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TITLE 7. ENVIRONMENTAL PROTECTION  
CHAPTER 26. SOLID WASTE  
SUBCHAPTER 14A. RESOURCE RECOVERY AND SOLID WASTE DISPOSAL FACILITY LOANS

N.J.A.C. 7:26-14A.1 (2016)

7:26-14A.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations from the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330, c.331 and c.335. Additionally P.L. 1985, c.335 appropriated to the Resource Recovery and Solid Waste Disposal Facility Fund \$ 50,000,000 from the Natural Resources Bond Fund established pursuant to P.L. 1980 c.70. Appropriations from the Fund shall be used for loans to local government units for the construction and operation of resource recovery facilities and environmentally sound sanitary landfill facilities or other approved solid waste facilities which are identified and included in a district solid waste management plan approved pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. Any loan agreements which are executed pursuant to P.L. 1985 c.330, c.331 and c.335 after June 20, 1988, shall be in accordance with this subchapter.

7:26-14A.2 Construction

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

7:26-14A.3 Purpose

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

1. To implement the purposes and objectives of the Natural Resources Bond Act, P.L. 1980, c.70, and the Resource Recovery and Solid Waste Disposal Facility Bond Act, P.L. 1985, c.330, c.331, and c.335;
2. To establish policies and procedures for the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Fund as loans to local government units within the State to help defray the costs of constructing and operating resource recovery facilities and environmentally sound sanitary landfill facilities and other approved solid waste facilities. This includes local government unit contracts with vendors who contract with the local government unit to undertake such projects to service the local government unit's recovery and disposal needs;
3. To protect the public and the State by insuring that funds appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of funds are consistent with the laws and policies of the State;
5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of loans; and
6. To establish accounting procedures for the administration of loans.

7:26-14A.4 Definitions

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

"1980 Act" means the Natural Resources Bond Act of 1980, P.L. 1980, c.70.

"1985 Act" means the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985, P.L. 1985, c.330, c.331 and c.335.

"Approved solid waste facility" means and includes the plants and structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any local government

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unit, including materials recovery facilities, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal and/or recovery of solid waste.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the Commissioner's designee;

"Construct" and "construction" means, in addition to the usual meanings thereof, the designing, engineering, financing, extension, repair, remodeling, or rehabilitation, or any combination thereof, of a resource recovery facility or an environmentally sound sanitary landfill facility or any component part thereof.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Solid and Hazardous Waste in the Department.

"Environmentally sound sanitary landfill facility" means a sanitary landfill facility which is equipped with a liner or liners, a leachate control and collection system, and a groundwater pollution monitoring system, or any other pollution control or other engineering device required by the Department pursuant to law or rule and regulation, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq.

"Escrow account" means the account established with the escrow bank or the Department for receipt, investment and disbursement of the Fund loan monies.

"Escrow agent" means the entity or individual responsible for authorizing disbursements from the escrow account pursuant to the terms of the Fund loan agreement and the escrow agreement.

"Escrow bank" means the financial institution designated as the escrow bank pursuant to an escrow agreement entered into by the borrower.

"Full scale operation" means the point of time at which a facility becomes commercially available to operate at the facility for which it was designed.

"Fund" means the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330.

"Loan project officer" means, with respect to the local government unit or the State, the person designated to communicate, negotiate and receive all notices and communications relating to the loan agreement or the project.

"Local government unit" means a county, municipality, municipal or county utility authority, an implementing agency pursuant to an approved Solid Waste Management Plan, or any other political subdivision of this State authorized to construct, operate, or arrange for the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility.

"Project" means any work relating to the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility or an approved solid waste facility by a local government unit.

"Project cost" means the expenses incurred in connection with:

1. The acquisition by purchase, lease, or otherwise of a project; the development of a project; and the construction of any project authorized by the 1985 Act;
2. The acquisition by purchase, lease or otherwise and the development of any real or personal property for use in connection with any project authorized by the 1985 Act, including any rights or interests therein;
3. The execution of any agreements and franchises deemed by the Department to be necessary or useful and convenient in connection with any project authorized by the 1985 Act;
4. The procurement of engineering, inspection, planning, legal, financial, geological, hydrological or other professional services, including the services of a bond registrar or an authenticating agent;
5. The issuance of bonds, or any interest or discount thereon;

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6. The administrative, organizational, operating or other expenses incident to the financing, completing and placing into service of projects authorized by the 1985 Act or any related contractual arrangements for providing resource recovery or environmentally sound sanitary landfill facility services;
7. The establishment of a reserve fund or funds for working capital, operating, maintenance or replacement expenses and for the payment or security, principal or interest on bonds, as the State Treasurer may determine; and
8. Reimbursement to any fund of the State of moneys which may have been transferred or advanced therefrom to any fund created by the 1985 Act, or of any moneys which may have been expanded therefrom for or in connection with any project authorized by the 1985 Act.

"Residual landfill" means an environmentally sound sanitary landfill facility which is designed primarily for the disposal of residuals from resource recovery facilities, non-processable wastes for an emergency backup disposal when resource recovery facilities are shut down for repair or maintenance.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse, or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

"Vendor" means a private or public entity qualified and selected by a local government unit in accordance with any applicable law resulting in an agreement whereby the vendor agrees to design, construct, and/or operate a resource recovery facility and/or an environmentally sound sanitary landfill facility or to provide resource recovery facility and/or environmentally sound sanitary landfill facility services to the local government unit.

#### 7:26-14A.5 Eligibility for project loans

- (a) Any local government unit is eligible to receive a loan for a resource recovery facility, environmentally sound sanitary landfill facility or other approved solid waste facility from the Fund. Only a county governing body, however, is eligible to receive a loan from moneys transferred to the Fund pursuant to P.L. 1985, c.335 from the Natural Resources Fund which was established pursuant to P.L. 1980, c.70.
- (b) To receive a loan, the project shall meet the following criteria to the satisfaction of the Department:
  1. The project for which the loan application is being made has been included (by lot and block number, by type of technology, for example, landfill, mass burn, composting, etc.) in the appropriate district solid waste management plan adopted and approved in accordance with N.J.S.A. 13:1E-1 et seq.;
  2. If applicable, the project shall have received the approvals required under N.J.S.A. 13:1E-26; and
  3. The local government unit shall not be in current default on any State loan. If a local government unit is in current default on a State loan, a Fund loan pursuant to this subchapter will not be executed between the Department and the local government unit unless the Department determines that repayment of the defaulted loan will be received.

#### 7:26-14A.6 Application procedures

- (a) No loan shall be awarded until an appropriation is made by the Legislature for the project to be financed. Upon receipt of notice from the Legislature that an appropriation has been made, the Department shall transmit a non-governmental use determination questionnaire (questionnaire) to the local government unit for which an appropriation was made.
- (b) Each questionnaire shall be submitted to the Department on forms available from the Department for that purpose.
- (c) Each questionnaire submitted to the Department shall include the following information:

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1. The name, address and description of the project or facility;
  2. A list of the individuals or entities with an ownership interest in the project of facility, including the percentage of the facility owned by such individual or entity;
  3. A description of the function performed and/or the contributions made by such individuals and entities on behalf of the project or facility; and
  4. A detailed summary of the proposed project or facility, including the estimated costs of each phase of such project of facility.
- (d) Questionnaires shall be signed for the applicant by a person authorized by resolution or ordinance to file an application for a State loan, and to represent the applicant in all matters relating to the loan process.
1. Each resolution or ordinance shall constitute an undertaking to accept the requirements of this subchapter.
  2. A copy of the signed resolution or ordinance shall be submitted with the application.
- (e) All questionnaires shall be submitted to:
- New Jersey Department of Environmental Protection  
Division of Solid and Hazardous Waste  
Bureau of Solid Waste Planning and Licensing  
Mail Code 401-02C  
P.O. Box 420  
401 East State Street  
Trenton, New Jersey 08625-0420

#### 7:26-14A.7 Use and disclosure of information

All questionnaires and other submissions, when received by the Department, are public records pursuant to N.J.S.A. 47:1A-1 et seq. The Department shall make them available to persons who so request, to the extent required by New Jersey and/or Federal law and consistent with the confidentiality provisions therein.

#### 7:26-14A.8 Loan terms and administration of disbursements

- (a) The following requirements apply to the amount of, interest rate on and maturity period of the loan:
1. Loan amounts shall be established and appropriated by the Legislature of the State of New Jersey.
  2. Loan proceeds may be used to pay any project costs authorized in the loan agreement, which agreement shall be consistent with the provisions of the 1985 Act and this subchapter.
    - i. Loan proceeds may be used for project costs associated with the construction and/or the operation of resource recovery facilities and/or environmentally sound sanitary landfill facilities and/or other approved solid waste facilities to service the needs of local government units.
    - ii. Loan proceeds may be used directly by the local government unit to undertake project costs associated with the development of a resource recovery and/or environmentally sound sanitary landfill facility and/or other approved solid waste facility.
    - iii. Loan proceeds may be used by the local government unit to defray project costs associated with an agreement it has entered into with a vendor.
    - iv. Loan proceeds may be used to pay any operation and maintenance costs after project completion as well as the costs of any debt service associated with the development, construction or operation of the project.

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3. The interest rate on the loans shall be dependent upon legislation and/or the financial condition of the Fund. The loan interest rate shall be established annually by the State Treasurer.
  4. The loan maturity period shall be for a period of not more than 23 years from the date the funds are delivered to the escrow agent by the Department. Repayment shall begin no later than the fourth year of the loan maturity period or one year following the initiation of full scale operation of the facility, whichever comes first. Equal semi-annual loan repayments shall be made starting on or before the first of February and August for every year that repayments are due. The Department may, at its discretion, negotiate an individual repayment schedule. Principal and accrued interest, if applicable, may be prepaid without penalty prior to the end of the loan maturity period. Partial repayment shall be applied on a pro rata basis to reduce all subsequent payments.
  5. There shall be due and owing by the local government unit to the Fund a late fee of five percent of any payment when such payment is 15 calendar days or more past due, 10 percent of any payment when such payment is 30 calendar days or more past due. Failure of the local government unit to make any repayment within 45 calendar days of the scheduled repayment date shall constitute default of the loan agreement and all outstanding principal, interest and penalty amounts shall become immediately due and owing to the State.
- (b) The following terms of the loan shall be incorporated into the loan agreement to be executed by the Department and the borrower:
1. Execution of the loan agreement constitutes an irrevocable agreement to repay the loan on the part of the borrower;
  2. Counties and municipalities shall place general obligation bonds with the State in order to receive the loan proceeds. Other local government units lacking general taxing powers shall secure their loans with service/deficiency agreements with a local government unit having the ability to levy taxes, a surety bond, or other security acceptable to the Department;
  3. A list of the required contents of the county or municipal bond resolution, which list shall be subject to Department approval;
  4. Loans may be released by the Department on a single or multiple sum basis at the discretion of the Department. Release of the loan funds may be based upon adherence to the project schedule which shall be included in the loan agreement;
  5. Release of the loan funds may only be made to an escrow agent selected by the borrower and approved by the Department. In the case of comparatively small loans or where the local government unit, after using its best efforts, cannot retain an escrow agent which will act in accordance with this subchapter, the Department shall act as the escrow agent. The borrower shall enter into an agreement with the escrow agent specifying the escrow agent's duties and responsibilities, which agreement shall be consistent with the terms and conditions of the loan agreement and the requirements of this subchapter. Any escrow agent shall only disburse loan funds in accordance with the executed loan agreement, the escrow agreement and this subchapter;
  6. Where there is an escrow agent other than the State, the escrow agent shall submit a monthly financial activity report to the Department which includes a disbursement report for the previous month, an expenditure report which identifies the specific uses of loan funds and, where applicable, a certified statement by the licensed project engineer for the local unit or the vendor in accordance with N.J.A.C. 7:26-14A.24, confirming the percentage of project construction which is completed, and an estimate of expenditures for the upcoming fiscal year.
  7. Interest earned on the funds in the borrower's loan escrow account shall accrue to the benefit of the project and may only be used for project costs as defined in N.J.A.C. 7:26-14A.4; and
  8. The borrower shall be responsible for paying for the services of the escrow agent.
- (c) The borrower shall promptly notify the Department loan project officer in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification. Changes in the use of loan funds which shall require such notification shall include but are not limited to:

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1. Rebudgeting;
  2. Changes in approved technical plans or specifications for the project;
  3. Changes which may affect the approved scope or objective of a project;
  4. Significant changed conditions at the project site;
  5. Deceleration in time for the performance of the project, construction schedule, or any major phase thereof; and
  6. Changes which may increase or substantially decrease the total cost of the project. There shall be no loan modification increasing the funding amount;
  7. Unforeseen expenses; and
  8. Less than anticipated revenues;
- (d) If, on the basis of information submitted pursuant to (c) above, the Department determines that a formal loan amendment is necessary, it shall notify the borrower and a written amendment to the loan agreement will be prepared in accordance with this subchapter.
- (e) Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, constitute changes to the loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such change unilaterally. Such changes shall be in writing and shall be effected by a letter (certified mail, return receipt requested) to the borrower.

#### 7:26-14A.9 Payment procedures

- (a) The escrow agent shall only make payments in accordance with the escrow agreement which shall be consistent with the loan agreement and this subchapter. A retainage may be held in accordance with the loan agreement.
- (b) The escrow agent shall certify that all disbursements from the account will be made strictly in accordance with the escrow agreement, the loan agreement and this subchapter. The form of certification shall be subject to Department approval and shall be attached to the loan agreement and be made a part thereof.
- (c) The borrower shall submit a requisition to the escrow agent which sets forth the amount of the requested disbursement and the purposes for which the money to be used. The borrower shall certify that the money requisitioned will be used in accordance with the loan agreement and this subchapter. The requisition and certification shall be signed by the individual vested with such authority by the local government unit. The form of requisition and certification shall be subject to Department approval and shall be attached to the loan agreement and made a part thereof.
- (d) through (g) (Reserved)
- (h) In the event that no monies are requisitioned by the borrower or disbursed from the escrow account within one year of the loan closing date of the loan agreement, all monies in the escrow account, including all investment earnings from the monies in the escrow account, shall revert to the Fund and be credited as repayment of the principal of the loan by the borrower.
- (i) In those cases in which the Department is to act as escrow agent pursuant to N.J.A.C. 7:26-14A.11(b)5, all requirements of this section shall apply to the Department except that (c) above, shall not apply. Whenever in this section reference is made to an escrow agent as a separate entity from the Department, the same term shall mean and refer to the Department which shall then carry out all functions of the escrow agent.

#### 7:26-14A.10 Loan agreement

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- (a) The Department may impose conditions precedent as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the 1980 and 1985 Acts which conditions shall include, but not be limited to, the following:
  - 1. The borrower shall submit proof that it and its contractors and subcontractors will comply with any hazard insurance requirements of the loan agreement and that it will be able to certify that the insurance is in full force and effect and that the premiums have been paid;
  - 2. The borrower shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with generally accepted accounting principles;
  - 3. The borrower shall certify that it and its contractors and their subcontractors will comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27-1 et seq.; the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 through 34:11-56.46; the Civil Rights provisions of N.J.S.A. 10:1-1 et seq. and the rules promulgated pursuant thereto; and
  - 4. The borrower shall certify in accordance with N.J.A.C. 7:26-14A.24 that it is in compliance with all other requirements and conditions of the loan agreement and this subchapter.
- (b) The loan agreement shall set forth the terms and conditions of the loan, which may include, but not be limited to, as applicable: a description of the project, including an estimate of all expenses to be funded, escrow agent requirements, and the approved commencement and completion dates for the project or major phases thereof.
  - 1. The borrower shall execute four copies of the loan agreement and return them within 45 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The loan agreement shall be signed by a person authorized by resolution or ordinance to obligate the borrower to the terms and conditions of the loan agreement and this subchapter. A copy of the resolution or ordinance shall be forwarded immediately to the Department.
  - 2. The loan agreement shall set forth the terms and conditions of the loan, which may include but not be limited to, as applicable: approved project scope including construction plans and specifications where applicable, budget, approved project costs, escrow agent requirements, construction and disbursement schedules, and the approved commencement and completion dates for the project or major phases thereof.
  - 3. After the Department has completed its internal processing of the loan agreement, it shall transmit a copy of the executed loan agreement to the borrower.

#### 7:26-14A.11 Effect of loan agreement

- (a) At the time of execution of the loan agreement by the Department and the borrower, the loan shall become effective and shall constitute an obligation of the Resource Recovery and Solid Waste Disposal Facility Fund in the amount and for the purposes stated in the loan agreement.
- (b) The award of the loan shall not commit or obligate the Department to award any continuation loan or future loans. The Department shall not in any way be held responsible for the borrower's use of loan funds.
- (c) A determination of eligibility by the Department shall not be used as a defense, by the borrower, to any action by any agency for the borrower's failure to obtain all requisite permits, licenses and operating certificates.

#### 7:26-14A.12 Repaid funds

All loan repayments and any interest on loans shall be deposited into the Fund. Upon a specific legislative appropriation, the Department may lend all moneys deposited in the Fund to local government units to finance

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other approved resource recovery or environmentally sound sanitary landfill facility or other approved solid waste facility projects in accordance with P.L. 1985, c.330.

#### 7:26-14A.13 Fraud and other unlawful or corrupt practices

- (a) The borrower shall administer loans, acquire property, award contracts and subcontracts pursuant to the loan agreement from bribery, graft, and other corrupt practices. The borrower bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State may also pursue administrative or other legally available remedies.
- (b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall immediately notify in writing the Division of Solid and Hazardous Waste when such allegation or evidence comes to its attention, and shall periodically advise the Division of the status and ultimate disposition of any related matter.

#### 7:26-14A.14 Administration and performance of loan

The borrower bears primary responsibility for the administration and use of loan proceeds. Although borrowers are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the borrower to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with this subchapter and the loan agreements to achieve loan objective and to insure that the purposes set forth in the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985 are fully executed.

#### 7:26-14A.15 Access

- (a) The borrower and its contractors and subcontractors shall provide to Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the use of loan funds. The borrower shall submit to the Department such documents and information as requested by the Department. The borrower, and all contractors and subcontractors which contract directly with the borrower or receive a portion of the State funds under the Acts, may be subject to a financial audit as to the use of the State funds. Records shall be retained and be made available to the Department for a minimum of three years after submission of the final requests for payment.
- (b) The loan agreement shall contain provisions which set forth the access requirements of (a) above.

#### 7:26-14A.16 Assignment

The rights and obligations of the parties to the loan agreement shall not be assigned.

#### 7:26-14A.17 Publicity and signs

- (a) Press releases and other public dissemination of information by the borrower concerning the project work shall acknowledge State loan support.
- (b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Department of Environmental Protection shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

#### 7:26-14A.18 Debarment



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- (a) No borrower shall enter into a contract related to the development of a project for work with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2.
- (b) Borrowers shall insert in every contract related to the development of a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting on any project financially assisted by the State or the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1D-2.2.
- (c) The borrower, prior to acceptance of State funds, shall certify that no contractor or subcontractor is included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders as a result of action by a State agency other than the Department.
- (d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2, the borrower may take into account the loss of Department loan funds under these rules which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsible bidder pursuant to law; and the borrower may advise prospective bidders that these procedures will be followed.
- (e) Any person included on the Treasurer's List of Debarred, Suspended or Disqualified Bidders as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a loan under this subchapter, may present information to the Department on why this section should not apply to such person. The Commissioner, pursuant to N.J.A.C. 7:1D-2, may grant an exception from the application of this section with respect to a particular contract. The Commissioner may only take this action following a determination that such an exception is essential to the public interest and after filing a finding thereof with the Attorney General. In the alternative, the Department, pursuant to N.J.A.C. 7:1D-2, may suspend or debar any such person, or take such action as may be appropriate.

#### 7:26-14A.19 Termination of loans

- (a) Termination of loans by the Department shall be as follows:
  1. The Department may terminate a Fund loan in whole or in part for events of default which shall include but not be limited to:
    - i. Failure to comply with any of the terms and conditions of the loan agreement;
    - ii. A determination that the loan was obtained by fraudulent practices;
    - iii. Gross abuse or corrupt practices in the administration of the project have occurred;
    - iv. Funds have been expended for non-allowable costs; and/or
    - v. Failure to comply with a corrective action/correction schedule entered into pursuant to (a)4 below.
  2. The Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to terminate the loan in whole or in part. Such notice shall be given to the borrower at least 30 days prior to the intended date of termination.
  3. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation the Department may, in writing, terminate the loan in whole or in part. Upon termination, the full amount of the outstanding balance of the loan shall be immediately repaid in full.
  4. Where the Department deems it appropriate, the following procedures may be used following an event of non-performance pursuant to (a)1 above:
    - i. The Department shall notify the borrower of the event of non-performance pursuant to (a)1 above. Within 30 days of receipt of such notification of non-performance, the borrower shall submit to the Department a compliance schedule which schedule shall require approval by the Department. The schedule shall identify how and when the borrower will remedy the non-compliance identified by the Department.

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- ii. If the borrower fails to remedy the non-performance in accordance with the approved schedule or fails to submit the compliance schedule pursuant to (a)4i above, the Department shall notify the borrower (certified mail, return receipt requested) of such failure, which failure shall itself be considered an event of non-performance pursuant to (a)1 above and shall then trigger the termination procedure in (a)2 and 3 above.
  5. The Department shall maintain sole discretion to determine the appropriate remedy for non-performance. Within that discretion the Department may invoke remedies which include, but are not limited to, the following:
    - i. Withholding of loan disbursement;
    - ii. Acceleration of loan agreement;
    - iii. Conversion to an interest-bearing loan; and
    - iv. Immediate loan repayment in accordance with procedures outlined in (a)2 and 3 above.
- (b) Project termination by the borrower shall be conducted in accordance with the following provisions:
1. The borrower shall not unilaterally terminate the project work for which a loan has been awarded. Where the borrower terminates the project, the loan shall be repaid in accordance with a schedule approved by the Department.
  2. The borrower shall promptly give written notice to the Department of its intent to wholly or partially terminate the project work.
  3. The Department, upon receipt of the borrower's written notice of intent to wholly or partially terminate the project, may enter into a repayment agreement with the borrower, which agreement shall establish the effective date of termination of the project work and the schedule for repayment of the entire loan. If the Department determines that a borrower has ceased to work on a project and has not complied with the notification and repayment provisions outlined in (b)1 and 2 above, or has failed to take all available steps to ensure project completion consistent with all agreements entered into, the Department may unilaterally terminate the loan pursuant to this section.
- (c) The Department and borrower may enter into a mutual agreement to terminate the loan agreement at any time pursuant to terms which are consistent with this subchapter. The termination agreement shall establish the effective date of termination of the project and the schedule for the repayment of the entire loan.
- (d) The effect of termination of the loan, in whole or in part, shall be as follows:
1. Upon termination, the borrower may be required to immediately refund or repay the entire amount of the loan to the Fund. If the loan is guaranteed by a security/deficiency agreement, the agreement shall be brought into effect to ensure the entire repayment of the loan. At the Department's discretion, it may authorize the immediate repayment of part of the loan and allow the remaining balance to be repaid in accordance with the loan agreement repayment schedule.
  2. The borrower shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of funds awarded under the loan. The Department shall make the final determination of the allowability of termination costs.
- (e) In addition to any termination action, the Department retains the right to pursue other legal remedies as may be available under Federal, State and local law as warranted.

#### 7:26-14A.20 Certifications

Whenever in this subchapter a certification is required pursuant to this section, such certification shall include the following statement:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment. I understand that, in addition to criminal

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penalties, I may be liable for a civil administrative penalty as set forth at N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

#### 7:26-14A.21 Administrative hearings

- (a) The Department shall decide in writing all disputes arising under a loan.
- (b) A borrower may request an administrative hearing within 15 days of a written decision by the Department. Such hearing requests shall be addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, 7<sup>th</sup> Floor, Mail Code 401-04L, P.O. Box 402, Trenton, New Jersey 08625-0402. The borrower shall be required to specify in writing and in detail the basis for its appeal.
- (c) Following receipt of a complete request for a hearing pursuant to (b) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.
- (d) If the Department determines the matter to be a contested case, the Department shall file the request for an administrative hearing with the Office of Administrative Law. Such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

#### 7:26-14A.22 Severability

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