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Subchapter 4. Environmental Infrastructure Trust Procedures and Requirements

7:22-4.1 Scope

This subchapter constitutes the rules of the Trust established pursuant to the Trust Act governing the disposition of appropriations made available pursuant to the Bond Acts, or any other moneys available to the Trust including future bond acts or other appropriations to provide financial assistance for construction of environmental infrastructure facilities.

7:22-4.2 Construction of rules

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

7:22-4.3 Purpose

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

1. To implement the purposes and objectives of the Trust Act;
2. To establish policies and procedures for the distribution of funds appropriated or otherwise available to the Trust for the purpose of providing financial assistance to project sponsors through the issuance of Trust loans for the costs of the construction of environmental infrastructure facilities;
3. To protect the public, the State and the Trust's bondholders by ensuring that Trust moneys appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of Trust moneys is consistent with the laws and policies of the State;
5. To establish minimum standards of conduct to prevent conflicts of interest and to ensure proper administration of funds;
6. To establish accounting procedures for the administration of Trust moneys;
7. To establish Trust loan repayment requirements; and
8. To establish standards for the construction of environmental infrastructure facilities.

7:22-4.4 Definitions

In addition to the words and terms defined at N.J.A.C. 7:22-3.4, the following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise:

"Allowable costs" means those costs that are eligible, reasonable, necessary and allocable to the project; permitted by generally accepted accounting principles; and approved by the Trust in the Trust loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C.

7:22-5.

"Applicant" means any project sponsor that applies for a Trust loan pursuant to the provisions of these rules and regulations.

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

1. Differ materially from physical conditions (including subsurface and latent conditions) referred to in the plans, specifications and reports submitted under N.J.A.C. 7:22-4.11(d)7; and
2. Were not known to the applicant at the time the building contracts were executed.

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

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

"Interim loan" means a type of Trust loan (as defined in N.J.A.C. 7:22-3.4) for the purpose of financing the allowable costs of an environmental infrastructure project for a period of less than one year.

"Private entity" means the owner(s) of a nongovernmental community water system, a nonprofit noncommunity water system or a person that sponsors a project to prevent, reduce or treat runoff from agricultural cropland activities, including farming operations, animal feeding operations and other animal-related sources.

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

"Project scope" or "scope of work" means the scope of services and/or activities for which a Trust loan agreement has been executed by the Trust and a recipient.

"Project sponsor" means any local government unit or private entity that seeks a Trust loan pursuant to this subchapter.

"Recipient" means any project sponsor which has received preaward approval pursuant to N.J.A.C. 7:22-4.32 or a Trust loan pursuant to this subchapter.

"Responsible bidder" means a bidder that satisfactorily demonstrates to the Trust that it has:

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

"Trust loan agreement" means a legal instrument executed between the Trust and the recipient for the construction of environmental infrastructure facilities.

7:22-4.5 Trust funds and accounts

(a) The Trust shall establish one or more general loan fund(s) into which may be deposited all revenues and receipts of the Trust, including moneys received as payment of principal and interest on loans made by the Trust, earnings on the moneys in any fund or account of the Trust, any grants or appropriations, other than those specified in (b) below, and all other moneys from any source available for the purpose of making Trust loans to applicants for the construction of environmental infrastructure facilities.

(b) The Trust shall establish reserve and guarantee funds into which will be deposited the proceeds from any State bonds authorized for deposit in the Trust or other funds appropriated by law to the Trust for deposit in the reserve and guarantee funds. The reserve funds will be used by the Trust to secure debt issued by the Trust. The guarantee funds will be used by the Trust to secure debt issued by a project sponsor.

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(c) Except for interim loans, the Trust shall not expend any moneys for loans during a fiscal year unless the expenditure is authorized pursuant to a project specific appropriations act by the Legislature in accordance with the Trust Act.

7:22-4.6 Terms of the loans from the Trust

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

(b) The term of the Trust loans will not exceed 20 years or as indicated in the Trust loan agreement. Trust loan repayments shall be made by the recipient in accordance with the repayment schedule indicated in the Trust loan agreement. Principal and accrued interest with respect to a particular Trust loan may, however, be prepaid in accordance with the provisions of the relevant Trust loan agreement. Interest on the Trust loan will accrue as indicated in the financial plan submitted to the Legislature pursuant to Section 21 of the Trust Act.

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

(d) Trust loan proceeds will be disbursed to recipients in accordance with N.J.A.C. 7:22-4.24.

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

7:22-4.7 Criteria for project loan priority

(a) Each year, the Department shall develop a Priority System, Intended Use Plan and Project Priority List for wastewater treatment, stormwater management and nonpoint source management facilities and a Priority System, Intended Use Plan and Project Priority List for water supply facilities for the specified Federal fiscal year(s). The Priority System establishes the ranking methodology. For wastewater treatment, stormwater management and nonpoint source management facilities, the ranking methodology evaluates projects individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions. For water supply facilities, the ranking methodology evaluates projects individually for their anticipated impacts on existing water supply needs to achieve or maintain compliance with the Federal and State Safe Drinking Water Acts. The Intended Use Plan includes information on the timing, use and distribution of Federal funds anticipated to be made available to New Jersey for financing the construction of environmental infrastructure facilities. The Project Priority List presents the projects initially eligible for funding according to their cumulative scores derived from application of the Priority System. Criteria for project loan priority shall be developed by the Department in accordance with the provisions of N.J.A.C. 7:22-3.7.

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

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

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

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

(e) The Trust shall give funding priority over projects on the Project Priority List to a project which has previously received a Trust loan in any previous funding cycle in instances where the allowable loan amount due to low bid building costs as determined by the Trust exceeds the Trust loan amount previously awarded or in instances where a project has been certified by the Trust for Trust financial assistance for costs related to reserve capacity under the provisions of N.J.A.C. 7:22-4.36 or in instances where the allowable loan amount as determined by the Trust has increased due to differing site conditions.

7:22-4.8 Eligibility for State and Federal funding

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

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

7:22-4.9 Project bypassing

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

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

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

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

7:22-4.10 Pre-application procedures

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

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

7:22-4.11 Application procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Cost impacts on system users; and

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

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

iii. For wastewater treatment, water supply and stormwater management facilities permitted as a municipal separate storm sewer system, an analysis that includes:

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

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

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

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

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

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

(1) An evaluation of the land to be acquired, including the water quality basis for the proposed land acquisition that addresses the existing land use patterns, potential threats to water quality, and other existing problems and appropriate documentation demonstrating compliance with the Environmental Assessment Requirements for State Assisted Environmental Infrastructure Facilities, N.J.A.C. 7:22-10;

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(2) An executed purchase agreement or, in the case of condemnation, evidence of the filing of a declaration of taking for the parcel(s);

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

(4) A preliminary assessment report or site investigation report prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E that evaluates the potential contamination of the land to be acquired;

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

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

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

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

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

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

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

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

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

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

10. Project cost breakdown for each subagreement;

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

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

13. Reserved

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

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

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

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

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

19. Draft engineering agreements for building services;

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

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

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

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

24. Such other information as the Trust may require.

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

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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.

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 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.

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.

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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.

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.

7:22-4.17 Loan conditions

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

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

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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) and Federal OMB Circular A-133, both incorporated herein by reference, and State OMB Circular 04-04-OMB, incorporated herein by reference as amended and supplemented. 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. (Reserved);

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. (Reserved);

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

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

13. (Reserved)

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

15. (Reserved)

16. Except for land acquisition and conservation and well sealing projects, the recipient shall certify to the Department that a final plan of operation, including an operations and maintenance manual, an emergency operating program, personnel training, an adequate budget consistent with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including

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replacement) program for the complete environmental infrastructure facility has been developed for the project;

17. The recipient shall certify that it has not and shall not enter into any contract with nor has any subcontract been or shall be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2 for any services within the scope of project work;

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

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

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

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

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

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

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

25. For environmental infrastructure 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

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determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq.;

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

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

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

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

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

iii. For pipeline construction (including the construction of transmission facilities), full-time construction inspections shall be provided during the following operations:

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

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

(3) Alignment and joining of pipe sections;

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

(5) Placement and compaction of trench backfill material;

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

(1) Excavation and spoils disposal;

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

(3) Installation of all concrete reinforcing bars;

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

(5) Installation of all equipment;

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

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

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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 may be witnessed by a representative of the Trust; and

(7) If required, actual flow tests may be conducted 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

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by reference as amended and/or supplemented, or as otherwise approved by the Department. A WWA standards may be obtained from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235.

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

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

i. The recipient, or the local government unit to which a parcel is transferred in conformance with (a)33vi below, shall perpetually maintain a fee simple interest in the parcel(s) that excludes future sale considerations or an interest stated in the form of a right, restriction, easement, covenant or condition in any deed, will, or other instrument executed by, or on behalf of the owner of the parcel(s) and the local government unit that does not allow any of the following:

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

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

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

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

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

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

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

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

iii. The recipient shall provide evidence to the Department that a properly executed real estate deed has been recorded with the clerk of the county in which the parcel is located. A conservation restriction shall also be recorded and referenced in the real estate deed which,, at a minimum, prohibit the activities identified in (a)33i. above in perpetuity.

iv. The recipient shall submit a no further action letter issued by the Department pursuant to N.J.A.C. 7:26C-2.6, if a preliminary assessment report or site assessment prepared under the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, identifies contamination at or migrating from the parcel.

v. The recipient shall submit a site survey signed and sealed by a land surveyor licensed to practice in the State of New Jersey that appropriately identifies the parcel or portion of the parcel financed pursuant to this subchapter.

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vi. The recipient shall only transfer or convey its interest in the parcel(s) upon receipt of prior written approval by the Trust. The Trust will only approve transfer to a fee simple ownership in the parcel where the transfer of title is to another local government unit.

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

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

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

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

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

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.

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;

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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.

7:22-4.20 Trust loan agreement amendments

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

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

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

7:22-4.21 Administrative loan changes

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

7:22-4.22 Other changes

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

7:22-4.23 Access

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

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

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

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

7:22-4.24 Trust disbursement

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

7:22-4.25 Assignment

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

7:22-4.26 Unused funds

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

7:22-4.27 Publicity and signs

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

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

7:22-4.28 Land acquisition

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

7:22-4.29 Project initiation

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

(b) The recipient shall not advertise any contract or any addendum thereto for the building of the project until authorization to advertise the contract or any addendum thereto has been granted by the Department.

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

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

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

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

7:22-4.30 Project performance

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

(b) On the date one year after the initiation of operation, the recipient shall certify to the Trust the performance record of the project. If the Trust or the recipient concludes that the project does not meet the environmental infrastructure facilities' performance standards as specified in the Trust loan agreement, the recipient shall submit the following:

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

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

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

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

(d) Nothing in this section:

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

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

(e) At a minimum, unless further specified, the project performance standards for wastewater treatment facilities consist of the effluent discharge limitations in the NJPDES permit (if applicable), the construction standards identified in N.J.A.C. 7:14A-22, Treatment Works Approvals, Sewer Bans, Sewer Ban Exemptions, N.J.A.C. 7:14A-23, Technical Requirements for Treatment Works Approval Applications, and the design criteria in the Department-approved Engineer's Technical Design Report submitted by the local government unit for the project, including the quantity of excessive infiltration and inflow which the project is designed to eliminate. The project performance standards for water supply projects consist of N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems, or N.J.A.C. 7:10-12, Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems, as applicable. The project performance standards for landfill closure facilities consist of the landfill's approved Closure and Post-Closure Plan submitted in accordance with N.J.A.C. 7:26-2A.9. The project performance standards for new landfill facilities consist of the solid waste facility permit issued pursuant to N.J.A.C. 7:26-2. The project performance standards for remedial action activities

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consist of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, approved by the Department. The project performance standards for well sealing projects consist of N.J.A.C. 7:9D.

7:22-4.31 Allowable project costs

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

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

7:22-4.32 Preaward costs

(a) The Trust shall not consider allowable those costs incurred for building activities, including equipment purchases and open space land acquisition performed or undertaken prior to closing the loan for the project, unless the project sponsor has met the requirements as specified in (a)1, 2 or 3, below:

1. The project sponsor has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19 to the Department prior to the advertisement of any contract for which cost reimbursement is being sought; the project sponsor has not advertised any contract or any addendum thereto, for which cost reimbursement is being sought, without the authorization to advertise the contracts or any addendum thereto being given by the Department in writing; the project sponsor has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department and the Trust in writing; and the project sponsor has taken all required actions consistent with applicable Internal Revenue Service laws, rules and regulations, and provided evidence of such actions in a manner acceptable to the Trust.

2. The project sponsor has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19 to the Department and has received the Department's and the Trust's written approval thereof prior to the issuance of a notice to proceed with building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.), the Water Supply Privatization Act (N.J.S.A. 58:26-1 et seq.) or other applicable procurement method authorized under State law.

3. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Trust may approve certain activities such as procurement of major equipment, sewer replacement, replacement or rehabilitation of transmission facilities, or building those portions of the environmental infrastructure facilities that are in need of immediate repair. However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and the Trust approves any specific documents necessary to adequately evaluate the proposed action, including compliance with (a)1 or 2 above.

(b) If the Trust approves preliminary building activities, such approval is not an actual or implied commitment of Trust loan moneys and the project sponsor proceeds at its own financial risk. Except for interim loans, the project sponsor shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act and closing a Trust loan for the project.

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

7:22-4.33 Force account work

(a) A recipient must secure the Trust's prior written approval for use of force account work for construction, construction-related activities or for repairs or improvements to a facility where costs exceed \$25,000.

(b) The recipient shall demonstrate that:

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1. The work can be accomplished cost effectively by the use of force account; or
2. Emergency circumstances necessitate its use.

7:22-4.34 Planning and design

The actual costs associated with the planning and design of environmental infrastructure facilities are allowable for reimbursement from the Trust or the Trust may provide an allowance to assist in defraying the planning and design costs to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, the Sewage Infrastructure Improvement Act, or the Safe Drinking Water Act for costs associated with any portion of the project scope or for costs to address the project need, will not be eligible to receive reimbursement for actual costs incurred or an allowance for planning and/or design as appropriate in accordance with N.J.A.C. 7:22-5.12. Planning and/or design costs are not allowable costs under a post-construction supplemental Trust loan to address differing site conditions.

7:22-4.35 Infiltration/inflow for wastewater treatment facilities

- (a) An infiltration/inflow analysis is required for sanitary sewer rehabilitation projects as part of the Project Report/Facilities Plan.
- (b) The applicant shall demonstrate to the Department's satisfaction that each sewer system discharging into the wastewater treatment facility is not or will not be subject to excessive infiltration/inflow. For combined sewer overflow projects, in no case shall inflow be considered excessive.
- (c) If the rainfall induced peak inflow rate results or will result in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.
- (d) If the flow rate at the existing wastewater treatment facility is less than 120 gallons per capita per day during periods of high groundwater, the applicant shall design the project including sufficient capacity to transport and treat any existing infiltration. If the applicant demonstrates that its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the applicant shall perform a sewer system evaluation survey including a cost effectiveness analysis and shall propose a rehabilitation program to eliminate the excessive infiltration.
- (e) The provisions of (a) through (d) above are not intended to apply to stormwater runoff collection systems. However, a similar analysis regarding the quality and quantity of infiltration/inflow into a stormwater runoff collection system may be required.

7:22-4.36 Reserve capacity

- (a) For those wastewater treatment facilities eligible for Trust loans in State fiscal year 1993 and beyond whose project sponsor indicates in its initial loan application that it does not want to exercise its option to receive Trust loan assistance for those costs related to reserve capacity that the Department determines to be unallowable under the provisions of N.J.A.C. 7:22-3.36, the Trust shall limit the recipient's Trust loan assistance to the cost of the project, to address the wastewater needs for which the planning requirements at N.J.A.C. 7:22-10 have been met, with a capacity based upon flow records, existing unsewered needs and flows anticipated as of the date of initiation of operation as established in the Trust loan agreement.
- (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

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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.

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.

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. 7:1D-2.

(b) Recipients shall insert in every contract for work on a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting on any project financially assisted by the State or the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1D-2.2.

(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

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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. 7:1D-2 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2, the recipient may take into account the loss of 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. 7:1D-2.9. 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. 7:1D-2.

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.).

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

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(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.

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 Trust loan period, and/or the project, and the Trust loan agreement shall be modified if necessary. However, additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-4.44 Termination of loans

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

1. The Trust may terminate a Trust 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 Trust loan agreement;
- ii. Default by the recipient;
- iii. A determination that the Trust 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. Trust funds have been used for non-allowable costs.

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

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

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

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

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

3. If the Trust determines that a recipient has ceased work on a project without good cause, the Trust may unilaterally terminate the Trust loan pursuant to this section.

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

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

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

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

7:22-4.45 Administrative hearings

(a) The Trust shall make the initial decision regarding all disputes arising under a Trust loan. The recipient shall specifically detail in writing the basis for its appeal. When a recipient so requests, the Trust shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) If a recipient wishes to appeal the Department's decision under (a) above, the recipient shall request an administrative hearing within 15 calendar days of a decision by the Trust. The request for an administrative hearing must specify in detail the basis for the appeal.

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

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(d) If the recipient raises a substantial and meritorious issue and such efforts at settlement fail, the Trust shall file the request for an administrative hearing with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. promulgated pursuant to those Acts.

7:22-4.46 Assistance in the administration of Trust rules

In evaluating whether a project has complied with or satisfied any requirement or criteria under these New Jersey Environmental Infrastructure Trust Rules, including, but not limited to, N.J.A.C. 7:22-4.11, 4.13, 4.17, 4.29, 4.31, 4.35, 4.36, 4.37, 4.43 or 4.45, or in determining what course of action the Trust may decide upon regarding those sections, the Trust shall be entitled to rely upon any advice, certifications or opinions which may be provided to it by the engineering, professional or legal staff of the Department or of any other State governmental unit upon which it may call for assistance pursuant to N.J.S.A. 58:11B-5(f).

7:22-4.47 Interim Loans

(a) A project sponsor is eligible for an interim loan from the Trust provided all of the following conditions are met:

(1) The project is listed on the project priority list developed in accordance with N.J.A.C. 7:22-4.8(a) for funding in the forthcoming State fiscal year;

(2) The project sponsor has submitted a complete application for the project in accordance with N.J.A.C. 7:22-4.11;

(3) The project has been certified for funding by the Trust in accordance with N.J.A.C. 7:22-4.13;

(4) The project is in the fundable range in the forthcoming funding cycle given the project's rank and the anticipated availability of Department and trust monies for loans; and

(5) The project sponsor has not previously received an Interim loan with the Trust for the same project scope.

(b) Interim loans will be awarded on a readiness-to-proceed basis until the funds available for interim loan awards are exhausted.

7:22-4.48 Severability

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