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ENVIRONMENTAL PROTECTION AND NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST

Financial Assistance Programs for Environmental Infrastructure Facilities

Proposed Readoption with Amendments: N.J.A.C. 7:22

Authorized By: Bradley M. Campbell, Commissioner, Department of Environmental Protection as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10 and the New Jersey Environmental Infrastructure Trust, Robert A. Briant, Sr., Chairman, as to N.J.A.C. 7:22-4, 5 and 9.

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 Environmental Infrastructure Trust Act (N.J.S.A. 58:11B-1 et seq.); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act Amendments (P.L. 1997, c.225); the Water Supply Bond Act Amendments (P.L. 1997, c.223); and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88); 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 Environmental Infrastructure Trust to provide assistance for construction of environmental infrastructure projects as to N.J.A.C. 7:22-4, 5 and 9.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 20-05-06/484

Proposal Number:

A public hearing concerning this proposal will be held on Wednesday, August 31, 2005 at:

NJ Environmental Infrastructure Trust Offices
3131 Princeton Pike, Building 6, Suite 201
Lawrenceville, New Jersey
10:00 A.M. until the end of testimony

Submit written comments by September 16, 2005 to:

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Oneida Cuevas, Esq.
Attn: DEP Docket Number:
Office of Legal Affairs
Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's website at <http://www.state.nj.us.dep>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement under N.J.A.C. 1:30-3.3(a)5.

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the Financial Assistance Programs for Environmental Infrastructure Facilities rules, N.J.A.C. 7:22, expire on June 12, 2005. The Department and the New Jersey Environmental Infrastructure (Trust) have reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Because the proposed re-adoption was filed before June 12, 2005, the expiration date was statutorily extended by 180 days, until December 9, 2005. See N.J.S.A. 52:14B-5.1c.

The New Jersey Environmental Infrastructure Financing Program was initially established as the Wastewater Treatment Financing Program in 1987. From 1987 through 1997, the Financing Program provided loans to a number of project types that are classified as wastewater treatment facilities, including sewage treatment plant improvements and expansions, new interceptor and collection sewers, sewer system rehabilitation (replacement and repair) and sludge management facilities. As substantial progress was made in addressing point source needs, the State began to expand the financing program to include various types of stormwater/nonpoint source management projects in 1997. In 1998, the Division of Water Quality, together with the Water Supply Administration and the New Jersey Environmental Infrastructure Trust, promulgated rules and developed the necessary program documents to implement the Drinking Water State Revolving Fund (SRF). The Drinking Water SRF was patterned after the wastewater program model, referred to as the Clean Water SRF. The Department administers both clean water and drinking water Federal SRF capitalization grants, monies available from the 1981 Water Supply Bond Act, the 1985 Wastewater Treatment Bond

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Act, the 1989 Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the 1992 Green Acres, Clean Water, Farmland and Historic Preservation Bond Act, and the 2003 Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act and State appropriations through N.J.A.C. 7:22. The Trust administers several general loan funds and utilizes State monies available to them to establish debt service reserve funds to secure Trust bond issues.

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 being proposed for readoption with amendments contain ten subchapters. Subchapter 1 is reserved. Subchapter 2 contains the rules that establish the matching State grants program for projects that received Federal Construction Grants. Subchapters 3, 4, and 5 contain the rules governing the Environmental Infrastructure Financing Program. Subchapters 6 and 7 contain the rules governing the Pinelands Infrastructure Trust Financing Program. Subchapter 8 establishes minimum standards of conduct for utilities officers, employees, agents and members participating in these State financial assistance programs. Subchapter 9 governs socially and economically disadvantaged contractor participation requirements pursuant to this chapter and N.J.A.C. 7:22A (Sewage Infrastructure Improvement Act rules). Subchapter 10 establishes environmental assessment requirements that apply to all environmental infrastructure projects pursuing financial assistance pursuant to this chapter and N.J.A.C. 7:22A.

The Department and the Trust are proposing to readopt these rules with amendments to remove certain requirements that are no longer applicable, clarify procedures related to open space land acquisition projects, expand the existing provisions related to the financing of emergency projects and to update and simplify the method used to determine allowable costs related to planning and design activities.

The following is a summary of the rules proposed for readoption and the proposed amendments.

SUBCHAPTER 2. MATCHING GRANT PROCEDURES AND REQUIREMENTS

Subchapter 2, Matching Grant Procedures and Requirements, prescribes the eligibility and application requirements for local government units (for example, municipalities, utility authorities and sewerage authorities) which seek a State grant to supplement Federal Construction Grants, awarded pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. §§1251 et seq.) as amended, for the planning, design or construction of wastewater treatment facilities. This subchapter describes the procedures to be followed by the Department in the evaluation of applications and in the related grant award process. The rules are intended to ensure that grant funds awarded pursuant to this subchapter are administered and expended for the purposes approved by the Department. The Department and the Trust are proposing to readopt this subchapter without change.

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SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

N.J.A.C. 7:22-3, Fund Procedures and Requirements, establishes the procedures by which the Department provides loans to project sponsors for the construction of wastewater treatment, water supply and stormwater/nonpoint source management facilities. The rules generally define a project sponsor as a county, municipality, sewerage and utility authority and owners (both private and public) of community water systems or nonprofit noncommunity water systems. These rules establish a protocol to ensure that the funds are distributed by the Department according to the laws and policies of the State and in a manner which protects the public interest. Requirements for loan application and repayment are included as well as general terms and conditions of the loan agreements and minimum standards for the construction of environmental infrastructure facilities. The amendments being proposed to N.J.A.C. 7:22-3 remove outdated Federal requirements that were once applicable to Clean Water SRF participants, clarify the requirements applicable to open space land acquisition projects and expand the existing provisions to provide for the financing of emergency projects.

The terms "ad valorem tax", "alternative technology", "innovative technology", and "user charge" at N.J.A.C. 7:22-3.4 are proposed to be deleted since these terms are associated with requirements that the State was required to pass on to Clean Water SRF program participants for the State to be in a position to continue to receive Federal funding for the program. Although the need to apply these Federally-derived requirements expired several years ago, the State continued to require them over concerns that, with the reauthorization of the Clean Water Act, the requirements would again apply. The Department and the Trust have discussed the proposed changes with the United States Environmental Protection Agency "USEPA," the agency that administers the Clean Water and Drinking Water SRF Programs at the Federal level. They have confirmed that there is no longer a need to require these items of program participants for the State to continue to receive Federal funding and it is not likely that the requirements would be re-instituted with a reauthorization of the Clean Water Act.

The definition of "Bond Acts" at N.J.A.C. 7:22-3.4 is proposed to be amended to add the Dam, Lake, Stream, Flood Control, Water Resources and Wastewater Treatment Bond Act of 2003. The 2003 Bond Act, like other State bond acts enacted in the past, provides an additional source of State monies to award Department and Trust loans. A definition for the Dam, Lake, Stream, Flood Control, Water Resources and Wastewater Treatment Bond Act is also proposed to be added to this section.

In addition, the term "certified mail" is proposed to be deleted since the Department and the Trust are proposing to delete references to "certified mail" in the rule.

The requirement that the Department send a written notice to the project sponsor of a bypass action by certified mail is proposed to be deleted from N.J.A.C. 7:22-3.9(c). While the Department intends to continue to provide written notice, the proposed amendments would no longer require the Department to send these notices by certified mail.

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N.J.A.C. 7:22-3.11(d)5 is proposed to be amended to remove outdated Federal requirements that were once applicable to Clean Water SRF participants and other project level requirements. Specifically, the planning requirements at N.J.A.C. 7:22-3.11(d)5i(1), (2) and (3) for a complete description of the environmental infrastructure facilities and the system of which it is a part, detailed cost information and a description of potential open space opportunities are proposed to be deleted. At N.J.A.C. 7:22-3.11(d)5i5(A), the term "design" is proposed to be replaced with the term "preliminary engineering" to more clearly specify that a detailed engineering design is not needed at the planning phase.

At N.J.A.C. 7:22-3.11(d)5iii, the requirement for a formal cost effectiveness analysis is proposed to be deleted from the rule to be replaced with an analysis that contains similar elements, including a description of the relationship between cost, environmental benefit and capacity of alternatives at N.J.A.C. 7:22-3.11(d)5iii(2). In addition, N.J.A.C. 7:22-3.11(d)5iii(3), (5) and (6) which require an evaluation of improved operations and maintenance, of revenue generating applications and of opportunities to reduce energy use or recover energy are proposed to be removed from the rule. Based on these amendments, sponsors of wastewater treatment, water supply and certain stormwater management activities will no longer need to conduct these evaluations as part of their project approval from the Department. While the Department is proposing to remove these requirements from the financing program, project sponsors are still encouraged to investigate and evaluate these factors (improved operation and maintenance, revenue generating applications and energy reduction or recovery opportunities) as part of the development of the project when the scope of the project lends itself to such an evaluation. At new N.J.A.C. 7:22-3.11(d)5iii(4), information regarding replacement costs is proposed to be added to the rule.

N.J.A.C. 7:22-3.11(d)5v(1) is proposed to be modified to clarify the requirements applicable to land acquisition and conservation projects to emphasize these projects must also comply with the applicable provisions of N.J.A.C. 7:22-10, the environmental assessment requirements for environmental infrastructure facilities. In addition, the requirement for the submittal of a site survey at the time of loan application is proposed to be removed from N.J.A.C. 7:22-3.11(d)5v(2). A site survey must still be submitted, but the requirement has been recodified at N.J.A.C. 7: 22-3.17(a)33v, under loan conditions. A new requirement is proposed to be added in its place to require that the project sponsor submit an executed purchase agreement or, in the case of a condemnation, evidence of the filing of a declaration of taking for the parcel or parcels for which funding is sought. This requirement is meant to minimize the possibility that the sponsor cannot implement the project and buy the parcel after the award of a Fund loan. N.J.A.C. 7:22-3.11(d)5v(4) is proposed to be amended to better clarify that a preliminary assessment and site investigation, if applicable, is needed in all cases at the time of the loan application. Amendments are also proposed to N.J.A.C. 7:22-3.11(d)5v(4) and (5) to remove the requirement for a letter of no further action (if the parcel is contaminated) and the requirement for a statement from the project sponsor pledging to comply with the loan conditions at the time of loan application because it is more appropriate for these conditions to be met after the award of the loan.

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N.J.A.C. 7:22-3.11(d)13 related to the development of sewer use ordinance and a user charge system is proposed to be deleted. These requirements were once mandated by the Federal laws and regulations governing the Clean Water SRF program. The need to continue to review these documents no longer exists and the Department believes that the development and implementation of a sewer use ordinance and user charge system is best left to the individual owners and operators of these systems. In addition, the amount of extraneous flows entering a wastewater treatment system that were controlled to some extent through individual sewer use ordinances are otherwise regulated under the capacity assurance program in the Treatment Works Approval rules at N.J.A.C. 7:14A-22.16.

N.J.A.C. 7:22-3.11(d)22 is proposed to be amended to clarify that, in order for project sponsors to satisfy this provision, the sponsor must provide, among other things, a description of the water supply system's compliance with the rules that implement the Safe Drinking Water Act and evidence of ownership of the water supply system associated with the project scope. Federal requirements allow the State to finance water supply systems that are not in compliance with the Safe Drinking Water Act rules only if the project being funded will bring the system into compliance.

N.J.A.C. 7:22-3.13(c) is proposed to be amended to remove the requirement that the Department provide notice of a bypass action by certified mail. While the Department intends to continue to provide written notice, the proposed amendments would no longer require the Department to send these notices by certified mail. The Department generally does not bypass a project without first informing the project sponsor that such an action is forthcoming. In many instances, a project is bypassed by the Department at the request of the project sponsor and correspondence through certified mail is unnecessary.

Under loan conditions at N.J.A.C. 7:22-3.17, the reference to State OMB Circular 98-07-OMB, that details acceptable accounting and auditing procedures at N.J.A.C. 7:22-3.17(a)2, is proposed to be updated to identify the most current State OMB Circular, currently known as 04-04-OMB. State OMB Circular 04-04-OMB identifies the standards developed by the State that address accounting and auditing practices that apply to certain loan recipients. The applicability of the State Circular is based on the amount of State and/or federal financial assistance expended by the project sponsor during a given fiscal year.

The loan condition that requires the recipient to adopt a sewer use ordinance and implement a user charge system is proposed to be removed at N.J.A.C. 7:22-3.17(a)5. These Federally-derived requirements are no longer applicable to the Clean Water SRF program and are also proposed to be removed from the definition and loan application sections of the rule.

At N.J.A.C. 7:22-3.17(a)10, the requirement related to the qualifications of the recipient's personnel is proposed to be removed from the financing program rule. The qualifications of the recipient's operating and management personnel are decisions that are best left with the recipient who has the ultimate responsibility for the project, the wastewater treatment or water supply system and compliance with any associated discharge or safe drinking water limitations. In addition, owners of water and wastewater treatment systems are responsible to ensure that their

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operating personnel are properly licensed in accordance with the applicable Department rules at N.J.A.C. 7: 10A, Licensing of Water Supply and Wastewater Treatment Operators, regardless of participation in the financing program.

N.J.A.C. 7:22-3.17(a)25 is proposed to be amended to replace wastewater treatment and stormwater management with “environmental infrastructure” facilities and to remove the requirement that projects pay not less than the prevailing Federal wage rate as determined by the US Secretary of Labor. Once a Federal requirement for all Clean Water projects, this requirement is no longer applicable to the Clean Water SRF program.

N.J.A.C. 7:22-3.17(a)31iv(6) and (7) are proposed to be amended to modify the requirement that the Department must witness or be present for certain mechanical equipment testing and flow tests. The Department has reviewed this requirement and determined that a representative from the Department need not be present for all such tests. The Department reserves the right to be present as may be appropriate, but those determinations will be made on a project-by-project basis.

N.J.A.C. 7:22-3.17(a)33i is proposed to be amended to allow the recipient to transfer its interest in a property that was purchased using Fund monies with prior approval by the Department. The recipient, or its successor, would still be required to perpetually maintain a compatible interest in the property that does not allow activities that are detrimental to water quality in the project area. The Department will only approve these transactions if the interest in the property is transferred to a local government unit. The requirement for a project sign for land acquisition projects is proposed to be removed from N.J.A.C. 7:22-3.17(a)33i(1) as this sign is more appropriate for wastewater and water supply projects where construction activities are occurring. N.J.A.C. 7:22-3.17(a)33iii is proposed to be modified to recognize the distinction between the real estate deed, which defines ownership of the property, and the deed of conservation restriction, which is the document that actually contains the prohibitions needed to ensure that the funded parcel will continue to help protect and maintain water quality in the project area. Both deeds are required to be recorded.

New provisions are being proposed to be added at N.J.A.C. 7:22-3.17(a)33iv, v and vi. N.J.A.C. 7:22-3.17(a)33iv requires loan recipients for open space land acquisition projects to provide a no further action letter issued by the Department if the preliminary assessment or site investigation identifies contamination on the property. N.J.A.C. 7:22-3.17(a)33v has been recodified from the loan application section and requires the sponsor to provide a site survey that identifies the parcel or portion of the parcel financed with Clean Water SRF program funds. N.J.A.C. 7:22-3.17(a)33vi is proposed to be added to allow recipients to transfer ownership of a parcel to another local government unit if the Department approves the transfer prior to the transfer of ownership.

The project performance standards for wastewater treatment facilities at N.J.A.C. 7:22-3.30(e) are proposed to be amended to include the standards identified in the Treatment Works approval rules at N.J.A.C. 7:14A-22 and 23. In addition, the rule reference applicable to well

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sealing projects is proposed to be more correctly identified as N.J.A.C. 7:9D. The existing rule cites N.J.A.C. 7:9-9.

Changes are being proposed to N.J.A.C. 7:22-3.32(a) to clarify that this section which identifies preaward costs, applies to all building activities as defined in the rule, including land acquisition projects and equipment purchases. This section is often misinterpreted since land acquisition projects and equipment purchases are typically not considered building activities by the regulated community. In addition, N.J.A.C. 7:22-3.32(a)3 is proposed to be amended to modify and expand the description of those activities that could qualify under the emergency project provisions of the financing program. With the issuance of an "emergency project" environmental decision document by the Department and these proposed changes, the Department will be in a better position to address emergency projects as they arise and guide project sponsors through the applicable program requirements. Sewer or transmission line repair or replacement and the repair or replacement of treatment or conveyance components that are damaged as a result of an emergency occurrence are being proposed to be eligible activities for which a project sponsor can seek preaward approval.

N.J.A.C. 7:22-3.34 is proposed to be modified to remove the distinction between allowable costs based on the level of environmental review a project requires based on N.J.A.C. 7:22-10. As modified, N.J.A.C. 7:22-3.34 will provide project sponsors with two options for financing the planning and design costs associated with an environmental infrastructure project. The sponsor may either apply for reimbursement of actual planning and design costs (in which case, the sponsor would be required to submit actual vouchers for planning and design costs) or use the allowance table to calculate the planning and design allowance in accordance with N.J.A.C. 7:22-5.12. The planning and design allowance table is proposed to be updated and simplified as described below in the summary section for changes to subchapter 5, Allowable Costs.

SUBCHAPTER 4. ENVIRONMENTAL INFRASTRUCTURE TRUST PROCEDURES AND REQUIREMENTS

N.J.A.C. 7:22-4, Environmental Infrastructure Trust Procedures and Requirements, establishes the procedures by which the Trust provides loans to project sponsors for the construction of environmental infrastructure facilities. It assures that funds are distributed by the Trust according to the laws and policies of the State and in a manner which protects the public interest. Requirements for loan application and repayment are included in this subchapter, as well as general terms and conditions for the loan agreements and the minimum standards for the construction of environmental infrastructure facilities. The proposed amendments to N.J.A.C. 7:22-4 modify the rules removing outdated Federal requirements that were once applicable to Clean Water SRF participants, clarify the requirements applicable to open space land acquisition projects and expand the existing provisions to provide for the financing of emergency projects.

The requirement that the Trust send a written notice to the project sponsor of a bypass action by certified mail is proposed to be deleted from N.J.A.C. 7:22-4.9(c) for the same reason this change is proposed to be made at N.J.A.C. 7:22-3.9(c).

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N.J.A.C. 7:22-4.11(d)5 is proposed to be amended to remove outdated Federal requirements that were once applicable to Clean Water SRF participants and other project level requirements. Specifically, planning requirements at N.J.A.C. 7:22-4.11(d)5i(1), (2) and (3) for a complete description of the environmental infrastructure facilities and the system of which it is a part, detailed cost information and a description of potential open space opportunities are proposed to be deleted. At N.J.A.C. 7:22-4.11(d)5i5(A), the term "design" is proposed to be replaced with the term "preliminary engineering" to more clearly specify that a detailed engineering design is not needed at the planning phase.

At N.J.A.C. 7:22-4.11(d)5iii, the requirement for a formal cost effectiveness analysis is proposed to be deleted from the rule to be replaced with an analysis that contains similar elements, including a description of the relationship between cost, environmental benefit and capacity of alternatives at N.J.A.C. 7:22-4.11(d)5iii(2). In addition, N.J.A.C. 7:22-4.11(d)5iii(3), (5) and (6) which require an evaluation of improved operations and maintenance, of revenue generating applications and of opportunities to reduce energy use or recover energy are proposed to be removed from the rule. Based on these amendments, sponsors of wastewater treatment, water supply and certain stormwater management activities will no longer need to conduct these evaluations as part of their project approval from the Trust. While the Trust is proposing to remove these requirements from the financing program, project sponsors are still encouraged to investigate and evaluate these factors (improved operation and maintenance, revenue generating applications and energy reduction or recovery opportunities) as part of the development of the project when the scope of the project lends itself to such an evaluation. At new N.J.A.C. 7:22-4.11(d)5iii(4), information regarding replacement costs is proposed to be added to the rule.

N.J.A.C. 7:22-4.11(d)5v(1) is proposed to be modified to clarify the requirements applicable to land acquisition and conservation projects to emphasize these projects must also comply with the applicable provisions of N.J.A.C. 7:22-10, the environmental assessment requirements for environmental infrastructure facilities. In addition, the requirement for the submittal of a site survey at the time of the loan application is proposed to be removed from N.J.A.C. 7:22-4.11(d)5v(2). A site survey must still be submitted, but the requirement has been recodified at N.J.A.C. 7:22-4.17(a)33v, under loan conditions. At N.J.A.C. 7:22-4.11(d)5v(2), a new requirement is proposed to be added in its place to require that the project sponsor submit an executed purchase agreement or, in the case of condemnation, evidence of the filing of a declaration of taking for the parcel or parcels for which funding is sought. This requirement is meant to minimize the possibility that the sponsor cannot implement the project and buy the parcel after the award of a Trust loan. N.J.A.C. 7:22-4.11(d)5v(4) is proposed to be amended to better clarify that a preliminary assessment and site investigation, if applicable, is needed in all cases at the time of the loan application. Amendments are also proposed to N.J.A.C. 7:22-4.11(d)5v(4) and (5) to remove the requirement for a letter of no further action (if the parcel is contaminated) and the requirement for a statement pledging to comply with the loan conditions at the time of the loan application because it is more appropriate for these conditions to be met after loan award.

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N.J.A.C. 7:22-4.11(d)13 related to the development of sewer use ordinance and a user charge system is proposed to be deleted. These requirements were once mandated by the Federal laws and regulations governing the Clean Water SRF program. The need to continue to review these documents no longer exists and the adoption of a sewer use ordinance and the implementation of a user charge system is best left to the individual owners and operators of these systems. In addition, the amount of extraneous flows entering a wastewater treatment system that were controlled to some extent through individual sewer use ordinances are otherwise regulated under the capacity assurance program in the Treatment Works Approval rules at N.J.A.C. 7:14A-22.16.

N.J.A.C. 7:22-4.11(d)22 is proposed to be amended to clarify that, in order for project sponsors to satisfy this provision, the sponsor must be in compliance with the rules that implement the Safe Drinking Water Act and provide evidence of ownership of the water supply system associated with the project scope. Federal requirements allow the State to finance water supply systems that are not in compliance with the Safe Drinking Water Act rules only if the project being funded will bring the system into compliance.

N.J.A.C. 7:22-4.13(c) is proposed to be amended to remove the requirement that the Trust provide notice of a bypass action by certified mail. While the Trust intends to continue to provide written notice, the proposed amendments would no longer require the Trust to send these notices by certified mail. The Trust generally does not bypass a project without first informing the project sponsor that such an action is forthcoming. In many instances, a project is bypassed by the Department and/or the Trust at the request of the project sponsor and correspondence through certified mail is unnecessary.

Under loan conditions at N.J.A.C. 7:22-4.17, the reference to State OMB Circular 98-07-OMB, that details accounting and auditing procedures and identified at N.J.A.C. 7:22-4.17(a)2, is proposed to be updated to identify the most current State OMB Circular, currently known as 04-04-OMB. See discussion at N.J.A.C. 7:22-3.17 for description of State OMB Circular 04-04-OMB.

The loan condition that requires the recipient to adopt a sewer use ordinance and implement a user charge system is proposed to be removed at N.J.A.C. 7:22-4.17(a)5. These Federally-derived requirements are no longer applicable to the Clean Water SRF program and are also proposed to be removed from the definition and loan application sections of the rule.

At N.J.A.C. 7:22-4.17(a)10, the requirement related to the qualifications of the recipient's personnel is proposed to be removed from the financing program rule. The qualifications of the recipient's operating and management personnel are decisions that are best left with the recipient who has the ultimate responsibility for the project, the wastewater treatment or water supply system and compliance with any associated discharge or safe drinking water limitations. In addition, owners of water and wastewater treatment systems are responsible to ensure that their operating personnel are properly licensed in accordance with the applicable Department rules at N.J.A.C. 7:10A, Licensing of Water Supply and Wastewater Treatment Operators, regardless of participation in the financing program.

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N.J.A.C. 7:22-4.17(a)25 is proposed to be amended to replace wastewater treatment and stormwater management facilities with “environmental infrastructure” facilities and to remove the requirement that projects pay not less than the prevailing Federal wage rate as determined by the US Secretary of Labor. Once a Federal requirement for all Clean Water projects, this requirement is no longer applicable to the Clean Water SRF program.

N.J.A.C. 7:22-4.17(a)31iv(6) and (7) are proposed to be amended to modify the requirement that a representative from the Trust must witness or be present for certain mechanical equipment testing and flow tests. The Trust has reviewed this requirement and determined that a representative from the Trust need not be present for all such tests. The Trust has historically relied on the Department to perform these functions. The Department and the Trust reserves the right to be present as may be appropriate, but those determinations will be made on a project-by-project basis.

N.J.A.C. 7:22-4.17(a)33i is proposed to be amended to allow the recipient to transfer its interest in a property that was purchased using Trust monies with prior approval by the Trust. The recipient, or its successor, would still be required to perpetually maintain a compatible interest in the property that does not allow activities that are detrimental to water quality in the project area. The Trust will only approve these transactions if the interest in the property is transferred to a local government unit. The requirement for a project sign for land acquisition projects is proposed to be removed from N.J.A.C. 7:22-4.17(a)33i(1) as this sign is more appropriate for wastewater and water supply projects where construction activities are occurring. N.J.A.C. 7:22-4.17(a)33iii is proposed to be modified to recognize the distinction between the real estate deed, which defines ownership of the property, and the deed of conservation restriction, which is the document that actually contains the prohibitions needed to ensure that the funded parcel will continue to help protect and maintain water quality in the project area. Both deeds are required to be recorded.

New provisions are being proposed to be added at N.J.A.C. 7:22-4.17(a)33iv, v and vi. N.J.A.C. 7:22-4.17(a)33iv requires loan recipients for open space land acquisition projects to provide a no further action letter issued by the Department if the preliminary assessment or site investigation identifies contamination on the property. N.J.A.C. 7:22-4.17(a)33v has been recodified from the loan application section and requires the sponsor to provide a site survey that identifies the parcel or portion of the parcel financed with Clean Water SRF program funds. N.J.A.C. 7:22-4.17(a)33vi is proposed to be added to allow recipients to transfer ownership of a parcel to another local government unit if the Trust approves the transfer prior to the transfer of ownership.

The project performance standards for wastewater treatment facilities at N.J.A.C. 7:22-4.30(e) is proposed to be amended to include the standards identified in the Treatment Works approval rules at N.J.A.C. 7:14A-22 and 23. In addition, the rule reference applicable to well sealing projects is proposed to be more correctly identified as N.J.A.C. 7:9D. The existing rule cites N.J.A.C. 7:9-9.

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Changes are being proposed to N.J.A.C. 7:22-4.32(a) to clarify that this section which identifies preaward costs, applies to all building activities as defined in the rule, including land acquisition projects and equipment purchases. This section is often misinterpreted since land acquisition projects and equipment purchases are typically not considered building activities by the regulated community. In addition, N.J.A.C. 7:22-4.32(a)3 is proposed to be amended to modify and expand the description of those activities that could qualify under the emergency project provisions of the financing program. With the issuance of an "emergency project" environmental decision document by the Department and these proposed changes, the Trust will be in a better position to address emergency projects as they arise and guide project sponsors through the applicable program requirements. Sewer or transmission line repair or replacement and the repair or replacement of treatment or conveyance components that are damaged as a result of an emergency occurrence are being proposed to be eligible activities for which a project sponsor can seek preaward approval.

N.J.A.C. 7:22-4.34 is proposed to be modified to remove the distinction between allowable costs based on the level of environmental review a project requires based on N.J.A.C. 7:22-10. As modified, N.J.A.C. 7:22-4.34 will provide project sponsors with two options for financing the planning and design costs associated with an environmental infrastructure project. The sponsor may either apply for reimbursement of actual planning and design costs (in which case, the sponsor would be required to submit actual vouchers for planning and design costs) or use the allowance table to calculate the planning and design allowance in accordance with N.J.A.C. 7:22-5.12. The planning and design allowance table is proposed to be updated and simplified as described below in the summary section for changes to Subchapter 5, Allowable Costs.

SUBCHAPTER 5. DETERMINATION OF ALLOWABLE COSTS: FUND AND TRUST

N.J.A.C. 7:22-5, Determination of Allowable Costs: Fund and Trust, sets forth policies for determining the allowability of costs for projects which are awarded Fund and Trust loans. It describes the general criteria for, and gives specific examples of, expenditures which, according to State cost accounting principles, are necessary for efficient administration of the loan project. Such allowable costs are differentiated from those expenses required to carry out routine functions inherent in the operation of an environmental infrastructure facility. The proposed amendments to N.J.A.C. 7:22-5 modify the rules by providing a new option that would allow project sponsors to be reimbursed through a loan for the actual costs incurred during the planning and design phases of the project.

N.J.A.C. 7:22-5.4(c) is proposed to be amended to indicate that a project sponsor may either be reimbursed for costs related to subagreements for planning and design activities based on actual costs incurred or through the planning and design allowance table at N.J.A.C. 7:22-5.12. The existing rules already provide for actual reimbursement of planning and design costs, but only for projects that qualify for a Level 3 environmental review. The proposed change would provide this option to all projects, regardless of the level of environmental review required by the Department.

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To be consistent with the proposed amendments at N.J.A.C. 7:22-5.4(c), N.J.A.C. 7:22-5.4(d)1 which limits the reimbursement of planning and design costs for projects that need a Level 1 or Level 2 environmental review is proposed to be removed from the rule.

A new provision is proposed to be added at N.J.A.C. 7:22-5.11(a)8 to clearly indicate that security measures, including the installation of fences, lighting, cameras and video equipment are allowable project costs.

N.J.A.C. 7:22-5.12(a) is proposed to be amended to provide project sponsors with a choice between reimbursement for actual planning and design costs or through the allowance table method. Consistent with the proposed amendments to N.J.A.C. 7:22-5.4(c), this option is provided to all projects regardless of the level of environmental review required by the Department.

N.J.A.C. 7:22-5.12(d) is proposed to be amended to remove references to Table 2. Table 2 is an allowance table for design costs only, and was used only in cases where a project sponsor received other State or Federal funding for planning costs. Under the proposed changes, the design allowance would be determined by using Table 1 to calculate the planning and design allowance and subtracting any State or Federal funding provided for planning activities from it.

Table 1, the Allowance for Facilities Planning and Design, is proposed to be updated and simplified. The new method proposed to calculate the planning and design allowance is slightly more generous to project sponsors than the current Table 1, and does not require interpolating an allowance. The new method being proposed to calculate the planning and design allowance would provide project sponsors with an allowance of 25 percent of the allowable building costs for the first \$1,000,000 of allowable building costs, 12 percent of the allowable building costs for allowable building costs between \$1,000,000 and \$10,000,000, 6 percent of the allowable building costs for allowable building costs between \$10,000,000 and \$100,000,000 and 5 percent of the allowable building costs for allowable building costs more than \$100,000,000.

Table 2, the Allowance for Design Only, is proposed to be removed from Subchapter 5 since the Department is proposing an alternative method to calculate a design allowance as described at N.J.A.C. 7:22-5.12(d).

SUBCHAPTER 6. PINELANDS PROCEDURES AND REQUIREMENTS

Subchapter 6, Pinelands Procedures and Requirements, establishes the procedures through which local government units apply for, and are awarded, funds from the Pinelands Infrastructure Trust Fund. It ensures that funds are distributed by the Department according to the laws and policies of the State and in a manner which protects the public interest. The Pinelands Infrastructure Trust Bond Act of 1985 established the authority under which this subchapter was initially promulgated. The proposed amendments to N.J.A.C. 7:22-6 modify the rules by removing outdated Federal requirements that were once applicable to Clean Water SRF participants and clarifying the requirements applicable to certain sections of this subchapter.

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The terms "ad valorem tax", "alternative technology", "innovative technology", and "user charge" at N.J.A.C. 7:22-6.4 are proposed to be deleted since these terms are associated with requirements that the State was required to pass on to Clean Water SRF program participants for the State to be in a position to continue to receive Federal funding for the program. Although the need to apply these Federally-derived requirements expired several years ago, the State continued to require them over concerns that, with the reauthorization of the Clean Water Act, the requirements would again apply. The Department has discussed the proposed changes with USEPA, the agency that administers the Clean Water and Drinking Water SRF Programs at the Federal level. They have confirmed that there is no longer a need to require these items of program participants for the State to continue to receive Federal funding and it is not likely that the requirements would be reinstated with a reauthorization of the Clean Water Act.

In addition, the term "certified mail" is proposed to be deleted from N.J.A.C. 7:22-6.4 since the Department is proposing to delete the references to "certified mail" in the rule.

The requirement that the Department send a written notice to the project sponsor of a Notice of Project Eligibility or a bypass action by certified mail is proposed to be deleted from N.J.A.C. 7:22-6.9(a) and (c). While the Department intends to continue to provide written notice for such events, the proposed amendments would no longer require the Department to send these notices by certified mail.

N.J.A.C. 7:22-6.11(d)3 and 4 are proposed to be amended to update references to certain forms used by the Department to administer financial assistance programs.

N.J.A.C. 7:22-6.11(d)5 is proposed to be amended to remove outdated Federal requirements that were once applicable to Clean Water SRF participants and other project level requirements. Specifically, the requirement for a complete description of the environmental infrastructure facilities and the system of which it is a part is proposed to be deleted from N.J.A.C. 7:22-6.11(d)5i.

At N.J.A.C. 7:22-6.11(d)5iii, the requirement for a formal cost effectiveness analysis is proposed to be deleted from the rule because it refers to an outdated federal requirement. At proposed amended N.J.A.C. 7:22-6.11(d)5ii(2), the terms cost and environmental benefits have been added to the existing description to expand the analysis that results in the selection of the project.

In addition, the existing N.J.A.C. 7:22-6.11(d)5iii(3), (5) and (6) which require an evaluation of improved operations and maintenance, of revenue generating applications and of opportunities to reduce energy use or recover energy are proposed to be removed from the rule. Based on these amendments, sponsors of wastewater treatment projects will no longer need to conduct these evaluations as part of their project approval from the Department. While the Department is proposing to remove these requirements from the financing program, project sponsors are still encouraged to investigate and evaluate these factors (improved operation and maintenance, revenue generating applications and energy reduction or recovery opportunities) as part of the development of the project when the scope of the project lends itself to such an evaluation. While the Department is proposing to remove these requirements from the financing

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program, project sponsors are still encouraged to investigate and evaluate these factors (improved operation and maintenance, revenue generating applications and energy reduction or recovery opportunities) as part of the development of the project when the scope of the project lends itself to such an evaluation. At new N.J.A.C. 7:22-6.11(d)5ii(4), information regarding replacement costs is proposed to be added to the rule.

The requirement to include a description of potential open space opportunities and the environmental impact evaluation are proposed to be deleted at N.J.A.C. 7:22-6.11(d)5v and vi. The open space description is being eliminated since it is an outdated Federal requirement and the environmental impact analysis needed for approval are already defined at N.J.A.C. 7:22-10.

At new N.J.A.C. 7:22-6.11(d)5v(1), the term "design" is proposed to be replaced with the term "preliminary engineering" to more clearly specify that a detailed engineering design is not needed at the planning phase.

N.J.A.C. 7:22-6.11(d)13 related to the development of sewer use ordinance and a user charge system is proposed to be deleted. These requirements were once mandated by the Federal laws and regulations governing the Clean Water SRF program. The need to continue to review these documents no longer exists and the adoption of a sewer use ordinance and the implementation of a user charge system is best left to the individual owners and operators of these systems. In addition, the amount of extraneous flows entering a wastewater treatment system that were controlled to some extent through individual sewer use ordinances are otherwise regulated under the capacity assurance program in the Treatment Works Approval rules at N.J.A.C. 7:14A-22.16.

N.J.A.C. 7:22-6.11(d)15 and 6.11(f)3 are proposed to be amended to update references to certain forms used by the Department to administer financial assistance programs.

N.J.A.C. 7:22-6.13(d) is proposed to be amended to remove the requirement that the Department provide notice of a bypass action by certified mail. While the Department intends to continue to provide written notice, the proposed amendments would no longer require the Department to send these notices by certified mail. The Department generally does not bypass a project without first informing the project sponsor that such an action is forthcoming. In many instances, a project is bypassed by the Department at the request of the project sponsor and correspondence through certified mail is unnecessary.

Under loan conditions at N.J.A.C. 7:22-6.17, the reference to State OMB Circular 98-07-OMB, that details accounting and auditing procedures at N.J.A.C. 7:22-6.17(a)2, is proposed to be updated to identify the most current State OMB Circular, currently known as 04-04-OMB. See discussion at N.J.A.C. 7:22-3.17 for description of State OMB Circular 04-04-OMB.

The loan condition that requires the recipient to adopt a sewer use ordinance and implement a user charge system is proposed to be removed at N.J.A.C. 7:22-6.17(a)5. These

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Federally-derived requirements are no longer applicable to the Clean Water SRF program and are also proposed to be removed from the definition and loan application sections of the rule.

At N.J.A.C. 7:22-6.17(a)10, the requirement related to the qualifications of the recipient's personnel is proposed to be removed from the financing program rule. The qualifications of the recipient's personnel are decisions that are best left with the recipient who has the ultimate responsibility for the project and the system and any associated discharge or safe drinking water limitations. In addition, owners of water and wastewater treatment systems are responsible to ensure that their operating personnel are properly licensed in accordance with the applicable Department rules at N.J.A.C. 7:10A, Licensing of Water Supply and Wastewater Treatment Operators, regardless of participation in the financing program.

N.J.A.C. 7:22-6.17(a)25 is proposed to be amended to remove the requirement that wastewater treatment and stormwater management projects pay not less than the prevailing Federal wage rate as determined by the US Secretary of Labor. Once a Federal requirement for all Clean Water projects, this requirement is no longer applicable to the Clean Water SRF program.

N.J.A.C. 7:22-6.17(a)31iv(6) and (7) are proposed to be amended to modify the requirement that the Department must witness or be present for certain mechanical equipment testing and flow tests. The Department has reviewed this requirement and determined that a representative from the Department need not be present for all such tests. The Department reserves the right to be present as may be appropriate, but those determinations will be made on a project-by-project basis.

The project performance standards at N.J.A.C. 7:22-6.30(e) are proposed to be amended to cross-reference the standards identified in the Treatment Works approval rules at N.J.A.C. 7:14A-22 and 23.

SUBCHAPTER 7. ALLOWABLE COSTS: PINELANDS

Subchapter 7, Allowable Costs: Pinelands, sets forth policies for determining the allowability of costs for projects which are awarded funding through the Pinelands Infrastructure Trust Financing Program. It describes the general criteria for, and gives specific examples of, expenditures which, according to State cost accounting principles, are necessary for efficient administration of the funded project. Such allowable costs are differentiated from those expenses required to carry out routine functions inherent in the operation of a wastewater treatment facility. The proposed amendments to N.J.A.C. 7:22-7 clarify the allowability of costs related to security measures and modify the rules by providing a new allowance table to cover the recipient's costs incurred during the planning and design phases of the project.

A new provision is proposed to be added at N.J.A.C. 7:22-7.11(a)8 to clearly indicate that security measures, including the installation of fences, lighting, cameras and video equipment are allowable project costs.

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N.J.A.C. 7:22-7.12(d) is proposed to be amended to remove references to Table 2. Table 2 is an allowance table for design costs only, and was used only in cases where a project sponsor received other State or Federal funding for planning costs. Under the proposed changes, the design allowance would be determined by using Table 1 to calculate the planning and design allowance and subtracting any State or Federal funding provided for planning activities from it.

Table 1, the Allowance for Facilities Planning and Design, is proposed to be updated and simplified. The new method proposed to calculate the planning and design allowance is slightly more generous to project sponsors than the current Table 1, and does not require interpolating an allowance. The new method being proposed to calculate the planning and design allowance would provide project sponsors with an allowance of 25 percent of the allowable building costs for the first \$1,000,000 of allowable building costs, 12 percent of the allowable building costs for allowable building costs between \$1,000,000 and \$10,000,000, 6 percent of the allowable building costs for allowable building costs between \$10,000,000 and \$100,000,000 and 5 percent of the allowable building costs for allowable building costs more than \$100,000,000.

Table 2, the Allowance for Design Only, is proposed to be removed from Subchapter 7 since the Department is proposing an alternative method to calculate a design allowance as described at N.J.A.C. 7:22-7.12(d).

SUBCHAPTER 8. MINIMUM STANDARDS OF CONDUCT FOR OFFICERS, EMPLOYEES, AGENTS AND MEMBERS OF AUTHORITIES PARTICIPATING IN STATE FINANCIAL ASSISTANCE PROGRAMS FOR ENVIRONMENTAL INFRASTRUCTURE FACILITIES

Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of Authorities Participating in State Financial Assistance Programs for Environmental Infrastructure Facilities, establishes standards of ethical conduct and financial disclosure requirements for local government officers and employees of utilities which receive funding under these rules. The Department and the Trust are proposing to readopt this subchapter without change.

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

Subchapter 9, Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, establishes procedures for providing opportunities for socially and economically disadvantaged (SED) contractors and vendors to supply materials or services under contracts for the construction of environmental infrastructure facilities that are financed by the Department and the Trust. The proposed amendments to N.J.A.C. 7:22-9 would eliminate all references to the term "set-aside contract" and update the organizational name of the office in the Department that administers these rules. The Department has determined that the requirements for the "set-aside

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contract” in this subchapter have been a deterrent to the implementation of the socially and economically disadvantaged utilization process.

At N.J.A.C. 7:22-9.2, the definition of "Office" is proposed to be amended to remove the reference to Environmental Equity since the Office of Equal Opportunity and Public Contract Assistance no longer reference environmental equity in its organizational title. In addition, the definition of the term "set-aside contract" is proposed to be removed.

N.J.A.C. 7:22-9.3(b) and 9.4(b) are proposed to be amended and 9.4(e) is proposed to be deleted to remove references to set-aside contracts. Removing the set-aside language in these sections will allow the contractor to not only determine which categories of work can be utilized for SEDs, but in the event the contractor cannot find SEDs in the categories designated, the contractor may search other categories of work within a project or on a contract in which SEDs may submit bids. Maintaining the set-aside option would mean the contractor would be confined to searching for SEDs within those categories of work initially designated by the contractor (regardless of the degree of difficulty encountered in attracting SEDs to those subcontracting opportunities).

N.J.A.C 7:22-9.5 is proposed to be deleted since this section discusses bidding through set-aside contracts, and is therefore no longer required.

N.J.A.C. 7:22-9.6(a) and 9.7(b)1 are proposed to be amended to delete references to set-aside contracts.

In addition, N.J.A.C. 7:22-9.7(b)1 is proposed to be amended to change the reference from small businesses to SED businesses to better define the category of businesses impacted by this subchapter. N.J.A.C. 7:22-9.7(d) is proposed to be deleted since the Department and the Trust are proposing to eliminate the sponsor’s option to use set-aside contracts.

N.J.A.C. 7:22-9.8 and 9.9 are proposed to be removed from the rule and reserved. The proposed changes are consistent with the other changes proposed to eliminate set-aside contracts. References to set-aside contracts at N.J.A.C. 7:22-9.10 and 9.13(a)6 are also proposed to be removed from the rule.

N.J.A.C. 7:22-9.13(a)8 is proposed to be amended to remove reference to Environmental Equity since the Office of Equal Opportunity and Public Contract Assistance no longer reference environmental equity in its organizational title.

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED ENVIRONMENTAL INFRASTRUCTURE FACILITIES

Subchapter 10, Environmental Assessment Requirements For State Assisted Environmental Infrastructure Facilities, establishes the requirements for environmental assessment which apply to project sponsors seeking financial assistance for the construction of environmental infrastructure facilities. The authority for this subchapter is included in the

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various bond acts and other enabling legislation from which the financing programs were developed. Three levels of environmental review for the planning phase of projects are provided for in this subchapter. Requirements for re-evaluating environmental decision documents, cultural resource impact assessments, environmental coordination and public participation are also set forth. Environmental review requirements and procedures for design and construction phases are also included.

The definitions of “environmentally constrained areas”, and “environmentally critical area” at N.J.A.C. 7:22-10.2 are proposed to be amended to include the term “vernal habitats.” In addition, the Department is proposing to add a new definition for the term “vernal habitats.” The references to vernal habitats are included throughout the subchapter to reflect the recognition that vernal habitats are environmentally sensitive areas and there is a need to protect this type of resource. The definition for the term references the New Jersey Freshwater Wetlands Protection Act rules as the primary definition.

New N.J.A.C. 7:22-10.3(c) is proposed to be added to exempt certain types of projects which, by their nature, have virtually no potential to affect either the natural environment or cultural resources from the requirements of subchapter 10. The changes being proposed require that the project’s scope be strictly limited to equipment purchases; televising and grouting of sanitary sewers; sanitary sewer rehabilitation projects (including in-kind replacement) with no change in existing flow capacity and no adverse environmental or cultural resource impacts; and water meter replacement to qualify for the exemption. If, as a result of the design review for the project, the scope of the project has been altered to include activities beyond those listed above, the Department reserves the right to require planning information in accordance with the traditional subchapter 10 requirements to fully evaluate the project's potential to affect the environment or cultural resources.

N.J.A.C 7:22-10.4(a)2 is proposed to be reformatted in tabular form to make these criteria clearer to the reader. In addition, two new criteria at N.J.A.C. 7:22-10.4(a)2iv and v are proposed to be added to clarify the Department’s position that certain water supply projects cannot be classified as level 1. This proposed change reflects the Department’s experience with a number of drinking water infrastructure projects since the last rule revision, and clarifies the qualifications for a Level 1 review of drinking water projects.

A reference to vernal habitats is proposed to be added to N.J.A.C. 7:22-10.4(b)2 to reflect the recognition that vernal habitats are environmentally sensitive areas and there is a need to protect this type of resource.

N.J.A.C. 7:22-10.4(c)1 is proposed to be amended to specify that the Level 1 planning document must contain a geographical description of the planning area. The proposed amendments to N.J.A.C. 7:22-10.4(c)2 and proposed new N.J.A.C. 7:22-10.4(c)3 clarify and distinguish the types of mapping necessary for a Level 1 review. The map and site plan required under amended N.J.A.C. 7:22-10.4(c)2 locate the project generally. The map required under new N.J.A.C. 7:22-10.4(c)3 provides a detailed view of the project site and affected areas. N.J.A.C. 7:22-10.4(c)4, 5, and 6 are proposed to be renumbered as a result of the addition of the

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new section at 10.4(c)3. In addition, new language has been added to N.J.A.C. 7:22-10.4(c)5 that reflects the need for an environmentally sound selected plan. The changes being proposed would replace the term “cost effective” with “economical” consistent with the changes being proposed to N.J.A.C. 7:22-3.11(d), 4.11(d) and 6.11(d) that remove the requirement for a formal cost effectiveness analysis. Additional changes to this section are proposed to clarify the information the Department requires concerning user costs and household income. While the Department has researched median household income data in the past, the proposed changes would require the sponsor to submit this data with the guidance provided. This information is often submitted incorrectly. The proposed clarification should increase the frequency with which the information is submitted correctly, thus improving the Department's efficiency in assessing the impact of project costs on users.

A number of changes to N.J.A.C. 7:22-10.5 are being proposed to improve the quality and efficiency of the Level 2 environmental review of projects. N.J.A.C. 7:22-10.5(b)1 is proposed to be amended to specifically state that geological and geographical descriptions of the project planning area must be submitted to the Department. N.J.A.C. 7:22-10.5(b)2 is proposed to be amended to state that separate maps of the project planning area one which depicts the location of the proposed activity, and another map of the areas of proposed construction must be submitted to the Department.

The name Soil Conservation Service is proposed to be changed to Natural Resources Conservation Service at N.J.A.C. 7:22-10.5(b)3iv to reflect the current name of this agency. The references to vernal habitats are proposed to be included at N.J.A.C. 7:22-10.5(b)3viii to reflect recent changes to the New Jersey Freshwater Wetlands Protection rules which increase protections for this type of resource. Several agency name changes are proposed in N.J.A.C. 7:22-10.5(b)3ix. The name Hackensack Meadowlands Commission is changed to New Jersey Meadowlands Commission to reflect the current name of this agency. The Delaware and Raritan Basin Commission, the Delaware and Raritan Canal Commission, and the New Jersey Highlands Water Protection and Planning Council are added to reflect the mandate for project sponsors to comply with the requirements of these agencies.

At N.J.A.C. 7:22-10.5(b)7, the requirements for an environmental constraints analysis is proposed to be amended to clarify that an environmental constraints analysis is required by the Department for wastewater treatment and water supply projects when new or expanded capacity is involved, unless otherwise exempted by the Department. A project shall be exempted from the requirement to complete an environmental constraints analysis if the Department determines that the proposed project will not enable development in environmentally constrained areas. For example, a project involving a sewer service area that is completely built-out and the new or expanded capacity is needed solely to support vertical development would not be required to perform an environmental constraints analysis.

N.J.A.C. 7:22-10.5(b)11 is proposed to be amended to clarify the fact that the selected plan should be the most environmentally sound plan, in keeping with the overall goals of the financing program to improve water quality. The changes being proposed would replace the term “cost effective” with “economical” consistent with the changes being proposed to N.J.A.C.

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7:22-3.11, 4.11 and 6.11 that remove the requirement for a formal cost effectiveness analysis. The proposed changes in N.J.A.C. 7:22-10.5(b)11v are intended to clarify what information is needed by the Department to assess accurately the impact of project costs on user charges. This information is frequently provided incorrectly and the change is intended to enable more accurate submissions, thus facilitating more efficient review.

N.J.A.C. 7:22-10.5(b)18 is proposed to be amended to reflect the requirement of project sponsors to determine if proposed projects are consistent with the requirements of the Stormwater Rules.

In N.J.A.C. 7:22-10.6(e), the wording, “EIS” is being deleted and the wording, “environmental impact statement,” is being added to clarify that a draft of the environmental impact statement needs to be kept by the Department.

N.J.A.C. 7:22-10.7(a) is proposed to be amended to clarify that the project sponsor must submit a certification confirming that the design documents (plans and specifications) are consistent with the planning submittal prior to the loan award.

N.J.A.C. 7:22-10.7(b) is proposed to be deleted to reflect the conclusion that it is not the amount of time which has elapsed between the issuance of an environmental decision document and the award of funds, but rather the Department’s ability to determine if the scope of work is the same as that which was previously approved. The existing rule states that, if five years elapses between the issuance of an environmental decision document and the award of financial assistance, and the project has not changed substantially, then a public notice will be issued by the Department stating that the Department intends to award funds for a previously approved scope of work. The proposed amendment does not change the requirement of the Department to review a project under those circumstances, but merely eliminates the need to issue a public notice if the project has not changed in the elapsed five years. Under 10.7(a), the Department is still required to determine if a public notice is necessary because a project has changed, but the requirement for a public notice will be based on project scope rather than elapsed time, with the proposed change.

The Department proposes several changes to the cultural resources provisions of the subchapter, in order to clarify and simplify these requirements for project sponsors. N.J.A.C. 7:22-10.8(c) and (d) is proposed to be amended to clarify that the Department determines the level of cultural resources survey required for each project, and also what specific tasks are required of the project sponsor to fulfill these requirements. “Memorandum of Agreement” is proposed to be capitalized at N.J.A.C. 7:22-10.8(j) to reflect that it is a proper noun and to make it consistent with its use in the corresponding Federal regulations cited in this section. A reference to the requirements for digital imagery is proposed to be added to N.J.A.C. 7:22-10.8(k). Since the last rule revision, this type of media is now allowed to be submitted, and must comply with the requirements set forth by the New Jersey Historic Preservation Office of the Department. Requirements related to digital imagery are proposed to be added to N.J.A.C. 7:22-10.8(k). In addition, at N.J.A.C. 7:22-10.8(k), the Department is proposing to remove the guidelines used by the New Jersey Historic Preservation Office.

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N.J.A.C. 7:22-10.9(a) contains a list of environmental and cultural resource protection statutes. The rule requires that a project sponsor must consult with and/or apply for appropriate permits from the agencies that administer these statutes. The proposed amendments add several Federal and State statutes that correspond to permits and/or approvals that, as applicable, a project sponsor will need to obtain in order to implement a project.

N.J.A.C. 7:22-10.10(b)1 is proposed to be amended to clarify the public notification requirements for projects. The responsibility of the project sponsor is specified, as is the content of the notice. N.J.A.C. 7:22-10.10(c) is proposed to be amended to more clearly state the purpose of the mailing list that the Department develops for each project.

N.J.A.C. 7:22-10.11(a) is proposed to be amended by restructuring two sentences into subsections. The purpose for separating these concepts is to emphasize the need for project sponsors to indicate specifically to the Department any revisions to the scope of a proposed project, thus reducing the amount of time spent by Department staff reviewing design documents for consistency with approved planning; and the need for project sponsors to claim responsibility for ongoing environmental protection measures.

The term "cultural resources" is proposed to be added to N.J.A.C. 7:22-10.11(b) to reflect and emphasize the importance of identifying such measures in the design documents. At N.J.A.C. 7:22-10.11(b)1, language is proposed to be deleted to reflect the fact that the appropriate format of contract documents is to have all environmental and cultural resources measures in a single section and new language is proposed to indicate that if a Department issued permit has conditions that contradict those of this subchapter, then the conditions identified in the Department-issued permit shall have precedence. The Department will save considerable time reviewing design documents if all environmental measures are located in a single section, rather than spread throughout the documents. In addition, identifying which conditions take precedence in the contract specifications will avoid conflicts, delays and cost increases for contractors and local units involved in the construction of environmental infrastructure facilities. N.J.A.C. 7:22-10.11(b)2, is proposed to be amended to reflect that environmental protection measures can include restoration, but cultural resources cannot, as they are non-renewable resources. Effects to cultural resources can only be avoided or mitigated against. N.J.A.C. 10.11(b)3 is proposed to be amended to specify that separate unit items may be required to be included in the project specifications for environmental restoration and/or cultural resources mitigation.

At N.J.A.C. 7:22-10.11(c)2, the reference to the "Standards for Soil Erosion and Sedimentation Control in New Jersey" is replaced with a reference to the standards established under the Soil Erosion and Control Act, N.J.S.A. 4:24-39 and implementing regulations. This will ensure that the projects designed and constructed under N.J.A.C. 7:22 will meet the most current standards for controlling erosion and sedimentation resulting from or related to construction. The standards are promulgated by the State Soil Conservation Committee under N.J.A.C. 2:90 and are the technical basis for local and conservation district certification of soil

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erosion and sediment control plans. The standards include vegetative, engineering, and stormwater runoff treatment standards.

N.J.A.C. 7:22-10.11(c)3 is proposed to be amended to modify the length of time that it is acceptable for a disturbed area to be left unattended from 14 to 10 days. A number of the Soil Conservation Districts throughout New Jersey use 10 days as their limit to leave disturbed areas unseeded or unmulched. The Department is also proposing to remove requirements related to disturbed areas and final restoration measures since these activities are adequately regulated through a permit issued by the local Soil Conservation District, as applicable.

N.J.A.C. 7:22-10.11(e), the use of native species is proposed to be added to encourage their use in restoration where possible. Use of native species in restoration supports the indigenous environment. At N.J.A.C. 7:22-10.11(e)4, the date of the citation of the “Standards for Soil Erosion and Sedimentation Control in New Jersey” is amended to incorporate the publication as supplemented or amended, in order that the rules will continue to refer to the most recent version of the publication. The standards are described in the discussion of N.J.A.C. 7:22-10.11(c)2 above.

N.J.A.C. 7:22-10.11(f) is proposed to be amended to clarify and expand environmental protection measures that are required of project sponsors during construction. Vernal habitats is proposed to be added throughout N.J.A.C. 7:22-10.11(f) to recognize that vernal habitats are environmentally sensitive areas and there is a need to protect this type of resource. N.J.A.C. 7:22-10.11(f)1 is proposed to be supplemented to reflect the requirement to avoid affecting sites listed or eligible for listing on the New Jersey or National Registers of Historic Places during construction. N.J.A.C. 7:22-10.11(f)8 is proposed to be amended to specify that the use of calcium chloride, petroleum products or other chemicals for dust control are prohibited. N.J.A.C. 7:22-10.11(f)10 is proposed to be added to clearly specify that the unpermitted discharge of sewage is prohibited during construction activities. This is a particular concern with projects that use bypass pumping to implement the project.

Requirements for construction in wetlands at N.J.A.C. 7:22-10.11(g)1 through 5 are proposed to be deleted because it was determined that the Freshwater Wetlands Protection Act permit requirements adequately account for all of these provisions. By reference to this Act, which is proposed to be referenced at N.J.A.C. 7:22-10.11(g), the Department believes that construction in wetlands will be adequately regulated. Requirements for mitigating measures and techniques where stream crossings are necessary at N.J.A.C. 7:22-10.11(h)1 through 8 are proposed to be deleted because it was determined that the Flood Hazard Area Control Act permit requirements adequately account for all of these provisions. By reference to this Act, which is referenced at N.J.A.C. 7:22-10.11(h), the Department believes that stream crossings will be properly regulated.

The provisions for acid soils at N.J.A.C. 7:22-10.11(j)3 and (j)7 are proposed to be reformatted in tabular form to make the text easier to read. There are no substantive changes to these sections.

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N.J.A.C. 7:22-10.11(k)1 is proposed to be amended to include a reference to vernal habitats to recognize that vernal habitats are environmentally sensitive areas and there is a need to protect this type of resource. N.J.A.C. 7:22-10.11(k)3 addresses hydrogen sulfide concentrations in dewatering discharges. This subsection is proposed to be removed to reflect the fact that the Department has determined that, if a dewatering permit is needed, the dewatering requirements are adequately met. The New Jersey Pollutant Discharge Elimination System dewatering permit does not allow discharges to exceed ambient surface water levels for hydrogen sulfide.

N.J.A.C. 7:22-10.11(l)1 and (l)3ii are proposed to be amended to reference vernal habitats to reflect the recognition that vernal habitats are environmentally sensitive areas and there is a need to protect this type of resource. N.J.A.C. 7:22-10.11(l)2 is proposed to be amended to reduce the length of time by which stockpiled fill must be protected from erosion from 14 to 10 days. This change is being proposed to maintain consistency with another change regarding erosion control proposed herein at N.J.A.C. 7:22-10.11(c)3.

N.J.A.C. 7:22-10.11(n) is proposed to be amended to reformat this section regarding noise impacts on construction. These amendments merging the first two sentences are intended to make this section easier to read. Language regarding submission of video documentation of existing conditions is proposed at N.J.A.C. 7:22-10.11(q). This is intended to reflect the increasing use of video in the construction industry to document conditions, and its acceptability by the Department.

Social Impact

The rules proposed for readoption with amendments are anticipated to have positive social impacts. The provisions of these subchapters establish a financing mechanism for the award of grants and loans to project sponsors for the construction of environmental infrastructure facilities, including equipment purchases and land acquisition projects, that help to prevent, reduce or treat pollutants so that they do not adversely impact groundwater, rivers, lakes and other waterbodies. In addition, these rules provide a mechanism to finance water supply facilities so that the water treatment systems provide safe public drinking water in conformance with the requirements of the Safe Drinking Water Act. The construction of these projects maintains and improves water quality and water-quality related activities (such as, swimming, fishing, boating, etc.) and protects and enhances drinking water supplies. By maintaining and improving water quality and ensuring safe drinking water supplies, recreational activities and tourism within the State will be impacted in a positive manner. The proposed amendments included in this readoption would eliminate unnecessary and duplicative requirements needed for a sponsor to have its project approved for financing and provide for reimbursement of actual planning and design costs as an option to using the allowance table. With these changes, the Department anticipates an increased interest in the financing program, an increase in the projects that are undertaken by project sponsors and a corresponding increase in the social benefits that can be attributed to financing improvements to environmental infrastructure facilities.

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Economic Impact

The Department anticipates that a number of positive economic impacts will result from the rules proposed for readoption with amendments. The rules establish the framework to provide financial assistance to local government units and private entities to prevent or correct water quality problems and ensure the availability of safe drinking water supplies. Project sponsors will incur costs in order to meet the administrative, environmental and technical requirements of the rule. However, the overall costs associated with the planning, design and construction of environmental infrastructure facilities will be reduced as a result of the financial assistance available through this chapter in comparison to the costs that a project sponsor would otherwise incur without the benefit of the State's financing programs. Since the total project costs to be borne by the recipient will be reduced, the charges to be paid by the system's users, generally the public, will also be lower.

Overall, a favorable public reaction is anticipated to the proposed amendments since they eliminate unnecessary and duplicative requirements needed for a sponsor to have its project approved for financing and offer an option for project sponsors to be reimbursed for the actual planning and design costs incurred as an option to using the allowance table.

With increased participation in the financing program, more environmental infrastructure facilities (typically, wastewater treatment and public water supply projects) can be financed at lower costs. Ultimately, these reduced costs are passed on to the residents and users of these systems.

There will continue to be a minimal expense incurred by the Department and by project sponsors as a result of the reporting requirements of N.J.A.C. 7:22-9. The Department will incur expenses by providing the reporting forms, by providing general guidance to project sponsors and by monitoring compliance. The project sponsor will incur costs associated with developing a SED utilization plan, completing reporting forms and appointing a compliance officer. While the cost of constructing environmental infrastructure facilities may possibly be higher if the SED firms cannot perform for as low a price as a non-SED competitor, the negative impact of the potential price differential (if it occurs) is offset by the positive economic impact that will result from the overall increase in the number of successful SED firms participating in these areas.

The provisions of N.J.A.C. 7:22-10 set forth the environmental assessment requirements for planning, design and construction of environmental infrastructure facilities. The purpose of the assessment process is to take into account those factors that are not readily assigned a dollar value when selecting the best overall project alternative. Therefore, any apparent cost increase is expected to be offset by the value of the environmental resources protected by selecting the best alternative to address the project sponsor's needs.

Environmental Impact

The Department anticipates that the rules proposed for readoption with amendments will result in a positive environmental impact. Improperly planned or constructed environmental

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infrastructure facilities have the potential to have adverse impact on the environment and project area. The selection of sites, the sizing of facilities and the designation of service areas are all factors that determine the extent of the direct and indirect impacts on the environment. Wastewater treatment facilities, in particular, have the potential to induce adverse indirect impacts, such as growth in undesirable amounts or environmentally sensitive locations.

Environmental assessment procedures have been in place since 1973 in New Jersey to encourage the identification of needs and the development and evaluation of alternative solutions to determine the significance of environmental impacts and various alternatives before selecting a proposed plan. Readoption of the subchapter, as well as adoption of the proposed amendments, will ensure that the environmental impacts as a result of the construction of environmental infrastructure facilities will be adequately evaluated and minimized and unavoidable adverse impacts will be mitigated to the extent practicable.

Federal Standards Analysis

Executive Order No 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt or amend state regulations that exceed any Federal Standard or requirement to include in the rulemaking document a Federal Standards Analysis.

The rules do not exceed the standards imposed by Federal law. The Federal government provides monies to the State in the form of capitalization grants under the Environmental Infrastructure Financing Program, which is administered pursuant to the provisions of the rules contained within N.J.A.C. 7:22. Federal regulations have been adopted at 40 CFR Part 35, Subpart K, which establish requirements applicable to States for the implementation and management of State Revolving Funds (SRF). The regulations define eligible activities of the SRF and the types of projects that the SRF can finance, establish requirements that apply to recipients of SRF assistance, specify capitalization grant agreement requirements, environmental review requirements and financial requirements (including cash draw procedures, annual reports, audits and others). Extensive policy documents have also been issued by the US Environmental Protection Agency with respect to the SRF program including the "Initial Guidance for State Revolving Funds (January 1988) which better defines the applicability of the project-level requirements and elaborates on other Federal laws that impact the SRF program. Other requirements applicable to SRF recipients are also included as conditions to the award of the Federal capitalization grant agreements. N.J.A.C. 7:22 is designed to achieve conformance with these Federal requirements and to protect the use of public funds to ensure the self-perpetuating nature of the SRF.

Jobs Impact

Since the rules proposed for readoption with amendments streamlines the existing financing program to encourage participation, it is anticipated that there will be a positive impact on employment and jobs in New Jersey. The availability of low-interest financing facilitates the construction of environmental infrastructure projects to improve the environment and to do so in a more timely manner than if only market-rate financing was available. All of the projects financed through the program spurs employment through the continued availability of

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construction jobs, as well as professional services associated with the planning, design and construction oversight involved.

The rules proposed for readoption with amendments are expected to have a positive impact on employment in New Jersey. The rules will streamline the existing financing program and encourage more participation. The availability of low-interest financing facilitates the construction of environmental infrastructure projects that will improve the environment. Also, the financing will be made available in a more timely manner than if only market-rate financing was available. All the projects financed through the program will spur employment through the continued availability of construction jobs, as well as professional services associated with the planning, design and construction oversight.

Agriculture Industry Impact

The rules proposed for readoption with amendments is expected to have a positive agricultural impact in the State. The readoption of the chapter continues the State's programs to address water pollution concerns, including those that impact agricultural operations and to provide safe and plentiful water. The proposed amendments will continue to allow the Trust to directly finance private persons that sponsor projects to correct water quality problems linked to agricultural cropland activities, animal feeding operations and other animal-related sources. By continuing to provide a mechanism to directly finance private persons in these areas, increased participation by project sponsors to correct water quality concerns is anticipated. The agriculture industry relies on clean and plentiful water to routinely manage and operate the farms and livestock activities in the State.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the rules proposed for readoption with amendments has the potential to impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Act. The purpose of this chapter is to provide financial assistance for the construction of environmental infrastructure facilities to eligible applicants. While the majority of the applicants will be local government units, some of the privately-owned water supply projects which may seek financial assistance are small businesses. However, application for financial assistance is voluntary. As such, no new compliance requirements for small businesses are being mandated as a result of this rule action.

The reporting, recordkeeping and other compliance requirements that would be required of small businesses are consistent with the requirements applicable to project sponsors which are local government units (regardless of their size) and include such items as engineering and environmental assessments, preparations of contract documents to implement the project (including State and/or Federal wage rates, minority and women's business utilization plan and quarterly reporting), the receipt of all permits and approvals from Federal, State and local agencies and project cost accounting. See the Economic Impact above for a discussion of the cost of these requirements. To meet these requirements, project sponsors typically need to

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secure professional services, such as a licensed professional engineer, financial advisor and/or bond counsel. It should be noted that the Department and the Trust have made a continued effort to streamline the requirements under the existing financing program to the extent practicable in recognition that local government units have limited resources and may have difficulty in meeting program requirements. The ability to further reduce these already streamlined compliance requirements for small businesses is limited since these requirements are necessary to meet applicable Federal and State laws and/or to otherwise establish safeguards to ensure the proper use of public funds. Further, small businesses are only required to adhere to the reporting, recordkeeping and other compliance requirements if they receive financial assistance under these rules. Any costs incurred to satisfy these requirements would be similar to the costs incurred by local government units and are eligible costs under the financing program.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The rules proposed for readoption with amendments is expected to have a positive impact on Smart Growth in the State. The State's comprehensive Smart Growth Initiative focuses on several objectives, including (1) to make developed areas healthier, more appealing places - with cleaner air and water and more parks and open space, (2) to reduce the rate at which forests, open space, farmland and other undeveloped areas are being lost to development; and (3) to promote and accelerate development in urban and suburban areas or other growth areas identified through sound planning. The readoption of the chapter continues the State's financing programs to address water pollution concerns, including addressing the needs of those in the most urbanized areas of the State.

In addition, the Department's Priority System includes other enhancements for projects in smart growth areas (like urban centers, transit villages and brownfield redevelopment areas). The enhancements include a lower interest rate than the traditional program's half-market rate loan and a broader definition of allowable costs for future capacity. The ranking methodology also provides additional priority points to those areas in the State designated as urban centers and complexes, transit villages and/or brownfield redevelopment areas. For other less urbanized areas, where the protection of existing open space and the desire to avoid having centralized wastewater treatment services, a better financing package is available to acquire land or to rehabilitate or replace existing on-site septic systems. Collectively, these initiatives are expected to enhance the financing program's ability to promote smart growth and provide financial assistance to realize smart growth objectives. As a result, the Department and the Trust expect this rulemaking to have a positive impact on the State's achievement of smart growth and implementation of the State Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:22.

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Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated by 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.

["Ad valorem tax" means a tax based upon the value of real property.]

...

["Alternative technology" means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and onsite systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.]

...

"Bond Acts" means the Wastewater Treatment Bond Act, the Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act, the Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act, the Water Supply Bond Act and future bond acts passed for the purpose of providing funds for the construction of environmental infrastructure facilities. As they are enacted, reference to such bond acts shall be added to this definition through a notice of administrative change published in the New Jersey Register, pursuant to N.J.A.C. 1:30-2.7.

...

["Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.]

...

"Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act" means the Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act of 2003 (P.L. 2003, c. 162), as amended and/or supplemented.

...

["Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.]

...

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["User charge" means a charge levied on users of an environmental infrastructure facility or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such facilities and may include debt service.]

...

7:22-3.9 Project bypassing

(a) - (b) (No change.)

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

(d) (No change.)

7:22-3.11 Application procedures

(a) - (c) (No change.)

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

1. - 4. (No change.)

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

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

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

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

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

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

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

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

(B) - (C) (No change.)

ii. (No change.)

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

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Statewide Water Supply Plan or current census data. A cost effectiveness] An analysis [must include] 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 improved effluent or drinking water quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;]

[(4] 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

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

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

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

iv. (No change.)

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

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

(2) [A site survey signed and sealed by a land surveyor licensed to practice in the State of New Jersey and the criteria used to select the parcel(s)for acquisition] An executed purchase agreement or, in the case of condemnation, evidence of the filing of a declaration of taking for the parcel(s);

(3) (No change.)

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

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

vi. -viii. (No change.)

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

6. – 12. (No change.)

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

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

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

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

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

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

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

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

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that

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portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

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

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

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

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

(I) Flow volume of the users;

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

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

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

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

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

14. – 21. (No change.)

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, [and] adequacy of infrastructure, and clear ownership of the water system.

23. – 24. (No change.)

(e) – (g) (No change.)

7:22-3.13 Evaluation of application

(a) – (b) (No change.)

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

7:22-3.17 Loan conditions

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

1. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-133, both incorporated herein by reference and State OMB Circular [98-07-OMB] 04-04-OMB, incorporated herein by reference as amended and supplemented. Copies of these documents may be obtained from the Department;

3. – 4. (No change.)

5. [For wastewater treatment facilities, the recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-3.11(d)13;] (Reserved)

6. – 9. (No change.)

10. [Except for land acquisition and conservation and well sealing projects, the recipient shall retain sufficient qualified operating and management personnel including a qualified chief operating officer or executive director, from the time of completion of construction or initiation of operation, whichever is earlier, until such time as the operation of the facility is discontinued;] (Reserved)

11. – 24. (No change.)

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

26. – 30. (No change.)

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. – iii. (No change.)

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

(1) – (5) (No change.)

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(6) Testing of all mechanical equipment at treatment plants and pump stations may be witnessed by a representative of the Department; and

(7) If required, actual flow tests must may be conducted in accordance with parameters established by the Department and performed in the presence of a representative of the Department; and

v. – vi. (No change.)

32. (No change.)

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 N.J.A.C. 7:22-3.17(a)33vi., shall perpetually maintain a fee simple interest in the parcel(s) that excludes future sale considerations or an interest stated in the form of a right, restriction, easement, covenant or condition in any deed, will, or other instrument executed by, or on behalf of the owner of the parcel(s) and the local government unit that does not allow any of the following:

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

(2) - (7) (No change.)

ii. (No change.)

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. [Said deed shall] A conservation restriction shall also be recorded and referenced in the real estate deed which, at a minimum, prohibits 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 investigation report 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.

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

34. (No change.)

(b) – (g) (No change.)

7:22-3.30 Project performance

(a) – (d) (No change.)

(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,

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including the quantity of excessive infiltration and inflow which the project is designed to eliminate. The project performance standards for water supply projects consist of N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems, or N.J.A.C. 7:10-12, Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems, as applicable. The project performance standards for landfill closure facilities consist of the landfill's approved Closure and Post-Closure Plan submitted in accordance with N.J.A.C. 7:26-2A.9. The project performance standards for new landfill facilities consist of the solid waste facility permit issued pursuant to N.J.A.C. 7:26-2. The project performance standards for remedial action activities consist of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, approved by the Department. The project performance standards for well sealing projects consist of N.J.A.C. 7:9[-9]D.

7:22-3.32 Preaward costs

(a) The Department 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. – 2. (No change.)

3. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Department may approve [preliminary building] certain activities such as procurement of major equipment [requiring long lead times], [minor] sewer replacement or rehabilitation, [or] replacement or rehabilitation of transmission facilities, [acquisition of allowable land] or [advance] building [of minor] 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 any specific documents necessary to adequately evaluate the proposed action, including compliance with (a)1 or 2 above.

(b) – (c) (No change.)

7:22-3.34 Planning and design

[(a) For projects for which a Level 1 or Level 2 environmental review is required in accordance with N.J.A.C. 7:22-10.4 and 10.5, respectively, the] The actual costs associated with the planning and design of environmental infrastructure facilities are [not] allowable for reimbursement from the Fund[. However,] or the Fund may provide an allowance to assist in defraying the planning and design costs [will be provided] to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, [or] the Sewage Infrastructure Improvement Act, 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. [An allowance for planning] Planning and/or design costs [will] are not [be provided as part of] allowable costs under a post-construction supplemental Fund loan to address differing site conditions.

[(b) For projects for which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recipient's costs actually incurred for planning and design activities and

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for which financial assistance has not been received from the sources of funding cited in (a) above are allowable for a Fund loan.]

SUBCHAPTER 4. TRUST PROCEDURES AND REQUIREMENTS

7:22-4.9 Project bypassing

(a)– (b) (No change.)

(c) Written notice of a bypass action shall be [forwarded] sent to the project sponsor [by certified mail]. As a result of such an action, the project on the Project Priority List shall become ineligible to receive a 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) (No change.)

7:22-4.11 Application Procedures

(a) - (c) (No change.)

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

1. – 4. (No change.)

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

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

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

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

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

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

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

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

(B) - (C) (No change.)

ii. (No change.)

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

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Statewide Water Supply Plan or current census data. A cost effectiveness] an analysis [must include] 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 improved effluent or drinking water quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;]

[(4] 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

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

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

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

iv. (No change.)

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

(1) An evaluation of the land to be acquired, including [a] the water quality basis for the proposed land [purchase] 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);

(2) [A site survey signed and sealed by a land surveyor licensed to practice in the State of New Jersey and the criteria used to select the parcel(s)for purchase] An executed purchase agreement or, in the case of condemnation, evidence of the filing of a declaration of taking for the parcel(s);

(3) (No change.)

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

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

vi. -viii. (No change.)

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

6. – 12. (No change.)

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

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

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

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

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

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

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

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

(3) Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Department) of the rate and that

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portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

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

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

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

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

(I) Flow volume of the users;

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

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

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

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

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

14. – 21. (No change.)

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, [and] adequacy of infrastructure, and clear ownership of the water system.

23. (No change.)

(e) –(g) (No change.)

7:22-4.13 Evaluation of application

(a) – (b) (No change.)

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

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. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. §§ 7501-7507), Federal OMB Circular A-133, both incorporated by reference and State OMB Circular [98-07-OMB] 04-04-OMB, incorporated herein by reference as amended and supplemented. Copies of these documents may be obtained from the Department;

3. – 4. (No change.)

5. [For wastewater treatment facilities, the recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-4.11(d)13;] (Reserved)

6. – 9. (No change.)

10. [Except for land acquisition and conservation and well sealing projects, the recipient shall retain sufficient qualified operating and management personnel including a qualified chief operating officer or executive director, from the time of completion of construction or initiation of operation, whichever is earlier, until such time as the operation of the facility is discontinued;] (Reserved)

11. – 24. (No change.)

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

26. – 30. (No change.)

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. – iii. (No change.)

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

(1) – (5) (No change.)

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(6) Testing of all mechanical equipment at treatment plants and pump stations [must] may be witnessed by a representative of the Trust; and

(7) If required, actual flow tests [must] may be [done] conducted in accordance with parameters established by the Trust and performed in the presence of a representative of the Trust; and

v. – vi. (No change.)

32. (No change.)

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 N.J.A.C. 7:22-4.17(a)33vi., 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] signs needed to address public health or safety issues);

(2) - (7) (No change.)

ii. (No change.)

iii. The recipient shall provide evidence to the [Trust] Department that a properly executed real estate deed has been recorded with the clerk of the county in which the parcel is located. [Said deed shall] A conservation restriction shall also be recorded and referenced in the real estate deed which, at a minimum, prohibits the activities identified in i. 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.

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 of fee simple ownership in the parcel where the transfer of title is to another local government unit.

34. (No change.)

(b) - (g) (No change.)

7:22-4.30 Project performance

(a) – (d) (No change.)

(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,

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including the quantity of excessive infiltration and inflow which the project is designed to eliminate. The project performance standards for water supply projects consist of N.J.A.C. 7:10-11, Standards for the Construction of Public Community Water Systems, or N.J.A.C. 7:10-12, Standards for the Construction of Public Noncommunity Water Systems and Nonpublic Water Systems, as applicable. The project performance standards for landfill closure facilities consist of the landfill's approved Closure and Post-Closure Plan submitted in accordance with N.J.A.C. 7:26-2A.9. The project performance standards for new landfill facilities consist of the solid waste facility permit issued pursuant to N.J.A.C. 7:26-2. The project performance standards for remedial action activities consist of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, approved by the Department. The project performance standards for well sealing projects consist of N.J.A.C. 7:9[-9]D.

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. – 2. (No change.)

3. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Trust may approve [preliminary building] certain activities such as procurement of major equipment [requiring long lead times], [minor] sewer replacement or rehabilitation, [or] replacement or rehabilitation of transmission facilities, [acquisition of allowable land] or [advance] building [of minor] 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) – (c) (No change.)

7:22-4.34 Planning and design

[(a) For projects for which a Level 1 or Level 2 environmental review is required in accordance with N.J.A.C. 7:22-10.4 and 10.5, respectively, the] The actual costs associated with the planning and design of environmental infrastructure facilities are [not] allowable for reimbursement from the Trust[. However,] or the Trust may provide an allowance to assist in defraying the planning and design costs [will be provided] to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, [or] the Sewage Infrastructure Improvement Act, 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. [An allowance for planning] Planning and/or design costs [will] are not [be provided as part of] allowable costs under a post-construction supplemental Trust loan to address differing site conditions.

[(b) For projects for which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recipient's costs actually incurred for planning and design activities and

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for which financial assistance has not been received from the sources of funding cited in (a) above are allowable for a Trust loan.]

SUBCHAPTER 5. DETERMINATION OF ALLOWABLE COSTS: FUND AND TRUST

7:22-5.4 Costs related to subagreements

(a) – (b) (No change.)

(c) [For projects for which a Level 3 environmental review is required in accordance with N.J.A.C. 7:22-10.6, the recipient's costs actually incurred for planning and design activities are allowable for Fund and Trust loans.] The recipient's costs for architectural or engineering services or other services incurred in the planning and design of a project may either be reimbursed based on actual costs incurred or through the allowance for planning and design under N.J.A.C. 7:22-5.12.

(d) Unallowable costs related to subagreements include:

1. [For projects for which a Level 1 or Level 2 environmental review is required in accordance with N.J.A.C. 7:22-10.4 and 10.5, respectively, the actual costs of architectural or engineering services or other services incurred in the planning and design of a project;

2.] Except as provided in paragraph (a)5 above, architectural or engineering services or other services necessary to correct defects in a planning document, design drawings and specifications, or other subagreement documents;

[3. – 5.] 2. – 4. (No change in text.)

7:22-5.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. - 7. (No change.)

8. Costs associated with the purchase and installation of security measures, including, but not limited to, such items as fencing, cameras, lighting or video equipment.

(b) (No change.)

7:22-5.12 Allowance for planning and design

(a) For projects [for which a Level 1 or Level 2 environmental review is required in accordance with N.J.A.C. 7:22-10.4 and 10.5 respectively] whose sponsor does not seek reimbursement of actual planning and design costs, this section provides the method the Department and the Trust will use to determine both the estimated and final allowance under N.J.A.C. 7:22-3.34 and 4.34, planning and design. The Fund or Trust loan agreement will include an estimate of the allowance.

(b) – (c) (No change.)

(d) The estimated and final allowance will be determined in accordance with this section and Table[s] 1 [and 2]. [Table 2 is to be used in] In the event that the recipient received a Federal grant, Sewage Infrastructure Improvement Act funding, [or] Pinelands funding, or Safe Drinking Water Act funding for facilities planning[. The] , the amount of the allowance is computed by [applying] subtracting the amount of the other State or Federal funding for facilities planning

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from the [resulting] appropriate allowance [percentage to the initial allowable building cost] computed using Table 1.

(e) – (i) (No change.)

TABLE 1 - ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building Cost	[Allowance as a Percentage of Building Cost+]
\$ 100,000 or less	27.5396
120,000	26.8177
150,000	25.9599
175,000	25.3834
200,000	24.8944
250,000	24.0981
300,000	23.4663
350,000	22.9452
400,000	22.5032
500,000	21.7833
600,000	21.2124
700,000	20.7413
800,000	20.3418
900,000	19.9956
1,000,000	19.6910
1,200,000	17.1564
1,500,000	16.6076
1,750,000	16.2389
2,000,000	15.9259
2,500,000	13.6029
3,000,000	13.2464
3,500,000	12.9522
4,000,000	12.7026
5,000,000	12.2963
6,000,000	10.7766
7,000,000	10.5373
8,000,000	10.3343
9,000,000	10.1585
10,000,000	10.0036
12,000,000	8.6591
15,000,000	8.3821
17,500,000	8.1960
20,000,000	8.0381
25,000,000	7.1325
30,000,000	6.9456

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35,000,000	6.7913
40,000,000	6.6605
50,000,000	6.4474
60,000,000	6.2785
70,000,000	6.1390
80,000,000	6.0207
90,000,000	5.9183
100,000,000	5.8281
120,000,000	5.4174
150,000,000	5.2441
175,000,000	5.1277
200,000,000 (or more)	5.0289

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

+ Interpolate between values.]

<u>Allowable Building Cost</u>	<u>Allowance</u>
<u>\$1,000,000 or less</u>	<u>25% of the allowable building cost; up to a maximum of \$250,000</u>
<u>\$1,000,000 to \$10,000,000</u>	<u>\$250,000 plus 12% of the allowable building cost over \$1,000,000; up to a maximum of \$1,330,000</u>
<u>\$10,000,000 to \$100,000,000</u>	<u>\$1,330,000 plus 6% of the allowable building cost over \$10,000,000; up to a maximum of \$6,730,000</u>
<u>over \$100,000,000</u>	<u>\$6,730,000 plus 5% of the allowable building cost over \$100,000,000</u>

[TABLE 2 - ALLOWANCE FOR DESIGN ONLY

Building Cost	Allowance as a Percentage of Building Cost+
\$ 100,000 or less	16.2798
120,000	15.9235
150,000	15.4983
175,000	15.2112
200,000	14.9667
250,000	14.5669
300,000	14.2483
350,000	13.9844
400,000	13.7596
500,000	13.3922

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600,000	13.0992
700,000	12.8565
800,000	12.6498
900,000	12.4705
1,000,000	12.2170
1,200,000	10.7751
1,500,000	10.4873
1,750,000	10.2930
2,000,000	10.1276
2,500,000	8.6975
3,000,000	8.5071
3,500,000	8.3496
4,000,000	8.2154
5,000,000	7.9959
6,000,000	7.0389
7,000,000	6.9085
8,000,000	6.7975
9,000,000	6.7010
10,000,000	6.6159
12,000,000	5.7522
15,000,000	5.5986
17,500,000	5.4948
20,000,000	5.4065
25,000,000	4.8236
30,000,000	4.7181
35,000,000	4.6307
40,000,000	4.5563
50,000,000	4.4345
60,000,000	4.3375
70,000,000	4.2572
80,000,000	4.1888
90,000,000	4.1294
100,000,000	4.0769
120,000,000	3.8065
150,000,000	3.7048
175,000,000	3.6362
200,000,000 (or more)	3.5778

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

+ Interpolate between values.]

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SUBCHAPTER 6. PINELANDS PROCEDURES AND REQUIREMENTS

7:22-6.4 Definitions

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

["Ad valorem tax" means a tax based upon the value of real property.]

...

["Alternative technology" means proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes, but is not limited to, land application of effluent and sludge, aquifer recharge, aquaculture, direct reuse (non-potable), horticulture, revegetation of disturbed land, containment ponds, sludge composting and drying prior to land application, self-sustaining incineration, methane recovery, individual and onsite systems, and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.]

...

["Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.]

...

["Innovative technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.]

...

["User charge" means a charge levied on users of a wastewater treatment facility or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such facilities and may include debt service.]

...

7:22-6.9 Notice of project eligibility

(a) The Department shall send a Notice of Project Eligibility [by certified mail] to those local government units whose projects rank high enough on the Pinelands Infrastructure Trust Fund List to receive funds. The Department as directed by the Pinelands Commission reserves the right to send a Notice of Project Eligibility to the next highest ranked project(s) outside the fundable range to act as contingency project(s) should the project(s) within the fundable range not proceed as planned. This notice shall not constitute an obligation to provide Pinelands Infrastructure Trust funding for the project. The Notice of Project Eligibility may not be sent to any local government unit who is in current default on any State loan. However, unless the

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Department determines that repayment of the defaulted loan will be received, a Pinelands grant or loan agreement will not be executed between the Department and the local government unit.

(b) (No change.)

(c) Written notice of a bypass or disapproval action shall be [forwarded] sent to the local government unit [by certified mail]. As a result of such an action, the project shall be bypassed on the Pinelands Infrastructure Trust Funding List which may allow the next highest ranked contingency project to be within the fundable range on the Pinelands Infrastructure Trust funding list. A bypassed or disapproved project shall remain on the funding list and its priority shall remain the same.

7:22-6.11 Application procedures

(a) - (c) (No change.)

(d) The following must be submitted when applying for Pinelands Infrastructure Trust funding for the construction of wastewater treatment facilities:

1. - 2. (No change.)

3. Statement of Assurances ([MWA] Form [LP-4] LP-3) and an executed Professional Services Affidavit ([MWA] Form LP-11) for each person or firm whose professional services have been procured by the local government unit for the project for which cost reimbursement will be sought under this chapter, including those planning and design activities for which direct funding is provided in accordance with N.J.A.C. 7:22-6.11(f) and (g) below. If the professional services for which cost reimbursement will be sought under this chapter, have not been procured at the time of loan application, submittal by the local government unit of a letter of commitment to comply with the requirements of the Professional Services Affidavit, and to submit a copy of the executed Professional Services Affidavit to the Department immediately upon execution of the contract for the professional services, will satisfy this requirement. Submittal of the executed Professional Services Affidavit or letter of commitment is a requirement of the application process so that the Department will have written confirmation from the local government unit that it has or will procure any necessary professional services in conformance with the procurement requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), the Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.) or other State-approved method and the local government unit has or will review the proposed costs and activities and finds them acceptable. This Professional Services Affidavit requirement does not apply to professional services obtained for those planning and design activities which are covered through an allowance in accordance with N.J.A.C. 7:22-7.12;

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

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans in accordance with the provisions of N.J.A.C. 7:15 and the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). A complete Project Report/Facilities Plan must include:

i. [A description of both the proposed wastewater treatment facilities and the complete wastewater treatment system of which it is a part;

ii.] A description of the Best Practicable Wastewater Treatment Technology;

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[iii.] ii. [A cost effectiveness analysis of the feasible conventional, innovative and alternative technologies capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for cost effectiveness analysis must be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The population forecasting in the analysis must be consistent with the appropriate Water Quality Management Plan. A cost effectiveness] An analysis [must include] that includes:

(1) (No change.)

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

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

[(4) 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

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

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

[(7) 4] Cost information on total capital costs, and annual operation [and], maintenance and replacement costs, as well as estimated annual or monthly costs to residential and industrial users.

[iv.] iii. An infiltration/inflow analysis of the sewer system in accordance with N.J.A.C. 7:22-6.35;

[v. An analysis of the potential open space and recreation opportunities associated with the project;

vi. An adequate evaluation of the environmental impacts of the alternatives analyzed in N.J.A.C. 7:22-6.11(d)5.iii;]

[vii.] iv. (No change in text.)

[viii.] v. For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(1) Relevant [design] preliminary engineering parameters, including a description of the treatment units and/or sewer system to be built, schematic flow diagrams, hydraulic profiles and preliminary design criteria;

(2) - (5) (No change.)

6. - 12. (No change.)

13. [A sewer use ordinance and user charge system acceptable to the Department;

i. The sewer use ordinance or other legally binding document must include provisions that prohibit any new connections from inflow sources into the treatment facilities and require that new sewers and connections to the treatment facilities are properly designed and constructed. The ordinance or other legally binding document must require the local unit to diligently investigate any existing inflow sources (such as sump pumps) and eliminate such sources within

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a reasonable time period. The ordinance or other legally binding document must also require that all wastewater introduced into the treatment facilities not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment facilities; not violate effluent or water quality limitations; or not preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.

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

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

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

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

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

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

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

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

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

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

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

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

(I) Flow volume of the users;

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

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

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

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

iii. The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual, an emergency operating program, personnel training, an adequate budget consist with the user charge system, operational reports, laboratory testing needs, and an operation and maintenance (including replacement) program for the complete waste treatment system;] (Reserved)

14. (No change.)

15. An affidavit ([CGA] Form [LP-8] LP-7) certifying that required permits and approvals for building the wastewater treatment facilities, were received from applicable Federal, State, and local agencies;

16. - 22. (No change.)

(e) (No change.)

(f) The following shall be submitted when applying for Pinelands Infrastructure Trust funding for the planning of wastewater treatment facilities:

1. - 2. (No change.)

3. Draft engineering agreements and related cost documentation and an executed Professional Services Affidavit ([MWA] Form LP-11) for each person or firm whose professional services are procured by the local government unit for the project for which cost reimbursement is sought under this chapter.

(g) - (h) (No change.)

7:22-6.13 Evaluation of application

(a) - (c) (No change.)

(d) The Department shall promptly notify an applicant [by certified mail] of any disapproval. A disapproval of an application will not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Pinelands application and/or processing

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of a Pinelands grant or loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action. As a result of a disapproval and project bypass action, the next highest ranked project on the Pinelands Infrastructure Trust Funding List may fall within the fundable range.

7:22-6.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-6.18 through 6.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Pinelands grant or loan, and conditions to each disbursement under a Pinelands grant or loan agreement:

1. (No change.)

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. The recipient shall comply with the requirements of the Single Audit Act of 1984 (31 U.S.C. 7501-7507), Federal OMB Circular A-128, both incorporated herein by reference and State OMB Circular [87-11] 04-04-OMB, incorporated herein by reference as amended or supplemented. Copies of these documents may be obtained from the Department;

3. - 4. (No change.)

5. [The recipient shall adopt a sewer use ordinance and implement the user charge system consistent with the provisions of N.J.A.C. 7:22-6.11(d)13;] (Reserved)

6. - 9. (No change.)

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

11. - 24. (No change.)

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

26. - 30. (No change.)

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

i. - iii. (No change.)

iv. All visual inspections and testing shall be done in accordance with the following:

(1) - (5) (No change.)

(6) Testing of all mechanical equipment at treatment plants and pump stations [must] may be witnessed by a representative of the Department; and

(7) If required, actual flow tests must be done in accordance with parameters established by the Department and may be witnessed by [performed in the presence of] a representative of the Department; and

32. (No change.)

(b) - (g) (No change.)

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7:22-6.30 Project performance

(a) - (d) (No change.)

(e) At a minimum, unless further specified, the project performance standards consist of the effluent discharge limitations in the NJPDES permit (if applicable), the construction standards identified at 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] project.

SUBCHAPTER 7. DETERMINATION OF ALLOWABLE COSTS: PINELANDS

7:22-7.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. - 7. (No change.)

8. Costs associated with the purchase and installation of security measures, including, but not limited to, such items as fencing, cameras, lighting and video equipment.

(b) (No change.)

7:22-7.12 Allowance for planning and design

(a) - (c) (No change.)

(d) The estimated and final allowance will be determined in accordance with this section and Table[s] 1 [and 2. Table 2 is to be used in] In the event that the recipient received a federal grant or a Pinelands grant or loan for facilities planning[. The] , the amount of the allowance is computed by [applying] subtracting the amount of the other State or Federal funding for facilities planning funding from the [resulting] appropriate allowance [percentage to the initial allowable building cost] computed using Table 1.

(e) - (i) (No change.)

TABLE 1 - ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building Cost	[Allowance as a Percentage of Building Cost+]
\$ 100,000 or less	27.5396
120,000	26.8177
150,000	25.9599
175,000	25.3834
200,000	24.8944
250,000	24.0981
300,000	23.4663
350,000	22.9452
400,000	22.5032
500,000	21.7833

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600,000	21.2124
700,000	20.7413
800,000	20.3418
900,000	19.9956
1,000,000	19.6910
1,200,000	17.1564
1,500,000	16.6076
1,750,000	16.2389
2,000,000	15.9259
2,500,000	13.6029
3,000,000	13.2464
3,500,000	12.9522
4,000,000	12.7026
5,000,000	12.2963
6,000,000	10.7766
7,000,000	10.5373
8,000,000	10.3343
9,000,000	10.1585
10,000,000	10.0036
12,000,000	8.6591
15,000,000	8.3821
17,500,000	8.1960
20,000,000	8.0381
25,000,000	7.1325
30,000,000	6.9456
35,000,000	6.7913
40,000,000	6.6605
50,000,000	6.4474
60,000,000	6.2785
70,000,000	6.1390
80,000,000	6.0207
90,000,000	5.9183
100,000,000	5.8281
120,000,000	5.4174
150,000,000	5.2441
175,000,000	5.1277
200,000,000 (or more)	5.0289

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

+ Interpolate between values.]

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<u>Allowable Building Cost</u>	<u>Allowance</u>
<u>\$1,000,000 or less</u>	<u>25% of the allowable building cost; up to a maximum of \$250,000</u>
<u>\$1,000,000 to \$10,000,000</u>	<u>\$250,000 plus 12% of the allowable building cost over \$1,000,000; up to a maximum of \$1,330,000</u>
<u>\$10,000,000 to \$100,000,000</u>	<u>\$1,330,000 plus 6% of the allowable building cost over \$10,000,000; up to a maximum of \$6,730,000</u>
<u>over \$100,000,000</u>	<u>\$6,730,000 plus 5% of the allowable building cost over \$100,000,000</u>

[TABLE 2 - ALLOWANCE FOR DESIGN ONLY

Building Cost	Allowance as a Percentage of Building Cost+
\$ 100,000 or less	16.2798
120,000	15.9235
150,000	15.4983
175,000	15.2112
200,000	14.9667
250,000	14.5669
300,000	14.2483
350,000	13.9844
400,000	13.7596
500,000	13.3922
600,000	13.0992
700,000	12.8565
800,000	12.6498
900,000	12.4705
1,000,000	12.2170
1,200,000	10.7751
1,500,000	10.4873
1,750,000	10.2930
2,000,000	10.1276
2,500,000	8.6975
3,000,000	8.5071
3,500,000	8.3496
4,000,000	8.2154
5,000,000	7.9959
6,000,000	7.0389
7,000,000	6.9085
8,000,000	6.7975
9,000,000	6.7010

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10,000,000	6.6159
12,000,000	5.7522
15,000,000	5.5986
17,500,000	5.4948
20,000,000	5.4065
25,000,000	4.8236
30,000,000	4.7181
35,000,000	4.6307
40,000,000	4.5563
50,000,000	4.4345
60,000,000	4.3375
70,000,000	4.2572
80,000,000	4.1888
90,000,000	4.1294
100,000,000	4.0769
120,000,000	3.8065
150,000,000	3.7048
175,000,000	3.6362
200,000,000 (or more)	3.5778

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.

+ Interpolate between values.]

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, as used in this subchapter, will have the following meanings unless the content clearly indicates otherwise.

...

"Office" means the Office of Equal Opportunity[,] and Public Contract Assistance [and Environmental Equity] or other program of the Department of Environmental Protection with the responsibility for administration of this subchapter.

...

["Set-aside contract" means:

1. A contract for building, materials and equipment, or services, which is designated as a contract for which bids are solicited on a restricted basis such that responses will be accepted only from qualified small business enterprises owned and controlled by socially and economically disadvantaged individuals; or

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2. A portion of a contract when that portion has been so designated; or
3. Any other purchase or procurement so designated.]

...

7:22-9.3 SED utilization requirements for projects

(a) (No change.)

(b) The 10 percent SED utilization requirement shall be accomplished by the following:

1.[Bids may be solicited on a restricted basis by setting aside a contract or subcontract for building, materials and equipment, or services. Once so designated, bids on a set aside contract shall be invited and accepted only from SEDs; or

2.] Bids [may] shall be solicited on an unrestricted basis [and not designated a set-aside contract]. The bid documents, however, shall include a statement to the effect that the successful bidder must fulfill the SED utilization requirements by subcontracting portions or the work to SEDs; or

[3] 2. Contractors also have the option of establishing [set-aside or] unrestricted bidding procedures[, or both,] to fulfill the 10 percent SED utilization requirement for the project.

7:22-9.4 Requirement to develop SED Utilization Plan

(a) (No change.)

(b) The project plan shall identify those contracts proposed to be bid on [a restricted (that is, a set aside contract) or on] an unrestricted basis[, or both]. For each unrestricted contract the project plan shall also identify the SED utilization requirements that the successful bidder shall meet.

(c) – (d) (No change.)

[(e) Project sponsors, contractors, and the Office shall consider factors similar to those set forth in N.J.A.C. 17:12-6.11 implementing the State Set-Aside Act when developing SED utilization plans.]

7:22-9.5 [Bidding for contracts or subcontracts through set-asides] (Reserved)

[(a) The 10 percent SED utilization requirement established by N.J.A.C. 7:22-9.3(a) may be attained by requiring that a contract or a subcontract shall be set aside for bidding only by qualified small businesses owned or controlled by socially or economically disadvantaged individuals ("SEDs") whenever there is a reasonable expectation that at least two bids will be obtained from such enterprises at a fair and reasonable price. A fair and reasonable price will be determined by comparison to other estimates received for the same work.

(b) Designation of set aside contracts shall be made prior to any notice and advertisement for bids. Once designated, the notices and advertisements for bids shall indicate that the contract or subcontract to be awarded is a set aside for qualified small businesses owned or controlled by socially and economically disadvantaged individuals ("SEDs").

(c) The provisions of (a) above and 7:22-9.8(a) requiring at least two bids to be obtained from qualified SEDs shall not apply to set-aside contracts for professional services and extraordinary unspecifiable services pursuant to N.J.S.A. 40A:11-5(1)(a)(i) and (ii), in which case a contract may be awarded to a qualified SED pursuant to N.J.S.A. 40A:11-5(1)(a)(i) or (ii).]

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7:22-9.6 Notice of SED utilization opportunities

(a) All project sponsors, at least 30 days prior to public advertisement for bids, shall notify the agencies specified in N.J.A.C. 7:22-9.13(a)8, of the availability of opportunities for SEDs to provide services, [to bid on set aside construction contracts or subcontracts,] to bid on unrestricted contracts or subcontracts, or to provide any other necessary purchase or procurement. The notice shall include a description of the type and scope of the services involved.

(b) (No change.)

7:22-9.7 Advertisements for SED utilization

(a) (No change.)

(b) The advertisement for bids shall indicate that [the invitation to bid is on]:

1. [A set-aside contract or subcontract and that awards] Awards will be made only to [small] socially and economically disadvantaged business concerns that are certified by the New Jersey Department of Commerce and Economic Growth Commission, the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, the New Jersey Transit or other agencies deemed appropriate by the Office as eligible minority businesses or female businesses; or

2. [An] The invitation to bid is on an unrestricted basis whereby the successful bidder must fulfill the SED utilization requirements. The agencies specified in N.J.A.C. 7:22-9.13(a)8 will have a list of eligible SED firms and shall, upon request, provide them to the project sponsor. The project sponsor shall, during the advertisement phase, provide copies of the list to all contractors bidding on unrestricted contracts.

(c) (No change.)

(d) [In the case of a set aside contract, the newspaper or newspapers in which the advertisement for bids appears shall be selected by the contracting agency in consultation with the Office.

(e) If there are no responses to the bid solicitation from SEDs or if the successful bidder's proposal does not meet the SED utilization requirements, the successful bidder shall advertise and continue the search for SED participants for a minimum of 30 days after the contract is awarded. The contract shall include a provision to this effect.

7:22-9.8 [Cancellation of set-aside designation] (Reserved)

[If, in consultation with the Office, the contracting agency determines that two bids from the appropriate qualified business enterprises cannot be obtained, the contracting agency may withdraw the designation of the set-aside contracts and resolicit bids on an unrestricted basis. The cancelled designation shall not be considered in determining the percentage of the total amount of contracts for a project awarded to SEDs. The project plan shall be modified accordingly.]

7:22-9.9 [Acceptance of set-aside bids] (Reserved)

[When a contract or portion thereof has been designated as a set-aside, or when the contractor is required to subcontract a portion of a contract to qualified SEDs, acceptance of set-aside bids shall be confined to small business concerns that are certified as a SED.]

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7:22-9.10 Lowest bid resulting in payment of unreasonable price

(a) If the contracting agency determines that the acceptance of the lowest responsible bid [on a set-aside contract] will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing public contracts, the contracting agency shall reject all bids.

(b) Bidders and the office shall be notified of the rejection of all bids, the reasons for the rejection, and the contracting agency's intent to solicit bids for a second time [on a set-aside contract].

(c) If the contracting agency determines a second time that the acceptance of the lowest responsible bid [on a set-aside contract] will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing public contracts, the contracting agency shall reject all bids and [withdraw the designation of the set-aside contract,] notify the Office and, after receipt of the Office's approval, shall amend the project plan accordingly.

(d) Bidders shall be notified of the [set-aside] cancellation, the reasons for the cancellation and the contracting agency's intent to resolicit bids on an unrestricted basis. SEDs may participate in the bidding on an unrestricted basis.

(e) The cancelled solicitation shall not be counted as a set aside for the purpose of obtaining the required 10 percent participation by small businesses owned or controlled by socially or economically disadvantaged individuals ("SEDs").]

7:22-9.13 Assessment of compliance

(a) Where the Office determines that a project sponsor has failed or is failing to meet the 10 percent SED utilization requirement, the project sponsor shall, upon the written request of the Office, submit the following:

1. – 5. (No change.)

6. [Established set-aside contracts (if previously outlined in the contractor's SED plan);]

(Reserved)

7. (No change.)

8. Proof that the assistance of State Agencies was solicited, including:

Office of Equal Opportunity[,] and Public Contract Assistance [and Environmental Equity]

New Jersey Department of Environmental Protection

PO Box 402

Trenton, New Jersey 08625-0402

Division for the Development of Small Businesses and Women Businesses and Minority Businesses

New Jersey Commerce and Economic Growth Commission

PO Box 835

1 West State Street

Trenton, New Jersey 08625-0835

(b) – (c) (No change.)

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED ENVIRONMENTAL INFRASTRUCTURE FACILITIES

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7:22-10.2 Additional definitions

In addition to the words and terms defined at N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-1, the following words and terms are defined for the purposes of this subchapter:

...

"Environmentally constrained area" means areas in which development is in some way restricted including wetlands, vernal habitats, floodplains, endangered species sites or designated habitats, parks and preserves and Agricultural Development Areas.

"Environmentally critical area" means an area or feature which is of significant environmental value, including but not limited to wetlands, vernal habitats, floodplains, important farmlands, Agricultural Development Areas, steep slopes, endangered or threatened species and their designated habitats, important aquifer recharge areas, coastal areas, stream corridors, parks, and preserves.

...

"Vernal habitat" means those areas designated as such pursuant to New Jersey Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A-1.4.

...

7:22-10.3 Establishing the level and scope of environmental review

(a) - (b) (No change.)

(c) The following projects are exempt from a Level 1, 2 or 3 environmental review:

1. Equipment purchases;
2. Televising of pipes and repair by grouting;
3. Sanitary sewer rehabilitation projects that do not involve an increase in capacity, provided the Department determines that there are no adverse impacts to cultural resources or environmentally critical areas; and/or
4. Water meter replacement in the exact same locations as the existing meters.

(d) If during the review of the project application the Department determines that the scope of a project deviates from the project types listed at (c) above, then the project sponsor shall submit appropriate planning information in accordance with N.J.A.C. 7:22-10.4, 10.5 or 10.6, as applicable.

7:22-10.4 Level 1 environmental review

(a) Projects qualifying for this level of environmental review may include the following categories of projects:

1. (No change.)
2. Construction of ancillary facilities or minor improvements to environmental infrastructure facilities which do not:
 - i. create a new discharge;
 - ii. reduce the level of treatment;
 - iii. result in an increase in quantity of flow of an existing discharge;
 - iv. involve an increase in water allocation; or
 - v. involve the construction of a new water tower.

(b) Projects which conform to one of the categories identified in (a) above but which have any of the following characteristics shall not qualify for a Level 1 environmental review:

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1. (No change.)

2. The project can be expected to have a permanent adverse or a significant temporary adverse direct or indirect impact on cultural resources, endangered or threatened species or designated habitats, wetlands, vernal habitats, floodplains, important farmlands or other environmentally critical areas;

3. – 4. (No change.)

(c) Where a Level 1 review has been determined to be appropriate, a Level 1 environmental planning document must be submitted by the project sponsor to the Department for review. The Level 1 environmental planning document must be of sufficient scope to permit the Department to verify the preliminary determination to proceed with this level of review. Information to be provided in the environmental planning document includes the following, as applicable:

1. A brief geographical description of the planning area, a description of the need for the proposed activity, and a description of the nature and location of any structures to be built[, and a map of the service area of the affected environmental infrastructure facilities];

2. [A suitable] An 8½ inch by 11 inch map of the planning area which depicts the location of the proposed activity[. An], and an 8½ by 11 inch site plan showing areas of proposed construction [should also be included where appropriate to the type of project proposed];

3. Maps that clearly depict the topography of the planning area, the location of the proposed activity, the service area of the affected environmental infrastructure facilities, all areas of proposed construction, and environmental features, as appropriate. The USGS quadrangle maps are an acceptable base map, if the scale allows for a clear depiction of the project;

[3] 4. (No change in text.)

[4] 5. A summary of alternatives available, including, at a minimum, the no action alternative, and the basis for selecting the proposed action. For wastewater treatment, water supply and stormwater management facilities permitted as a municipal separate storm sewer system, the selected plan must be the most [cost effective, environmentally sound alternative which will address the water quality or water supply need which has been identified and which is implementable]economical, environmentally sound and implementable alternative (for other environmental infrastructure facilities, the provisions with respect to cost effectiveness are not applicable). The most [cost effective] economical alternative is determined by taking into account the cost of environmental impacts and the cost of construction. The basis discussion must include the project costs, user costs, median annual household income of the service area, environmental impacts and effectiveness of the proposed alternatives relative to addressing the identified water quality or water supply need as compared with other alternatives considered. For wastewater and water supply projects, the user cost at the time of the application and the proposed increase in the user cost as a result of the project must be provided. The median annual household income shall be derived from the current United States Census income data updated to the present using the "Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100," which can be obtained from the United States Department of Labor, Bureau of Labor Statistics; and

[5] 6. (No change in text.)

(d) – (f) (No change.)

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7:22-10.5 Level 2 environmental review

(a) (No change.)

(b) For a Level 2 review, environmental planning documentation must be submitted by the project sponsor consisting of an environmental information document, results of investigations and consultations conducted pursuant to N.J.A.C. 7:22-10.8 and 10.9 and results of public participation conducted pursuant to N.J.A.C. 7:22-10.10. At a minimum, a public hearing [will be] is required and proof of same must be included as part of a complete planning document submittal to the Department. The environmental information document must include, [where] to the extent applicable, the following information[.]:

1. A geographical, geological and topographical description of the planning area;

2. [A clear map of the planning area. The scale of the map should generally be one inch equal to 2000 feet. However, where the size of the planning area is inappropriate to this scale, a larger or smaller scale map may be required by the Department] An 8½ inch by 11 inch map of the planning area which depicts the location of the proposed activity, and an 8½ by 11 inch site plan showing areas of proposed construction. The USGS quadrangle maps are an acceptable base map, if the scale allows for a clear depiction of the project;

3. A description of and mapping, where applicable, of existing environmental conditions and features including:

i. – iii. (No change.)

iv. Geology, topography and soils types and limitations with respect to the use of on-site systems or land application of effluent or residuals. Soil information shall be taken from the [Soil Conservation Service] Natural Resources Conservation Service county soils maps and interpretations unless more accurate field evaluation of the specific project area is available;

v. – vii. (No change.)

viii. Environmentally critical areas within the planning area, including, but not limited to, wetlands, vernal habitats, floodplains, important farmlands, Agricultural Development Areas, important aquifer recharge areas, coastal areas, stream corridors, parks and preserves, steep slopes, and locations of endangered or threatened species or designated habitats; and

ix. Areas subject to the jurisdiction of the Pinelands Commission, the Coastal Area Facility Review Act, [or] the [Hackensack] New Jersey Meadowlands [Development] Commission, the Delaware and Raritan Basin Commission, the Delaware and Raritan Canal Commission, or the New Jersey Highlands Water Protection and Planning Council.

4. – 6. (No change.)

7. For wastewater treatment and water supply projects, where new or expanded facilities are involved in the scope of the project, an environmental constraints analysis shall be prepared according to [the following procedure] i. and ii. below, unless specifically exempted by the Department. A project shall be exempted from the requirement to complete an environmental constraints analysis if the Department determines that the proposed project will not enable development in environmentally constrained areas:

i. Overlay mapping of environmentally constrained areas, which include wetlands, vernal habitats, floodplains, endangered species sites or designated habitats, parks and preserves, and Agricultural Development Areas, in the planning area with mapping of existing land use and permitted zoning for currently undeveloped areas. Areas not yet developed which are not environmentally constrained are considered developable. Environmentally constrained, developed, and developable areas shall be clearly depicted on the mapping to be submitted.

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ii. (No change.)

8. – 10. (No change.)

11. A description of the selected plan. For wastewater treatment, water supply and stormwater management facilities permitted as a municipal separate storm sewer system, the selected plan must be the most [cost effective, environmentally sound alternative]economical, environmentally sound and implementable alternative which addresses the identified water quality or water supply need [and which is implementable] (for other environmental infrastructure facilities, the provisions with respect to cost effectiveness are not applicable). Include, where applicable, the following:

i. – iv. (No change.)

v. For wastewater and water supply projects, [a comparison of user cost to the median annual household income in the planning area. The base income data source shall be the latest United States Census. Income data shall be updated to the present using the consumer price index or other equivalent means] the user cost at the time of the application, the proposed increase in the user cost as a result of the project and the median annual household income in the planning area. The median annual household income shall be derived from the current United States Census income data updated to the present using the "Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100," which can be obtained from the United States Department of Labor, Bureau of Labor Statistics;

vi. – x. (No change.)

12. – 17. (No change.)

18. Assessment of the consistency of the proposed project with the Stormwater Management Rules, N.J.A.C. 7:8.

(c) - (e) (No change.)

7:22-10.6 Level 3 environmental review

(a) – (d) (No change.)

(e) The final environmental impact statement, maintained in the Department's file for the project shall contain copies of the correspondence received on the draft [EIS] environmental impact statement, and responses to written comments, comments received at the hearing for the draft environmental impact statement, any additional information compiled or modifications made to the project as the result of comments, where applicable, and mitigating measures that will be required to make the proposed project acceptable.

7:22-10.7 Re-evaluation of environmental decision statements

[(a) The] Prior to loan award, the project sponsor shall certify in writing that the project submitted in the design phase, or for which authorization to advertise or authorization to award is requested, is the same as that which was described in the environmental decision statement and approved in the planning phase and includes all mitigating measures developed for the project in the planning or design phase. If this certification cannot be made, then the project sponsor shall describe the proposed project modifications, the reason for the changes, and the costs and environmental impacts of the revised project. Project modifications that may be included from the time of planning approval through construction of the project that require notification by the project sponsor to the Department include, but are not limited to, changes in facility location, size, capacity or type and changes in the depth or limits of construction disturbance. The

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Department may request additional information or additional public participation regarding the proposed modifications. On the basis of the information available, the Department will determine if there is a need to issue a revised environmental decision statement or elevate the project to a Level 2 or Level 3 environmental review and proceed accordingly.

[(b) Where five or more years have elapsed between the issuance of a Level 1, 2, or 3 environmental decision statement and the proposed award of financial assistance, and where the Department determines that there are no significant changes in the proposed project or its impact based on the certification made according to (a) above, then the Department will issue a public notice to the persons on a mailing list developed in accordance with N.J.A.C. 7:22-10.10(c) stating that the Department intends to proceed with an award of financial assistance for the previously approved project.]

7:22-10.8 Cultural resource survey requirements

(a) – (b) (No change.)

(c) If the Department determines that a cultural resource survey is required for the proposed project, then the Department shall [direct the] specify the level of survey that is required to be completed. The project sponsor [to] shall secure the services of a professional, qualified archaeologist to prepare the [appropriate] level of survey as [directed] determined by the Department.

(d) The project sponsor shall submit to the Department a [scope of work] proposal for each level of cultural resource survey required, as directed by the Department in accordance with (c) above. The [scope of work] proposal shall be prepared by a professional, qualified archaeologist. No cultural resource survey shall be initiated until the Department reviews and approves, in writing, the scope of work for the cultural resource survey.

(e) – (i) (No change.)

(j) Where it is determined that an alternative to avoid an adverse effect is not feasible, measures to minimize the potential effects shall be developed by the Department in consultation with the appropriate State and Federal agencies, State Historic Preservation Officer and, as required, other interested parties. A mitigation plan outlining these measures shall be included in the [memorandum] Memorandum of [agreement] Agreement signed by the consulting parties in accordance with the requirements of 36 C.F.R. Part 800. Mitigation shall be commensurate with the nature and the significance of the resource adversely affected by the project.

(k) All reports of cultural resource surveys shall be submitted for review by the Department. All cartographic and document reproduction contained in the report must be clear and legible. Reports must have original photographic plates or high quality offsets. Digital images may be submitted for photographic figures in reports. Whichever type of imagery is used, the quality of the printed images in the report shall be sufficiently clear and comprehensive to illustrate the subject. Survey reports displaying digital images rather than original photographs shall incorporate a sturdy sleeve containing a CD with all of the digital images used in the report. Image files in the CD shall be in jpg or tif format and have a minimum resolution of two megapixels (approximately 1600 x 1300 pixels). The CD shall be provided with the draft report. The CD shall be labeled with project/site name, county, municipality, and the names of the firm and/or individuals who created the images. If a revised or final report is submitted to the Department, it shall also incorporate a sleeve into which the CD initially provided to the

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Department can be inserted. Professional procedures and reports shall meet the criteria set forth in the U.S. Department of Interior's "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines" (Federal Register, Vol. 48, No. 190; September 29, 1983), [and the professional reporting and survey guidelines of the New Jersey Historic Preservation Office of the Department, once these guidelines are promulgated as rules (in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.),] incorporated herein by reference. All reports must contain:

1. - 11. (No change.)
- (l) (No change.)

7:22-10.9 Environmental coordination

(a) The project sponsor shall consult, coordinate with, or apply to those agencies responsible for issuing permits or which have other jurisdiction regarding environmental concerns with respect to the proposed project and its impacts. Those agencies include, but are not limited to, the agencies responsible for administering the following:

1. - 10. (No change.)
11. Coastal Zone Management Act of 1972, 16 U.S.C. §§1451 et seq., as amended;
12. - 21. (No change.)
22. Endangered Plant Species List Act, N.J.S.A. 13:1B-151 et seq.; [and]
23. (No change.)
24. Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;
25. New Jersey Green Acres Land Acquisition Act, N.J.S.A. 13:8A-1 et seq.;
26. Highland Water Protection and Preservation Act, N.J.S.A. 13:20-1 et seq.;
27. Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;
28. Water Quality Planning Act, N.J.S.A. 58:11A-1 to 16.; and
29. Native American Graves Protection and Repatriation Act of 1990, 25 USC §§3001 et seq., as amended.

- (b) (No change.)

7:22-10.10 Public participation

(a) (No change.)

(b) Where a public hearing is required, a public hearing shall be noticed and documented by the project sponsor in the following manner:

1. A public notice shall be prepared by the project sponsor and submitted to the Department for approval prior to its publication. The advertisement shall include a brief description of the proposed project, its location and costs. The time, date and place of the public hearing must provide the affected public with an opportunity to attend and fully participate. A retail or display advertisement located in the body of the newspaper noting the date, time, place and subject of the hearing shall be [placed] published at least 30 days in advance of the hearing. The advertisement shall indicate repositories where planning documentation prepared for the project will be available for public review. The advertisement shall be placed in a newspaper of general circulation in the project planning area for a Level 2 review, and in at least two newspapers statewide for a Level 3 review.

2. (No change.)

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(c) A mailing list shall be developed by the Department for each project, for use by the Department to inform the public and other interested parties of its decisions regarding the project. The mailing list shall include elected officials, Federal, State and local government agencies, environmental groups, and other interested groups and individuals appropriate to the planning area for the proposed project.

(d) (No change.)

7:22-10.11 Design requirements

(a) The project sponsor shall prepare design plans and specifications which conform to the project alternative selected and approved in planning pursuant to the provisions of N.J.A.C. 7:22-10.4, 10.5 or 10.6 and which include mitigating measures developed during planning and incorporated in the approved planning documentation. [Any revisions of the project as designed from the project as approved during planning shall be specifically identified.] In addition, the design plans and specifications shall conform to the minimum standards for each area of concern which is applicable to the proposed project as set forth below. All activities which are a part of the comprehensive environmental infrastructure project(s) for the planning area must conform to the requirements of this section, regardless of the eligibility of individual components of the project. [Where any on-going environmental protection measures will be the responsibility of the project sponsor, the project sponsor shall submit a letter prior to loan award specifying that it will adhere to the scope of work approved by the Department.]

1. Any design revisions of the project which differ from the project as approved during planning shall be specifically identified.

2. Where any on-going environmental protection measures will be the responsibility of the project sponsor, the project sponsor shall submit a letter prior to loan award specifying that it will adhere to the scope of work approved by the Department.

(b) The contract documents shall be prepared to clearly identify environmental and cultural resources protection measures and shall conform to the following:

1. [Unless otherwise approved by the Department, the] The format of the contract documents shall consolidate environmental and cultural resource protection/restoration measures in a single section of the design specifications as well as on appropriate sheets of the design plans. The specifications which spell out the environmental and cultural resource protection/restoration measures shall be identified in the specifications as having precedence over other potentially contradictory language contained elsewhere in the design contract documents. The specifications shall clearly state that, in instances where the provisions of a Department-issued permit contradict a provision of the specifications (including those identified in this subchapter), the environmental resources protection and/or restoration and cultural resource mitigation measures identified in the Department-issued permit shall govern.

2. Environmental resources protection and/or restoration measures, and cultural resource [protection/restoration] mitigation measures should generally include the following subject areas:

i. - xiii. (No change.)

3. The method of payment for environmental and cultural resource protection/restoration measures shall be specified in the applicable section of the contract documents. Where restoration and maintenance of environmental quality are necessary outside of the designated construction area or when measures for maintenance of environmental quality are required after the date of completion and acceptance of the environmental infrastructure facilities, the project

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sponsor shall clearly state the contractor's responsibilities in the specifications. The [project sponsor shall include minimum per unit prices for materials needed] Department may require the project sponsor to include separate unit bid items for environmental and cultural resource [protection and] restoration and/or mitigation.

4. (No change.)

(c) Every effort shall be made to prevent and correct problems associated with erosion and sedimentation which could occur during and after project construction. At a minimum, design specifications shall incorporate the following erosion and sedimentation control measures:

1. (No change.)

2. All erosion and sedimentation control measures shall be constructed and maintained in accordance with the ["Standards for Soil Erosion and Sediment Control in New Jersey," prepared by the New Jersey State Soil Conservation Committee, 1987] standards established under the Soil Erosion and Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules.

3. Disturbed areas that will be exposed in excess of [14] 10 days shall be temporarily seeded and/or mulched until proper weather conditions exist for establishment of a permanent vegetative cover [except in areas where final restoration is expected to be completed within seven days after the completion of construction, in which case no temporary protective measures will be required. If final restoration is expected to begin more than seven days and completed more than 30 days after the start of construction, seeding shall be required for temporary protection, except where seasonal conditions are not suitable for growing vegetation. In this case, mulch may be applied until conditions are suitable for establishing vegetative cover or until final restoration is implemented].

(d) (No change.)

(e) Restoration measures to be identified and designated on the environmental plans and specifications include the following: ground preparation, topsoiling, fertilizing, liming, reseeding, and replanting/ replacement of trees and shrubs with native species. The aim of restoration is to restore the disturbed area to a condition as nearly equal to pre-disturbance condition as possible. The environmental specifications shall set forth the procedure for accomplishing these restoration measures. The plans shall include the location of various types of restoration and shall include details depicting typical methods to accomplish restoration. The provisions shall include the following when applicable:

1. - 3. (No change.)

4. In wooded areas, for a 50 foot wide construction easement, generally 10 trees should be planted for every 100 feet of length of the easement. More trees would be required in wider easements or densely wooded areas. Plans shall include a restoration schedule specifying the quantity, common and botanic names, sizes, and spacing of trees to be planted and the type of seed mixtures to be used from station to station. Trees to be replaced should be trees native to New Jersey suitable for the particular site and generally should conform to the list of trees found in the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1999[87.] as incorporated by reference, as supplemented or amended.

5. (No change.)

(f) A listing of prohibited construction procedures shall be incorporated into the specifications. These procedures include, but are not limited to, the following:

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1. Dumping of spoil material into any stream corridor, any wetlands, any vernal habitats, any surface waters, any sites listed or eligible for listing on the New Jersey or National Registers of Historic Places, or at unspecified locations;

2. Indiscriminate, arbitrary or capricious operation of equipment in any stream corridors, wetlands, vernal habitats, or surface waters;

3. Pumping of silt-laden water from trenches or other excavations into any surface waters, stream corridors, [or] wetlands or vernal habitats;

4. (No change.)

5. Disposal of trees, brush and other debris in any stream corridors, wetlands, vernal habitats, surface waters or at unspecified locations;

6. - 7. (No change.)

8. Use of calcium chloride, petroleum products, or other chemicals for dust control; [and]

9. Use of asphaltic mulch binder; and

10. Any unpermitted discharge of sewage.

(g) [Construction in wetlands shall conform to requirements imposed through applicable permits and, at a minimum, the following:

1. Before excavation is initiated in the wetlands, a line of hay bales or other siltation control barriers shall be staked in place along the edges of the construction area and shall remain in place until restoration is complete. In addition, marsh mats shall be used for heavy construction equipment;

2. Topsoil shall be stripped and soil layers replaced in the excavated area in the same order that they were removed. Final grade shall match the elevation prior to disturbance;

3. The cleared easement shall be revegetated with a mix and density of species similar to that which was removed. Material for vegetation can be preserved from the areas cleared and replanted or provided from nursery stock;

4. Anti-seep collars shall be installed as needed in the trench to avoid draining the wetland; and

5. Coastal wetland areas disturbed during the construction shall be restored to pre-disturbance conditions by an environmentally-oriented concern with documented successful experience in the restoration of wetland areas.] Construction in wetlands shall conform to the requirements of the New Jersey Freshwater Wetlands Protection Act, N.J.S.A 13:9B-1 et seq. and N.J.A.C. 7:7A.

(h) [Where stream crossings are necessary, adverse impacts shall be minimized by including appropriate mitigating measures and restoration techniques in plans and specifications. At a minimum, mitigating measures and techniques shall include the following requirements:

1. Avoid clearing until immediately preceding construction;

2. Prior to clearing, place staked hay bales across the sloped approach to the crossing and maintain, except during actual crossing, until restoration is complete;

3. Avoid stockpiling material in the floodplain of the stream;

4. Set up in-stream sediment controls prior to commencing construction;

5. Complete crossing expeditiously. Consider weather and anticipated stoppages for weekends and holidays and plan to cross at such a time that the work can be continued until complete;

6. Maintain effectiveness of sediment control features throughout the crossing process;

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7. Construction through stream corridors, wetlands and other surface waters shall be scheduled to minimize damage to fish populations wherever possible. Recommended periods during which construction is to take place shall be in accordance with N.J.A.C. 7:13-5.6(g) and N.J.A.C. 7:7E; and

8. Restoration shall be initiated immediately following the crossing and be completed as soon as possible. Restoration shall conform to the following:

- i. Re-establishing channel contours;
- ii. Replacing bottom with native material, or in very silty bottoms, with crushed stone (one through three inch diameter);
- iii. Stabilizing banks with rip-rap. The size and nature of the rip-rap shall conform to the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987. Jute mesh may be used to stabilize intermittent or extremely low flow streams with shallowly sloping banks in sand/silt bottomed streams; and
- iv. Revegetating banks with appropriate native materials such as grasses, ground covers, trees and shrubs.] Stream crossings shall conform to the requirements of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. and N.J.A.C. 7:13.

(i) (No change.)

(j) If there is the possibility of encountering acid-producing deposits in the course of construction, as identified during the planning process, special requirements and conditions will apply and shall be incorporated in the specifications as follows:

1. - 2. (No change.)

3. In both vegetated and paved areas, when acid-producing deposits are encountered, as determined by the soil specialist, excavated trench material shall be returned to the trench [in order of removal, that is] as follows:

i. Lower material first, followed by upper material.

ii. [In addition, the] The top one to two inches of soil on which the deeper soil was stockpiled shall be scraped and placed below a depth of two feet.

iii. For pipeline construction, the quantity of material to be displaced by bedding and pipe, as well as soil scraped from the stockpile area, shall be subtracted from the deeper, excavated material and this quantity of deeper material removed to an approved disposal site and covered as described above at N.J.A.C. 7:22-10.11(e)3, Restoration Measures.

iv. After backfilling the deeper soil, one ton of limestone per 2,000 square feet shall be spread over the deeper soil in the trench. This liming requirement is applicable in areas of well drained, nonsaturated soils, as determined by the soil specialist.

v. In vegetated areas, the top two feet of soil, stockpiled for this purpose, shall then be replaced. If the top two feet of soil was also contaminated, clean backfill material similar to the native topsoil shall be used in place of the contaminated material.

4. - 6. (No change.)

7. Lime requirement tests shall be performed by the soil specialist to determine the lime application rates. This will require an incubation test in which the sample is oxidized for a period of six weeks, as follows[.] :

i. The sample shall be air dried and ground so that the whole sample passes a 0.5 millimeter sieve.

ii. The lime requirement to reach pH 6.5 shall be determined initially, and again at two week intervals for six weeks, using standard soil testing techniques.

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iii. The total lime requirement determined by this method can be extrapolated to the area under consideration.

8. - 9. (No change.)

(k) When dewatering will occur [in the vicinity of structures or potable wells] and a dewatering permit is not required, the contractor shall monitor for adverse effects to structures or wells due to dewatering and shall be responsible to remedy same to the satisfaction of the Department. Discharges from dewatering activities which contain silt [or hydrogen sulfide] are subject to the following controls:

1. All discharges from dewatering activities to surface waters, wetlands, vernal habitats, or storm sewers shall be free of sediment. Care shall be taken not to damage or kill vegetation by excessive watering or by damaging silt accumulation in the discharge area. If discharges are sediment laden, techniques shall be employed to remove sediment prior to discharge. A sedimentation basin shall be constructed and used as specified, where necessary, to protect vegetation and to achieve environmental objectives.

2. (No change.)

[3. In coastal areas, it is possible that water emanating from dewatering operations may contain hydrogen sulfide concentrations that could adversely impact areas to which the water is discharged. In these areas, at no time may the water emanating from dewatering operations be discharged if concentrations of hydrogen sulfide in excess of 40 parts per billion (ppb) are present. Prior to, and periodically during, dewatering, tests shall be conducted on the groundwater and dewatering discharge to determine if the hydrogen sulfide concentration is within the prescribed limits. In the event that these limits are exceeded, the contractor shall pretreat the discharge water prior to disposal. Pretreatment must maintain the hydrogen sulfide concentrations at or below the 40 ppb level and must be in use during those times when dewatering is occurring and the specified concentrations are exceeded.]

(l) Contract requirements with regard to the location and control of stockpile, storage and disposal areas whether provided by the project sponsor or the contractor, must conform to the following:

1. Only environmentally suitable stockpile sites may be used for the purposes of staging or storing materials, equipment and suitable trench backfill material. Environmentally suitable sites must be level, and devoid of mature stands of natural vegetation. Drainage facilities and features, wetlands, vernal habitats, and stream corridors are not environmentally suitable sites.

2. The boundary of the stockpile area shall be clearly marked by hay bales, silt fencing or another appropriate method. Where fill is to be stored in excess of [14]10 days, a suitable means of protecting excavated material from wind and water erosion shall be employed. Erosion control methods may include one or more of the following: mulching, sprinkling, silt fencing, haybaling and stone covering.

3. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded on-site only to the extent needed to achieve preconstruction grade, unless otherwise specifically approved by the Department. The project sponsor shall ensure that the contractor removes the remainder from the site and disposes of it at a site approved by the project sponsor in accordance with the following:

i. (No change.)

ii. The disposal of excess excavated material in wetlands, vernal habitats, stream corridors and floodplains is strictly prohibited, even if the permission of the property owner is

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obtained. The contractor shall be responsible to remove any fill improperly placed by the contractor at the contractor's expense and restore the area impacted.

iii. - iv. (No change.)

(m) (No change.)

(n) In order to limit noise impacts in the vicinity of sensitive receptors, construction operations and activities shall be limited as follows[. Time limits are] : Monday through Friday between the hours of 7:00 A.M. and 6:00 P.M. unless variances to these times are granted in times of emergency. No driving, pulling, or other operations entailing the use of vibratory hammers or compactors shall be permitted, other than between the hours of 8:00 A.M. and 5:00 P.M. The number of machines in operation at a given time shall be limited to the minimum practicable. All engine generators or pumps must have mufflers and be enclosed within a temporary structure.

(o) - (p) (No change.)

(q) The project sponsor shall obtain photographs of existing conditions prior to the start of site and access clearing and construction. At a minimum, one 8 inch by 10 inch color glossy print photograph shall be obtained for each 100 feet of the construction area. Special attention shall be given to environmentally critical areas and areas outside of the public right-of-way. Photographs shall be labeled by station so that upon completion of the construction, or during construction if necessary, subsequent photographs can be taken from the same control points. The project sponsor shall file copies of the above photographs with the Department. As a supplement to the required photographs, video documentation may be submitted to the Department, and is encouraged as a way of documenting site conditions.