

RESOLUTION NO. 18 - 65

**READOPTON OF THE RULES AND REGULATIONS FOR
THE NJ ENVIRONMENTAL INFRASTRUCTURE FINANCING PROGRAM**

WHEREAS, the rules of the Department of Environmental Protection (“DEP”) and the New Jersey Infrastructure Bank (“I-Bank”) governing the financial assistance application and award procedures and related requirements for project sponsors to qualify for financing of environmental infrastructure projects are established within the New Jersey Administrative Code (N.J.A.C.) Title 22 as the regulations of the Financial Assistance Programs for Environmental Infrastructure Facilities (the “Rules”); and

WHEREAS, pursuant to N.J.S.A. §52:14B-5.1 and N.J.A.C. §1:30-6.4, the Rules expire on January 18, 2019, seven years after the chapter’s original or readoption effective date; and

WHEREAS, the Rules require technical changes to update references resulting from changes to the I-Bank enabling act; and

WHEREAS, the I-Bank in cooperation with the DEP desire to readopt with technical changes the existing Rules and Regulations that govern the operation of the New Jersey Environmental Infrastructure Financing Program pursuant to N.J.S.A. 52:14B-5.1; and

WHEREAS, pursuant to N.J.S.A. 52:14B-5.1(10)c and N.J.A.C. §1:30-6.4(h), the Department and I-Bank must file the notice of readoption at least 30 days prior to the expiration date to extend the sunset date seven years from the date of filing; and

WHEREAS, the Rules will be reviewed for more substantive amendments; and

WHEREAS, the DEP and the I-Bank have established a schedule by which to review the Rules and, where necessary, amend the Rules in accordance with the New Jersey Administrative Procedure Act by October 2020.

NOW THEREFORE BE IT RESOLVED, that the I-Bank hereby authorizes the Vice Chairman to sign the Notice of Readoption with technical changes of N.J.A.C. 7:22, “Financial Assistance Program for Environmental Infrastructure Facilities”, which will be in substantially the form attached and request a filing of the Readoption Notice with the Office of Administrative Law.

Adopted Date: November 15, 2018

Motion Made By: Mr. Roger Ellis

Motion Seconded By: Mr. Mark Longo

Ayes: 7

Nays: 0

Abstentions: 0

ENVIRONMENTAL PROTECTION AND

NEW JERSEY INFRASTRUCTURE BANK

Notice of Readoption

Financial Assistance Programs for Environmental Infrastructure Facilities

Readoption with Technical Changes: N.J.A.C. 7:22

Authority: Water Conservation Bond Act of 1969 (P.L. 1969, c. 127); the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Natural Resources Bond Act of 1980 (P.L. 1980, c. 70); the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181); the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.306); the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88); the Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act of 2003 (P.L. 2003, c. 162); the Water Supply Bond Act of 1981 (P.L. 1981, c.261); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:1A-1 et seq.; N.J.S.A. 58:10A-1 et seq.; N.J.S.A. 58:11A-1 et seq.; and N.J.S.A. 58:12A-1 et seq.; and future laws authorizing the Department of Environmental Protection to provide assistance for construction of environmental infrastructure projects, as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10, and the New Jersey Infrastructure Trust Act (N.J.S.A. 58:11B-1 et seq.); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act Amendments (P.L. 1997, c.225); the Water Supply Bond Act Amendments (P.L. 1997, c.223); and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88); the Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act of 2003 (P.L. 2003, c. 162) and future laws authorizing the New Jersey Infrastructure Bank to

provide assistance for construction of environmental infrastructure projects as to N.J.A.C. 7:22-4, 5 and 9.

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10; and

Robert A. Briant, Jr., Acting Chairman, New Jersey Infrastructure Bank, as to N.J.A.C. 7:22-4, 5 and 9.

Effective Date: 2018, Readoption:
2019, Technical Changes.

New Expiration Date:

Take notice that pursuant to N.J.S.A. 52:14B-5.1, Financial Assistance Programs for Environmental Infrastructure Facilities, N.J.A.C. 7:22, is being readopted and shall continue in effect for a seven-year period. The rules had been scheduled to expire on January 18, 2019. The Department of Environmental Protection (Department) and the New Jersey Infrastructure Bank (referred to in the rules as the Trust) have reviewed these rules and have determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, the Department and the Trust propose to readopt this chapter with changes to update references to an enabling statute, as discussed below. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice extends the expiration date of the chapter seven years from the date of filing.

N.J.A.C. 7:22 contains the rules of the Department and the Trust governing the financial assistance application and award procedures, as well as other related requirements, for project

sponsors to qualify for State monies to finance environmental infrastructure projects, including wastewater treatment, water supply and stormwater/nonpoint source management facilities. The rules governs the New Jersey Environmental Infrastructure Financing Program, jointly administered by the Department and the Trust, including the procedures by which the Department provides loans to project sponsors for the acquisition, construction, improvement, repair or reconstruction of all or part of any wastewater treatment, water supply and stormwater/nonpoint source management facilities; the procedures by which the Trust provides loans to project sponsors for the acquisition, construction, improvement, repair or reconstruction of all or part of any wastewater treatment, water supply and stormwater/nonpoint source management facilities; the policies for determining the allowability of costs for projects that are awarded Fund and Trust loans.

Further, the chapter governs the Pinelands Infrastructure Trust Financing Program, and establishes the procedures through which local government units apply for, and are awarded, funds from the Pinelands Infrastructure Trust Fund; and sets forth policies for determining the allowability of costs for projects that are awarded funding through the Pinelands Infrastructure Trust Financing Program.

The rules establish standards of ethical conduct and financial disclosure requirements for local government officers and employees of utilities that receive funding under the chapter; establish procedures for providing opportunities for socially and economically disadvantaged contractors and vendors to supply materials or services under construction contracts for environmental infrastructure projects that are financed by the Department and the Trust; govern socially and economically disadvantaged contractor participation requirements pursuant to this chapter and N.J.A.C. 7:22A, Sewage Infrastructure Improvement Act; and establish the requirements for environmental

assessment that apply to project sponsors seeking financial assistance for environmental infrastructure projects under N.J.A.C. 7:22 and 22A.

The Legislature by P.L. 2016, c. 56 changed the name of the New Jersey Environmental Infrastructure Trust Act, N.J.S.A. 58:11B-1 et seq., to the New Jersey Infrastructure Trust Act. The Legislature changed the name of the New Jersey Environmental Infrastructure Trust to the New Jersey Infrastructure Bank. The definition of "Trust" at amended N.J.S.A. 58:11B-3 refers to the New Jersey Infrastructure Bank.

The Department and the Trust are changing the rules at N.J.A.C. 7:22 to refer to the New Jersey Infrastructure Bank, rather than the New Jersey Environmental Infrastructure Trust, and to use the amended title of N.J.S.A. 58:11B-1 et seq.

Full text of the technical changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

7:22-3.4 Definitions

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

...

"Trust" means the New Jersey [Environmental Infrastructure Trust] **Infrastructure Bank** created pursuant to the Trust Act, or its duly authorized agent.

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

...

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-3.18 through 3.30, as well as such statutes, rules, permits, terms and conditions, which may be applicable to particular loans, are conditions to each Fund loan and conditions to each disbursement under a Fund loan agreement:

...

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

SUBCHAPTER 4. [ENVIRONMENTAL INFRASTRUCTURE] TRUST PROCEDURES AND REQUIREMENTS

7:22-4.17 Loan conditions

(a) – (c) (No change.)

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

(e) – (g) (No change.)

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 [R]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).

SUBCHAPTER 9. AWARDING CONTRACTS FOR STATE ASSISTED PROJECTS TO SMALL BUSINESS
CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED
INDIVIDUALS

7:22-9.2 Definitions

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

...

"Trust" means the New Jersey [Environmental Infrastructure Trust] **Infrastructure Bank** established pursuant to the Trust Act.

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

Date: _____

Catherine R. McCabe, Commissioner
Department of Environmental Protection

Robert A. Briant, Jr. Acting Chairman
New Jersey Infrastructure Bank

ADOPTION OF AMENDMENTS TO NJAC 7:22 - DRAFT SCHEDULE

<u>Delivery Date</u>	<u>Deliverable</u>
November 15, 2018	I-Bank Board approves Readoption of NJAC 7:22 with Technical Amendments
December 13, 2018	Rule Team assembled Team meets and has established the Scope of Rule Amendment(s) Request Legal Assignments from OLA and DAG
January 2019	Meet with DEP Office of Economic Analysis for guidance and support and preparation of Economic Impact statement. Consult with Office of Communications for planning and conducting stakeholder outreach procedures, public notification, meeting format, review of stakeholder lists and facilitation needs.
March 14, 2019	Establish Dates, Invitees and Posting of Notice for Stakeholder Meetings Submit Notice for NJ Register Publication thru OLA - (Only need to notice if rules require it)
May 9, 2019	Conduct first Stakeholder meeting (for Subchapters 3,4 and 5 only) Conduct a Launch Meeting & Discuss need for further Stakeholder meetings. Review of draft proposal launch memorandum and discuss first stakeholder outreach Issue a Proposal Launch Memorandum within week of meeting
June 13, 2019	Meet with Rule Team and draft amendments to the rules Identify cross-program issues (Environmental rules, SED provisions, etc.)
Summer/Fall 2019	Conduct further Stakeholder Meetings (as necessary) Continue drafting the rule amendments
November 14, 2019	Finalize Proposal for filing
December 12, 2019	I-Bank Board approves the filing of the proposal
January 16, 2020	Mandatory Additional Notice of Proposal Distribution
February 18, 2020	Publication of Proposal in NJ Register
March 12, 2020	Public Hearing(s) and Close of Comment Period (April, 2020)
May 14, 2020	Rule Team re-convenes and conducts an adoption launch meeting; draft adoption launch memorandum Finalize Adoption Launch Memorandum

June 11, 2020	Rule Team drafts adoption document and prepares Response to Comments Prepare Adoption Briefing Memorandum Send to Commissioner for Review (two week review time)
July 16, 2020	Send to Governor's Office
August 13, 2020	I-Bank Board Authorizes Adoption
September 10, 2020	Finalize Adoption for filing in NJR
October 15, 2020	Publication in NJR Update Rule page on DEP Website