition that addresses the existing land use patterns, potential threats to water quality, and other existing problems;

(2) A site survey signed and sealed by a land surveyor licensed to practice in the State of New Jersey and the criteria used to select the parcel(s) for acquisition;

(3) The appraisal(s) of the parcel(s). For a parcel with an estimated land value of less than \$250,000, the local government unit shall obtain at least one appraisal. For a parcel with an estimated land value of \$250,000 or more, two appraisals shall be obtained. For easement acquisitions, appraisals shall be submitted that identify the fair market value of the parcel with and without the conservation restriction.

Any appraisals required herein shall be prepared by a real estate appraiser licensed by the State's Division of Consumer Affairs to perform such appraisals;

(4) If a preliminary assessment report or site assessment prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E identifies potential contamination of the land to be acquired, a letter of no further action issued by the Department under N.J.A.C. 7:26C-2.6 is also required; and

(5) A statement from the local government unit pledging to comply with the loan conditions identified in N.J.A.C. 7:22-3.17(a)33 and identifying the actions the local government unit will take to ensure that the applicable restrictions will be incorporated in the deed for the parcel(s) and will apply in perpetuity;

vi. For landfill closure facilities, a copy of the Department's approval of the sanitary landfill's Closure and Post-Closure Plan submitted pursuant to N.J.A.C. 7:26-2A;

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

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

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

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

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

6. For sewer rehabilitation projects, a Sewer System Evaluation Survey in accordance with N.J.A.C. 7:22-3.35;

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

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

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

10. Project cost breakdown for each subagreement;

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

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

13. For wastewater treatment facilities, a sewer use ordinance and user charge system acceptable to the Department;

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and constructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system must be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below or a combination of the two. It must also meet the requirements set forth in (d)13ii(3) through (8) below.

(1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to users (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users; and/or

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the Fund loan agreement) shall be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant may establish lower user charge rates for low income residential users as authorized by State law. The total revenue for operation and maintenance, including equipment replacement, of the facilities must not be reduced as a result of establishing a low income residential user class;

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

15. An affidavit (Form LP-7) certifying that required permits and approvals for building the environmental infrastructure facilities were received from applicable Federal, State and local agencies;

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

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

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

19. Draft engineering agreements for building services;

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

21. A description of how the applicant plans to repay the Fund loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Fund loan that shall guarantee that at the time of the signing of the Fund loan agreement it shall be irrevocably committed to repay the Fund loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all Fund loans in a manner acceptable to the State, pledging to provide funds to repay the debt, even if the Fund loan is terminated pursuant to N.J.A.C. 7:22-3.44. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, service/deficiency agreement(s) with government units with general taxing power, bond insurance, revenue bonds, debt service reserve funds and surety bonds.

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

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

24. Such other information as the Department may require.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote (d).

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

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

In (d), rewrote 4 and 5.

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

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

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

7:22-3.12 Use and disclosure of information

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

7:22-3.13 Evaluation of application

- (a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Department's program objectives;

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and

4. Final administrative evaluation.

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

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

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

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

Substituted "Project Priority" for "State Funding".

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

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

(c) deleted; (d) recodified as (c).

7:22-3.14 Supplemental information

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

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

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

"Division" replaced by "Department".

7:22-3.15 Fund loan agreement

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

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

(c) The Department, 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 Fund loan agreement transmitted to the applicant.

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

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

(f) The Fund loan agreement shall not be executed by the State 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).

(a)1, 2 and 5. deleted, (a) rewritten; new (b)-(d); (a)3. and 4. recodified as (e) and (f).

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

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

In (d), deleted "by resolution" following "by a person authorized", inserted "For local government units, a" at the beginning of the second sentence and added a new last sentence.

7:22-3.16 Fund loan award and closing

(a) Upon the execution of the Fund loan agreement by the State and the recipient, the Fund loan is awarded and the agreement becomes effective and constitutes an obligation of the appropriate Fund(s) in accordance with the terms and conditions of the applicable Bond Act(s) and Federal and State law. The obligation of the State under a Fund loan agreement is contingent upon the availability of appropriated funds from which disbursements can be made. The Fund loan is considered closed as indicated in the Fund loan agreement.

(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.

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

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

Rewrote (a).

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, permits, 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. Local government units shall comply with the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or other applicable procurement method authorized 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-133 and State OMB Circular 98-07 OMB, incorporated herein by reference. Copies of these documents may be obtained from the Department;

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

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

5. For wastewater treatment facilities, 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. For wastewater treatment facilities, the recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 40 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. Except for land acquisition and conservation and well sealing projects, 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 recipient 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 recipient 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. Except for land acquisition and conservation and well sealing projects, 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 environmental infrastructure facility 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. 7:1D-2 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 environmental infrastructure 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 project compliance officer, pursuant to 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. For wastewater treatment and stormwater management facilities, 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. For water supply and nonpoint source management facilities, 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.;

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 (including the construction of transmission facilities), 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 well as disinfection of water system components, as follows:

i. The recipient shall notify the Department one week prior to all final visual inspections, disinfection, and tests of all sewer lines, force mains, transmission facilities, mechanical equipment and treatment plant operation at which time the Department shall notify the recipient if it is necessary that a Department representative be present at the visual inspection or testing activity, a determination that shall be based on the specific project circumstances such as project location, design, construction methods and other factors;

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

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. For wastewater treatment facilities, all visual inspections and testing shall be done in accordance with the following:

(1) All manholes and pipelines shall be completed and flushed clean prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and, if determined necessary under (a)31i above, 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, if determined necessary under (a)31i above, a representative from the Department. Upon completion of the test, a copy of the test results must be forwarded to the Department;

(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

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

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

32. The recipient shall forward a letter to the 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.

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

i. The recipient shall perpetually maintain a fee simple interest in the parcel(s) that excludes future sale considerations or an interest stated in the form of a right, restriction, easement, covenant or condition in any deed, will, or other instrument executed by, or on behalf of the owner of the parcel(s) and the local government unit that does not allow any of the following:

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

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

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

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

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

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

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

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

iii. The recipient shall provide evidence to the Department that a properly executed deed has been recorded with the clerk of the county in which the parcel is located. Said deed shall, at a minimum, prohibit the activities identified in (a)33i above in perpetuity.

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

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

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

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

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and the New Jersey Environmental

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

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

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

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

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

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

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

Added (d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Administrative change.

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

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

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

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

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

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

Added (a)34.

7:22-3.18 Administration and performance of loan

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

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

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

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

7:22-3.19 Project changes and loan modifications

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

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

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

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

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

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

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

7:22-3.20 Fund loan agreement amendments

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

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

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

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

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

Deleted and replaced (b).

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

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

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

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

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

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

7:22-3.21 Administrative loan changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the recipient, or a non-substantial alteration of the disbursement schedule for Fund loans for construction of environmental infrastructure facilities, constitute changes to the Fund loan 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.

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

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

Substituted "environmental infrastructure" for "wastewater treatment" in the first sentence.

7:22-3.22 Other changes

All other project changes, which do not require a Fund loan agreement amendment as stated in N.J.A.C. 7:22-3.20 require written approval of 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 reference to Assistant Director and replaced with Department.

7:22-3.23 Access

(a) The recipient and its contractor and subcontractors shall provide to Department personnel and any authorized representative of 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 contractors and subcontractors which contract directly with the recipient or receive a portion of State monies, may be subject to a financial audit.

(d) Records shall be retained and available to the Department until the final Fund loan repayment has been made by the recipient.

7:22-3.24 State disbursement

Disbursement of Fund loan moneys shall be made as indicated in the Fund loan agreement at intervals as work progresses and expenses are incurred by the recipient and as approved by the Department, but in no event will total disbursements at any time exceed the cumulative Fund loan amounts indicated in the disbursement schedule of the Fund loan agreement or the allowable costs which have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which must include all forms and information required by the Department and completed in a manner satisfactory 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).

Stipulated that total disbursement not exceed the "cumulative Fund loan amounts ... in the disbursement schedule of the Fund loan agreement," or allowable costs.

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

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

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

7:22-3.25 Assignment

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

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 assignment or encumbrance approval needs to be in writing.

7:22-3.26 Unused funds

Where the total amount disbursed under a Fund loan due to the low bid building cost is less than the initial Fund loan award, and/or where the total amount disbursed under a Fund loan due to the final building cost is less than the

Fund loan amount due to the low bid building cost, the Fund loan shall be adjusted, if necessary, and the difference shall be retained by the Fund to be reallocated, pursuant to the provisions of a legislative appropriations act, to other environmental infrastructure facilities projects and shall not be available for increased costs (including increased costs due to differing site conditions). However, where allowable cost overruns occur, Fund moneys may be used to cover these cost overruns up to the loan amount. Line item adjustments for allowable project costs may be made at the request of the recipient provided the Fund loan amount in the Fund loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Department shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.

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

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

Provision for line item adjustments 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 specifically state that Fund moneys included in the original Fund loan award which are in excess of the low bid adjusted Fund loan amount are not available to cover a recipient's project cost increases (including cost increases due to differing site conditions). Amended by R.1998 d.407, effective August 3, 1998.

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

Substituted "environmental infrastructure" for "wastewater treatment" in the first sentence and deleted "adjusted due to the low bid building cost" from the end of the second sentence.

7:22-3.27 Publicity and signs

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

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

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

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

Clarified to indicate that the project sign must include the information required by the Department, not the Division, since, as a result of a recent reorganization, the Division of Water Resources no longer exists.

7:22-3.28 Land acquisition

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

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

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

Deleted and replaced.

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

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

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

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

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

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

7:22-3.29 Project initiation

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

(b) The recipient shall not advertise any contract or any addendum thereto for the building of the project until authorization to advertise the contract or any addendum thereto has been granted by the Department. Further, the recipient shall be required to execute the engineering agreement for building services prior to, or concurrently with, receipt of authorization to advertise. The recipient shall transmit an executed copy of the engineering agreement for building services to the Department immediately upon its execution.

(c) The recipient shall not award any subagreement(s) until authorization to award has been given by the Department.

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

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

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

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

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

Requirements added at (b).

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

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

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

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

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

Rewrote (c).

7:22-3.30 Project performance

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

(b) On the date one year after the initiation of operation, the recipient shall certify to the Department the performance record of the project. If the Department or the recipient concludes that the project does not meet the environmental infrastructure facilities' performance standards as specified in the Fund 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 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 for wastewater treatment facilities consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the project, including the quantity of excessive infiltration and inflow which the project is designed to eliminate. The project performance standards for water supply projects consist of N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems, or N.J.A.C. 7:10-12, Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems, as applicable. The project performance standards for landfill closure facilities consist of the landfill's approved Closure and Post-Closure Plan submitted in accordance with N.J.A.C. 7:26-2A.9. The project performance standards for new landfill facilities consist of the solid waste facility permit issued pursuant to N.J.A.C. 7:26-2. The project performance standards for remedial action activities consist of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, approved by the Department. The project performance standards for well sealing projects consist of N.J.A.C. 7:9-9.

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

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

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

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

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

In (b), substituted "environmental infrastructure" for "wastewater treatment"; and rewrote (e).

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

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

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

7:22-3.31 Allowable project costs

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

(b) Notwithstanding (a) above, the 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).

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

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

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

7:22-3.32 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 project sponsor has met the requirements as specified in (a)1, 2 or 3, below:

1. The project sponsor has submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19 to the Department prior to the advertisement of any contract for which cost reimbursement is being sought; the project sponsor has not advertised any contract or any addendum thereto, for which cost reimbursement is being sought, without the authorization to advertise the contracts or any addendum thereto being given by the Department in writing; and the project sponsor has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department in writing.

2. The project sponsor has submitted items required at N.J.A.C. 7:22-3.11(d)3 through 19 to the Department and has received the Department's written approval thereof prior to the issuance of a notice to proceed with building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.), the Water Supply Privatization Act (N.J.S.A. 58:26-1 et seq.) or other applicable procurement method authorized under State law.

3. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Department may approve preliminary building activities such as procurement of major equipment requiring long lead times, minor sewer rehabilitation or rehabilitation of transmission facilities, acquisition of allowable land or advance building of minor portions of the environmental infrastructure facilities. However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and 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 project sponsor proceeds at its own financial risk. The project sponsor shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act and closing a 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).

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

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

In (a), inserted "and has received the Department's written approval thereof" following "the Department" and added a reference to the Water Supply Privatization Act in 2, and inserted "or rehabilitation of transmission facilities" and substituted "environmental infrastructure" for "wastewater treatment" in 3; and substituted "project sponsor" for "local government unit" throughout the section.

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

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

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

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

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

Ineligibility 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.

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

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

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

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

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

In (a), substituted "environmental infrastructure" for "wastewater treatment" in the first sentence.

7:22-3.35 Infiltration/inflow for wastewater treatment facilities

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

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

(c) If the rainfall induced peak inflow rate results or will result in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

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

(e) The provisions of (a) through (d) above are not intended to apply to stormwater 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.

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

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

In (a), inserted "for sanitary sewer rehabilitation projects" preceding "as part of the Project".

7:22-3.36 Reserve capacity

(a) Except as provided in (d) below, for wastewater treatment facilities, the Department shall limit the recipient's Fund loan assistance to the cost of the project, to address the wastewater needs for which the planning requirements at N.J.A.C. 7:22-10 have been met, with a capacity based upon flow records, existing unsewered needs and flows anticipated as of the date of initiation of operation as established in the 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) Except as provided in (d) below, for water supply facilities, the Department shall limit the recipient's Fund loan assistance to the cost of the project, to address the water supply needs for which the planning requirements at N.J.A.C. 7:22-10 have been met, with a capacity based on the existing population and water supply demand anticipated as of the date of initiation of operation as established in the Fund loan agreement.

(c) Except as provided in (d) below, the incremental cost for any project providing reserve capacity which, for the purposes of this section, includes capacity in excess of that provided by (a) or (b) above 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 reserve capacity (that is, any cost in addition to the most cost effective alternative with allowable capacity as described in (a) or (b) above).

(d) For Fund loan awards in State Fiscal Year 2004 and beyond, the incremental costs associated with reserve capacity, as described in (c) above, shall be an allowable cost under a Fund loan agreement for that portion of a project that serves a green light area on the Blueprint for Intelligent Growth (BIG) Map promulgated in rule by the Department. Until the Department promulgates the BIG Map in rule, the incremental costs associated with reserve capacity shall be an allowable cost under the Fund loan agreement for that portion of a project that serves an Urban Center or Urban Complex designated by the State Planning Commission in accordance with the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq. and the State Development and Redevelopment Plan (adopted March 1, 2001).

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).

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

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

Rewrote (a); inserted a new (b); and rewrote and recodified former (b) as (c).

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

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

In (a) through (c), inserted references to the exceptions as provided in (d); added (d).

7:22-3.37 Value engineering for wastewater treatment facilities

(a) For wastewater treatment facilities, the applicant shall conduct value engineering if the total estimated building cost exceeds the building cost threshold as established in the Federal Water Pollution Control Act Amendments. As of March 1, 1998, the building cost threshold is \$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).

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

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

Rewrote (a).

7:22-3.38 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer Fund loans, acquire property pursuant to the award documents, and award contracts and subcontracts pursuant to those loans 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" at (b).

7:22-3.39 Debarment

(a) No recipient shall enter into a contract for work on environmental infrastructure facilities with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2.

(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. 7:1D-2.

(c) The recipient, prior to acceptance of Fund loan monies, 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. If Fund loan moneys are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate (N.J.A.C. 7:22-3.44) the Fund loan and/or take such other action pursuant to N.J.A.C. 7:1D-2 as is appropriate.

(d) Whenever a bidder is debarred, suspended, or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2, the recipient may take into account the loss of Fund loan moneys under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive and responsible bidder pursuant to laws, and the recipient may advise prospective bidders that these procedures shall be followed.

(e) 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 contract which is or will be funded by a Fund loan under this subchapter, may present information to the Department why this section shall not apply to such 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 contract, in keeping with N.J.A.C. 7:1D-2.9. 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. 7:1D-2.

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

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

"Commissioner" replaced by "Department" and stylistic changes in (e).

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

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

In (a), substituted "environmental infrastructure facilities" for "a wastewater treatment project".

Administrative change.

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

7:22-3.40 Noncompliance

(a) In addition to any other remedies as may be provided by law or in the Fund loan agreement, in the event of noncompliance with any loan condition, requirement of this subchapter, or contract requirement or specification, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22-3.41;
2. Withhold Fund loan moneys pursuant to N.J.A.C. 7:22-3.42;
3. Order suspension of project work pursuant to N.J.A.C. 7:22-3.43;
4. Terminate the Fund loan pursuant to N.J.A.C. 7:22-3.44; and/or

5. Issue administrative orders of enforcement pursuant to the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) or the Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.).

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

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

In (a)5, inserted a reference to the Safe Drinking Water Act.

7:22-3.41 Notice of noncompliance

Where the Department determines that the recipient is in noncompliance with any condition or requirement of these rules or with any contract specification or requirement, it shall notify the recipient, its engineer, and/or the contractor of the noncompliance. The Department may require the recipient, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the recipient, its engineer, and/or contractor fails to take corrective action or if the action taken is inadequate, then the Department may issue a stop-work order or withhold disbursement. The Department may, however, withhold disbursement or issue a stop-work order pursuant to N.J.A.C. 7:22-3.423 and 3.43 without issuing a notice pursuant to this section.

7:22-3.42 Withholding of funds

The Department may withhold, upon written notice to the recipient, a Fund loan disbursement or any portion thereof where it determines that a recipient has failed to comply with any loan condition, provision of this subchapter, or contract specification or requirement.

7:22-3.43 Stop-work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the recipient or noncompliance with the terms and conditions of the Fund loan. The Department shall limit 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 program or Department considerations.

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

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

(c) 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.

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

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the 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. 7:22-3.44; or
- iii. Authorize resumption of work.

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

7:22-3.44 Termination of loans

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

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

- i. Substantial failure to comply with the terms and conditions of the Fund loan agreement;
- ii. Default by the recipient;

(b) If a project sponsor is awarded a Trust loan in addition to funding from any other Federal or State grant or loan, the total amount of such other funding and the Trust loan shall not exceed the allowable costs of the project. If a project sponsor is awarded funding from any other Federal or State grant or loan after the Trust has awarded a Trust loan to the project sponsor, the Trust shall reduce the loan in the amount of such other funding. If a project sponsor is awarded funding from any other Federal or State grant or loan after the Trust has made disbursement from the Trust loan, the project sponsor shall, within 60 days of notice of the award of such other funding, reimburse the Trust in the amount of such other funding. If both a Trust loan (pursuant to this subchapter) and a Fund loan (pursuant to N.J.A.C. 7:22-3) are received in combination with funding from any other Federal or State grant or loan, the Fund and Trust loans will be proportionally reduced.

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

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

Substantially deleted text in (b) and (c).

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

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

New (a); old (a) recodified as (b) and (b) and (c) deleted.

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 a project which receives financial assistance from the United States Department of Agriculture's Farmers Home Administration for the same scope of work for which the project receives a Trust loan will have its Trust loan share reduced by an amount equal to the amount of financial assistance provided by the Farmer's Home Administration. If both Fund and Trust loans are received, both loans will be proportionally reduced.

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

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

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

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

Rewrote (b).

7:22-4.9 Project bypassing

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

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

(c) Written notice of a bypass action shall be forwarded to the project sponsor. As a result of such an action, the project on the Project Priority List shall become ineligible to receive a Trust loan in the specified State fiscal year(s). This may allow the next highest ranked project to fall within the fundable range on the Project Priority List.

(d) The Trust shall bypass a project sponsor's project on the Project Priority List in cases where the Trust has given priority to funding other projects on the Project Priority List in accordance with N.J.A.C. 7:22-4.7(d) or (e).

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 and heading was originally "notice of project eligibility".

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

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

Clarification at (b) of necessary documents for submission; new (d) 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 eliminate the concept of contingency projects to be consistent with the provision of the existing rules.

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

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

Substituted "project sponsor" for "local government unit" throughout the section.

7:22-4.10 Pre-application procedures

(a) Project sponsors are urged to be familiar with the requirements of this subchapter and to contact the Trust early in the planning process so that their projects are in a position to proceed (that is, planning and design completed) in a timely manner. Project sponsors should be aware that Department approvable plans and specifications are required as part of the application for a Trust loan.

(b) The Trust requires a pre-application conference with potential applicants prior to submission of a formal application for a Trust loan. During the conference the Trust shall identify and explain all loan application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Trust.

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

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

Deleted "at a time of Notice of Project Eligibility" and substituted "in a timely manner".

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

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

Deleted (c) and address.

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

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

In (a), substituted "project sponsors" for "local government units".

7:22-4.11 Application procedures

(a) Each application for a Trust loan shall be submitted to the trust in conformance with the time period specified in the Proposed Priority System, Intended Use Plan and Project Priority List or otherwise extended by the Trust and must include full and complete documentation and any supplementary materials that the Trust requires an applicant to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further and the applicant shall be so advised.

(c) Processing of a Trust loan application generally requires 60 calendar days after receipt of a complete application by the Trust.

(d) The following must be submitted when applying for a Trust loan, as applicable:

1. An application (Form LP-2) for a Trust loan pursuant to this subchapter for the construction of environmental infrastructure facilities. Each application constitutes an agreement to accept the requirements of this subchapter;

2. If the applicant is a local government unit, a resolution passed by the local government unit authorizing the filing of an application for a Trust loan and specifying the individual authorized to sign the Trust loan application on behalf of the local government unit. If the applicant is a private entity, a letter from the private entity authorizing the filing of an application and specifying the individual authorized to represent the private entity, as well as evidence of ownership of the water supply system. If two or more project sponsors are involved in the project, a resolution or letter indicating the lead applicant and the authorized representative is required from each;

3. Statement of Assurances (Form LP-3) from each applicant and, if the applicant is a local government unit, an executed Professional Services Affidavit (Form LP-11) for each person or firm whose professional services have been procured by the local government unit for the project for which cost reimbursement will be sought under this chapter. If the professional services for which cost reimbursement will be sought under this chapter have not been procured at the time of loan application, submittal by the local government unit of a letter of commitment to comply with the requirements of the Professional Services Affidavit, and to submit a copy of the executed Professional Services Affidavit to the Trust immediately upon execution of the contract for the professional services, will satisfy this requirement. Submittal of the executed Professional Services Affidavit or letter of commitment is a requirement of the application process so that the Trust will have written confirmation from the local government unit that it has procured or will procure any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or other applicable procurement method authorized under State law and the local government unit has reviewed or will review the proposed costs and activities and finds them acceptable. This Professional Services Affidavit requirement does not apply to professional services obtained for those planning and design activities which are covered through an allowance in accordance with N.J.A.C. 7:22-5.12 or to professional services obtained by private entities;

4. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) (Form LP-4);

5. A complete Project Report/Facilities Plan, which must include:

i. For all environmental infrastructure facilities, the following items must be submitted:

(1) A description of both the proposed environmental infrastructure facilities and the complete environmental infrastructure system of which it is a part;

(2) Cost information on total capital costs of the project, and annual operation and maintenance costs;

(3) A description of the potential open space and recreation opportunities associated with the project;

(4) Appropriate documentation demonstrating compliance with the Environmental Assessment Requirements for State Assisted Environmental Infrastructure Facilities (N.J.A.C. 7:22-10); and

(5) For the selected alternative, a concise description, at an appropriate level of detail, of at least the following:

(A) Relevant design parameters, including a description of the environmental infrastructure facilities to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(B) Cost impacts on system users; and

(C) Institutional and management arrangements necessary for successful implementation, such as service agreements, local ordinances, interagency agreements or intermunicipal agreements;

ii. For wastewater treatment and stormwater management facilities, a statement of consistency with the appropriate Water Quality Management Plans in accordance with the provisions of N.J.A.C. 7:15. For wastewater treatment facilities, a description of the Best Practicable Wastewater Treatment Technology or, for stormwater management facilities, a description of the Best Management Practices that will be utilized;

iii. For wastewater treatment, water supply and stormwater management facilities permitted as a municipal separate storm sewer system, a cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality, or drinking water standards and public health requirements over the design life of the facility while recognizing environmental and other nonmonetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan, the New Jersey Statewide Water Supply Plan or current census data. A cost effectiveness analysis must include:

(1) For wastewater treatment facilities, an evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evaluation is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the environmental infrastructure facilities become operational. This includes letters of intent from significant industrial or commercial users and all establishments intending to increase their wastewater flows or water supply demand or relocate in the area documenting capacity needs and characteristics for existing or projected wastewater flows or water supply demand;

(3) An evaluation of improved effluent or drinking water quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

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

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

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

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

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

(1) An evaluation of the land to be acquired, including a water quality basis for the proposed land purchase that addresses the existing land use patterns, potential threats to water quality, and other existing problems;

(2) A site survey signed and sealed by a land surveyor licensed to practice in the State of New Jersey and the criteria used to select the parcel(s) for purchase;

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

(4) If a preliminary assessment report or site assessment prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E identifies potential contamination of the land to be acquired, a letter of no further action issued by the Department under N.J.A.C. 7:26C-2.6 is also required; and

(5) A statement from the local government unit pledging to comply with the loan conditions identified in N.J.A.C. 7:22-3.17(a)33 and identifying the actions the local government unit will take to insure that the applicable restrictions will be incorporated in the deed for the parcel(s) and will apply in perpetuity;

vi. For landfill closure facilities, a copy of the Department's approval of the sanitary landfill's Closure and Post-Closure Plan submitted pursuant to N.J.A.C. 7:26-2A;

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

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

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

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

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

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

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

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

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

10. Project cost breakdown for each subagreement;

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

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

13. For wastewater treatment facilities, a sewer use ordinance and user charge system acceptable to the Trust;

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and constructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system must be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below or a combination of the two. It must meet the requirements set forth in (d)13ii(3) through (8) below.

(1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to users (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users;

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the Trust loan agreement) must be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems must also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant may establish lower user charge rates for low income residential users as authorized by State law. The total revenue for operation and maintenance, including equipment replacement, of the facilities must not be reduced as a result of establishing a low income residential user class;

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

15. An affidavit (Form LP-7) certifying that required permits and approvals for building the environmental infrastructure facilities were received from applicable Federal, State and local agencies;

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

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

18. Executed service, joint and/or deficiency or other intermunicipal agreements, if applicable. If the project will serve two or more project sponsors, the applicant shall submit the executed service agreements, contracts

or other legally binding instruments necessary for the financing, building and operation of the proposed environmental infrastructure facilities. At a minimum, these documents must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered;

19. Draft engineering agreements for building services;

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

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

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

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

24. Such other information as the Trust may require.

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

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

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

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

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

Deleted old (d)20 and inserted new.

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

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

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

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

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

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

Rewrote (d).

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

In (d), rewrote 4 and 5.

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

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

7:22-4.12 Use and disclosure of information

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

7:22-4.13 Evaluation of application

(a) Each application shall be subject to:

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

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

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

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

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

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

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

7:22-4.14 Supplemental information

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

7:22-4.15 Trust loan agreement

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

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

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

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

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

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

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

Modified to identify the procedures related to the execution of the Trust loan agreement, including the requirements for the applicant to provide a loan commitment letter, escrow agreement or other similar document to irrevocably commit itself to borrow the amount included within the Trust loan agreement, if such commitment is required by the Trust, in accordance with current program practice.
Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

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

7:22-4.16 Trust loan award and closing

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

(b) The award or closing of the Trust loan does not commit or obligate the Trust to award any continuation or supplemental Trust loan to cover cost overruns of the

project. Cost overruns for any project or portion thereof are the sole responsibility of the recipient.

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

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

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

Added language regarding contingency upon availability of funds.

7:22-4.17 Loan conditions

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

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

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. §§ 7501-7507), Federal OMB Circular A-133 and State OMB Circular 98-07-OMB, incorporated herein by reference. Copies of these documents may be obtained from the Department;

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

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

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

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

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

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

10. Except for land acquisition and conservation and well sealing projects, 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 recipient who is in current default on any Trust loan. The Trust may, at its discretion, make a Trust loan disbursement where it determines that the recipient will repay the defaulted loan obligation and associated 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. Except for land acquisition and conservation and well sealing projects, 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 environmental infrastructure facility 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. 7:1D-2 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 environmental infrastructure 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 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 project compliance officer, pursuant to 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. For wastewater treatment and stormwater management facilities, 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. For water supply and nonpoint source management facilities, 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.;

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 (including the construction of transmission facilities), 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 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 well as disinfection of water system components, as follows:

i. The recipient shall notify the Trust one week prior to all final visual inspections, disinfection, and tests of all sewer lines, force mains, transmission facilities, mechanical equipment and treatment plant operation at which time the Department shall notify the recipient if it is necessary that a Trust representative be present at the visual inspection or testing activity, a determination that shall be based on the specific project circumstances such as project location, design, construction methods and other factors;

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

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. For wastewater treatment facilities, all visual inspections and testing shall be done in accordance with the following:

(1) All manholes and pipelines shall be completed and flushed clean prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and, if determined necessary under (a)31i above, 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, if determined necessary under (a)31i above, a representative from the Trust. Upon completion of the test, a copy of the test results must be forwarded to the Trust;

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

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

(6) Testing of all mechanical equipment at treatment plants and pump stations 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

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

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

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

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

i. The recipient shall perpetually maintain a fee simple interest in the parcel(s) that excludes future sale considerations or an interest stated in the form of a right, restriction, easement, covenant or condition in any deed, will, or other instrument executed by, or on behalf of the owner of the parcel(s) and the local government unit that does not allow any of the following:

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

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

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

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

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

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

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

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

iii. The recipient shall provide evidence to the Trust that a properly executed deed has been recorded with the clerk of the county in which the parcel is located. Said deed shall, at a minimum, prohibit the activities identified in i. above in perpetuity.

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

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

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

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

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

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

(f) The recipient shall insert into the contracts, and shall ensure that their contractor(s) include within their 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).

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

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

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

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

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

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

Administrative change.

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

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

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

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

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

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

Added (a)34.

7:22-4.18 Administration and performance of loan

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Trust loan objectives. Although recipients are encouraged to seek the advice and opinion of the Trust on problems that may

arise, the giving of such advice does not shift the responsibility for final decisions from the recipient to the Trust.

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

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

Last sentence, non-regulatory language deleted.

7:22-4.19 Project changes and loan modifications

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

(b) The recipient shall promptly notify the Trust in writing (certified mail, return receipt requested) of events or proposed changes which may require a Trust 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 Trust determines that a Trust loan modification by means of a Trust loan agreement amendment is necessary in accordance with N.J.A.C. 7:22-4.20, the recipient shall be notified and a Trust loan agreement amendment shall be processed. If the Trust decides a Trust loan agreement amendment is not necessary, the Trust and the recipient shall follow the procedures of N.J.A.C. 7:22-4.21 or 4.22, 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).

(b) and (d) deleted; (c) and (e) recodified.

7:22-4.20 Trust loan agreement amendments

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

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

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

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

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

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

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

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

Added a provision governing circumstances in which additional money is required for a project as a result of differing site conditions. Amended by R.1998 d.407, effective August 3, 1998.

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

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

7:22-4.21 Administrative loan changes

Administrative changes by the Trust, such as a change in the designation of key Trust 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 Trust loans for construction of environmental infrastructure facilities, constitute changes to the Trust loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Trust or the recipient. The Trust may issue such changes unilaterally by written notice to the recipient.

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

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

Substituted "environmental infrastructure" for "wastewater treatment" and rewrote the last sentence.

7:22-4.22 Other changes

All other project changes, which do not require a Trust loan agreement amendment as stated in N.J.A.C. 7:22-4.20, require written approval of the Trust.

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

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

Stylistic change.

7:22-4.23 Access

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

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

(c) The recipient, and all contractors and subcontractors which contract directly with the recipient or receive a portion of Trust moneys, may be subject to a financial audit.

(d) Records shall be retained and available to the Trust until the final Trust loan repayment has been made by the recipient.

7:22-4.24 Trust disbursement

Disbursement of Trust loan moneys shall be made as indicated in the Trust loan agreement at intervals as work progresses and expenses are incurred by the recipient and as approved by the Trust, but in no event shall total disbursements at any time exceed the cumulative Trust loan amounts indicated in the disbursement schedule of the Trust loan agreement or the allowable costs which have been incurred at that time. No disbursement shall be made until the Trust receives satisfactory cost documentation which must include all forms and information required by the Trust and completed in a manner satisfactory to the Trust.

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

Added language regarding the Trust loan agreement.
Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

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

7:22-4.25 Assignment

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

7:22-4.26 Unused funds

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

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

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

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

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

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

7:22-4.27 Publicity and signs

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

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

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

7:22-4.28 Land acquisition

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

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

Deleted and replaced entire text.

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

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

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

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

7:22-4.29 Project initiation

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

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

(c) The recipient shall not award any subagreement(s) until authorization to award has been given by the Trust.

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

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all

significant elements of the project no later than 12 months after the loan closing, unless a specific extension has been approved by the Trust.

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

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

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

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

Editorial change only.

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

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

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

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

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

Rewrote (c).

7:22-4.30 Project performance

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

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

1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

3. The scheduled date for certifying to the Trust that the project is meeting the specified performance standards.

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

(d) Nothing in this section:

1. Prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or

2. Affects the Trust's right to take remedial action, including enforcement, against a recipient that fails to carry out its obligations.

(e) At a minimum, unless further specified, the project performance standards for wastewater treatment facilities consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the project, including the quantity of excessive infiltration and inflow which the project is designed to eliminate. The project performance standards for water supply projects consist of N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems, or N.J.A.C. 7:10-12, Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems, as applicable. The project performance standards for landfill closure facilities consist of the landfill's approved Closure and Post-Closure Plan submitted in accordance with N.J.A.C. 7:26-2A.9. The project performance standards for new landfill facilities consist of the solid waste facility permit issued pursuant to N.J.A.C. 7:26-2. The project performance standards for remedial action activities consist of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, approved by the Department. The project performance standards for well sealing projects consist of N.J.A.C. 7:9-9.

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

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

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

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

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

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

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

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

7:22-4.31 Allowable project costs

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

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

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

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

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

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

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

7:22-4.32 Preadward costs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.2002 d.259, effective August 5, 2002.

See: 34 N.J.R. 1373(a), 34 N.J.R. 2803(a).

In (b), added "Except for interim loans," to the beginning of the second sentence.

7:22-4.33 Force account work

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

(b) The recipient shall demonstrate that:

1. The work can be accomplished cost effectively by the use of force account; or

2. Emergency circumstances necessitate its use.

7:22-4.34 Planning and design

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

(b) For projects for which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recip-

ient's costs actually incurred for planning and design activities and for which financial assistance has not been received from the sources of funding cited in (a) above are allowable for a Trust loan.

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

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

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

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

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

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

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

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

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

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

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

In (a), substituted "environmental infrastructure" for "wastewater treatment"

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

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

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

(c) If the rainfall induced peak inflow rate results or will result in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

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

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

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

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

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

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

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

In (a), inserted "for sanitary sewer rehabilitation projects".

7:22-4.36 Reserve capacity

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

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

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

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

7:22-5.2 Applicability

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

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

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

7:22-5.3 Definitions

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

7:22-5.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

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

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

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) For projects for which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recipient's costs actually incurred for planning and design activities are allowable for Fund and Trust loans.

(d) Unallowable costs related to subagreements include:

1. For projects for which a Level 1 or Level 2 environmental review is required in accordance with N.J.A.C. 7:22-10.4 and 10.5, respectively, the actual 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).

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

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

Added (c); recodified former (c) as (d); and in (d)1, substituted "For projects for which ... 10.5, respectively, the actual" for "The".

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 environmental infrastructure 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 Environmental Infrastructure 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 supply depletion, 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 environmental infrastructure 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).

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

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

In (a), inserted "water supply depletion" preceding "water quality deterioration" in 3; and substituted "environmental infrastructure" for "wastewater treatment" throughout the section.

7:22-5.6 Publicly owned small and on-site wastewater treatment systems

(a) Allowable costs for publicly owned small and on-site wastewater treatment systems serving residences and small commercial establishments include:

1. The cost of major rehabilitation, upgrading, enlarging and installing publicly owned small and on-site systems;

2. Conveyance pipes from property line to off-site 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 on-site wastewater treatment 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

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.

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

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

7:22-5.10 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. 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 is an unallowable cost under a Fund or Trust loan agreement.

2. All costs related to reserve capacity are unallowable except as provided for under the provisions of N.J.A.C. 7:22-3.36 and 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).

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

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

Rewrote (b).

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 environmental infrastructure facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Federal Safe Drinking Water Act Amendments, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments and/or the Bond Acts and that fail to meet the 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 environmental infrastructure facilities that have received previous State or Federal funds;

ii. The loan application for the additions includes an analysis of why the environmental infrastructure facilities cannot meet the 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 environmental infrastructure facilities; or

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

(2) Meet all of the following conditions:

(A) The environmental infrastructure facilities have not completed their 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 environmental infrastructure facilities that fail at the end of their 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 environmental infrastructure 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, preparation and sale of bonds, notes or obligations of the project sponsor 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 the house connection (service lateral) owned by the project sponsor and to which the project sponsor 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, environmental infrastructure facilities that were assisted under the Federal Water Pollution Control Act Amendments, the Federal Safe Drinking Water Act, the Trust Act, the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or its amendments and/or the Bond Acts and that fail to meet their performance standards. This provision applies to failures that occur either before or after the initiation of operation but does not apply to environmental infrastructure facilities that fail at the end of their 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 environmental infrastructure facilities that would provide wastewater treatment capacity or water supply service 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 4.30(b)1, as applicable;

12. The cost of the construction of dams or rehabilitation of dams for water supply purposes;

13. The cost of purchasing water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy in accordance with the Federal Safe Drinking Water Act Amendments;

14. The cost of building reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the water treatment facility is located; and

15. Laboratory fees for monitoring and other routine operation and maintenance expenses.

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).

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

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

In (a)2 and (b)5, inserted reference to "Green Acres" bonding act. Amended by R.1998 d.407, effective August 3, 1998.

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

Rewrote (a) and (b).

7:22-5.12 Allowance for planning and design

(a) For projects for which a Level 1 or Level 2 environmental review is required in accordance with N.J.A.C. 7:22-10.4 and 10.5 respectively, 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 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 environmental infrastructure 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 other applicable procurement method authorized under State law.

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
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

Building cost	Allowance as a percentage of building cost [†]
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
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

Building cost	Allowance as a percentage of building cost [†]
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).

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

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

In (a), inserted "For projects for which . . . 10.5, respectively,".

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

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

In (e), substituted "environmental infrastructure" for "wastewater treatment" in the introductory paragraph; and in (i), substituted "other applicable procurement method authorized under State law" for "the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.)."

7:22-5.13 Planning and design costs for Level 3 projects

For projects for which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recipient's costs actually incurred for planning and design activities are allowable for Fund and Trust loans.

New Rule, R.1997 d.346, effective August 18, 1997.

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

7:22-5.14 Waivers

(a) Upon the application of any Trust loan recipient or potential Trust loan recipient (the "applicant"), the Trust shall waive the application of any provision in this subchapter as applied to any Trust loan upon finding the following:

1. Unusual circumstance(s) beyond the control of the applicant has or will cause an adverse economic impact on the applicant;

2. The granting of the requested waiver would serve to alleviate the adverse economic impact of such unusual circumstance(s) on the applicant; and

3. The granting of the requested waiver is consistent with the purposes and objectives of the Trust Act, the Bond Act or other appropriations to the Trust for the purpose of providing financing to eligible projects, and any amendatory or supplementary acts thereto.

New Rule, R.1997 d.346, effective August 18, 1997.
See: 29 N.J.R. 2207(a), 29 N.J.R. 3723(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 pollu-

tants, 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).

“Bond Act” means the Pinelands Infrastructure Bond Act of 1985 (P.L. 1985, c.302) and any amendatory and supplementary acts thereto as well as future bond acts passed for the purpose of providing funds for the construction of wastewater treatment facilities.

“Bonds” means the bonds authorized to be issued, or issued, under the Pinelands Infrastructure Trust Bond Act or future bond acts passed for the purpose of providing funds for the construction of wastewater treatment facilities.

“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 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. 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 units are cost effective and are owned, operated and maintained by the local government unit.

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

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

“Comprehensive management plan” means the plan for the protection of the Pinelands area adopted pursuant to N.J.S.A. 13:18A-8.

“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 acquisition of land (including sewer right-of-ways); 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.

“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 individuals.

“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 of 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 Pinelands grant or 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.

"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 washwaters, or drainage. Inflow does not include, and is distinguished from, infiltration.

"Initiation of operation" means the date specified by the recipient in the Pinelands grant or 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.

"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.

"Pinelands Area" means the area so designated by N.J.S.A. 13:18A-11a.

"Pinelands Bond Act" means the Pinelands Infrastructure Bond Act of 1985 (P.L. 1985 c.302) and any amendatory complementary acts thereto.

"Pinelands Commission" means the commission created pursuant to N.J.S.A. 13:18A-4.

"Pinelands Fund" or "Pinelands Infrastructure Trust Fund" means the Pinelands fund established pursuant to the Pinelands Bond Act or other fund established by a future bond act for the construction of wastewater treatment facilities.

"Pinelands grant" or "Pinelands Infrastructure Trust grant" means a grant from the Pinelands Infrastructure Trust fund or future bond act funds or other appropriations for the allowable costs of a wastewater treatment facilities project.

"Pinelands grant agreement" means the legal instrument executed between the State of New Jersey and the local government unit for the construction of wastewater treatment facilities.

"Pinelands Infrastructure Master Plan" means an infrastructure needs report prepared by the New Jersey Pinelands Commission which includes a capital projects inventory within regional growth areas, assessment of projects, establishment of a priority ranking system for projects, and a final ranking of Pinelands Infrastructure projects.

"Pinelands Infrastructure Trust Funding List" means the mechanism by which projects are ranked and a subsequent funding list developed by the Pinelands Commission through the Pinelands Infrastructure Master Plan.

"Pinelands loan" or "Pinelands Infrastructure Trust loan" means a loan from the Pinelands Infrastructure Trust Fund or future bond act funds or other appropriations for the allowable costs of a wastewater treatment facilities project.

"Pinelands 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.

"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 Pinelands grant or 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 Pinelands grant or 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. 7:22-6.32 or a Pinelands grant or loan pursuant to this subchapter.

"Regional growth area" means an area designated in the comprehensive management plan as a receiving area for Pinelands Commission development credits to accommodate regional growth.

"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.

"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.

"Subagreement" means a written agreement between a recipient and another party (other than another public agency) which may include the prime building agreement for the project, and 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.

"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.

"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 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 overflow, intercepting sewers, trunklines, sewage collection systems, and other equipment, personal property and appurtenances necessary thereto.

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

Amended by R.1992 d.42, effective January 21, 1992.
See: 23 N.J.R. 3382(a), 24 N.J.R. 246(a).

Amended to provide definitions applicable to the test of the amendments included in subsequent sections of the 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 several definitions applicable to the construction requirements included in N.J.A.C. 7:22-6.17.

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

7:22-6.5 Pinelands Infrastructure Trust Fund

(a) The proceeds from the sale of bonds issued pursuant to section 5.a of the Pinelands Act shall be paid to the State Treasurer and held thereby in a separate interest bearing account specifically dedicated to making grants and low interest loans to local government units for financing the cost of the construction of wastewater treatment facilities.

(b) The moneys in the Pinelands Fund are specifically dedicated and shall be used for the purposes identified in N.J.A.C. 7:22-6.3; however, no moneys shall be expended from the Pinelands Fund for those purposes without the specific appropriation thereof by the Legislature.

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

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

In (b), affirmatively state that moneys . . . "shall be used for."

7:22-6.6 Terms of grants and loans from the Pinelands Infrastructure Trust Fund

(a) The Pinelands Fund may offer grants and loans for up to 100 percent of allowable project costs for the acquisition, construction, improvement, expansion, repair or rehabilitation of all or part of any structure, facility, or equipment necessary for or ancillary to any wastewater treatment facilities and may offer a range of options regarding the term, interest rate and level of loan funding.

(b) The term of the Pinelands loans will generally be 20 years or as indicated in the Pinelands grant or loan agreement. The interest rate will not exceed 50 percent of the Bond Buyer Municipal Bond Index for bonds available for purchase during the last 26 weeks preceding the date of the execution of the loan agreement by the Department. Pinelands loan repayments shall be made by the recipient in accordance with the repayment schedule indicated in the Pinelands loan agreement. Principal and accrued interest with respect to a particular Pinelands loan may, however, be prepaid in accordance with the provisions of the relevant Pinelands loan agreement.

(c) Local government units shall secure all Pinelands 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) Pinelands grant and loan proceeds will be disbursed to recipients in accordance with N.J.A.C. 7:22-6.24.

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

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

Deleted more specific time frames regarding initiation of repayment in lieu of repayment schedule as indicated in loan agreement.

7:22-6.7 Criteria for project funding priority

(a) The Department shall utilize a Pinelands Infrastructure Trust Funding List which will be the same as the priority list of projects contained within the Pinelands Infrastructure Master Plan developed by the Pinelands Commission. The Pinelands Infrastructure Master Plan will be the subject of at least one public hearing held by the Pinelands Commission including a public comment period. Local government units are only eligible for Pinelands Infrastructure Trust funding if they are on the priority list and are ranked by the Pinelands Infrastructure Master Plan. Eligible projects placed on the Pinelands Infrastructure Trust Funding List shall be eligible to receive a Notice of Project Eligibility in accordance with N.J.A.C. 7:22-6.8. The following must be submitted by the authorized representative of the local government unit to be considered for ranking on the Pinelands Infrastructure Trust Funding List:

1. Brief description of the project including category of need (that is, secondary treatment, advanced treatment, collection system) and any significant change in scope of work from that contained in the Pinelands Infrastructure Master Plan;
2. Brief description of existing and anticipated water quality deficiencies; and
3. Estimated costs associated with building the project, excluding planning and design except as provided in 7:22-6.11(e), (f), and (g). Significant changes in estimated costs shall be outlined.

(b) Any significant change in estimated costs or scope of work from that contained in the Pinelands Infrastructure Master Plan may result in deferral or rejection of a project.

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

Deleted address of the Pinelands Commission.

7:22-6.8 Pinelands Infrastructure Trust, State and Federal funding

(a) Local government units which receive funding through a grant from any Federal program, including a special project grant or loan authorized pursuant to Federal law, or a loan from the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-4 shall also be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for the construction of the same work (planning, design or building) within the scope of the project. However, in no case shall the total funding assistance under a Federal grant, special project grant or loan, Trust loan and the Pinelands Fund exceed the total eligible costs. However, local government units which receive funding through a loan from the Wastewater Treatment Fund pursuant to N.J.A.C. 7:22-3 shall not be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for construction of the same work within the scope of the wastewater treatment facilities project.

(b) Those local government units whose projects are ranked within the fundable range of the Pinelands Infrastructure Trust Funding List shall receive a Notice of Project Eligibility in accordance with N.J.A.C. 7:22-6.9. The Department as directed by the Pinelands Commission reserves the right to send a Notice of Project Eligibility to the next highest ranked local government unit(s) for contingency project(s) should the project(s) within the fundable range not proceed as planned.

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

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

Added new (a) allowing projects to receive Federal funding in addition to funding pursuant to N.J.A.C. 7:22-6 but prohibits projects from receiving funding in excess of the total allowable costs for the same project scope.

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

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

7:22-6.9 Notice of project eligibility

(a) The Department shall send a Notice of Project Eligibility by certified mail to those local government units whose projects rank high enough on the Pinelands Infrastructure Trust Funding List to receive funds. The Department as directed by the Pinelands Commission reserves the right to send a Notice of Project Eligibility to the next highest ranked project(s) outside the fundable range to act as contingency project(s) should the project(s) within the fundable range not proceed as planned. This notice shall not constitute an obligation to provide Pinelands Infrastructure Trust funding for the project. The Notice of Project Eligibility may not be sent to any local government unit who is in current default on any State loan. However, unless the Department determines that repayment of the defaulted loan will be received, a Pinelands grant or loan agreement will not be executed between the Department and the local government unit.

(b) Local government units receiving a Notice of Project Eligibility shall notify the Department within 45 days of receipt as to their intent to proceed with the project and shall submit to the Department a complete application in conformance with N.J.A.C. 7:22-6.11 within the time period specified in the Notice of Project Eligibility. Failure of the local government unit to respond to the Notice of Project Eligibility within 45 days shall be interpreted as a decision by the local government unit to not apply for Pinelands Infrastructure Trust funding at this time and may result in that project being bypassed on the Pinelands Infrastructure Trust Funding List. Failure to submit the complete application within the time period specified in the Notice of Project Eligibility shall result in the Department's disapproval of the local government unit's loan application unless the Department, at its discretion approves, for good cause, an extension to this period.

(c) Written notice of a bypass or disapproval action shall be forwarded to the local government unit by certified mail. As a result of such an action, the project shall be bypassed on the Pinelands Infrastructure Trust Funding List which may allow the next highest ranked contingency project to be within the fundable range on the Pinelands Infrastructure Trust funding list. A bypassed or disapproved project shall remain on the funding list and its priority shall remain the same.

7:22-6.10 Pre-application procedures

(a) Local government units are urged to be familiar with the requirements of this subchapter and to contact the Department early in the planning process so that their projects are in a position to proceed at time of Notice of Project Eligibility.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for a Pinelands grant or loan. During the conference the Department shall identify and explain all application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind 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 (c) with address of Division of Water Resources in it.

7:22-6.11 Application procedures

(a) Each application for Pinelands Infrastructure Trust funds shall be submitted to the Department in conformance with the time period specified in the Notice of Project Eligibility or as otherwise extended by the Department and must include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further and the applicant shall be so advised.

(c) Processing of a Pinelands grant or loan application generally requires 60 calendar days after receipt of a complete application by the Department.

(d) The following must be submitted when applying for Pinelands Infrastructure Trust funding for the construction of wastewater treatment facilities:

1. An application for Pinelands Infrastructure Trust funding pursuant to this subchapter for the construction of wastewater treatment facilities. Each application constitutes an agreement to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Pinelands Infrastructure Trust funding and specifying the individual authorized to sign the Pinelands grant or loan application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution indicating the lead applicant and the authorized representative is required from each;

3. Statement of Assurances (MWA Form LP-4) and an executed Professional Services Affidavit (MWA Form LP-11) for each person or firm whose professional services have been procured by the local government unit for the project for which cost reimbursement will be sought under this chapter, including those planning and design activities for which direct funding is provided in accordance with N.J.A.C. 7:22-6.11(f) and (g) below. If the professional services for which cost reimbursement will be sought under this chapter, have not been procured at the time of loan application, submittal by the local government unit of a letter of commitment to comply with the requirements of the Professional Services Affidavit, and to submit a copy of the executed Professional Services Affidavit to the Department immediately upon execution of the contract for the professional services, will satisfy this requirement. Submittal of the executed Professional Services Affidavit or letter of commitment is a requirement of the application process so that the Department will have written confirmation from the local government unit that it has or will procure any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other State-approved method and the local government unit has or will review the proposed costs and activities and finds them acceptable. This Professional Services Affidavit requirement does not apply to professional services obtained for those planning and design activities which are covered through an allowance in accordance with N.J.A.C. 7:22-5.12;

4. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) (CGA Form LP-5);

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans in accordance with the provisions of N.J.A.C. 7:15 and the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). A complete Project Report/Facilities Plan must include:

i. A description of both the proposed wastewater treatment facilities and the complete wastewater treatment system of which it is a part;

ii. A description of the Best Practicable Wastewater Treatment Technology;

iii. A cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan. A cost effectiveness analysis must include:

(1) An evaluation of flow reduction methods. If the applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Department determines the area has an effective existing flow reduction program, this evaluation is not required;

(2) A description of the relationship between the capacity of alternatives analyzed and the needs to be served, including capacity for future growth expected after the wastewater treatment facilities become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(3) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

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

(5) A consideration of systems with revenue generating applications;

(6) An evaluation of opportunities to reduce use of or recover energy; and

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

- iv. An infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-6.35;
- v. An analysis of the potential open space and recreation opportunities associated with the project;
- vi. An adequate evaluation of the environmental impacts of the alternatives analyzed in N.J.A.C. 7:22-6.11(d)5iii;
- vii. An evaluation of the water supply implications of the project; and
- viii. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:
 - (1) Relevant design parameters, including a description of the treatment units and/or sewer system to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;
 - (2) Estimated capital construction and operation and maintenance costs identifying the Pinelands Funds and local (or other source) shares, and a description of the manner in which local costs will be financed;
 - (3) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;
 - (4) Cost impacts on wastewater system users; and
 - (5) Institutional and management arrangements necessary for successful implementation;
- 6. For sewer rehabilitation projects, a Sewer System Evaluation Survey in accordance with N.J.A.C. 7:22-6.35;
- 7. Department approvable plans, specifications and technical design report;
- 8. A description of the public participation process to date. Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible;
- 9. A report on the participation by socially and economically disadvantaged individuals during planning and design as required by N.J.A.C. 7:22-9.12(a);
- 10. Project cost breakdown for each subagreement;
- 11. Projected cash flow schedule to be used to establish the disbursement schedule;
- 12. Project construction schedule. A court-sanctioned order or a Department-issued Administrative Consent

Order indicating a compliance schedule will be required where applicable;

- 13. A sewer use ordinance and user charge system acceptable to the Department;

- i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and constructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

- ii. The user charge system shall be designed to produce adequate revenues required for operation and maintenance (including replacement) and, in most cases, to cover debt service costs for the local government unit's wastewater treatment facilities. It must provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment facilities shall pay for such increased cost. Unless otherwise approved by the Department, the user charge system shall be based on either actual use under (d)13ii(1) below, ad valorem taxes under (d)13ii(2) below, or a combination of the two. It must also meet the requirements set forth in (d)13ii(3) through (8) below.

- iii. The applicant may establish lower user charge rates for low income residential users as authorized by State law. The total revenue for operation and maintenance, including equipment replacement, of the facilities must not be reduced as a result of establishing a low income residential user class;

- (1) A user charge system based on actual use (or estimated use) of wastewater treatment services must provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment facilities within the service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

- (2) A user charge system which is based on ad valorem taxes may be approved if:

(A) On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment facilities within the service area and the applicant has continued to use that system;

(B) The ad valorem user charge system distributes the operation and maintenance costs for all treatment facilities in the applicant's jurisdiction to the residential and small nonresidential user class (including at the applicant's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment facilities), in proportion to the use of the treatment facilities by this class; and

(C) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance of the treatment facilities based upon charges for actual use.

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(4) Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(5) The user charge system must provide that the costs of operation and maintenance for all flow not directly attributable to users (that is, infiltration/inflow) be distributed among all users based upon either of the following:

(A) In the same manner that it distributes the costs for their actual use; or

(B) Under a system which uses one or any combination of the following factors on a reasonable basis:

(I) Flow volume of the users;

(II) Number of hookups or discharges of the users;

(III) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

(6) After completion of construction of a project, revenue from the project (for example, sale of a treatment-related by-product, lease of the land, or sale of crops grown on the land purchased under the Pinelands grant or loan agreement) must be used to offset the costs of operation and maintenance. The applicant shall proportionately reduce all user charges.

(7) One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this section. These user charge systems must also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment facilities.

iii. The applicant shall submit a draft plan of operation that addresses development of: an operation 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 waste treatment system;

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

15. An affidavit (CGA Form LP-8) certifying that required permits and approvals for building the wastewater treatment facilities, were received from applicable Federal, State, and local agencies;

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

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

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

19. Draft engineering agreements for building services;

20. A description of how the applicant plans to repay the Pinelands loan, if applicable, and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Pinelands loan that guarantee that at the time of the signing of the Pinelands loan agreement it is irrevocably committed to repay the Pinelands loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description must include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Pinelands Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all loans in a manner acceptable to the State pledging to provide funds to repay the debt, even if the Pinelands loan is terminated pursuant to N.J.A.C. 7:22-6.43. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, municipal bond insurance, and service/deficiency agreement(s) with government units with general taxing power and surety bonds.

21. Comments or approvals from relevant State, local, and Federal agencies.

22. Such other information as the Department may require.

(e) Certain planning and design projects shall be permitted under the Pinelands Infrastructure Trust Bond Act. These projects shall be approved subject to a determination of need as determined by the New Jersey Pinelands Commission. This determination of need may be based on but is not necessarily limited to groundwater contamination, surface water contamination, the potential use of Pinelands Development Credits in Regional Growth Areas, community financial and budget restraints, or overall development pressures. Any agency receiving a planning grant or loan moneys must agree, as a grant or loan provision, to abide by and follow the findings of the Planning Study with regard to recommendations for infrastructure construction.

(f) The following shall be submitted when applying for Pinelands Infrastructure Trust funding for the planning of wastewater treatment facilities:

1. A plan of study representing:
 - i. The proposed planning area;
 - ii. An identification of the entity or entities that will be conducting the planning;
 - iii. The nature and scope of the proposed project including a schedule for the completion of certain tasks;
 - iv. An itemized description of the estimated costs for the project; and

v. Any significant public comments received.

2. Comments or approvals of relevant State, local and Federal agencies.

3. Draft engineering agreements and related cost documentation and an executed Professional Services Affidavit (MWA Form LP-11) for each person or firm whose professional services are procured by the local government unit for the project for which cost reimbursement is sought under this chapter.

(g) The following shall be submitted when applying for Pinelands Infrastructure Trust Funding for the design of wastewater treatment facilities:

1. A project report (including the environmental assessment) in accordance with Department guidelines;
2. Adequate information regarding availability of proposed site(s), if relevant;
3. Comments or approvals of relevant State, local and Federal agencies;
4. Proposed intermunicipal agreements necessary for the construction and operation of the proposed wastewater treatment for any facilities serving two or more municipalities and facilities; and
5. A schedule for initiation and completion of the project including milestones.
6. Draft engineering agreements and related cost documentation and an executed Professional Services Affidavit (MWA Form LP-11) for each person or firm whose professional services are procured by the local government unit for the project for which cost reimbursement is sought under this chapter.

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

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

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

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

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

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

7:22-6.12 Use and disclosure of information

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

7:22-6.13 Evaluation of application

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Technical and scientific evaluation to determine the merit and relevance of the project to the Department's objectives and the objectives of the Pinelands Infrastructure Master Plan;

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and

4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Department shall either certify the project for funding or make the determination that the awarding of Pinelands Infrastructure Trust funds shall be deferred. An approval by the Department shall only be issued after certification by the Pinelands Commission that the master plan and zoning ordinance of the municipalities and the Master Plan of the county wherein the project is to take place is in conformance with the Comprehensive Management Plan.

(c) The Department shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action results in one of the following:

1. An approval of the application if the outstanding issues are addressed to the satisfaction of the Department within the specified time frame; or

2. A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Department within the specified time frame.

(d) The Department shall promptly notify an applicant by certified mail of any disapproval. A disapproval of an application will not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Pinelands application and/or processing of a Pinelands grant or loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action. As a result of a disapproval and project bypass action, the next highest ranked project on the Pinelands Infrastructure Trust Funding List may fall within the fundable range.

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

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

In (a), deleted Department notification of application receipt. In (b), added "certify the project for funding". In (d), added notification "by certified mail". Changed "Division" to "Department" throughout.

7:22-6.14 Supplemental information

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

7:22-6.15 Pinelands Infrastructure Trust Fund grant and loan agreements

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

(b) The Pinelands Infrastructure Trust Fund grant or loan agreement shall be executed by the applicant within such period of time and pursuant to such terms and conditions as the Department may determine. Such determinations shall be made in consultation with the Pinelands Commission and in consideration of any conditions identified in the Pinelands Infrastructure Master Plan.

(c) The Department, 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 Pinelands Infrastructure Trust Fund grant or loan agreement transmitted to the applicant.

(d) The Pinelands grant or 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 Department at the time that the executed Pinelands grant or loan agreement, loan commitment letter, escrow agreement or other similar document is delivered to the Department.

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

(f) The Pinelands grant or loan agreement shall not be executed by the State 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 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 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 or 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. 7:1D-2 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 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, 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 at which time the Department shall notify the recipient if it is necessary that a Department representative be present at the visual inspection or testing activity, a determination that will be made based on the specific project circumstances such as project location, design, construction methods and other factors;

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

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 clean prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and, if determined necessary under (a)31i above, 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, if determined necessary under (a)31i above, a representative from the Department. Upon completion of the test, a copy of the test results must be forwarded to the Department;

(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).

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

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

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

Administrative change.

See: 32 N.J.R. 1796(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;

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 Pinelands grant or loan modification by means of a Pinelands grant or loan agreement amendment is necessary in accordance with N.J.A.C. 7:22-6.20, the recipient shall be notified and a Pinelands grant or loan agreement amendment shall be processed. If the Department decides a Pinelands grant or loan agreement amendment is not necessary, the Department and the recipient shall follow the procedures of N.J.A.C. 7:22-6.21 or 6.22, 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) and (d) to (b) and (c).

7:22-6.20 Pinelands grant or loan agreement amendments

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

(b) In the event that a project has a need for additional moneys due to the low bid building cost being higher than the original Pinelands grant or loan amount, the local government unit may request a supplemental Pinelands grant or loan. After consultation with the Pinelands Commission, the Department may award a supplemental Pinelands grant or loan only after legislative approval, and only with a Pinelands grant or loan agreement. The recipient shall be responsible for all other increased costs.

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

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

7:22-6.21 Administrative grant or loan changes

Administrative changes by the Department, such as a change in the designation of a key Department personnel or of the office to which a report is to be transmitted by the recipient, or a non-substantial alteration of the disbursement schedule for Pinelands grants or loans for construction of wastewater treatment facilities, constitute changes to the Pinelands grant or loan agreement (but not necessarily to the project work) and to 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.

7:22-6.22 Other changes

All other project changes, which do not require a Pinelands grant or loan agreement amendment as stated in N.J.A.C. 7:22-6.20, require written approval of 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).
Stylistic changes.

7:22-6.23 Access

(a) The recipient and its contractors and subcontractors shall provide to Pinelands Commission personnel, Department personnel and any authorized representative of 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 contractors and subcontractors which contract directly with the recipient or receive a portion of State moneys, may be subject to a financial audit.

(d) Records shall be retained and available to the Department until the final loan repayment has been made by the recipient.

7:22-6.24 State disbursement

Disbursement of Pinelands grant and loan moneys shall be made as indicated in the Pinelands grant or loan agreement at intervals as work progresses and expenses are incurred by the local government unit and as approved by the Department, but in no event shall total disbursements at any time exceed the cumulative Pinelands grant and loan amounts indicated in the disbursement schedule of the Pinelands grant and loan agreement or the allowable costs which have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which must include all forms and information required by the Department and completed in a manner satisfactory 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).
Stylistic changes.

7:22-6.25 Assignment

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

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 that assignment of loan disbursements and/or repayments (although expected to be an unlikely event) may be allowed if approved by the Department pursuant to the conditions of the Fund loan agreement.

7:22-6.26 Unused funds

Where the total amount disbursed under a grant or loan due to the low bid building cost is less than the initial Pinelands grant or loan award, and/or where the total amount disbursed under a Pinelands grant or loan due to the final building cost is less than the Pinelands grant or loan amount due to the low bid building cost, the Pinelands grant or loan shall be adjusted, if necessary, and the difference shall be retained by the Pinelands Infrastructure Trust Fund to be reallocated, pursuant to the provisions of a legislative appropriations act, to other wastewater treatment facilities projects. However, where allowable cost overruns occur, Pinelands moneys may be used to cover these cost overruns up to the grant or loan amount adjusted due to the low bid building cost. Line item adjustments for allowable project costs may be made at the request of the recipient provided the Pinelands grant or loan amount in the Pinelands grant or loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Department shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.

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

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

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

7:22-6.27 Publicity and signs

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

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Pinelands Commission shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, the amount of financial assistance from the Pinelands Infrastructure Trust Fund, and other information as required by the Department.

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

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

Replaced the word "Division" (which had been defined to mean the Division of Water Resources, which no longer exists) with the word "Department."

7:22-6.28 Land acquisition

The acquisition of land (including sewer rights-of-way) shall be eligible for Pinelands Infrastructure Trust funding in accordance with N.J.A.C. 7:22-7.7.

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.

7:22-6.29 Project initiation

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

(b) The recipient shall not advertise any contract and or addendum thereto for the building of the wastewater treatment facilities until authorization to advertise the contract or any addendum thereto has been granted by the Department. Further, the recipient shall be required to execute the engineering agreement for building services prior to, or concurrently with, receipt of authorization to advertise. The recipient shall transmit an executed copy of the engineering agreement for building services to the Department immediately upon its execution.

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

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

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

(f) Failure to promptly award all subagreement(s) for building the project shall result in a limitation on allowable costs in accordance with N.J.A.C. 7:22-7.4(b)4.

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

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

Required the Department's approval of addenda to project-related contracts prior to their issuance by a recipient or prospective recipient and requires eligible entities 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.

7:22-6.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the wastewater treatment facilities the recipient shall, in writing, notify the Department.

(b) For the wastewater treatment process portion of the project, on the date one year after the initiation of operation, the recipient shall certify to the Department the performance record of the project. If the Department or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as specified in the Pinelands grant or 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 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, Determination of Allowable Costs: Pinelands.

(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).

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

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

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

7:22-6.32 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 or for costs related to the preparation of an environmental impact statement 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.

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

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

Inserted "or for costs related to the preparation of an environmental impact statement".

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. 7:1D-2.

(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. 7:1D-2.2.

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, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, 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, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, 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).

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

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

In (a)2 and (b)5, inserted reference to "Green Acres" bonding act.

7:22-7.12 Allowance for planning and design

(a) For projects for which a Level 1 or Level 2 environmental review is required in accordance with N.J.A.C. 7:22-10.4 and 10.5, respectively, 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 †
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
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

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

Building cost	Allowance as a percentage of building cost †
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
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).

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

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

In (a), inserted "For projects for which ... 10.5, respectively."

7:22-7.13 Planning and design costs for Level 3 projects

For projects for which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recipient's costs actually incurred for planning and design activities are allowable.

New Rule, R.1997 d.346, effective August 18, 1997.

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

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

7:22-8.1 Scope and purpose

This subchapter establishes the minimum standards of conduct for persons participating in any of the State financial assistance programs for environmental infrastructure facilities under N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6 and 7.

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

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

Rewrote the paragraph.

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 law that conveys and/or treats sewage or supplies water 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.

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

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 through 7:22-8.10 (Reserved)

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

7:22-9.1 Scope and purpose

(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 environmental infrastructure facilities. To implement the policies established in N.J.S.A. 58:11B-26, 40:11A-41 et seq., and 52:32-17 et seq., this subchapter applies to environmental infrastructure projects receiving financial assistance from the Department and the Trust pursuant to N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7. Under the provisions of N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 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 project 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 minority and women-owned business ordinances.

(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).

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

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

In (a), amended N.J.A.C. references and substituted "minority and women-owned business ordinance" for "set-aside ordinance".

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

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

In (a), substituted "environmental infrastructure" for "wastewater treatment" and "project" for "public agency".

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 acquisition, erection, alteration, remodeling, improvement or extension of an environmental infrastructure facility.

"Construction" includes, but is not limited to:

1. The preliminary planning to determine the economic and engineering feasibility of environmental infrastructure 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 environmental infrastructure facilities;
2. The building of, or purchase of land for, environmental infrastructure facilities; and
3. The inspection and supervision of the building of environmental infrastructure facilities.

"Contract" means any written agreement with a professional service or construction contractor related to the construction of an environmental infrastructure project.

"Contracting agency" means:

1. 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; or
2. The owner(s) or authorized representative(s) of a private entity.

"Contractor" means any party entering into a contract to provide or offering to provide building, materials and equipment, or services to a project sponsor for the construction of environmental infrastructure 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 project sponsor 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.

"Environmental infrastructure facilities" means wastewater treatment facilities, stormwater management facilities or water supply facilities.

"Financial agreement" means the legal instrument, including a grant agreement or loan agreement, executed between either the State of New Jersey or the Trust and the project sponsor for the construction of environmental infrastructure facilities.

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

"New Jersey environmental infrastructure financing program" means the program for providing financing to project sponsors 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, Public Contract Assistance and Environmental Equity or other program of the Department of Environmental Protection with the responsibility for administration of this subchapter.

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

"Project" means the defined services for the construction of specified operable environmental infrastructure facilities as approved by the Department or the Trust in the project sponsor's financial agreement.

"Project compliance officer" means an officer or employee of the project sponsor who is designated by the project sponsor to monitor and enforce compliance with the affirmative action and SED requirements of the applicable program rules and this subchapter.

"Project plan" means the proposal submitted at the time of application by the project sponsor to the Department establishing the SED utilization plan and its requirements.

"Project sponsor" means any local government unit or private entity that seeks a loan or grant pursuant to N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7.

"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 enter-

prises owned and controlled by socially and economically disadvantaged individuals; or

2. A portion of a contract when that portion has been so designated; or

3. Any other purchase or procurement so designated.

"Socially and economically disadvantaged small business concern" or "SED" means any small business concern:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; or, in the case of a joint venture, at least 51 percent of the beneficial ownership interests are legitimately held by a SED; and

2. Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals; and

3. Which is a full participation subcontractor in that the SED is responsible for the execution of a distinct element of work and carries out the work responsibility by actually performing, managing and supervising the task involved. Any deviation from this definition will automatically classify the SED as a broker, middleman or passive conduit. These three functions are contrary to the spirit of the Trust Act and will not qualify a SED enterprise for State of New Jersey certification; and

4. Which has been certified pursuant to the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.) or pursuant to the provisions of 49 CFR Part 23 by the New Jersey Commerce and Economic Growth Commission, 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 an eligible minority business or female business.

- i. "Socially disadvantaged individuals" means those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

- ii. "Economically disadvantaged individuals" 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.

- iii. "Socially and economically disadvantaged individuals" shall include women, Black Americans, Hispanic Americans, Native Americans, Asian Americans, and members of other groups, or other individuals, found to be socially and economically disadvantaged by the Small Business Administration under Section 8(a)

of the Small Business Act, as amended (15 USC 637(a)). Black Americans, Hispanic Americans, Native Americans and Asian Americans shall be defined as follows:

(1) "Black American" means a person having origins in any of the black racial groups in Africa;

(2) "Hispanic American" means a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;

(3) "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii, or the Pacific Islands;

(4) "Native American" means a person having origins in any of the original peoples of North America.

"Small business concern" means a business which is independently owned and operated and which is not dominant in its field of operation. A business is independently owned and operated if the management which controls the business is responsible for both its daily and long term operations.

"Subcontract" means an agreement to perform a portion of a contract.

"Subcontractor" means a third party that is engaged by the contractor to perform part of the work under a subcontract.

"10 percent SED utilization," "10 percent goal" and "10 percent" means SED business concern participation, which includes seven percent for minority-owned SED business concerns and three percent for women-owned SED business concerns.

"Trust" means the New Jersey Environmental Infrastructure Trust established pursuant to the Trust Act.

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

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

Amended for clarification purposes and to prevent non-compliance with the intent of the Trust's enabling legislation to promote SED participation.

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

Rewrote the section.

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

Inserted "10 percent SED utilization," "10 percent goal" and "10 percent".

7:22-9.3 SED utilization requirements for projects

(a) A goal of not less than 10 percent (or a higher percentage as may be required by Federal law) of the total amount of all contracts for building, materials and equipment, or services for a project funded by a New Jersey environmental infrastructure facilities financing program must be awarded to SEDs.

(b) The 10 percent SED utilization requirement shall be accomplished by the following:

1. Bids may be solicited on a restricted basis by setting aside a contract or subcontract for building, materials and equipment, or services. Once so designated, bids on a set aside contract shall be invited and accepted only from SEDs; or

2. Bids may be solicited on an unrestricted basis and not designated a set-aside contract. The bid documents, however, shall include a statement to the effect that the successful bidder must fulfill the SED utilization requirements by subcontracting portions or the work to SEDs; or

3. Contractors also have the option of establishing set-aside or unrestricted bidding procedures, or both, to fulfill the 10 percent SED utilization requirement 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 the 10 percent SED utilization requirement under the subchapter is a goal rather than an absolute requirement.

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

In (a), substituted "environmental infrastructure" for "wastewater treatment".

7:22-9.4 Requirement to develop SED Utilization Plan

(a) Each project sponsor shall develop, in consultation with the Office, a plan for achieving its SED utilization requirements (the "project plan"). Development of a plan shall be completed before the Department and, when relevant, the Trust may approve an application pursuant to the applicable program rules.

(b) The project plan shall identify those contracts proposed to be bid on a restricted (that is, a set aside contract) or on an unrestricted basis, or both. For each unrestricted contract the project plan shall also identify the SED utilization requirements that the successful bidder shall meet.

(c) All contractors, including SED contractors, shall submit their own SED utilization plan ("contractor's plan"), for the aspects of the project covered by the contract, to the project sponsor and to the Office within 30 days of the awarding of a contract. The Contractor's Plan shall contain provisions to meet the specific SED utilization requirements imposed upon the contractor by the project sponsor as well as to meet the general SED utilization requirements for the project pursuant to this subchapter.

(d) If the contractor does not comply with the requirements of the contractor's plan and the project sponsor does not take steps to otherwise comply with N.J.A.C. 7:22-9.3(a), the Department and, in the case of a Trust loan, the Trust, may take any of the 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.

(e) Project sponsors, contractors, and the Office shall consider factors similar to those set forth in N.J.A.C. 17:12-6.11 implementing the State Set-Aside Act when developing SED utilization plans.

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.1998 d.407, effective August 3, 1998.

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

Substituted references to project sponsors for references to local government units throughout.

7:22-9.5 Bidding for contracts or subcontracts through set-asides

(a) The 10 percent SED utilization requirement established by N.J.A.C. 7:22-9.3(a) may be attained by requiring that a contract or a subcontract shall be set aside for bidding only by qualified small businesses owned or controlled by socially or economically disadvantaged individuals ("SEDs") whenever there is a reasonable expectation that at least two bids will be obtained from such enterprises at a fair and reasonable price. A fair and reasonable price will be determined by comparison to other estimates received for the same work.

(b) Designation of set aside contracts shall be made prior to any notice and advertisement for bids. Once designated, the notices and advertisements for bids shall indicate that the contract or subcontract to be awarded is a set aside for qualified small businesses owned or controlled by socially and economically disadvantaged individuals ("SEDs").

(c) The provisions of (a) above and 7:22-9.8(a) requiring at least two bids to be obtained from qualified SEDs shall not apply to set-aside contracts for professional services and extraordinary unspecifiable services pursuant to N.J.S.A. 40A:11-5(1)(a)(i) and (ii), in which case a contract may be awarded to a qualified SED pursuant to N.J.S.A. 40A:11-5(1)(a)(i) or (ii).

7:22-9.6 Notice of SED utilization opportunities

(a) All project sponsors, at least 30 days prior to public advertisement for bids, shall notify the agencies specified in N.J.A.C. 7:22-9.13(a)8, of the availability of opportunities for SEDs to provide services, to bid on set aside construction contracts or subcontracts, to bid on unrestricted contracts or subcontracts, or to provide any other necessary purchase or procurement. The notice shall include a description of the type and scope of the services involved.

(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.

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

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

In (a), substituted "project sponsors" for "local government units" in the first sentence.

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 environmental infrastructure 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 Commerce and Economic Growth Commission, 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 the project sponsor. The project sponsor 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).
Amended by R.1998 d.407, effective August 3, 1998.
See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

In (a), substituted "environmental infrastructure" for "wastewater treatment"; and in (b), substituted references to project sponsors for references to local government units in 2.
Amended by R.2000 d.284, effective July 3, 2000.
See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

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 Project compliance officer

(a) Each project sponsor shall designate an officer or employee to serve as its project compliance officer.

(b) The project 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 or grant agreement has been executed or not. Each project sponsor shall be responsible for notifying the Office of the time and place of such meetings.

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

Substituted references to project compliance officers for references to public agency compliance officers and references to project sponsors for references to local government units throughout; and in (c), inserted a reference to grant agreements.

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 project 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 project compliance officer shall submit a periodic report on behalf of the project sponsor 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 project sponsor's SED utilization plan.

(d) Contractors shall submit a quarterly construction report to the project sponsor and to the Office. The project 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 project 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 project sponsor 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).

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

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

Substituted references to project compliance officers for references to public agency compliance officers and references to project sponsors for references to local government units throughout.

7:22-9.13 Assessment of compliance

(a) Where the Office determines that a project sponsor has failed or is failing to meet the 10 percent SED utilization requirement, the project sponsor 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 (if previously outlined in the contractor's SED plan);

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, Public Contract
Assistance and Environmental Equity
New Jersey Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402
Division for the Development of Small Businesses
and Women Businesses and Minority Businesses
New Jersey Commerce and Economic Growth
Commission
PO Box 835
1 West State Street
Trenton, New Jersey 08625-0835

(b) Where the project sponsor 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 project sponsor, 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 project sponsor 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 project sponsor 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 project sponsor'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).

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

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

In (a)6, added "(if previously outlined in the contractor's SED plan)".

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

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

Substituted references to project sponsors for references to local government units throughout; and in (a)8, changed addresses.

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

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

7:22-9.14 Penalties

Whenever a project sponsor 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).

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

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

Substituted "project sponsor" for "local government unit" in the first sentence.

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 project sponsor 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 project sponsor.

(b) A project sponsor 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, PO Box 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).

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

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

In (b), updated the address; and substituted "project sponsor" for "local government unit" throughout the section.

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 ENVIRONMENTAL INFRASTRUCTURE 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 Bond Acts, the Trust Act, the Pinelands Infrastructure Trust Bond Act (P.L. 1985, c.302), the Sewage Infrastructure Improvement Act and future bond acts and appropriations passed to provide financial assistance for environmental infrastructure facilities.

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

1. To implement the purposes and objectives of the Bond Acts, the Trust Act, the Pinelands Infrastructure Trust Bond Act, the Sewage Infrastructure Improvement Act and future bond acts and appropriations passed to provide financial assistance for environmental infrastructure 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).

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

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

Rewrote (b) and (c)1.

7:22-10.2 Additional definitions

In addition to the words and terms defined at N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-1, the following words and terms are defined for the purposes of this subchapter:

“Administrative action” means Department approval of planning or design documents or offer of award for financial 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, impor-

tant 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 environmental infrastructure facilities, but not generally as the result of the physical construction of the facilities. Examples include new development made possible by improved environmental 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 an environmental infrastructure 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 environmental infrastructure 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.

“Register” means the New Jersey Register of Historic Places and/or the National Register of Historic Places.

“Service area” means that area which is intended to be served by a proposed wastewater treatment, water supply or stormwater management project in the course of the design period.

“Significant” means a subjective determination in terms of both context and intensity of effect as defined at 40 CFR Part 1508.27.

“Threatened species” means a plant or animal species which has been designated as threatened pursuant to either the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., and N.J.A.C. 7:25-4 or

the Federal Endangered Species Act, 16 U.S.C. §§ 1531 et seq.

"Water supply allocation" means the amount of water identified in the water supply allocation permit issued by the Department, pursuant to N.J.S.A. 58:1A-1 et seq. and N.J.A.C. 7:19, for the diversion of 100,000 or more gallons per day of ground or surface water for more than 30 days in a consecutive 365 day period for any purpose other than agricultural or horticultural purposes.

"Wetlands" means those areas defined as wetlands under any of the following statutes and implementing rules as applicable:

1. New Jersey Coastal Wetlands Act, N.J.S.A. 13:9A-1 et seq., at N.J.S.A. 13:9A-2, (Authority of Commissioner to adopt, modify or repeal orders regulating, altering, or polluting coastal wetlands; coastal wetlands defined);

2. New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., at N.J.S.A. 13:9B-3, (Definitions, Freshwater Wetland), N.J.A.C. 7:7A-1.4 (Definitions, Freshwater wetland or wetland);

3. Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., at N.J.S.A. 13:19-4, (Coastal Area boundaries); N.J.A.C. 7:7E-3.25 (Wetlands); and

4. Pinelands Protection Act, N.J.S.A. 13:18-1 et seq., at N.J.S.A. 13:18A-3, (Definitions), and N.J.S.A. 13:18A-11, (Boundaries of Pinelands and preservation areas; official state planning maps of Pinelands National Reserve, and Pinelands protection and preservation areas); N.J.A.C. 7:50-3.1 (Purpose); N.J.A.C. 7:50-6.3 (Wetlands), N.J.A.C. 7:50-6.4 (Coastal Wetland) and N.J.A.C. 7:50-6.5 (Inland wetlands).

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 correct several citations in the definition of wetlands.

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 include species designated as endangered under the Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq., in the definition of endangered species and to further clarify the definition of "planning area."

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).

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

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

Rewrote the introductory paragraph, "Indirect impact", "Planning area", and "Service area" definitions, and inserted new "Water supply allocation" definition.

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

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

In "Administrative action", substituted a reference to financial assistance for a reference to loan assistance, and in "Service area", substituted a reference to wastewater treatment, water supply and stormwater management projects for a reference to environmental infrastructure projects.

7:22-10.3 Establishing the level and scope of environmental review

(a) To initiate the planning process, the project sponsor may be required by the Department to attend a preplanning meeting with the Department. When a preplanning meeting is required, the project sponsor shall be required to provide a preplanning summary including a brief written description of the proposed planning area, the environmental infrastructure needs, the preliminary environmental infrastructure alternatives to be considered, and a preliminary appraisal of potential beneficial and adverse environmental and cultural resource impacts of the alternatives. A map of the proposed planning area shall also be included. The planning area must include the entire area expected to benefit from the proposed project as a whole (that is, at a minimum, the potential service area) without regard to the eligibility of individual project components. The length of the planning period will be 20 years, unless otherwise approved by the Department. On the basis of this information, as well as any other information that may be available to the Department, the Department shall make a preliminary decision regarding the level of environmental review (Level 1, 2, or 3) that shall be required. The scope of the environmental review, including environmental information documentation and the Department's evaluation process, shall include the entire planning area and the comprehensive environmental infrastructure project(s) proposed within the planning area.

(b) The Department shall make a preliminary determination regarding the requirements for cultural resource study on the basis of the preplanning summary or other information available, in accordance with N.J.A.C. 7:22-10.8.

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

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

The required extent of the planning area and the planning period are identified.

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

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

Clarified to specify those areas which must be included in a project's planning area; also amended to identify the scope of the environmental review for a funded project.

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

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

In (a), substituted "project sponsor" for "local government unit" and "environmental infrastructure" for "wastewater management" and "wastewater treatment".

7:22-10.4 Level 1 environmental review

(a) Projects qualifying for this level of environmental review may include the following categories of projects:

1. Rehabilitation, repair or replacement of existing environmental infrastructure facilities, including land acquisition and conservation;

2. Construction of ancillary facilities or minor improvements to environmental infrastructure facilities which do not create a new discharge, reduce the level of treatment, or result in an increase in quantity of flow of an existing discharge.

(b) Projects which conform to one of the categories identified in (a) above but which have any of the following characteristics shall not qualify for a Level 1 environmental review:

1. The project can be expected to have a permanent adverse or a significant temporary adverse effect on the human environment;
2. The project can be expected to have a permanent adverse or a significant temporary adverse direct or indirect impact on cultural resources, endangered or threatened species or designated habitats, wetlands, floodplains, important farmlands or other environmentally critical areas;
3. For wastewater treatment or water supply projects, the user cost for the project significantly exceeds 1.75 percent of the median annual household income, as determined and modified according to N.J.A.C. 7:22-10.5(b)11; or
4. The project is expected to result in significant adverse public comment.

(c) Where a Level 1 review has been determined to be appropriate, a Level 1 environmental planning document must be submitted by the project sponsor to the Department for review. The Level 1 environmental planning document must be of sufficient scope to permit the Department to verify the preliminary determination to proceed with this level of review. Information to be provided in the environmental planning document includes the following, as applicable:

1. A brief description of the need for the proposed activity, the nature and location of any structures to be built, and a map of the service area of the affected environmental infrastructure facilities;
2. A suitable 8½ inch by 11 inch map of the planning area which depicts the location of the proposed activity. An 8½ by 11 inch site plan showing areas of proposed construction should also be included where appropriate to the type of project proposed;
3. A narrative describing the extent of beneficial and adverse impact on environmental or cultural resource features that can be expected as a result of implementing the proposed project and basis for concluding that the proposed project qualifies for a Level 1 environmental review in accordance with (a) and (b) above. Cultural resource impacts must be determined in accordance with N.J.A.C. 7:22-10.8;
4. A summary of alternatives available, including, at a minimum, the no action alternative, and the basis for selecting the proposed action. For wastewater treatment, water supply and stormwater management facilities permitted as a municipal separate storm sewer system, the selected plan must be the most cost effective, environmentally sound alternative which will address the water

quality or water supply need which has been identified and which is implementable (for other environmental infrastructure facilities, the provisions with respect to cost effectiveness are not applicable). The most cost effective alternative is determined by taking into account the cost of environmental impacts and the cost of construction. The basis discussion must include the project costs, user costs, environmental impacts and effectiveness of the proposed alternatives relative to addressing the identified water quality or water supply need as compared with other alternatives considered; and

5. A summary of the involvement of the public in the development and selection of the proposed project.

(d) The Department will review the environmental planning document submitted by the project sponsor and will make one of the following determinations:

1. The Level 1 environmental planning document is complete, acceptable, and verifies the preliminary determination to proceed with this level of environmental review. In this case, the Department will prepare and issue a Level 1 decision statement as set forth in (e) below which will be sent to a project mailing list developed in accordance with N.J.A.C. 7:22-10.10(c). The project sponsor shall publish a notice in a newspaper of general circulation in the planning area within two weeks of the date of the Department's decision statement. The notice must describe the proposed action, indicate the decision by the Department to approve the project, and advise the public that the project sponsor shall, upon written request, make available for public review both the planning documents and the Department's decision statement. Upon issuance of the decision statement, planning is approved and the Department may proceed with award of financial assistance, subject to the provisions of (f) below, and provided the other requirements of the program have been met as specified in the applicable program rules.

2. Additional information is required to make a final determination. In this case, the Department will notify the project sponsor in writing of the deficiencies and the project sponsor shall be responsible to correct the deficiencies. The Department may establish a time frame for response which, if not met, could result in a bypass of the proposed project in the applicable funding cycle.

3. A Level 1 environmental review is not appropriate. In this case, the Department will notify the project sponsor of this determination and will identify whether the project is elevated to a Level 2 or Level 3 environmental review.

(e) A Level 1 environmental decision statement will include a description of the proposed project, a summary of the need for the proposed project, alternatives considered, environmental, cultural resource and social impacts of the proposed project, costs, mitigating measures, public input,

and the basis for the determination that the proposed project qualifies for a Level 1 environmental decision statement.

(f) If, at any time up until the initiation of construction, additional information becomes available, the project is modified or conditions change, such that the project would not qualify for a Level 1 environmental review, the Department will require the project sponsor to proceed with a Level 2 or Level 3 review, whichever is determined appropriate by 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 clarify that cultural resource impact assessments must be determined in accordance with N.J.A.C. 7:22-10.8 and content of a Level 1 environmental decision document is described. Language was added to this section to the effect that the selected plan must be the most cost effective, environmentally sound and implementable alternative.

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).

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

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

Substituted "project sponsor" for "local government unit" throughout; in (a), rewrote 1, and substituted "environmental infrastructure" for "treatment" in 2; and in (c), substituted "environmental infrastructure" for "wastewater management" in 1, and inserted references to water supply in 2.

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

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

In (a)1, inserted a reference to land acquisition and conservation; in (b)3, inserted a reference to wastewater treatment or water supply projects; in (c)4, rewrote the second sentence; and in (d), substituted a reference to financial assistance for a reference to loans in 1, substituted "correct" for "satisfy" following "responsible to" in the second sentence of 2.

7:22-10.5 Level 2 environmental review

(a) If a project does not qualify for a Level 1 environmental review, but the Department determines that a Level 3 environmental review is not warranted, then a Level 2 environmental review is required.

(b) For a Level 2 review, environmental planning documentation must be submitted by the project sponsor consisting of an environmental information document, results of investigations and consultations conducted pursuant to N.J.A.C. 7:22-10.8 and 10.9 and results of public participation conducted pursuant to N.J.A.C. 7:22-10.10. At a minimum, a public hearing will be required and proof of same must be included as part of a complete planning document submittal to the Department. The environmental information document must include, where applicable, the following information.

1. A geographical description of the planning area;
2. A clear map of the planning area. The scale of the map should generally be one inch equal to 2000 feet. However, where the size of the planning area is inappropriate to this scale, a larger or smaller scale map may be required by the Department;

3. A description of and mapping, where applicable, of existing environmental conditions and features including:

i. Existing water quality and uses including a comparison to New Jersey water quality standards and uses established in accordance with N.J.A.C. 7:9-4, 5 or 6;

ii. Hydrologic characteristics;

iii. Water supply source, current demand and current reliable supply. Identify any designated sole source aquifer or critical water supply areas located in the planning area, if applicable;

iv. Geology, topography and soils types and limitations with respect to the use of on-site systems or land application of effluent or residuals. Soil information shall be taken from the Soil Conservation Service county soils maps and interpretations unless more accurate field evaluation of the specific project area is available;

v. Regional air quality and comparison to New Jersey Air Quality Standards established pursuant to N.J.S.A. 26:2C-1 et seq. Address conformance with the State Implementation Plan for air quality (prepared pursuant to the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq.);

vi. A general description of plant and animal communities existing in the planning area and a map of habitat types in the project's direct impact area;

vii. Existing land use and zoned use permitted for undeveloped areas in the planning area;

viii. Environmentally critical areas within the planning area, including, but not limited to, wetlands, floodplains, important farmlands, Agricultural Development Areas, important aquifer recharge areas, coastal areas, stream corridors, parks and preserves, steep slopes, and locations of endangered or threatened species or designated habitats; and

ix. Areas subject to the jurisdiction of the Pinelands Commission, Coastal Area Facility Review Act, or the Hackensack Meadowlands Development Commission.

4. The purpose and need for the project in terms of surface water or groundwater pollution or depletion, drinking water quality or public health problems to be addressed by the project;

5. A description of the future environment without the proposed project (that is, no action);

6. A description and map of existing environmental infrastructure facilities, their service areas and population served; the design and permitted capacity; treatment type and level; current wastewater or stormwater flow or water supply demand by type (residential, commercial, industrial) and, for wastewater treatment facilities, infiltration and inflow.

7. For wastewater treatment and water supply projects, where new or expanded facilities are involved in the scope of the project, an environmental constraints analysis prepared according to the following procedure:

i. Overlay mapping of environmentally constrained areas, which include wetlands, floodplains, endangered species sites or designated habitats, parks and preserves, and Agricultural Development Areas, in the planning area with mapping of existing land use and permitted zoning for currently undeveloped areas. Areas not yet developed which are not environmentally constrained are considered developable. Environmentally constrained, developed, and developable areas shall be clearly depicted on the mapping to be submitted.

ii. Identify existing population and current wastewater flow or water supply demand by source. Determine the extent of development which could occur according to permitted zoning in developable areas. This should be represented as a number of dwelling units and population for residential areas and area coverage for commercial and industrial areas. Information regarding existing wastewater flows and flow projections must be calculated in accordance with N.J.A.C. 7:14A-23.3 and 7:15-5.18. Current and projected water supply demand shall be calculated in accordance with N.J.A.C. 7:10-11 or 7:10-12, as applicable. These figures must be presented in a table and used in calculating the maximum wastewater flow or water supply demand projections that may be considered in planning environmental infrastructure facilities. All assumptions used in calculating wastewater flow or water supply demand from units and coverage must be explained.

8. A description of alternatives considered, including the no action alternative;

9. A cost comparison of alternatives, including capital costs, operation and maintenance costs, user cost and total project cost on a present worth basis;

10. A description of the environmental impacts for each alternative including beneficial and adverse direct, indirect (or secondary impacts) and cumulative effects with other projects. Include an assessment of such impacts associated with each alternative on the following:

i. Surface water and groundwater quality and quantity and hydrology (including new or increased depletive uses of water resources and, where new development is projected, increased nonpoint source pollution);

ii. Plant and animal communities or other natural resources. Quantify by type the extent of such resources anticipated to be disturbed as a result of project construction;

iii. Environmentally critical areas, as identified in (b)3viii above. Quantify by type the extent of such

resources anticipated to be disturbed as a result of project construction;

iv. Air quality, especially with respect to consistency with the New Jersey State Implementation Plan prepared pursuant to the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.;

v. Social and economic factors including, but not limited to, dust, noise, odors, nuisances, traffic or hazards; and

vi. Where significant increases in wastewater treatment or water supply capacity will be provided, effects of induced growth on the environment and social infrastructure.

11. A description of the selected plan. For wastewater treatment, water supply and stormwater management facilities permitted as a municipal storm sewer system, the selected plan must be the most cost effective, environmentally sound alternative which addresses the identified water quality or water supply need and which is implementable (for other environmental infrastructure facilities, the provisions with respect to cost effectiveness are not applicable). Include, where applicable, the following:

i. Environmental infrastructure facility treatment processes, treatment level, design flow (as included in the NJPDES permit, water supply allocation or other permit and on an annual average basis), capacity of units, effluent quality, discharge or water supply withdrawal location and receiving water body or treatment system. Include a site plan of the construction area. Design wastewater flow or water supply demand shall be broken down into residential, commercial and industrial, and for wastewater treatment facilities, infiltration/inflow components;

ii. A map of the location and service area of each environmental infrastructure facility. Unless otherwise directed by the Department, this map shall be at a scale of one inch equal to 2,000 feet. Include on the map the environmentally constrained areas and indicate that no environmental infrastructure services shall be provided to environmentally constrained areas, except where development requiring wastewater treatment or water supply services is specifically permitted by the Department;

iii. For wastewater and water supply projects, location, size, and capacity of the collection, conveyance or transmission facilities. Unless otherwise directed by the Department, the location shall be mapped at a scale of one inch equal to 2,000 feet;

iv. A summary of costs, including capital, operation and maintenance, present worth of total project cost and anticipated user cost;

v. For wastewater and water supply projects, a comparison of user cost to the median annual household

income in the planning area. The base income data source shall be the latest United States Census. Income data shall be updated to the present using the consumer price index or other equivalent means;

vi. A summary of environmental impacts of the selected alternative, as discussed in (b)10 above;

vii. Adverse impacts that cannot be avoided;

viii. The relationship between short term uses of the environment and enhancement of long term benefit;

ix. Irreversible and irretrievable commitments of resources to the project; and

x. Mitigating measures to be incorporated during design, construction, and/or the life of the project.

12. A description of steps needed and time frame for implementation of the project;

13. The identity of the owner or operator of the proposed facilities;

14. A list of the permits needed to implement the project and the status of obtaining the applicable permits;

15. A summary of the results of the coordination with affected Federal, State, regional, or local agencies and the public, carried out in accordance with N.J.A.C. 7:22-10.9 and 10.10;

16. For wastewater treatment and stormwater management projects, identification and assessment of consistency of the proposed project with the areawide Water Quality Management Plan which would apply to the planning area, and an assessment of whether or not the proposed project would trigger preparation of a wastewater management plan or a water quality management plan amendment in accordance with N.J.A.C. 7:15; and

17. For water supply facilities, assessment of consistency of the proposed project with the recommendations of the New Jersey Statewide Water Supply Plan.

(c) The Department will review the environmental planning documentation submitted by the project sponsor and will make one of the following determinations:

1. The Level 2 environmental planning documentation is complete and acceptable, and there will be no significant adverse impacts as a result of the proposed project. In this case, the Department will prepare and issue a preliminary Level 2 decision statement and an environmental appraisal as set forth in (d) and (e) below.

2. The Level 2 environmental planning documentation is incomplete. The Department will provide written notification to the project sponsor regarding the deficiencies. The project sponsor will be responsible for correcting the deficiencies. The Department may establish a time frame for response which, if not satisfied, could result in the bypass of a proposed project in the applicable funding cycle.

3. The Level 2 documentation is complete or incomplete but there would be a significant adverse impact if the proposed project were implemented. The Department will initially direct the project sponsor to develop and evaluate other alternatives which would not have a significant adverse impact. If such an alternative is available, the Department will direct the project sponsor to select an alternative with no significant adverse impact or forgo financial assistance. If no such alternative can be identified, then the Department will require the project sponsor to initiate the Level 3 environmental review process as set forth in N.J.A.C. 7:22-10.6.

(d) When appropriate, in accordance with (c)1 above, the Department will prepare and issue a preliminary Level 2 decision statement and environmental appraisal to the mailing list developed for the project in accordance with N.J.A.C. 7:22-10.10(c). The Department will take no further administrative action until after the conclusion of a 30-day comment period on the decision statement. If no significant adverse comment is received at that point, the Department will approve the planning and may proceed with an offer of financial assistance, provided that other requirements of the program, as set forth in the applicable program rules have been met.

(e) The Level 2 environmental appraisal attached to the decision statement will be the Department's summary of the proposed project and its impact and will include the following information:

1. A proposed project identification;
2. A proposed project description;
3. An evaluation of alternatives considered for the project area;
4. The environmental consequences of the selected plan. This will include beneficial and adverse direct and indirect impacts to water quality and hydrology, air quality, noise, natural resources, cultural resources, and environmentally critical areas;
5. For wastewater treatment, water supply and stormwater management projects, population to be served and wastewater or stormwater flow or water supply demand projections;
6. Social and economic impacts of the proposed project;
7. Required mitigating measures;
8. A summary of the coordination with other agencies and the public regarding the proposed project;
9. References to documents used in preparation of the environmental appraisal; and
10. Maps of the planning area, service areas and the location of the proposed construction.

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

Modifications include a clarification regarding the public hearing; with the change, documentation related to the hearing is a part of but need not be submitted prior to the complete planning documentation. Requirements related to describing and mapping plant and animal communities were clarified so as not to imply that this feature should be mapped for the entire planning area. Requirements for describing and mapping existing wastewater treatment facilities were clarified so as not to imply that the service area of each conveyance component must be mapped. Presentation requirements for the environmental constraints analysis have been specified more clearly. The intended extent of consideration for social and economic factors was clarified by including in the enumeration impacts to environmental and social infrastructure.

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).

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

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

Rewrote (b); in (c), substituted "project sponsor" for "local government" in the introductory paragraph, and substituted "project sponsor" for "local government unit" in 2 and 3; and in (e), rewrote 5. Administrative correction.

See: 30 N.J.R. 4212(a).

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

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

In (b), substituted a reference to the project for a reference to the existing environmental infrastructure facilities in 4, rewrote 7 and 11; in (d), substituted a reference to financial assistance for a reference to loan assistance; and rewrote (e)5.

7:22-10.6 Level 3 environmental review

(a) The Department may determine that a Level 3 environmental review is required pursuant to N.J.A.C. 7:22-10.3, 10.5(c), or as a result of significant adverse comment received during the preplanning or planning period or in response to the Department's issuance of a Level 1 or Level 2 decision statement.

(b) Additionally, the Department will require a Level 3 review when any of the following conditions are present:

1. The proposed project is expected to have significant adverse effects on the pattern and type of land use or growth and distribution of population in the project area;
2. Construction of the proposed project is expected to directly displace a significant amount of population or have a significant adverse effect on a residential area;
3. The proposed project is expected to directly or indirectly conflict significantly with Federal, State, regional, or local land use plans or policies;
4. The proposed project is expected to have significant adverse effects on environmentally critical areas either directly or indirectly or as the result of cumulative effects with other related projects; or
5. The proposed project may directly or indirectly have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife or their natural habitats.

(c) If a Level 3 environmental review is required by the Department prior to completion of a Level 2 environmental information document, then an environmental information document must be prepared in accordance with N.J.A.C. 7:22-10.5(b). In addition, an environmental impact statement must be prepared under a Level 3 environmental review. Environmental impact statements shall be prepared by the project sponsor. The Department must approve the scope, content and conclusion of both draft and final environmental impact statements prior to publication. The procedure will be as follows:

1. The Department will issue a notice of intent to prepare an environmental impact statement which will be published in at least two newspapers of general circulation in the State.

2. The Department will conduct a meeting to establish the scope of the environmental impact statement. Affected government agencies, environmental groups, local officials and other interested parties will be invited to the meeting for the purpose of defining the following:

- i. Critical issues to be addressed by the environmental impact statement;

- ii. The preliminary range of alternatives to be considered;

- iii. The information or other analysis required from other agencies;

- iv. The method of environmental impact statement preparation;

- v. The strategy for soliciting public participation including the techniques that will be used and the timing of participation activities;

- vi. Consultation requirements with regard to affected government agencies;

- vii. The relationship between the environmental impact statement and other documentation already prepared in support of the project and the information necessary to complete the project documentation requirements; and

- viii. The coordination procedure required between the Department and the preparers of the environmental impact statement to insure the Department's controlling role in environmental impact statement preparation.

3. The project sponsor shall prepare a preliminary draft environmental impact statement which contains the information required by (c)2 above in the format required by (d) below.

4. The Department will review the preliminary draft environmental impact statement, and if necessary, require the project sponsor to make additions or modifications to the content or conclusions of the preliminary draft environmental impact statement.

5. When the preliminary draft environmental impact statement is determined by the Department to be satisfactorily complete, the Department will direct the project sponsor to print the preliminary draft environmental impact statement, which will then become known as the draft environmental impact statement.

6. The project sponsor shall distribute the draft environmental impact statement to the mailing list developed for the project pursuant to N.J.A.C. 7:22-10.10(c) and shall place copies in public repositories in the planning area.

7. The project sponsor shall give notice of and hold a public hearing on the draft environmental impact statement. Notification of the hearing shall be sent to the persons on the project mailing list and shall be placed in at least two newspapers of general circulation in the State at least 30 days prior to the date of the hearing. The draft environmental impact statement shall be available for public review during the 30 day notice period and the newspaper notice shall advise the public of the locations of copies of the draft environmental impact statement available for public review. The project sponsor shall provide to the Department a verbatim transcript of the hearing. Written comments shall be accepted by the project sponsor and the Department for a minimum of 15 days following the public hearing. The Department will prepare responses to written comments with assistance, as needed, from the project sponsor.

8. The project sponsor shall prepare a final environmental impact statement in accordance with (e) below. The Department must approve the content and format of the final environmental impact statement prior to publication.

9. The project sponsor shall give notice of and hold a public hearing on and distribute the final environmental impact statement, in the same manner as for the draft environmental impact statement in accordance with (c)6 and 7 above.

10. After the conclusion of the comment period for the final environmental impact statement, the Department will prepare a Level 3 decision statement which will respond to comments received on the final environmental impact statement, set forth the decision made by the Department, and the basis for the decision. No administrative action will be taken by the Department prior to the conclusion of a 30-day comment period for the decision statement. If no further significant adverse comment is received during the comment period for the decision statement, the Department will approve the planning and the Department may proceed with an offer of assistance, provided other program requirements as set forth in the applicable program rules, have been met. If adverse comment is received which was not adequately addressed in the environmental impact statement process, the Department may require a supplemental evaluation and decision statement or may determine not to participate in the proposed project.

(d) Unless directed otherwise by the Department, the format and content of the draft environmental impact statement shall be as follows:

1. A cover sheet noting title, agencies responsible for development of the draft environmental impact statement, contact person, and the date by which comments must be submitted;

2. A summary which stresses areas of controversy, issues to be resolved, major conclusions, and recommendations;

3. The purpose and need for the proposed project;

4. An identification and comparison of alternatives previously considered including the proposed project and no action, as well as any new alternatives which may be feasible. The comparison shall rigorously and objectively evaluate each alternative and present the beneficial and adverse impacts of each alternative;

5. An identification of the preferred alternative and possible mitigating measures;

6. A description of the affected environment. This description should be brief and draw on or reference information compiled in the Level 2 environmental information document;

7. The environmental consequences of the proposed action, if it were to be implemented, including:
 - i. Adverse environmental impacts that cannot be avoided;

- ii. The relationship between short-term uses of the environment and the maintenance or enhancement of long-term benefit;

- iii. Irreversible or irretrievable commitments of resources; and

- iv. Mitigating measures that would be required to make the proposal acceptable.

8. A description of the coordination and public participation that has occurred for the project;

9. A list of preparers, including names and qualifications;

10. The mailing list developed for the project; and

11. An appendix, if applicable, with analyses or other material which substantiate evaluations contained in the draft environmental impact statement.

(e) The final environmental impact statement, maintained in the Department's file for the project shall contain copies of the correspondence received on the draft EIS, and responses to written comments, comments received at the hearing for the draft environmental impact statement, any additional information compiled or modifications made to the project as the result of comments, where applicable, and mitigating measures that will be required to make the proposed project acceptable.

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

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

N.J.A.C. reference added at (c)10.

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).

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

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

In (c), substituted "project sponsor" for "local government unit" throughout.

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

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

In (d)7ii, substituted "benefit" for "productivity".

7:22-10.7 Re-evaluation of environmental decision statements

(a) The project sponsor shall certify in writing that the project submitted in the design phase, or for which authorization to advertise or authorization to award is requested, is the same as that which was described in the environmental decision statement and approved in the planning phase and includes all mitigating measures developed for the project in the planning or design phase. If this certification cannot be made, then the project sponsor shall describe the proposed project modifications, the reason for the changes, and the costs and environmental impacts of the revised project. Project modifications that may be included from the time of planning approval through construction of the project that require notification by the project sponsor to the Department include, but are not limited to, changes in facility location, size, capacity or type and changes in the depth or limits of construction disturbance. The Department may request additional information or additional public participation regarding the proposed modifications. On the basis of the information available, the Department will determine if there is a need to issue a revised environmental decision statement or elevate the project to a Level 2 or Level 3 environmental review and proceed accordingly.

(b) Where five or more years have elapsed between the issuance of a Level 1, 2, or 3 environmental decision statement and the proposed award of financial assistance, and where the Department determines that there are no significant changes in the proposed project or its impact based on the certification made according to (a) above, then the Department will issue a public notice to the persons on a mailing list developed in accordance with N.J.A.C. 7:22-10.10(c) stating that the Department intends to proceed with an award of financial assistance for the previously approved 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 reflect the need for re-evaluation where design modifications are made after design approval; types of project modifications which are of concern were described in generic terms.

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

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

In (a), substituted "project sponsor" for "local government unit" throughout.

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

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

In (b)1, substituted "a mailing list developed in accordance with N.J.A.C. 7:22-10.10(c)" for "the previously established project mailing list" following "persons on".

7:22-10.8 Cultural resource survey requirements

(a) Based upon the preplanning summary prepared in accordance with N.J.A.C. 7:22-10.3, or other information available, the Department will make a preliminary determination regarding the need for and scope of a cultural resource survey. Factors that will affect this preliminary evaluation include:

1. The type and extent of the activity under consideration, particularly the nature of the physical disturbance that may be associated with the proposed undertaking;
2. The environmental characteristics of the planning area; and
3. If known, the likelihood of cultural resource material being present in the planning area.

(b) The Department may determine during the preliminary evaluation that the proposed project will have no effect upon cultural resources. In such cases, no survey will be required and the project may proceed without further cultural resource consideration.

(c) If the Department determines that a cultural resource survey is required for the proposed project, then the Department shall direct the project sponsor to secure the services of a professional, qualified archaeologist to prepare the appropriate level of survey as directed by the Department.

(d) The project sponsor shall submit to the Department a scope of work for each level of cultural resource survey required, as directed by the Department in accordance with (c) above. The scope of work shall be prepared by a professional, qualified archaeologist. No cultural resource survey shall be initiated until the Department reviews and approves, in writing, the scope of work for the cultural resource survey.

(e) The levels of cultural resource survey are progressive and the Department may decide at the conclusion of any given level that adequate documentation has been presented for the Department to issue a determination of effect as defined in (i) below. The project sponsor shall not proceed with a subsequent survey level until directed to do so by the Department.

(f) The following are the levels of cultural resource survey that the Department may require:

1. The first level of investigation is the Stage IA Documentation Review and Strategy Development Survey which consists of the following:

- i. A broad-based literature search that provides a concise but comprehensive discussion of the prehistoric

and historic development of the planning area referencing all known sites;

ii. An analysis of the documentation obtained from the State Historic Preservation Officer, the State Archaeologist, State and local libraries and museums, historic and archaeological societies, universities, professional and avocational experts;

iii. An environmental and geological analysis of the planning area which, taken with the archaeological and historic documentation, will predict areas of varying potential for the presence of cultural resources;

iv. An initial field inspection of the planning area; and

v. Recommendations for additional surveys, such as the Site Recognition Survey described in (f)2 below, that may be required.

2. The next level of investigation is the Stage IB Site Recognition Survey which consists of the following:

i. Subsurface testing for the identification of previously undocumented archaeological sites. Subsurface tests, placed at intervals approved by the Department, must be of sufficient depth to sample all soil strata that may potentially contain evidence of past human activity;

ii. An explanation, clearly presented and justified, of the survey methodology employed;

iii. The identification of previously undocumented historic sites or structures which require further architectural consideration;

iv. A clear analysis and presentation of the results of the survey; and

v. Recommendations for further actions concerning the avoidance of identified cultural resources or additional surveys.

3. The next level of investigation, the Stage II Site Definition and Evaluation Survey, is required if the potential direct or indirect impacts of the proposed project cannot be reasonably avoided by project modification or when there is insufficient data (extent, depth, significance) about the resource to assess avoidance or preservation alternatives. The Department will determine the need for a Stage II survey based upon an evaluation of the Stage IB survey report in conjunction with planning documentation prepared by the project sponsor in support of the project. A Stage II Survey consists of the following:

i. An assessment of the resource's eligibility to be listed on the New Jersey Register of Historic Places and the National Register of Historic Places by applying the State Register Criteria in accordance with N.J.S.A. 13:1B-15.128 et seq. and the National Register Criteria of Eligibility (36 C.F.R. Part 63) to properties identified within the planning area which have not been previously identified for National Register eligibility;

ii. An assessment of the probable impact the proposed project may have on Register-listed resources or resources eligible to be listed on the New Jersey Register of Historic Places or the National Register of Historic Places; and

iii. A proposal for mitigating measures that may be implemented should it be determined that avoidance of a Register-listed resource or a resource eligible to be listed on the New Jersey or National Registers of Historic Places is not feasible.

(g) Where a Stage II survey has been required, and the report approved by the Department, the Department will make one of the following determinations:

1. It is practicable to avoid potential impacts to Register-listed or eligible resources through project modification. In this case, the project sponsor shall be directed to make the appropriate project modifications.

2. It is not practicable to avoid potential impacts to a Register-listed or eligible resource. In this case, the Department will assess the need to obtain a determination of eligibility in accordance with (h) below.

(h) The Department will prepare documentation supporting a determination of eligibility in accordance with N.J.S.A. 13:1B-15.128 et seq. and 36 C.F.R. 800.4.

(i) After the satisfactory completion of the required cultural resource surveys, the Department, after consultation with the appropriate agencies, in accordance with N.J.S.A. 13:1B-15.128 et seq. and 36 C.F.R. Part 800, will issue one of the following determinations of effect:

1. No cultural resources affected: This determination shall be issued when the proposed project will have no direct or indirect effect on cultural resources. No further cultural resources review shall be required.

2. Cultural resources affected: If there will be an effect to cultural resources, the Department shall determine the nature of the effect in accordance with State and Federal laws and regulations. An adverse effect is found when a project may alter, directly or indirectly, the characteristics of a cultural resource that qualify it for listing in the National or New Jersey Registers of Historic Places in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. The Department may propose a finding of No Adverse Effect, if the Criteria of Adverse Effect, at 36 C.F.R. Part 800.5(a)(1), are not met, or the project is modified or conditioned to avoid adverse effects. If an adverse effect is found, the Department shall consult with the State Historic Preservation Officer to resolve the adverse effect pursuant to 36 C.F.R. Part 800.6.

(j) Where it is determined that an alternative to avoid an adverse effect is not feasible, measures to minimize the potential effects shall be developed by the Department in consultation with the appropriate State and Federal agencies, State Historic Preservation Officer and, as required, other interested parties. A mitigation plan outlining these measures shall be included in the memorandum of agreement signed by the consulting parties in accordance with the requirements of 36 C.F.R. Part 800. Mitigation shall be commensurate with the nature and the significance of the resource adversely affected by the project.

(k) All reports of cultural resource surveys shall be submitted for review by the Department. All cartographic and document reproduction contained in the report must be clear and legible. Reports must have original photographic plates or high quality offsets. Professional procedures and reports shall meet the criteria set forth in the U.S. Department of Interior's "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines" (Federal Register, Vol. 48, No. 190; September 29, 1983) and the professional reporting and survey guidelines of the New Jersey Historic Preservation Office of the Department, once these guidelines are promulgated as rules (in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.), incorporated herein by reference. All reports must contain:

1. A table of contents, list of figures, maps and plates;
2. A concise description of the proposed project, both in terms of its potential for ground disturbance and possible direct, indirect and future effects on cultural resources;
3. A clear discussion of the objectives of the survey, the methodology employed to achieve these objectives and an interpretation of the survey results;
4. A list of all sources and authorities consulted;
5. A map of sufficient scale upon which all identified cultural resources as well as potential project impacts are plotted;
6. A United States Geological Survey 7.5 minute quadrangle map of the planning area upon which cultural resources and areas surveyed are noted;
7. A map of sufficient scale identifying and plotting the locations of all tests and excavation units as well as areas of potential impacts;
8. A bibliography of all publications and manuscripts consulted;
9. An inventory of all artifacts recovered and analyzed according to provenience;
10. Stratigraphic profile information for all test units; and
11. Resumes of the individuals responsible for the survey and the report preparation.

(l) All archaeological materials and records resulting from investigations required by this rule must be curated in accordance with the "Secretary of the Interior's Standards and Guidelines for archeology and Historic Preservation," 48 Fed. Reg. 44,716 (September 29, 1983), incorporated herein by reference.

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

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

Modifications were made to specify certain documentation and curation requirements.

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

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

Clarified and modified to provide the correct citation references to applicable State or Federal statutes.

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

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

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

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

In (c) through (g), substituted "project sponsor" for "local government unit" throughout.

Amended by R.2000 d.284, effective July 3, 2000.

See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

Rewrote (b); in (f)3, rewrote i, deleted a former ii, and recodified former iii and iv as ii and iii; rewrote (i); in (j), deleted a reference to the Advisory Council on Historic Preservation, inserted a reference to the State Historic Preservation Officer, and deleted a reference to (i)3iv; and rewrote (k)2.

7:22-10.9 Environmental coordination

(a) The project sponsor shall consult, coordinate with, or apply to those agencies responsible for issuing permits or which have other jurisdiction regarding environmental concerns with respect to the proposed project and its impacts. Those agencies include, but are not limited to, the agencies responsible for administering the following:

1. New Jersey Wetlands Act, N.J.S.A. 13:9A-1 et seq.;
2. New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.;
3. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50;
4. Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq.;
5. Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq.;
6. Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.;
7. Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;
8. Archeological and Historic Preservation Act of 1974, 16 U.S.C. §§ 469 et seq.;
9. Clean Air Act, 42 U.S.C. §§ 7401 et seq.;
10. Coastal Barrier Resources Act, 16 U.S.C. §§ 3501 et seq.;
11. Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq., as amended;

12. Endangered Species Act, 16 U.S.C. §§ 1531, et seq.;
13. Federal Executive Order No. 11593, (1971), Protection and Enhancement of the Cultural Environment.
14. Federal Executive Order No. 11988, (1977), Floodplain Management.
15. Federal Executive Order No. 11990, (1977), Protection of Wetlands;
16. Farmland Protection Policy Act, 7 U.S.C. §§ 4201 et seq.;
17. Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 et seq. as amended;
18. National Historic Preservation Act of 1966, 16 U.S.C. §§ 470 et seq. as amended;
19. Safe Drinking Water Act, 42 U.S.C. § 300(h) as amended;
20. Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271 et seq. as amended;
21. Historic Sites Act, 16 U.S.C. §§ 461 et seq.;
22. Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq.; and
23. State Development and Redevelopment Plan, adopted pursuant to the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq.

(b) The project sponsor shall provide a written report on the results of consultation, the status of permit acquisition, statements of no jurisdiction from each applicable agency or other suitable demonstration of non-applicability, as part of the environmental planning documentation required at all levels of environmental review. Any written determination received by the project sponsor from the jurisdictional agency shall be included in the documentation of coordination. If the coordination activities require additional investigations to address relevant environmental issues and/or warrant project changes, the project sponsor shall comply with these requirements.

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 add the Endangered Plant Species List Act to the listing of Federal and State laws and orders which must be complied with as part of the environmental coordination process.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

In (a), substituted "project sponsor" for "local government unit" in the introductory paragraph and added new 23 and 24; and in (b), substituted "project sponsor" for "local government unit" throughout.

Amended by R.2000 d.284, effective July 3, 2000.

See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

In (a), deleted former 23 and recodified former 24 as 23.

7:22-10.10 Public participation

(a) The project sponsor shall inform the affected public regarding the intent to develop and implement an environmental infrastructure project and shall solicit input from the affected public prior to selection of the alternative which will become the proposed project. The project sponsor is encouraged to utilize appropriate public participation mechanisms, which shall include, but are not limited to, notices, newsletters, citizens advisory groups, public meetings, and public hearings to solicit comments. The minimum requirements for public participation at each level of environmental review are specified in N.J.A.C. 7:22-10.4, 10.5 and 10.6.

(b) Where a public hearing is required, a public hearing shall be noticed and documented by the project sponsor in the following manner:

1. A retail or display advertisement located in the body of the newspaper noting the date, time, place and subject of the hearing shall be placed at least 30 days in advance of the hearing. The advertisement shall indicate repositories where planning documentation prepared for the project will be available for public review. The advertisement shall be placed in a newspaper of general circulation in the planning area for a Level 2 review and in at least two newspapers statewide for a Level 3 review.

2. A verbatim transcript or detailed minutes shall be prepared of the proceedings. The transcript or minutes, any written comments received on the proposed project, and a summary of significant public comments along with the response to the comments, shall be submitted by the project sponsor to the Department as part of the planning documentation.

(c) A mailing list shall be developed by the Department for each project. The mailing list shall include elected officials, Federal, State and local government agencies, environmental groups, and other interested groups and individuals appropriate to the planning area for the proposed project.

(d) In addition to the public hearing, the Department may require supplemental measures to inform and solicit comments from the public under the following conditions:

1. Where factors, such as delays in project implementation or errors in cost estimation, result in significant increases in the user cost burden prior to the award of financial assistance, the project sponsor may be required to place a retail or display advertisement in the body of a newspaper of general circulation in the planning area which describes the proposed project and the revised costs, including user cost, and which establishes a comment period of 30 days. A summary of any public comment received during the comment period shall be submitted by the project sponsor to the Department. Based on the response of the public to the advertisement, the Department will determine if further project evaluation is required.

2. Where, as a result of the re-evaluation of the environmental review conducted in accordance with N.J.A.C. 7:22-10.7, the Department determines that significant changes in the project or project impact have occurred, which warrant public input, the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

3. Where notice of the public hearing does not comply with the requirements of (b) above or where significant project issues including costs or impacts were not disclosed, the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Modification was made clarifying circumstances under which a project change could trigger additional public participation activities.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

In (a), substituted "project sponsor" for "local government unit" and "an environmental infrastructure" for "a wastewater management", and changed N.J.A.C. references; in (b) substituted "project sponsor" for "local government unit" throughout; and in (d), inserted "In addition to the public hearing," at the beginning of the introductory paragraph and substituted "project sponsor" for "local government unit" in 1.

7:22-10.11 Design requirements

(a) The project sponsor shall prepare design plans and specifications which conform to the project alternative selected and approved in planning pursuant to the provisions of N.J.A.C. 7:22-10.4, 10.5 or 10.6 and which include mitigating measures developed during planning and incorporated in the approved planning documentation. Any revisions of the project as designed from the project as approved during planning shall be specifically identified. In addition, the design plans and specifications shall conform to the minimum standards for each area of concern which is applicable to the proposed project as set forth below. All activities which are a part of the comprehensive environmental infrastructure project(s) for the planning area must conform to the requirements of this section, regardless of the eligibility of individual components of the project. Where any on-going environmental protection measures will be the responsibility of the project sponsor, the project sponsor shall submit a letter prior to loan award specifying that it will adhere to the scope of work approved by the Department.

(b) The contract documents shall be prepared to clearly identify environmental protection measures and shall conform to the following:

1. Unless otherwise approved by the Department, the format of the contract documents shall consolidate environmental and cultural resource protection/restoration measures in a single section of the design specifications as well as on appropriate sheets of the design plans. The

specifications which spell out the environmental and cultural resource protection/restoration measures shall be identified in the specifications as having precedence over other potentially contradictory language contained elsewhere in the design contract documents.

2. Environmental and cultural resource protection/restoration measures should generally include the following subject areas:

- i. General;
- ii. Clearing;
- iii. Erosion and sedimentation control;
- iv. Protection of environmentally critical areas;
- v. Stockpiling and waste disposal;
- vi. Prohibited construction procedures;
- vii. Dust control;
- viii. Noise control;
- ix. Cultural resources;
- x. Dewatering;
- xi. Restoration;
- xii. Environmental maintenance bond; and
- xiii. Inspection.

3. The method of payment for environmental and cultural resource protection/restoration measures shall be specified in the applicable section of the contract documents. Where restoration and maintenance of environmental quality are necessary outside of the designated construction area or when measures for maintenance of environmental quality are required after the date of completion and acceptance of the environmental infrastructure facilities, the project sponsor shall clearly state the contractor's responsibilities in the specifications. The project sponsor shall include minimum per unit prices for materials needed for environmental and cultural resource protection and restoration.

4. Where construction will occur within or adjacent to environmentally critical areas, as approved by the Department, those areas shall be identified on design plans.

(c) Every effort shall be made to prevent and correct problems associated with erosion and sedimentation which could occur during and after project construction. At a minimum, design specifications shall incorporate the following erosion and sedimentation control measures:

1. All erosion and sedimentation control measures shall be in place prior to any grading operations or construction of proposed facilities and shall be maintained until construction is complete and the construction area is stabilized. After restoration is complete, temporary control measures shall be removed and disposed of properly.

2. All erosion and sedimentation control measures shall be constructed and maintained in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987.

3. Disturbed areas that will be exposed in excess of 14 days shall be temporarily seeded and/or mulched until proper weather conditions exist for establishment of a permanent vegetative cover except in areas where final restoration is expected to be completed within seven days after the completion of construction, in which case no temporary protective measures will be required. If final restoration is expected to begin more than seven days and completed more than 30 days after the start of construction, seeding shall be required for temporary protection, except where seasonal conditions are not suitable for growing vegetation. In this case, mulch may be applied until conditions are suitable for establishing vegetative cover or until final restoration is implemented.

(d) Site and access clearing must be confined to approved construction areas. Protection of existing vegetation must be practiced wherever possible. At a minimum, the project sponsor shall include provisions in the contract documents which conform to the following:

1. Temporary and permanent easement widths must be reduced to the minimum feasible for the proposed construction. Unless specifically approved by the Department, permanent access roads must not be more than eight feet wide and there shall be no permanent access roads in environmentally critical areas. Access roads may be paved only where absolutely necessary, as determined by the Department.

2. Only those portions of the site which are absolutely necessary and essential for construction shall be cleared. Whenever possible, excavation shall include the removal and storage of topsoil from the site for future use. The length of time of ground disturbance shall be reduced to the minimum practicable, especially in environmentally critical areas. Ground disturbance shall be avoided until immediately preceding construction to minimize exposure of soils.

3. Trees and shrubs within construction easements, which are not required to be removed to permit construction, shall be protected to the drip line with appropriate protection measures such as snow fencing or batter boards. Trees and shrubs whose removal is necessary to facilitate construction shall either be replanted at the same location or replaced with nursery stock of the same kind. Trees of greater than 12 inches in diameter should be preserved whenever possible by implementing slight shifts in alignment or tunneling under tree roots. Specimen trees, as identified in "New Jersey's Big Trees" (1998) published by the Department's Division of Parks and Forestry listing specimen trees in the State, shall be preserved.

4. Except in heavily wooded areas, the plans shall designate trees and shrubs which are to be protected as well as trees and shrubs which are to be removed. In addition, plans shall provide details which depict methods of protection to the drip line.

5. In heavily wooded areas, every effort shall be made to avoid the destruction of common native trees and shrubs so as not to unduly disturb the ecological balance or environmental quality of the area. Trees of 12 inch diameter or greater should be preserved whenever possible and protected to the drip line. Where practical, common native trees and shrubs, of one through three inch caliper, which must be cleared from the construction area shall be stockpiled for use in restoration. Straggling roots shall be pruned. Trees which must be pruned to facilitate construction shall be cut cleanly and painted with tree paint. If a tree not intended to be removed is damaged, the wood shall be repaired according to common nursery practice and painted with tree paint.

(e) Restoration measures to be identified and designated on the environmental plans and specifications include the following: ground preparation, topsoiling, fertilizing, liming, reseeding, and replanting/replacement of trees and shrubs. The aim of restoration is to restore the disturbed area to a condition as nearly equal to pre-disturbance condition as possible. The environmental specifications shall set forth the procedure for accomplishing these restoration measures. The plans shall include the location of various types of restoration and shall include details depicting typical methods to accomplish restoration. The provisions shall include the following when applicable:

1. Final restoration shall be undertaken as soon as an area is no longer needed for construction, stockpiling or access. Excavated material unsuitable for backfill as set forth at N.J.A.C. 7:14-2.13 and considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be removed from the construction site and disposed of at a sanitary landfill approved and licensed by the Department. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded or removed in accordance with (1)3 below. When access roads are no longer needed, road fill shall be removed and the access area shall be restored to pre-disturbance conditions. Care should be taken to avoid damage to adjacent vegetation and to prevent the formation of depressions that would serve as mosquito pools.

2. Topsoil shall be replaced with adequate amounts of topsoil material to restore the disturbed area to its original, pre-disturbance grade and depth of topsoil.

3. Rates and types of fertilization, liming, and seeding shall be as recommended by the local Soil Conservation District based on soil tests and local conditions. Seed mixtures shall be selected that are best suited for the particular site conditions. Seed selection shall provide for a quickly germinating initial growth, to prevent erosion, and for a secondary growth that will survive without continuing maintenance. Mulching shall occur immediately after seeding, and in no case shall more than five days elapse between seeding and mulching.

4. In wooded areas, for a 50 foot wide construction easement, generally 10 trees should be planted for every 100 feet of length of the easement. More trees would be required in wider easements or densely wooded areas. Plans shall include a restoration schedule specifying the quantity, common and botanic names, sizes, and spacing of trees to be planted and the type of seed mixtures to be used from station to station. Trees to be replaced should be trees native to New Jersey suitable for the particular site and generally should conform to the list of trees found in the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987.

5. In landscaped areas, environmental features shall be replaced or restored to pre-disturbance condition or better. This includes sodding, replacement of trees and shrubs, fences, drives, and other landscape features in kind.

(f) A listing of prohibited construction procedures shall be incorporated into the specifications. These procedures include, but are not limited to, the following:

1. Dumping of spoil material into any stream corridor, any wetlands, any surface waters, or at unspecified locations;
2. Indiscriminate, arbitrary or capricious operation of equipment in any stream corridors, wetlands or surface waters;
3. Pumping of silt-laden water from trenches or other excavations into any surface waters, stream corridors or wetlands;
4. Damaging vegetation adjacent to or outside of the access road or the right-of-way;
5. Disposal of trees, brush and other debris in any stream corridors, wetlands, surface waters or at unspecified locations;
6. Permanent or unspecified alteration of the flow line of any stream;
7. Open burning of project debris;
8. Use of chemicals for dust control; and
9. Use of asphaltic mulch binder.

(g) Construction in wetlands shall conform to requirements imposed through applicable permits and, at a minimum, the following:

1. Before excavation is initiated in the wetlands, a line of hay bales or other siltation control barriers shall be staked in place along the edges of the construction area and shall remain in place until restoration is complete.

In addition, marsh mats shall be used for heavy construction equipment;

2. Topsoil shall be stripped and soil layers replaced in the excavated area in the same order that they were removed. Final grade shall match the elevation prior to disturbance;

3. The cleared easement shall be revegetated with a mix and density of species similar to that which was removed. Material for vegetation can be preserved from the areas cleared and replanted or provided from nursery stock;

4. Anti-seep collars shall be installed as needed in the trench to avoid draining the wetland; and

5. Coastal wetland areas disturbed during the construction shall be restored to pre-disturbance conditions by an environmentally-oriented concern with documented successful experience in the restoration of wetland areas.

(h) Where stream crossings are necessary, adverse impacts shall be minimized by including appropriate mitigating measures and restoration techniques in plans and specifications. At a minimum, mitigating measures and techniques shall include the following requirements:

1. Avoid clearing until immediately preceding construction;
2. Prior to clearing, place staked hay bales across the sloped approach to the crossing and maintain, except during actual crossing, until restoration is complete;
3. Avoid stockpiling material in the floodplain of the stream;
4. Set up in-stream sediment controls prior to commencing construction;
5. Complete crossing expeditiously. Consider weather and anticipated stoppages for weekends and holidays and plan to cross at such a time that the work can be continued until complete;
6. Maintain effectiveness of sediment control features throughout the crossing process;
7. Construction through stream corridors, wetlands and other surface waters shall be scheduled to minimize damage to fish populations wherever possible. Recommended periods during which construction is to take place shall be in accordance with N.J.A.C. 7:13-5.6(g) and N.J.A.C. 7:7E; and
8. Restoration shall be initiated immediately following the crossing and be completed as soon as possible. Restoration shall conform to the following:

- i. Re-establishing channel contours;
 - ii. Replacing bottom with native material, or in very silty bottoms, with crushed stone (one through three inch diameter);
 - iii. Stabilizing banks with rip-rap. The size and nature of the rip-rap shall conform to the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987. Jute mesh may be used to stabilize intermittent or extremely low flow streams with shallowly sloping banks in sand/silt bottomed streams; and
 - iv. Revegetating banks with appropriate native materials such as grasses, ground covers, trees and shrubs.
- (i) Slopes exceeding 15 percent require special treatment. Specifications shall call for measures such as water diversion berms, sodding, or the use of jute or excelsior blankets. Hay bales shall be placed at the base of the slope prior to ground disturbance. Steep slopes that have been disturbed, if not sodded, shall be seeded and mulched immediately after construction is complete. Slope boards or other measures necessary to prevent slumping of the disturbed slope shall be incorporated, where appropriate.
- (j) If there is the possibility of encountering acid-producing deposits in the course of construction, as identified during the planning process, special requirements and conditions will apply and shall be incorporated in the specifications as follows:
1. In vegetated areas, the top two feet of soil shall be stripped and stockpiled separately from the material to be excavated. A soils specialist, to be provided by the project sponsor, shall monitor the stripping operation. If any acid-producing deposits are identified, this material and any contaminated soil shall be disposed of on the same day. The presence of acid-producing deposits is detected by the use of the following tests:
 - i. Determining the pH of the soil when suspended in 0.5 Molar calcium chloride solution (of neutral pH). A pH value below 3.0 indicates presence of ferrous sulfate and presence of acid-producing deposits is strongly suspected.
 - ii. Test for sulfate by adding a drop of 10 percent barium chloride solution to a water extract of the material. If voluminous flocks of barium sulfate form immediately the presence of acid-producing deposits is strongly suspected.
 2. The disposal site shall be approved by the Department. Any soil of this type disposed of shall be covered with a minimum of two feet of cover to prevent rapid oxidation and subsequent acid formation.

3. In both vegetated and paved areas, when acid-producing deposits are encountered, as determined by the soil specialist, excavated trench material shall be returned to the trench in order of removal, that is, lower material first, followed by upper material. In addition, the top one to two inches of soil on which the deeper soil was stockpiled shall be scraped and placed below a depth of two feet. For pipeline construction, the quantity of material to be displaced by bedding and pipe, as well as soil scraped from the stockpile area, shall be subtracted from the deeper, excavated material and this quantity of deeper material removed to an approved disposal site and covered as described above. After backfilling the deeper soil, one ton of limestone per 2,000 square feet shall be spread over the deeper soil in the trench. This liming requirement is applicable in areas of well drained, nonsaturated soils, as determined by the soil specialist. In vegetated areas, the top two feet of soil, stockpiled for this purpose, shall then be replaced. If the top two feet of soil was also contaminated, clean backfill material similar to the native topsoil shall be used in place of the contaminated material.

4. The excavated acid-producing deposits shall not be exposed for a period longer than eight hours. When acid-producing deposits are encountered, the trench opened in any construction day shall be backfilled and the areas cleaned up by the close of the day. Where this is impracticable, such as in the construction of pumping stations and treatment plants, exposed acid-producing deposits shall be covered with limestone screenings at a rate of 100 tons per acre and then covered with six inches of compacted soil within one week of exposure or before the exposed soil drops to pH 3, whichever occurs first. The pH shall be monitored daily under this procedure.

5. Temporary restoration of vegetated areas shall consist of mulching and shall be put in place at the end of each day's construction. Permanent restoration of the area shall begin as soon as construction is complete and after the results of incubation tests, where necessary, are available.

6. Prior to restoring vegetated areas, the soil specialist shall perform pH tests on the in-situ soil after the construction is completed. If the pH is below 4, intensive liming shall be required in order to make the soil suitable for plant survival.

7. Lime requirement tests shall be performed by the soil specialist to determine the lime application rates. This will require an incubation test in which the sample is oxidized for a period of six weeks, as follows. The sample shall be air dried and ground so that the whole sample passes a 0.5 millimeter sieve. The lime requirement to reach pH 6.5 shall be determined initially, and again at two week intervals for six weeks, using standard soil testing techniques. The total lime requirement determined by this method can be extrapolated to the area under consideration.

8. A minimum of 30 tons of limestone per acre or the amount of lime required according to the incubation test result shall be applied prior to seeding and planting where the pH is less than 4. Where the pH is greater than 4, liming and fertilizing requirements set out in the planting and environmental specifications shall apply.

9. The spreading and mixing of the subsoil and any topsoil contaminated with acid-producing deposits around the site and beyond the site is prohibited. Areas used for stockpiling acid-producing deposits shall be minimized. Equipment used for excavation and backfilling shall be cleaned, to the extent practicable, at the end of each day's operation and the soil removed shall be placed in the trench below a depth of two feet. No construction shall take place during significant rainstorms or while the area is saturated to avoid smearing or spreading of the acid-producing deposits over the area.

(k) When dewatering will occur in the vicinity of structures or potable wells, the contractor shall monitor for adverse effects to structures or wells due to dewatering and shall be responsible to remedy same to the satisfaction of the Department. Discharges from dewatering activities which contain silt or hydrogen sulfide are subject to the following controls:

1. All discharges from dewatering activities to surface waters, wetlands or storm sewers shall be free of sediment. Care shall be taken not to damage or kill vegetation by excessive watering or by damaging silt accumulation in the discharge area. If discharges are sediment laden, techniques shall be employed to remove sediment prior to discharge. A sedimentation basin shall be constructed and used as specified, where necessary, to protect vegetation and to achieve environmental objectives.

2. Sewer inlets within construction areas shall be provided with perimeter hay bales or other appropriate siltation control measures.

3. In coastal areas, it is possible that water emanating from dewatering operations may contain hydrogen sulfide concentrations that could adversely impact areas to which the water is discharged. In these areas, at no time may the water emanating from dewatering operations be discharged if concentrations of hydrogen sulfide in excess of 40 parts per billion (ppb) are present. Prior to, and periodically during, dewatering, tests shall be conducted on the groundwater and dewatering discharge to determine if the hydrogen sulfide concentration is within the prescribed limits. In the event that these limits are exceeded, the contractor shall pretreat the discharge water prior to disposal. Pretreatment must maintain the hydrogen sulfide concentrations at or below the 40 ppb level and must be in use during those times when dewatering is occurring and the specified concentrations are exceeded.

(l) Contract requirements with regard to the location and control of stockpile, storage and disposal areas whether provided by the project sponsor or the contractor, must conform to the following:

1. Only environmentally suitable stockpile sites may be used for the purposes of staging or storing materials, equipment and suitable trench backfill material. Environmentally suitable sites must be level, and devoid of mature stands of natural vegetation. Drainage facilities and features, wetlands and stream corridors are not environmentally suitable sites.

2. The boundary of the stockpile area shall be clearly marked by hay bales, silt fencing or another appropriate method. Where fill is to be stored in excess of 14 days, a suitable means of protecting excavated material from wind and water erosion shall be employed. Erosion control methods may include one or more of the following: mulching, sprinkling, silt fencing, haybaling and stone covering.

3. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded on-site only to the extent needed to achieve preconstruction grade, unless otherwise specifically approved by the Department. The project sponsor shall ensure that the contractor removes the remainder from the site and disposes of it at a site approved by the project sponsor in accordance with the following:

i. Disposal sites selected by the contractor shall be evaluated and approved by the project sponsor prior to their use. Disposal sites may also be selected by the project sponsor. The project sponsor shall conduct periodic inspection of disposal sites to ensure compliance with the requirements of this subsection during the off-site disposal operation.

ii. The disposal of excess excavated material in wetlands, stream corridors and floodplains is strictly prohibited, even if the permission of the property owner is obtained. The contractor shall be responsible to remove any fill improperly placed by the contractor at the contractor's expense and restore the area impacted.

iii. If excess excavated material is placed on private property, a hold harmless release in favor of the project sponsor and the Department shall be obtained from the property owner; and

iv. Prior to approval of a site for excess excavated material disposal, where the site exceeds 5,000 square feet, the project sponsor shall obtain, or shall ensure that the contractor or property owner has obtained, the appropriate certification of the soil erosion and sediment control plan in accordance with the State's standards for soil conservation (N.J.S.A. 4:24-1 et seq., also referred to as Chapter 251). Where the site is less than 5,000 square feet, the project sponsor shall advise the property owner of the need for erosion and sediment control and obtain a statement that the property owner

accepts complete responsibility for implementation of appropriate methods to prevent erosion and sedimentation.

(m) In order to control dust, as often as required during each working day, and particularly prior to the conclusion of each working day, areas under immediate construction (including access roads and other areas affected thereby) shall be swept and wet down with water sufficiently to lay dust. In addition, these areas shall be wet down during non-working hours (including weekends) as often as required to keep the dust under control. The use of calcium chloride or petroleum products or other chemicals for dust control is prohibited.

(n) In order to limit noise impacts in the vicinity of sensitive receptors, construction operations and activities shall be limited as follows. Time limits are Monday through Friday between the hours of 7:00 A.M. and 6:00 P.M. unless variances to these times are granted in times of emergency. No driving, pulling, or other operations entailing the use of vibratory hammers or compactors shall be permitted, other than between the hours of 8:00 A.M. and 5:00 P.M. The number of machines in operation at a given time shall be limited to the minimum practicable. All engine generators or pumps must have mufflers and be enclosed within a temporary structure.

(o) Provisions regarding the contractor's responsibility for cultural resource protection shall be included in contract documents that provide for the following:

1. If a cultural resource is encountered during the course of construction, the contractor is directed to halt all construction activities in that area. The contractor shall immediately contact the project sponsor who shall contact the Department. The Department will determine and require initiation of the appropriate actions in conformance with N.J.A.C. 7:22-10.8.

2. The contractor shall not dispose of excess excavated material at, stockpile construction materials at, or obtain borrow material from, properties which are listed or eligible for listing on the New Jersey or National Registers of Historic Places.

(p) The project sponsor shall require that the contractor supply an environmental maintenance bond in the amount of \$25,000 or 50 percent of the price bid for the materials needed to fulfill the environmental specifications, whichever is greater. The environmental maintenance bond shall provide that the contractor shall remedy, without cost, any defects which result from faulty workmanship or from failure to comply with the specifications and which develop during the period of one year from the expiration of the performance bond required pursuant to N.J.S.A. 40A:11-22.

(q) The project sponsor shall obtain photographs of existing conditions prior to the start of site and access clearing and construction. At a minimum, one 8 inch by 10 inch color glossy print photograph shall be obtained for each 100 feet of the construction area. Special attention shall be given to environmentally critical areas and areas outside of the public right-of-way. Photographs shall be labeled by station so that upon completion of the construction, or during construction if necessary, subsequent photographs can be taken from the same control points. The project sponsor shall file copies of the above photographs with 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).

Clarification was added regarding access roads, acid producing deposits, dewatering, stockpiling, and noise control to clarify intent and reflect practical experience.

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 clarify the scope of the applicability of the environmental review of the design documents to all components related construction project, consistent with amendment to N.J.A.C. 7:22-10.3.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

Substituted "environmental infrastructure" for "wastewater treatment" and "project sponsor" for "local government unit" throughout; and in (j)3, substituted "pipeline" for "interceptor" in the third sentence.

Amended by R.2000 d.284, effective July 3, 2000.

See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

In (d)3, rewrote the last sentence.

7:22-10.12 Construction phase requirements

(a) The project sponsor must employ one, or more if warranted by the scope of the project, environmental inspector(s) to ensure that the requirements of the specifications relating to environmental and cultural resource protection and restoration are effectively carried out. Individuals designated as environmental inspectors by the project sponsor must possess, at a minimum, the education/experience qualifications of an Environmental Specialist employed with the Department. The Department will also conduct environmental inspections to oversee the conduct of the protection/restoration measures. Responsibilities of the project sponsor's environmental inspector(s) include the following:

1. Daily inspections of active work areas and periodic inspection of maintenance or restoration areas sufficient to ensure performance of protection measures in accordance with contract documents.

2. The maintenance of a daily job diary in which they shall record the progress of the work and of any problems encountered. The environmental inspectors shall notify the contractor in writing immediately upon noticing that environmental specifications are not being met.

3. At frequent intervals during construction, the recipient, the resident engineer, the environmental inspectors and the Department inspectors shall meet to review progress and to resolve difficulties that might result in unnecessary delays in the work. The Department shall notify the recipient if deficiencies are not immediately corrected. The recipient shall then direct compliance with environmental requirements.

(b) After award of a contract and before construction commences, a pre-construction conference shall be held. The recipient, the resident engineer, the environmental inspectors, the Department inspectors and the contractor should reach general agreement upon procedures to be followed to comply with the plans and specifications intended to provide environmental and cultural resource protection and restoration that have been approved by the Department.

(c) A final inspection shall be required following completion of all construction and restoration work encompassed by each contract. The final inspection shall be conducted as follows:

1. Upon completion of all construction and restoration work of each contract of a project, the recipient shall submit a letter to the Department stating that the project (or contract) is ready for final inspection. No final inspection can be scheduled until formal notification is received.

2. The final inspection shall be a joint inspection with the recipient and/or the resident engineer, the environ-

mental inspector, the contractor and representatives from the Department in attendance.

(d) The Department shall make periodic determinations and following the final inspection, make a final determination, regarding the adequacy of the contractor's performance of the specifications relative to environmental and cultural resource protection and restoration. If the performance is not acceptable, this finding and the procedures and schedules needed to effect acceptable performance will be conveyed in writing to the project sponsor. Failure of the project sponsor to comply with the Department's requirements may subject the project sponsor to the noncompliance provisions of N.J.A.C. 7:22-3.40, 4.40 and 6.40 and N.J.A.C. 7:22A-1.8.

Amended by R.1992 d.42, effective January 21, 1992.

See: 23 N.J.R. 3282(a), 24 N.J.R. 246(a).

Clarification regarding the number and qualifications of environmental inspectors to be provided was added; responsibilities of the Department and the loan recipient were spelled out more clearly with regard to daily or other periodic inspections, deficiencies and final inspections of work.

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 reference the Department rather than the program involved to be consistent with the provisions of the existing rules.

Amended by R.1995 d.494, effective September 5, 1995.

See: 27 N.J.R. 1536(a), 27 N.J.R. 3403(a).

Amended by R.1998 d.407, effective August 3, 1998.

See: 30 N.J.R. 1144(a), 30 N.J.R. 2863(a).

In (a) and (d), substituted references to project sponsors for references to local government units.

Amended by R.2000 d.284, effective July 3, 2000.

See: 32 N.J.R. 363(a), 32 N.J.R. 2426(b).

Deleted "loan" preceding "recipient" throughout.