

CHAPTER 24A**DAM RESTORATION AND INLAND WATERS
PROJECTS LOAN PROGRAM****Authority**

N.J.S.A. 58:4-1 et seq., 13:1D-9 et seq. and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88

Source and Effective Date

R.2000 d.119, effective February 25, 2000.
See: 31 N.J.R. 3898(a), 32 N.J.R. 1015(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 24A, Dam Restoration and Inland Waters Project Loan Program, expires on August 24, 2005. See: 37 N.J.R. 999(a).

Chapter Historical Note

Chapter 24A, Dam Restoration and Inland Waters Projects Loan Program, was adopted as R.1995 d.117, effective March 6, 1995. See: 26 N.J.R. 2228(a), 27 N.J.R. 895(a).

Pursuant to Executive Order No. 66(1978), Chapter 24A, Dam Restoration and Inland Waters Projects Loan Program, was readopted as R.2000 d.119, effective February 25, 2000. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**7:24A-1.1 Scope and construction**

(a) The following constitute the rules governing loans to assist local government units, private lake associations or similar organizations, and owners of private dams for dam restoration and inland waters projects pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L.1992, c. 88. These rules prescribe the procedures, minimum standards for the conduct of borrowers, and standards for obtaining loans.

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

7:24A-1.2 Purposes

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L.1992, c. 88;
2. To establish policies and procedures for the administration of funds appropriated pursuant to the Act for the purpose of making loans for dam restoration and inland waters projects;
3. To protect the public and the State of New Jersey by ensuring that funds appropriated are spent in a proper manner and for the intended purposes;
4. To ensure that the distribution and use of funds is consistent with the laws and policies of the State of New Jersey;
5. To establish minimum standards of conduct to prevent conflicts of interest and ensure proper administration of loans; and

6. To establish accounting procedures for the administration of loans.

7:24A-1.3 Project eligibility

(a) Any local government unit with a proposed dam restoration or inland waters project as defined in N.J.A.C. 7:24A-1.7 is eligible to apply for loan under this chapter. Any private lake association or similar organization or any owner of a private dam with a proposed project is eligible to apply for loan as a co-applicant with a local government unit.

(b) To be eligible for a loan in any loan period, a proposed dam restoration or inland waters project, as defined in N.J.A.C. 7:24A-1.7, must satisfy the following criteria:

1. The proposed design of a dam restoration project must meet all requirements of the Dam Safety Standards, N.J.A.C. 7:20, including the development of an Operation and Maintenance Manual and Emergency Action Plan. The Operation and Maintenance Manual and Emergency Action Plan are not required to be completed at the time of application but must be completed as a condition of the loan award agreement;

2. A dredging or lake restoration project at a site where the dam impounding the lake is not in compliance with the Dam Safety Standards, N.J.A.C. 7:20, shall not be eligible unless the Department has awarded a loan for dam restoration pursuant to this chapter or the applicant provides with its application proof of other funding dedicated to the necessary dam repairs;

3. The project shall be an independent and complete project;

4. The project shall not be excessively expensive; and

5. The project shall not conflict with any other State projects.

7:24A-1.4 Project phases

(a) The application phase of a dam restoration or inland waters project shall consist of the following:

1. Pre-application conference;
2. Application submittal;
3. Review of application;
4. Priority ranking of project; and
5. Notice of qualification.

(b) The development phase of a dam restoration or inland waters project shall consist of the following:

1. Pre-loan conference;
2. Submittal and review of the materials required under N.J.A.C. 7:24A-3.2; and

3. Preparation and execution of the loan award agreement.

(c) The implementation phase of a dam restoration or inland waters project shall consist of the completion of the project in accordance with the terms of the loan award agreement and the requirements of this chapter.

7:24A-1.5 Legislative appropriations

Funding of loans shall be conditioned upon the appropriation by the legislature of funds from the 1992 Dam Restoration and Clean Water Trust Fund pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L.1992, c. 88, and subsequent bond acts.

7:24A-1.6 Severability

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

7:24A-1.7 Definitions

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

“Act” means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L.1992, c. 88, and any subsequent bond acts and legislative appropriations made for the purposes provided in this chapter.

“Administrator” means the Section Chief of the Dam Safety Section of the Department or other person designated by the Commissioner to carry out the functions of the Administrator.

“Allowable project costs” means the costs which are determined by the Department under the Act and this chapter to be eligible for a dam restoration or inland waters project loan.

“Applicant” means any local government unit that applies independently, or a private lake association or similar organization or private dam owner who has a local government unit as a co-applicant, for a loan pursuant to the provisions of this chapter.

“Bonds” means the bonds authorized under the Green Acres, Clean Water, Farmland, and Historic Preservation Bond Act of 1992, P.L.1992, c. 88, and subsequent bond acts.

“Borrower” means an applicant who has been awarded a loan pursuant to the Act and this chapter, and who has executed a loan award agreement.

“Commissioner” means the Commissioner of the Department of Environmental Protection or his or her designated representative.

“Construction” means, in addition to the usual meaning thereof, acts of construction, reconstruction, replacement, and improvement, and includes the solicitation of bids in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules N.J.A.C. 5:34-1.

“Dam restoration project” means the demolition, reconstruction, rehabilitation, or restoration of a dam that impounds water for water supply, flood control or recreation purposes.

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

“Flood control facility” means any dam, basin, dike, channelization or other measure which provides a flood control benefit to a documented flood-prone, previously developed area.

“Flood control project” means the construction, reconstruction, rehabilitation, or restoration of a flood control facility.

“Fund” means the 1992 Dam Restoration and Clean Water Trust Fund established pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L.1992, c. 88.

“Height of dam” means the vertical dimension from the lowest point in the streambed or ground surface at the downstream toe of the dam to the elevation of the top of dam (without camber).

“High hazard dam” means a dam, the failure of which may cause the probable loss of life or extensive property damage, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

“Inland waters” means any lake, river, pond, stream, marsh, or freshwater wetland; any floodway, flood fringe area, or flood hazard area as defined in N.J.S.A. 58:16A-51 or as delineated by the Department pursuant to N.J.S.A. 58:16A-52; and any area delineated by or for the Federal government which, if appropriately regulated by a local government unit, qualifies the residents therein for Federal flood insurance.

“Inland waters project” means any flood control project, pollution control project, or recreation and conservation project as defined in this chapter.

“Loan” means a loan awarded pursuant to the Act and this chapter.

“Local government unit” means a county or a municipality, or any agency, authority, board, commission, or other instrumentality thereof; or any two or more counties or municipalities operating jointly through a joint meeting or interlocal services agreement, permitted by law, or any

agency, authority, board, commission or other instrumentality thereof; or any other local or regional entity created by the legislature as a political subdivision of the State, or any agency, authority, board, commission, or other instrumentality thereof.

“Low hazard dam” means a dam, the failure of which would result in the loss of the dam itself but little or no additional damage to other property, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

“Pollution control facility” means any water conveyance or containment facility (basin, well, swale or other practice acceptable to the Department), proposed or existing, which contributes to the abatement of pollution from stormwater runoff, soil erosion, or other nonpoint sources in previously developed areas.

“Pollution control project” means the construction, reconstruction, rehabilitation, or restoration of a water pollution control facility.

“Project costs” means the applicant’s expenses incurred in connection with all things deemed by the Department to be necessary or useful and convenient for completion of a project; the execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with any project authorized by the Act; the procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of the Act.

“Recreation and conservation project” means the construction, rehabilitation, or restoration of a facility, lake or stream to improve the overall quality of inland waters, including the dredging of lakes, cleaning of streams, construction of water quality related facilities to enhance recreational fishing and wildlife preserves, or other practices acceptable to the Department.

“Significant hazard dam” means a dam, the failure of which may cause significant damage to property and project operation, but loss of human life is not envisioned, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

SUBCHAPTER 2. PROJECT APPLICATION PHASE

7:24A-2.1 Pre-application procedures

(a) Each applicant shall request a pre-application conference prior to making a formal application for a loan. During the conference, the Department shall identify and explain all loan application procedures and requirements.

The Department shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a loan. Neither written nor oral statements made during the pre-application conference shall bind the Department. The Department may waive the pre-application conference at its discretion.

(b) Questions concerning the dam restoration and inland waters projects loan program and requests for a pre-application conference may be directed to:

Department of Environmental Protection
 Dam Safety Section
 PO Box 419
 Trenton, NJ 08625-0419
 (609) 984-0859

Amended by R.2000 d.119, effective March 20, 2000.
 See: 31 N.J.R. 3898(a), 32 N.J.R. 1015(a).

7:24A-2.2 Application procedures

(a) To apply for a dam restoration or inland waters project loan, the applicant shall submit the following:

1. A completed loan application on the form available from the Department which shall include the information specified in (a)2 through 13 below;
2. A description of the applicant's plans to repay the loan and pay any other expenses necessary to fully complete and implement the project and the steps the applicant has taken or will be taking to implement this plan;
3. Evidence that all Federal, State, regional and local agencies with jurisdiction over the project have been notified of the project, including, but not limited to, the appropriate municipal planning board and environmental commission and county planning board and environmental commission;
4. Evidence that all required permits have been obtained or that steps have been taken to initiate the permit review process for the required permits in order to demonstrate that the requirements of N.J.A.C. 7:24A-3.2(c) can be met;
5. An explanation of the need for the project and a discussion of alternatives to the proposed project;
6. A statement explaining how the loan will accomplish the goal set out in the application;
7. A proposed construction schedule for the project;
8. Details of proposed financial arrangements for construction of the project;
9. All other forms, supplementary materials, agreements and subagreements which the Department may require as determined in the pre-application conference required pursuant to N.J.A.C. 7:24A-2.1(a);

10. An estimate of construction costs by unit price for the project. Estimated costs for labor, equipment, materials, supplies, overhead and contractors' and consultants' profit margins with supporting background and summary sheets as may be requested by the Department to substantiate the estimate of unit costs. Total project costs and those project costs that the applicant anticipates will be allowable project costs must be separately summarized;

11. A brief description of the environmental impact of the proposed project, including the environmental impact of the proposed project on water quality, plant and animal life, project site land characteristics, historical sites and other pertinent environmental factors;

12. Proof of the applicant's ownership of the real property on which the project is located, or the capability (right of eminent domain, conditional contract for property acquisition, easement or property owner's permission) to use that property for undertaking the project; and

13. All documentation and other information as the Department may require to adequately determine the applicant's priority point total pursuant to N.J.A.C. 7:24A-5.1.

(b) The application shall be signed by a person authorized by written resolution or ordinance of a local government unit to file an application for a loan under this chapter or to apply as a co-applicant with a private lake association or similar organization or private dam owner, to represent the local government unit in all matters relating to the application process, and to obligate the local government unit to the terms and conditions of a loan award agreement. A copy of the resolution or ordinance shall accompany the application.

(c) The application of a private lake association or similar incorporated organization shall be signed by a person authorized by written resolution of the association's or organization's board of directors or governing body to file an application for a loan under this chapter, to represent the private lake association or similar organization in all matters relating to the application process, and to obligate the private lake association or similar organization to the terms and conditions of a loan award agreement. A copy of the resolution shall accompany the application, along with the resolution required pursuant to (b) above.

(d) An application shall be submitted prior to the application closing date for the application period in which the applicant wishes to be awarded a loan. No application will be accepted after the close of business on the application closing date.

1. The initial application period and application closing date will be established subsequent to the adoption of this chapter. A notice of the details of the application period will be published in the New Jersey Register.

2. Additional application periods may be established as deemed necessary by the Department upon publication of a notice of the details of the additional application period in the New Jersey Register.

3. The application closing date for any application period may be extended, if deemed necessary by the Department, upon publication of a notice of extension in the New Jersey Register.

(e) Applications shall be sent to:

Department of Environmental Protection
Dam Safety Section
PO Box 419
Trenton, NJ 08625-0419

Amended by R.2000 d.119, effective March 20, 2000.

See: 31 N.J.R. 3898(a), 32 N.J.R. 1015(a).

Public Notice: Extension of Application Deadline for 2004 Dam Restoration Loan Program.

See: 36 N.J.R. 3934(a).

7:24A-2.3 Allowable project costs

(a) Project costs shall be allowed to the extent permitted under this chapter and the loan award agreement. Allowable project costs shall be those costs set forth below:

1. For a dam restoration project:

i. All items deemed by the Department to be necessary or useful and convenient in connection with a dam restoration project;

ii. Execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with a dam restoration project;

iii. Procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and

iv. Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter.

2. For an inland waters project:

i. All items deemed by the Department to be necessary or useful and convenient in connection with an inland waters project;

ii. Execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with an inland waters project;

iii. Procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and

iv. Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter.

3. The project costs set forth below shall not be allowable:

i. Project design and development costs incurred in preparing necessary documentation for the application phase of this loan program;

ii. Any costs associated with a project for which construction commenced prior to the filing of a loan application with the Department;

iii. Any items deemed by the Department to be unnecessary or not useful and convenient for the project;

iv. Any costs funded by any Federal or other State grant or loan to the applicant; and

v. Any costs not listed in (a)1 or (a)2 above.

7:24A-2.4 Use and disclosure of information

Any loan application, pre-application, or other submittal, when received by the Department, constitutes a public record. The Department shall make such records available to persons who request them to the extent allowed by State and Federal law.

7:24A-2.5 Application review

(a) The Department shall review each application according to the following protocol:

1. Administrative review to determine the completeness of the application;

2. Project, technical, scientific and environmental review to determine the merit and relevance of the project to the Department's program objectives;

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

4. Eligibility determination.

7:24A-2.6 Approval or disapproval of application

(a) Upon completion of its review of an application, the Department shall take one of the following actions:

1. Request additional information to complete the application;

2. Approve the application for priority ranking and possible loan; or

3. Disapprove the application.

(b) The Department shall promptly notify the applicant in writing of any disapproval and provide the reasons for such disapproval. A disapproval of an application shall not

preclude its reconsideration during a subsequent application period if revised and resubmitted by the applicant.

7:24A-2.7 Notice of qualification

(a) The Department shall send a notice of qualification to an applicant who has submitted an application approved pursuant to N.J.A.C. 7:24A-2.5 and 2.6 and ranking high enough on the priority list pursuant to N.J.A.C. 7:24A-5.1 to be awarded a loan. An applicant who has submitted an application approved pursuant to N.J.A.C. 7:24A-2.5 and 2.6 but not ranking high enough on the priority list pursuant to N.J.A.C. 7:24A-5.1 to be awarded a loan shall be so notified by the Department.

(b) Any applicant who receives a notice of qualification but who decides not to proceed with a project shall so notify the Department within 30 days of the date of the notice.

(c) The Department shall award a loan to any applicant who receives a notice of qualification subject to available appropriations, execution of a loan award agreement and submittal of required permits and materials, prepared to the satisfaction of the Department, within six months after the Department issues the notice of qualification or within any extension of the period for such submittals granted pursuant to N.J.A.C. 7:24A-3.2(c).

(d) An applicant with a project on a priority list who is not awarded a loan in any application period may reapply for a position on any subsequent priority list for a subsequent application period by timely filing a new loan application form and by updating the other application documents required under N.J.A.C. 7:24A-2.2. The reapplication will be treated as a new application for a loan and will be evaluated in accordance with the requirements of this chapter.

SUBCHAPTER 3. PROJECT DEVELOPMENT PHASE

7:24A-3.1 Pre-loan conference

(a) Each applicant who receives a notice of qualification shall arrange to have a pre-loan conference within 30 days from the date of the notice of qualification and shall submit all materials required pursuant to N.J.A.C. 7:24A-3.2(a) to the Department within six months after the date of the notice of qualification or within any extension of the period for materials submittal granted pursuant to N.J.A.C. 7:24A-3.2(c).

(b) During the pre-loan conference the Department shall identify and explain the submittals required before a loan award agreement can be executed.

7:24A-3.2 Required submittals prior to execution of a loan award agreement

(a) An applicant who receives a notice of qualification shall submit the following materials prepared in accordance with accepted engineering practices, within the time period specified in N.J.A.C. 7:24A-3.1(a):

1. A complete engineer's report prepared, signed and sealed by a New Jersey-licensed professional engineer experienced in hydrologic, hydraulic, structural and geotechnical engineering. The report shall include, but is not limited to, the engineering assumptions, references, calculations and conclusions relative to the structural, hydrologic and hydraulic design of all elements within the project scope, as well as all information, narrative, data, and computations necessary to support and describe the design developed in such detail as to permit complete understanding of the project design;

2. Plans for the loan project prepared by a New Jersey-licensed professional engineer. Each drawing shall be signed and sealed and shall have a title block giving the name and location of the project, the scale or scales used, date, the name of the engineer and his or her license number. Plans shall show clearly the datum to which elevations shown are referred. The National Geodetic Vertical Datum of 1929 (U.S.G.S.) should be used wherever possible or an equation converting to that datum given. The plans shall clearly reflect and label all existing and proposed features;

3. Construction specifications, including, but not limited to:

- i. General provisions, specifying the rights, duties, and responsibilities of the applicant, engineer and builder, and the prescribed order of work;

- ii. Technical provisions, describing in detail the work methods, equipment, and materials to be used, the results to be obtained and the project and payment schedule; and

- iii. All other provisions, submissions and certifications deemed necessary by the Department;

4. A detailed cost estimate of expenses for the project. The breakdown of the cost estimates shall be by unit price covering estimated labor, equipment, materials, supplies and contractor's overhead and profit. A summary form showing item number, description, estimated quantity, unit, unit price, and estimated amount is required; and

5. A description of the applicant's plan to repay the loan and pay any other expenses necessary to fully complete and implement the project and the steps the applicant has taken or will be taking to implement this plan.

(b) The Department reserves the right to waive any of the submission requirements of (a) above if it determines that the submission of such information is not required or necessary in order for the Department to enter into a loan award agreement with the applicant.

(c) An applicant who receives a notice of qualification shall obtain all necessary Federal, State and local permits and approvals within six months of the date of the notice of qualification. Failure to obtain the required permits within

the required time period shall disqualify the project for a loan for that application period unless prior written approval for an extension has been granted by the Department.

1. The Department will extend the time for submission of the required materials and/or permits for up to three months if the applicant provides written justification of the need for such extension to the satisfaction of the Department. The applicant must submit such written justification to the Department no later than 30 days before the expiration of the specified six-month period.

2. The Department will grant an additional extension for the submission of the required permits and/or materials if the applicant demonstrates to the satisfaction of the Department that the permits are delayed through no fault of the applicant.

7:24A-3.3 Execution of a loan award agreement

(a) The Department shall prepare and transmit duplicate copies of the loan award agreement to the applicant.

1. The applicant shall execute such duplicate copies of the loan award agreement and return them within 30 calendar days after the date of the Department's transmittal letter. The Department may, in its discretion, extend the time for execution. The loan award agreement of a local government unit applicant shall be signed by a person authorized by written resolution or ordinance to obligate the applicant to the terms and conditions of the loan award agreement. The loan award agreement shall be signed by, or on behalf of, each co-applicant, if any.

2. The loan award agreement shall set forth the terms and conditions of the loan, including an estimated loan repayment schedule, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

3. The loan award agreement is deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department during the application phase of the project.

4. After the Department has executed the loan award agreement, it shall transmit a copy of the executed loan award agreement to the applicant, and co-applicant, if any.

5. The Department shall not execute the loan award agreement if the applicant is in default on any State loan.

(b) The loan award shall become effective upon execution of a loan award agreement by the Department and the applicant, and shall constitute an obligation of the Fund in the amount and for the purposes stated in the loan award agreement.

(c) The loan award shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project. Cost overruns for any project or portion thereof are solely the responsibility of the borrower.

SUBCHAPTER 4. PROJECT IMPLEMENTATION PHASE

7:24A-4.1 Amount and terms of loan

(a) The amount of the loan, determined by the Department, shall be based upon allowable project costs as set forth in this chapter.

(b) The interest rate for loans made pursuant to the Act from the 1992 Dam Restoration and Clean Water Trust Fund shall not exceed two percent per year.

(c) The loan maturity period shall be for a period not to exceed 20 years from the date that disbursements to the borrower begin. The Department and borrower may establish a shorter repayment schedule by mutual agreement. Principal and accrued interest may be prepaid by the borrower prior to the end of the loan maturity period without penalty.

(d) The cost of payment of the principal and interest of any loan made to a private lake association or similar organization or owner of a private dam, as a co-applicant with a local government unit, shall be assessed by the local government unit against the real estate benefited thereby in proportion to and not in excess of the benefits conferred. Such assessments shall bear interest and penalties from the same time and at the same rate as assessments for local improvements in the municipality where they are imposed. From the date of confirmation, the assessments shall be a first and paramount lien upon the real estate assessed to the same extent, and be enforced and collected in the same manner as assessments for local improvements.

(e) A local government unit may be required to secure a loan awarded under this chapter in a manner acceptable to the Department. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, municipal bond insurance and surety bonds.

(f) An estimated amortization or loan repayment schedule will be provided to the borrower by the Department and be made part of the loan award agreement. The schedule will indicate installment dates and loan repayment amounts. The Department reserves the right to unilaterally adjust the loan repayment dates and amounts on the amortization schedule if the timetable for completion and the actual project costs and disbursements vary from the estimated amortization schedule.

(g) The loan shall be repaid in semi-annual installments over a period which will not exceed 20 years from the date of the first drawdown to the date of the borrower's final repayment.

(h) Interest shall accrue on the amount of loan funds disbursed from the Fund at a rate of two percent per year, computed from the date of disbursement to the date of the final repayment of principal. Interest accrued against each interim drawdown, from the date of the first drawdown to a date three months following the last project drawdown, must be paid to the Treasurer of the State of New Jersey three months after the date of the final drawdown.

(i) The first principal repayment will be made to the Treasurer of the State beginning nine months after the final project drawdown, or two years from the date of the first disbursement, or as per a schedule prescribed by the loan award agreement, whichever comes first.

(j) The borrower shall allocate a portion of its budget in an amount sufficient to meet the annual debt service on the loan. Repayment funds must be deposited into a fund specifically established for the purpose of assuring repayment of the loan to the Treasurer of the State.

(k) The borrower's failure to make any repayment within 30 days of the scheduled payment due date will result in the Department's assessing a late fee. The late fee is computed on the following basis:

1. When a payment is 30 days past due, the late fee shall be five percent of the payment amount due.
2. When a payment is 60 days past due, the late fee shall be 10 percent of the payment amount due.
3. When a payment is 90 days past due, the late fee shall be 15 percent of the payment amount due, and the borrower will be in default of the loan award agreement. Upon default, all outstanding principal, interest, and penalty amounts immediately become payable to the Treasurer of the State.
4. On a loan in default, interest charges at a rate of two percent accrue on the outstanding principal, interest, and penalty charges calculated from the date the repayment was due.

7:24A-4.2 Loan conditions

(a) The following requirements, in addition to the requirements of such other statutes, rules, terms and conditions as may be applicable to a particular loan, are conditions of each loan and conditions precedent to each disbursement under a loan award agreement:

1. No disbursement shall be made under a loan award agreement until a specific appropriation therefore has been made by the Legislature.
2. The borrower shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the loan award agreement.
3. The borrower shall certify that the borrower and its contractors and subcontractors shall comply with all insurance requirements of the loan award agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The borrower 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 borrower shall provide the Department with a copy of the certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to proceeding 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 borrower shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation.

4. The borrower shall certify that the borrower and its contractors and subcontractors maintain their financial records in accordance with N.J.A.C. 7:24A-4.20.

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

6. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project.

- i. The performance bond or performance guarantee shall remain in effect until the Department conducts its final inspection of the project and states in writing to the applicant that the project is satisfactorily completed.
- ii. The performance bond or performance guarantee shall be both nondiscriminatory and financially satisfactory to the Department, and meet all statutory requirements.

7. The borrower shall certify that the borrower is in compliance with all other requirements and conditions of the loan award agreement.

8. Bid specifications shall require that project elements which constitute unallowable project costs be bid as line items in the total bid specifications separate from project elements which constitute allowable project costs.

9. Bid specifications shall require that each general contractor who bids on the project shall identify in the bid submission to the borrower the principal subcontractors.

10. Before the borrower makes any final award of a construction contract, the borrower shall submit to the Department for review and approval the final construction contract, with work specifications detailing any changes made since submittal of the materials required during the project development phase pursuant to N.J.A.C. 7:24A-3.

11. Concurrent with the submittal to the Department required under (a)10 above, the borrower shall provide the Department with a tabulation of bids received and identify the general contractor to be awarded the construction contract for the project. In the event a contract is not proposed to be awarded to the contractor who has submitted the lowest bid, the borrower shall provide adequate justification for said award.

12. The Department reserves the right to require the borrower to readvertise the bid specifications for the project if the Department deems the certifications required in (a)13 below unsatisfactory.