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ENVIRONMENTAL PROTECTION

NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST

Financial Assistance Programs for Environmental Infrastructure Facilities

Readoption without Amendments: N.J.A.C. 7:22

Proposed: January 18, 2011 at 43 N.J.R. 84(a)

Adopted: January 12, 2012 by Authorized By: Bob Martin, 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 Trust Fund, Warren Victor, Chairman as to N.J.A.C. 7:22-4, 5 and 9.

Filed: January 18, 2012 as R. 2012, d.____ **without change.**

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

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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.

DEP Docket Number: 16-10-11

Effective Date: January 12, 2012

Expiration Date: January 12, 2019

The Department of Environmental Protection (Department) and the Environmental Infrastructure Trust (Trust) are readopting without amendments N.J.A.C. 7:22, Financial Assistance Programs for Environmental Infrastructure Facilities. The rules govern the application and award process for project sponsors to qualify and receive financing for environmental infrastructure projects, including improvements to wastewater treatment systems, water supply facilities and stormwater runoff control measures.

Summary of Public Comments and Agency Responses:

The Department received comments on the proposed readoption without amendments from one person, Jean Public.

Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of Authorities Participating in State Financial Assistance Programs

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1. COMMENT: Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of Authorities Participating in State Financial Assistance Programs, should be made more restrictive, with civil and criminal penalties for failure to properly administer a project. There should be project oversight and requirements that recipients be audited.

RESPONSE: Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of Authorities Participating in State Financial Assistance Programs, governs minimum standards of conduct for recipients of public funds and address disclosure requirements, conduct in office and other public accountability practices. Provisions to minimize and eliminate unscrupulous activities and remedies for the Department and the Trust to deal with any improprieties are included in Subchapter 3, Fund Procedures and Requirements, and Subchapter 4, Environmental Infrastructure Trust Procedures and Requirements.

In N.J.A.C. 7:22-3.11, Application procedures (for the Fund), and 4.11, Application procedures (for the Trust), an authorized representative of the borrower must make certain assurances and certifications at the time of application regarding the use of any debarred or suspended individuals and/or contractors and any violations of Federal, State or local laws pertaining to fraud, bribery, graft, kickbacks or conflicts of interest in connection with the project. The rules governing the Fund (at N.J.A.C. 7: 22-3.38, Fraud and other unlawful or corrupt practices, and 3.39, Debarment) and the Trust (at N.J.A.C. 7:22-4.38, Fraud and other unlawful or corrupt practices, and 4.39, Debarment) already adequately address fraud and other unlawful practices, such as bribery, graft and other corrupt practices that may occur during the construction of a publicly funded project.

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There are also Federal and State laws that guard against corruption in public contracting. Law enforcement agencies, including the Federal Bureau of Investigation's Public Corruption/Civil Rights Program and the U.S. Environmental Protection Agency's Office of Inspector General, will actively investigate any claims (including anonymous claims) of corruption in public contracting. In the event of wrongdoing, the Department and the Trust have several administrative sanctions (civil penalties) that can be applied to the project and/or borrower, including the issuance of a notice of non-compliance, withholding of funds, stop-work orders and termination of loans, as set forth at N.J.A.C. 7:22-3.41 through 3.44 and 4.41 through 4.44. In addition, the State has several laws that provide criminal penalties for such activities as bribery in official and political matters, acceptance or receipt of unlawful benefit by public servant for official behavior, and official misconduct. (See N.J.S.A. 2C:27-2 and 2C:27-10.) Depending on the severity of the act, maximum fines range from \$15,000 to \$150,000, and from three to 10 years in prison.

With regard to auditing requirements, N.J.A.C. 7:22-3.17(a)2 and 4.17(a)2 require recipients to maintain accurate financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions. Projects are subject to the requirements of the Federal Single Audit Act of 1984 (as amended) (31 U.S.C. § 7501 et seq.) and must certify and submit copies of annual audits or be subject to noncompliance, withholding of funds, stop work orders and termination of financial assistance under the terms of N.J.A.C. 7:22-3.40 through 3.44 (as to the Fund) and N.J.A.C. 7:22-4.40 through 4.44 (as to the Trust). (See State of New Jersey Treasury Circular 04-04-OMB regarding the Single Audit Act,

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<http://www.nj.gov/infobank/circular/cir0404b.htm>.) Accordingly, no amendment is necessary address the commenter's concerns.

Federal Standards Statement

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 readopted 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 at 40 CFR Part 35, Subpart K, 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 U.S. 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

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these Federal requirements and to protect the use of public funds to ensure the self-perpetuating nature of the SRF.

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