

7:22-2.17 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer grants, acquire property pursuant to the grant agreement, and award contracts and subcontracts under those grants free from bribery, graft, kickbacks, 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 matter.

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

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

Changed notification from Director to Department.

7:22-2.18 Grant conditions

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

1. The recipient shall comply with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.
2. The recipient shall certify that it 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 in 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 provide a copy of the NJPDES permit or otherwise provide an identification of effluent discharge limitations.
5. The recipient shall comply with the Civil Rights Act of 1964 (P.L. 88-352) as well as the New Jersey Law Against Discrimination, (N.J.S.A. 10:5-1 et seq.), as amended.
6. The recipient shall adopt a system of user charges and a sewer use ordinance consistent with 40 C.F.R. 35.2208 and other applicable laws and regulations.
7. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 et seq. and en-

force pretreatment standards which comply with 40 C.F.R. 403.

8. The recipient shall comply with all pertinent requirements of Federal, State and local environmental laws.

9. The recipient shall pay the non-State and non-federal costs of the construction (that is, facilities planning, design, building and related costs) which are associated with the project. The recipient shall be responsible to complete the construction of the project.

10. The recipient shall comply with the requirements governing Federal grants under the Federal Act, including 40 C.F.R. 30.100 et seq., 40 C.F.R. 33.001 et seq., and 40 C.F.R. 35.2000 et seq. Failure of the recipient to comply with Federal requirements shall constitute noncompliance with these regulations and shall give rise to the remedies provided in N.J.A.C. 7:22-2.29 through 7:22-2.35.

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

12. Qualified personnel and chief operating officer:

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

13. 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.

14. (Reserved)

15. No State funds shall be disbursed to a local government unit which has defaulted 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 grant payment where it simultaneously receives from the local government unit an amount in repayment of the defaulted loan obligation at least equal to the grant payment. 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 past loan.

16. (Reserved)

17. The recipient shall certify that it has not and will not enter into any contract with nor has any subcontract been or will be awarded to any person debarred, suspended or disqualified from Department contracting pursuant

to N.J.A.C. 7:1-5 for any services within the scope of work.

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

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

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

Incorporated by reference Federal Single Audit Act requirements.

7:22-2.19 Administration and performance of grants

The recipient bears primary responsibility for the administration and success of the grant project, including any subagreements made by the recipient for accomplishing grant objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the recipient to the Department. The primary concern of the Department is that grant funds awarded pursuant to this subchapter be used in conformance with applicable Federal and State requirements to achieve grant and program objectives to promote the most efficient use of public funds, and to make optimum contributions to the betterment of the environment.

7:22-2.20 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.

1. All recipients, contractors and subcontractors may be subject to a financial audit.

2. Records shall be retained and available to the Department for a minimum of three years after issuance of the final grant payment by the Department. If litigation, a claim, an appeal, or an audit is begun prior to the end of the three year period, records shall be retained and available until the three years have passed or until the action is completed and resolved, whichever is longer.

7:22-2.21 State payment

Payment of State funds shall be made at intervals as work progresses and expenses are incurred, but in no event shall payment exceed eight percent of the eligible costs which have been incurred to that time. Each payment shall be approved by the Department prior to disbursement to the recipient.

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

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

Deleted signature of Commissioner.

7:22-2.22 Assignment

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

7:22-2.23 Publicity and signs

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

(b) A project identification sign shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project and State grant support.

7:22-2.24 Debarment

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

(b) Recipients shall insert in every contract for work on a project advertised after January 5, 1987 a clause stating that the contractor may be debarred, suspended or disqualified from contracting with the State and the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

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

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the recipient may take into account the loss of State funds under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive, responsible bidder pursuant to law; and the recipient may advise prospective bidders that these procedures will be followed.

(e) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded under this subchapter may present information to the Department why this section should not apply to such person. If the Department determines that it is essential to the public interest and files a finding thereof with the 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. 7:1-5.9. In the alternative the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

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

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

At (e) changed Commissioner to Department.

7:22-2.25 Project changes and grant modifications

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

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

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of a 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;
6. Changes which may increase or substantially decrease the total cost of a project;
7. Changes in key personnel identified in the grant agreement or a reduction in time of effort devoted to the project by such personnel; or
8. Changes in construction contracts.

(c) If the Department decides a formal grant amendment is necessary, it shall notify the recipient and a formal grant amendment shall be prepared in accordance with N.J.A.C. 7:22-2.26. If the Department decides a formal grant amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22-2.27 or 2.28, 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).

At (b) deleted reference to Asst. Director and Division of Water Resources.

7:22-2.26 Formal grant amendments

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

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

7:22-2.27 Administrative grant changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or

of the office to which a report is to be transmitted by the recipient, or a nonsubstantial alteration of the payment schedule for grants for construction of wastewater treatment facilities, constitute changes to the grant agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient.

7:22-2.28 Other changes

All other project changes, which do not require formal grant amendment, 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 "Assistant Director"; added "Department".

7:22-2.29 Noncompliance

(a) In addition to other remedies as may be provided by law, in the event of noncompliance with any grant 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. 7:22-2.30;
2. Withhold grant funds pursuant to N.J.A.C. 7:22-2.31;
3. Order suspension of project work pursuant to N.J.A.C. 7:22-2.32;
4. Terminate or rescind a grant pursuant to N.J.A.C. 7:22-2.33 and 7:22-2.34; 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.).

7:22-2.30 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 payment. The Department may, however, issue a stop-work order or withhold payment pursuant to N.J.A.C. 7:22-2.31 and 2.32 without issuing a notice pursuant to this section.

7:22-2.31 Withholding of funds

The Department may withhold a grant payment or any portion thereof where it determines in writing that a recipient has failed to comply with any grant condition, provision of this subchapter, or contract specification or requirement.

7:22-2.32 Stop-work orders

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

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

1. The reasons for issuance of the stop-work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the recipient for materials or services;
4. Guidance as to action being taken on sub-agreements; 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 grant allocable to the work covered by such order as provided in N.J.A.C. 7:22-2.33; 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 grant period, and the grant agreement shall be modified accordingly within the discretion of the Department. However, any additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-2.33 Termination of grants

(a) The Department may terminate a grant for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include, but not be limited to, substantial failure to comply with the terms and conditions of the grant.

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

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

(b) A recipient shall not unilaterally terminate the project work for which a grant has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work by the recipient. If the Department determines that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, the Department may enter into a termination agreement or unilaterally terminate the grant effective with the date of cessation of the project work by the recipient. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the grant pursuant to this section or rescind the grant pursuant to N.J.A.C. 7:22-2.34.

(c) The Department and recipient may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and grant, basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party. The Department has the right to determine the schedule for repayment by the recipient under a termination action.

(d) Upon termination, the recipient shall refund or credit to the State or the Department that portion of grant funds paid to the recipient and allocable to the terminated project work. The recipient shall make no new commitments without the Department's approval.

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).

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, 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-128 and State OMB Circular 87-11, 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. 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. 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. 7:1-5 for any services within the scope of project work;

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

19. The recipient shall certify that it and its contractors and subcontractors shall comply with all insurance requirements of the Fund loan agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The recipient shall provide the Department with such certificate of liability insurance (or other similar document

evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage must begin with the period of building and continue for the entire period during which the 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 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 Associ-

ation (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.

(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), in-

corporated 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.

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.

(c) The incremental costs 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).

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).

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. 7:1-5.

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

(c) The recipient, prior to acceptance of Fund loan moneys, 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. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended, or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, 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. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

Amended by R.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".

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;

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. 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).

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, 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-128 and State OMB Circular 87-11, 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. 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. 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. 7:1-5 for any services within the scope of project work;
18. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the Trust loan agreement;
19. The recipient shall certify that it and its contractors and subcontractors shall comply with all insurance requirements of the Trust loan agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The recipient shall include the State and its agencies, employees and officers as additional "named insureds" on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The recipient shall provide the Trust with such certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to the issuance of the notice to proceed with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional "named insureds" through the completion of construction. The recipient shall not alter or cancel such certificate without prior notification to the Trust, in writing, 15 days in advance of any alteration or cancellation. In addition, when required, the recipient shall acquire or have the contractor acquire, as appropriate, flood insurance made available under the National Flood Insurance Act of 1968 (P.L. 90-448), as amended. Flood insurance coverage must begin with the period of building and continue for the entire period during which the 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 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 man-holes and other appurtenances; and

(5) Placement and compaction of trench backfill material;

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

(1) Excavation and spoils disposal;

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

(3) Installation of all concrete reinforcing bars;

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

(5) Installation of all equipment;

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

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

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

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

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

(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.

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.

(b) For those wastewater treatment facilities eligible for Trust loans in State fiscal year 1993 and beyond for which the local government unit indicates in its initial loan application that it wants 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 may offer a market rate Trust loan for such costs.

(c) For those wastewater treatment facilities which received an initial Trust loan in State fiscal year 1992, the Trust may offer a market rate Trust loan for the costs related to the reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36 provided the local government unit submits a Trust loan application for such costs in State fiscal year 1993 or 1994 and provided the local government unit submits the loan application for such costs in conjunction with its supplemental Trust loan application (if eligible to receive a supplemental Trust loan).

(d) In no case, however, shall the allowable capacity for existing flows exceed 120 gallons per capita per day for wastewater treatment facilities, or exceed the capacity to address wastewater needs for which the planning requirements at N.J.A.C. 7:22-10 have been met. Flow projections shall be calculated in accordance with N.J.A.C. 7:14A-23.3 or 7:15-5.18.

(e) For those wastewater treatment facilities which received Trust loans in State fiscal year 1991 or earlier, the Trust shall limit the recipient's Trust loan assistance as described in (a) above.

(f) For water supply facilities, the Trust may offer a market rate Trust loan for the costs related to reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36, to address the water supply needs for which the planning requirements at N.J.A.C. 7:22-10 have been met. Unless the applicant indicates in its initial loan application that it wishes to obtain a Trust loan for the unallowable capacity, the Trust loan assistance for the project shall be limited in accordance with N.J.A.C. 7:22-3.36.

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

The Trust practice modified to provide market rate loans for the incremental costs associated with reserve capacity.

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) through (c), substituted "wastewater treatment facilities" for "projects" throughout; in (a) and (d), inserted references to N.J.A.C. 7:22-10; and added a new (f).

7:22-4.37 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 required to conduct value engineering for all projects with building costs greater than \$10 million even if Federal grant assistance has been provided to ensure that value engineering is performed for all projects.

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).

7:22-4.38 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer Trust 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 Trust 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 Trust when such allegation or evidence comes to its attention, and shall periodically advise the Trust of the status and ultimate disposition of any related matter.

7:22-4.39 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. 7:1-5.

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

(c) The recipient, prior to acceptance of Trust loan moneys, shall certify that no contractor or subcontractor is included on the State Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a State agency in addition to that of the Department of Environmental Protection. If Trust loan moneys are used for disbursement to a debarred firm, the Trust reserves the right to immediately terminate (N.J.A.C. 7:22-4.44) the Trust loan and/or take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the recipient may take into account the loss of Trust 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 law, 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 shall be funded by a Trust loan under this subchapter, may present information to the Trust why this section should not apply to such person. If the Trust determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the Trust may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Trust may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

Amended by R.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".

7:22-4.40 Noncompliance

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

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22-4.41;
2. Withhold Trust loan moneys pursuant to N.J.A.C. 7:22-4.42;
3. Order suspension of project work pursuant to N.J.A.C. 7:22-4.43;
4. Terminate the Trust loan pursuant to N.J.A.C. 7:22-4.44; and/or
5. Request that the Department 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), rewrote 5.

7:22-4.41 Notice of noncompliance

Where the Trust 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 Trust 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 Trust may issue a stop-work order or withhold disbursement. The Trust may, however, withhold disbursement or issue a stop-work order pursuant to N.J.A.C. 7:22-4.42 and 4.43 without issuing a notice pursuant to this section.

7:22-4.42 Withholding of funds

The Trust may withhold, upon written notice to the recipient, a Trust 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 requirements.

7:22-4.43 Stop-work orders

(a) The Trust 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 loan. The Trust 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 Trust considerations.

(b) Prior to issuance, the Trust shall afford the recipient an opportunity to discuss the stop-work order with Trust personnel. The Trust 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 Trust 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 Trust shall either:
 - i. Rescind the stop-work order, in full or in part;
 - ii. Terminate the work covered by such order as provided in N.J.A.C. 7:22-4.44; or
 - iii. Authorize resumption of work.

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 pre-treatment standards which comply with 40 C.F.R. Part 403;

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

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

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

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

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

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

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

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

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

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

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

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

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

20. The recipient shall certify that it and its contractors and subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto, including, but not limited to, N.J.A.C. 17:27;

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Alignment and joining of pipe sections;

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

(5) Placement and compaction of trench backfill material;

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

(1) Excavation and spoils disposal;

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

(3) Installation of all concrete reinforcing bars;

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

(5) Installation of all equipment;

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

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

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

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

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

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

7:22-6.18 Administration and performance of funds

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

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

Deleted last sentence containing non-regulatory language.

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

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

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

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

1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

3. The scheduled date for certifying to the Department that the project is meeting the specified performance standards.

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

(d) Nothing in this section:

1. Prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any part performing project work; or

2. Affects the Department's right to take remedial action, including enforcement, against a recipient that fails to carry out its obligations.

(e) At a minimum, unless further specified, the project performance standards consist of the effluent discharge limitations in the NJPDES permit (if applicable) and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the Project.

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

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

7:22-6.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by N.J.A.C. 7:22-7, 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. 7:1-5.

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

(c) The recipient, prior to acceptance of Pinelands Infrastructure Trust funds, shall certify that no contractor or subcontractor is included on the State Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a State agency in addition to that of the Department of Environmental Protection. If Pinelands Infrastruc-

ture Trust funds are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate (N.J.A.C. 7:22-6.43) the Pinelands loan and/or take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the recipient may take into account the loss of Pinelands Infrastructure Trust funds 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 law 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 Pinelands grant or loan under this subchapter, may present information to the Department why this section should 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. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

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

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

The term "Commissioner" replaced by "Department".

7:22-6.39 Noncompliance

(a) In addition to any other remedies as may be provided by law, or in the Pinelands grant or loan agreement, in the event of noncompliance with any grant or 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. 7:22-6.40;
2. Withhold Pinelands Infrastructure Trust funds pursuant to N.J.A.C. 7:22-6.41;
3. Order suspension of project work pursuant to N.J.A.C. 7:22-6.42;
4. Terminate or rescind the Pinelands grant or loan funds pursuant to N.J.A.C. 7:22-6.43 or N.J.A.C. 7:22-6.44; 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.).

7:22-6.40 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. 7:22-6.41 and 6.42 without issuing a notice pursuant to this section.

7:22-6.41 Withholding of funds

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

7:22-6.42 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 Pinelands grant or loan. The Department shall limit the use of stop-work orders to those situations where it is advisable to suspend work on the project or portion or phase of the project for important 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;
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. 7:22-6.43; 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 loan period, and/or the project, and the Pinelands grant or loan agreement shall be modified if necessary. However, additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-6.43 Termination of grants or loans

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

1. The Department may terminate a Pinelands grant or 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 grant or loan agreement;
- ii. Default by the recipient;
- iii. A determination that the Pinelands grant or loan was obtained by fraud;
- iv. Without good cause therefor, substantial performance of the project work has not occurred;
- v. Gross abuse or corrupt practices in the administration of the project have occurred; or
- vi. Pinelands Infrastructure Trust moneys have been used for nonallowable costs.

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

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

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

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

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

3. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the Pinelands grant or loan pursuant to this section or rescind the grant or loan pursuant to N.J.A.C. 7:22-6.44.

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

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

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

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

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

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

Terms "Director" and "Assistant Director" replaced by "Department".

7:22-6.44 Rescission of Pinelands grants

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

1. Without good cause therefor, substantial performance of the project work has not occurred;