

**Chapter 595: STATE REVOLVING FUND**

SUMMARY: The State Revolving Fund (SRF) ~~has been established to replace the construction grants program which has provided~~ provides funding for the planning, design, and/or construction of municipal wastewater treatment ~~facilities works and other water pollution control facilities or practices.~~ The State Revolving ~~Loan Fund Regulation Rule~~, 06-096 CMR Chapter 595, contains eligibility requirements for applicants seeking loans from the SRF ~~to capitalize for municipal wastewater treatment projects~~ treatment works.

**A. Introduction Provisions****1. Definitions.** The following words and terms used in this Chapter have the following meanings:

- (a) Act.** "Act" ~~refers to~~ means the Federal Water Pollution Control Act, as amended, found at 33 USC §§ ~~—~~1251 et seq.
- ~~Alternative Technology. "Alternative Technology" refers to proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, which productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or which recover energy. Specifically, alternative technology includes 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 applications; self-sustaining incineration; methane recovery; individual and onsite systems; and small diameter pressure and vacuum sewers carrying partially or fully treated wastewater.~~
- (b) Applicable Interest Rate.** "Applicable Interest Rate" is means that rate of interest which in the judgment of the Bank reflects the rate it could obtain on a bond sale of equivalent credit rating and term in their current market conditions.
- (c) Authorized Representative.** The "Authorized Representative" is means the signatory agent of the Eligible Applicant authorized and directed by the applicant's governing body to make application for assistance and to sign documents required to undertake and complete the project on behalf of the applicant.
- (d) Bank.** "Bank" ~~refers to~~ means the Maine Municipal Bond Bank.
- (e) Best Practicable Waste Treatment Technologies (BPWTT).** The "BPWTT" ~~is~~ means the cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive Infiltration and Inflow in wastewater treatment works to meet the applicable provisions of federal and state effluent limitations, groundwater protection, or other applicable standards.
- (f) Binding Commitment.** A "Binding Commitment" ~~is~~ means a legal obligation of the Bank to an Eligible Applicant that, subject to the availability of funds in the SRF, defines the terms and timing for provisions of assistance from the SRF, predicated on the recipient meeting the normal terms of obtaining a loan.
- ~~Board. The "Board" refers to the Board of Environmental Protection.~~

- (g) Building.** "Building" ~~refers to~~ means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.
- (h) Capitalization Grant.** "Capitalization Grant" ~~refers to~~ means the Federal grant assistance awarded to the State of Maine for deposit in the State ~~Water Pollution Control~~ Revolving Fund.
- (i) Change Order.** "Change Order" ~~refers to~~ means ~~the~~ documents issued by the loan recipient, upon recommendation of the Project Engineer and, with the approval of the Department, ~~and the Bank to the extent it requires an increase in cost for the project,~~ authorizing a change, alteration, or variance in previously approved engineering plans and specifications, including, but not limited to, additions or deletions of work to be performed pursuant to the contract and/or a change in costs for work performed pursuant to the contract.
- (j) Closing.** A "Closing" ~~is~~ means the date on which an Eligible Applicant borrows funds or otherwise is granted Financial Assistance from the SRF.
- (k) Collector Sewer.** "Collector Sewer" ~~refers to~~ means the common sewers within a publicly owned treatment system ~~which that~~ are primarily installed to receive wastewater directly from individual systems or from private property.
- (l) Construction Fund.** A "Construction Fund" ~~is~~ means an account established by the Bank within the SRF into which is deposited the portion of loan proceeds available to an Eligible Applicant for eligible costs of construction of a project.
- (m) Cost-effectiveness Analysis .** A "Cost-effectiveness Analysis" ~~is~~ means an analysis performed to determine which waste treatment management system or component part necessary to meet federal, state, and local requirements will result in the minimum total costs over time.
- (n) Department.** "Department" means the Department of Environmental Protection.
- (o) Effluent Limitation.** A "Effluent Limitation" ~~is~~ means any restriction established by the state or the EPA administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from a Point Source into waters of the state.
- (p) Eligible Applicant.** "Eligible Applicant" ~~refers to~~ means a waste treatment management agency including any interstate agency, city, town, county, district, plantation, village corporation, or other public body created by or pursuant to state law which has authority to dispose of sewage, industrial wastes, or other waste, or is involved in water quality improvement or protection, or an authorized Indian tribal organization.
- (q) EPA.** "EPA" ~~is~~ means the U. S. Environmental Protection Agency.
- (r) Facilities Plan.** "Facilities Plan" ~~refers to~~ means plans and studies ~~which that~~ directly relate to the treatment works needed to comply with ~~Enforceable Requirements of the Act and state statutes~~ all applicable state and federal permits statutes and rules. It consists of a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic,

hydrologic and institutional characteristics of the area and will demonstrate that the selected alternative is cost-effective.

- (s) Financial Assistance.** "Financial Assistance" includes but is not limited to, loans by the Bank from the SRF, loans made by the Bank from revenue bond proceeds or any other purpose authorized pursuant to 30-A MRSA §6006-A in association with a project.
- (t) Force Account.** "Force Account" ~~refers to~~ means the use of a municipality's own work force to design, build or inspect ~~minor~~ portions of a project.
- (u) Infiltration.** "Infiltration" ~~refers to~~ means water other than wastewater that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipe, pipe joints, connections, or manholes.
- (v) Inflow.** "Inflow" is means water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from Infiltration.
- (w) Initiation of Operation.** "Initiation of Operation" ~~refers to~~ means the date the treatment works are fully operational or capable of being operated as determined by the Department. "Initiation of Operation" may also be referred to as "Substantial Completion".  
~~Innovative Technology. "Innovative Technology" refers to 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 reduction in life time cost or environmental benefits. It includes advances in 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.~~
- (x) Intended Use Plan.** "Intended Use Plan" ~~refers to~~ means a plan identifying the intended uses of the amount of funds available for loans in the SRF for each federal fiscal year as described in ~~section §606(e) of the act (33 USC §1386(e)) of the Act~~ 40 CFR § 35.3150. The Project Priority List is part of the Intended Use Plan.
- (y) Interceptor Sewer.** An "Interceptor Sewer" is means a sewer ~~which~~ that is designed for one or more of the following purposes:
- (a~~1~~) to intercept wastewater from a final point in a Collector Sewer and convey such wastes directly to a treatment facility or another interceptor;
  - (b~~2~~) to replace an existing wastewater treatment facility and transport the wastes to an adjoining Collector Sewer or Interceptor Sewer for conveyance to a treatment plant;
  - (e~~3~~) to transport wastewater from one or more municipal Collector Sewers to another municipality or to a Regional Facility for treatment; and

(~~d4~~)to intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment facility.

**(z) MBE/WBE Requirements.** MBE/WBE Requirements means requirements for the participation of minority and women owned business enterprises (MBE/WBE) apply to all loans made from original Capitalization Grants according to 40 CFR § 35.3145. “MBE/WBE” may also be referred to as “DBE” or Disadvantaged Business Enterprise.

**(aa) Non-Point Source.** “Non-Point Source” means any diffuse, nonconfined source of pollution other than Point Source (see definition below).

**(bb) Plans and Specifications.** “Plans and Specifications” refers to means the engineering description of the Project including engineering drawings, maps, technical specifications, design reports and construction contract documents in sufficient detail to allow contractors to bid on the work. “Plans and Specifications” may also be referred to as “Contract Documents”.

**(cc) Point Source.** A "Point Source" is means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Priority List. A “Priority List” is a list of Municipal Projects established by the Department pursuant to 30-A MRSA §6006-A(3) for which SRF assistance may be requested.

**(dd) Project.** The "Project" is means the scope of work for which a loan or other Financial Assistance is sought by an municipality-Eligible Applicant from the SRF.

**(ee) Project Account.** A "Project Account" ~~refers to~~ means an account established by an Eligible Applicant for the disbursement of the portion of loan proceeds available for eligible costs of construction of a Project from the designated Construction Fund within the SRF.

**(ff) Project Engineer.** The "Project Engineer" is means the ~~registered~~ licensed engineer or engineering firm retained by the eligible applicant to provide professional engineering services during the planning, design, and construction of a Project.

**(gg) Project Priority List.** A "Project Priority List" means a list of Projects established by the Department pursuant to 30-A MRSA §6006-A(3) for which SRF assistance may be requested. The Project Priority List is part of the Intended Use Plan.

**(hh) Project Performance ~~Performance Standards~~ Certification.** The "Project Performance ~~Performance Standards~~ Certification" ~~are~~ is means the performance and operation requirements applicable to a Project including the Enforceable Requirements of the Act and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the Project is planned to meet. the certification provided by the Project Engineer stating that the Project was constructed according to its design specifications and that it is meeting its intended performance and operational requirements.

**(ii) Regional Facility.** A "Regional Facility" ~~refers to~~ means a wastewater collection and treatment facility, which incorporates multiple service areas into an area wide service facility, thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state, the specified size of which is determined by any one or combination of population, number of governmental entities served, and ~~or~~ service capacity. Regional wastewater treatment facilities may also include those identified in the approved state water quality management plan and the annual updates to that plan.

**(jj) State Allotment.** The "State Allotment" ~~is~~ means the sum allocated or re-allocated to the State of Maine for a federal fiscal year, from funds appropriated by ~~e~~ Congress pursuant to the Act.

**(kk) SRF.** The "SRF" ~~is~~ means the ~~s~~State water pollution control ~~r~~ Revolving Fund created by Chapter 751 of Public Law approved April 21, 1988.

**(ll) Substantial Completion.** "Substantial Completion" ~~is~~ means the time at which the construction work (or a specified part thereof) has progressed to the point where, in the opinion of the project engineer, the work is sufficiently complete, in accordance with the contract documents, so that the work can be utilized for the purposes for which it is intended. "Substantial Completion" may also be referred to as "Initiation of Operation".

**(mm) Treatment Works.** "Treatment Works" ~~refers to~~ means any devices and systems ~~which~~ that are used in the storage, treatment, recycling, and reclamation of waste or ~~which that~~ are necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances, including land that will be an integral part of the treatment process (including land used for the storage of treated water in land treatment systems prior to land application) or is used for treatment or ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, or other facilities installed for the purpose of treating, neutralizing or stabilizing waste; or facilities to provide for the collection, control and disposal of waste or other facilities or best management management practices that implement a nonpoint source pollution management program under section 319 of the Act (33 USC § 1329) or develop and implement an estuary conservation and management plan under section 320 of the Act (33 USC § 1330)~~improve or protect surface water or groundwater~~.

**(nn) Value Engineering.** "Value Engineering" ~~is~~ means a specialized cost control technique ~~which that~~ uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a Project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the Project.

**(oo) Waste Discharge License Permit.** A "Waste Discharge ~~License Permit~~" ~~refers~~ means the ~~license permit~~ granted by the Department that establishes the conditions or limits under which waste may be discharged into or adjacent to waters of the state.

## 2. Declarations of Intent of SRF Regulations

(a) General. The Department and the Bank shall comply with all applicable federal, state and local laws and all rules and regulations promulgated under those laws. The 1987 amendments to the Act created and provided federal funding for the SRF. The SRF is

- intended to be a perpetual fund available to provide Financial Assistance for the planning, design and construction of available treatment works. The Department and Bank share equally in these policy objectives and will work to jointly administer the SRF program.
- (b) Management of Financial Resources. Financial Assistance to applicants will be structured so that the Bank ~~may~~ will maximize financial resources available to the ~~s~~State, while providing ~~E~~eligible ~~A~~applicants with the most cost effective capital financing possible within the limits of the fund, to fund needed ~~wastewater-treatment facilities works~~. The Department and the Bank shall administer the fund so that it will continue to grow in value with the goal of it becoming self-sustaining.
- (c) Projects Expedited. Projects undertaken with the SRF will be expedited. This may include, but is not limited to, streamlining financial and technical procedures for compliance with applicable federal requirements and increasing amounts available in the SRF to provide Financial Assistance through the issuance of debt by the Bank. The Bank will strive to ensure that SRF funding is efficiently and appropriately applied so that it meets the intent of federal requirements while attending to the State goals for water quality management and the needs of the ~~political subdivision~~ applicants the program is meant to serve.
- (d) Applicable Interest Rate. Loans will be made at least 2% below the rate the Bank could obtain on a Bond sale of equivalent credit and term in ~~their~~ its current market conditions. In establishing the Applicable Interest Rate the Bank will take into account the true interest cost of the leveraged funds ~~state matching funds~~ including issuance costs, the risks associated with operating a loan program, the inflation rate, ~~fee adjustments~~ and market conditions. The Bank will continuously review the Applicable Interest Rate in light of current market conditions, and alter the rate if changes are necessary. The Bank, in consultation with the Department, reserves the right to determine the Applicable Interest Rate and maturity schedule for each loan ~~applied and maturity schedule for each loan~~. Once established, the Applicable Interest Rate on loans funded from the SRF will be adjusted downward to account for any fees being charged for the operation of the program at the time the loan is made so that the cost of interest and fees will be 2% below the market rate. The Applicable Interest Rate for loans funded with Bank funds held outside the SRF may, at the discretion of the Bank, be adjusted downward to account for any fees charged. In either case, the Applicable Interest Rate will be fixed for the life of the loan.
- (e) Applicable Loan Term. Loans will have terms of up to twenty (20) years, except that terms of up to thirty (30) years may be approved, on a case by case basis, for projects where the majority of the project components have a useful life of at least 30 years, and when the State buys or refinances debt obligations of thirty (30) or more year terms of eligible applicants, in accordance with applicable Federal requirements.
- ~~(e) Force Account. All significant elements of the Project will be performed with skilled personnel hired through a competitive bidding process. The Department will not approve the use of Force Account in the major construction of the Project, but may approve the use of Force Account for inspection and/or minor construction when the applicant demonstrates that it possesses the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the Force Account method, or emergency circumstances dictate its use.~~

## B. Program Requirements

1. **Obligation Period.** Funds allotted to the State shall ~~shall~~ must be available for obligation for a period of one year after the close of the federal fiscal year for which the funds are authorized.
2. **Reserves for Planning and Program Administration Administration.** The Act, under section 604(b), (33 USC § 1384) requires states to reserve the greater of one percent of its allotment or \$100,000 each year to carry out planning under sections 205(j) and 303(e). Section 603(d)(7) of the Act (33 USC § 1383(d)(7)) ~~The Act~~ also allows states to use up to four percent of all grant awards to administer the SRF.
3. **Public Hearings Intended Use Plan.** ~~In accordance with the Act, the Board shall hold public hearings to consider adoption and approval of the~~ After providing for public comment, the Department shall prepare an annual plan identifying the intended use of the funds available. ~~annual Intended Use Plan and the Priority List and amendments thereto when required.~~
4. **Types of Financial Assistance.** The SRF has been established to assist and encourage ~~communities~~ eligible applicants to design and construct sewage treatment facilities works required to improve or protect water quality and public health with Financial Assistance.
  - (a) Purpose of the SRF. The SRF may be used for one or more of the following purposes:
    - (i) To make loans to ~~municipalities~~ eligible applicants pursuant to 30-A MRSA ~~Section §§5953-A and 6006-A.~~
    - (ii) To make loans to refund bonds or notes of ~~a-eligible applicants municipality~~ issued after March 7, 1985, for the purpose of financing the construction of any capital improvement described in ~~section §5953-A(1), and certified under section §5953-A(3);~~
    - (iii) To guarantee or insure, directly or indirectly, the payment of notes or bonds issued or to be issued by ~~a-eligible applicants municipality~~ or the Bank for the purpose of financing the construction of any capital improvement described in section 5953-A(1), and certified under section 5953-A(3);
    - (iv) To guarantee or insure, directly or indirectly, funds established by ~~municipalities-eligible applicants~~ or the Bank for the purpose of financing construction of any capital improvement described in section 5953-A(1);
    - (v) To invest available fund balances and to credit the net interest income on those balances to the SRF;
    - (vi) To invest as a source of revenue or security for the payment of principal and interest on general or special obligations of the Bank if the proceeds of the sale of the obligations have been deposited in the SRF or if such proceeds are to be used in conjunction with monies from the SRF for eligible Project purposes, or as a source of revenue to subsidize ~~municipal loan payment obligations; of eligible applicants; and~~
    - (vii) To pay the costs required permitted pursuant to the Federal Water Pollution Control Act, Title VI, and

~~Such fees are not part of loans and are held outside the fund.~~

- (b) Requirements of eligible applicants. All Eligible Applicants requesting assistance shall meet the following requirements:
- (i) The Project must be listed on the Intended Use Plan or the State Priority Project Priority List.
  - (ii) The Project has complied with requirements of Subsection C of this ~~rule~~ Chapter (relating to Capitalization Grant Requirements) and has been approved by the Department.
  - (iii) The Project must have Plans and Specifications approved by the Department, if applicable.
  - (iv) ~~Any Treatment Works associated with t~~ The Project must ~~have a valid Waste Discharge License issued by the Department~~ comply with all applicable statutes and rules.
  - ~~(v) The Project must have an operation and maintenance manual approved by the Department.~~
  - (vi) The ~~participant~~ eligible applicant ~~must~~ shall ~~on~~ enter into legal and binding commitments with the Bank to complete the financing and repay the loan.
  - ~~(vii) Terms of any SRF assistance may not exceed 20 years.~~
  - (viii) The ~~participant~~ eligible applicant ~~must~~ shall complete an application for financing with the Bank.
  - ~~(ix) (vii) The participant eligible applicant must shall~~ establish a dedicated source of funds for repayment of the loan, if applicable.
  - ~~(x) (viii) The participant eligible applicant must shall~~ establish a system of user fees with respect to the Project, if applicable.
- (c) Payments. Payments from the Bank may be made as planning, design and construction is progressing. Funds ~~will~~ may not be disbursed from the Bank without prior Department approval, which approval ~~shall~~ may not ~~be~~ unreasonably ~~be~~ withheld.
- (d) Sources of Financial Assistance. The Bank may provide Financial Assistance utilizing any amounts in the SRF and available therefore. Such amounts may include the proceeds of Federal Capitalization Grants, state matching funds, loan repayments or debt issued by the Bank, at the discretion of the Bank.
- (e) Municipal Bond. Each loan shall be evidenced by a municipal bond in form and substance satisfactory to the Bank.
- ~~(f) The Bank may establish a loan servicing fee which shall not exceed five percent (5%) of aggregate annual regularly scheduled debt service payments on the loans, and may deduct this fee from loan repayments received prior to depositing such loan repayments in the SRF. The Bank may establish an origination fee which shall not exceed one percent (1%) of the principal origination amount on the loan.~~

~~(g f) Fees. In order to maintain minimum administrative functions required by the program, and to ensure the self-sustaining nature of the funds created under the SRF, the Bank and the Department may jointly establish a loan servicing fees which may be shared in accordance with a Memorandum of Understanding, which that shall may not exceed five percent (5%) of aggregate annual regularly scheduled debt service payments on the loans. and The Bank may will deduct these fees from loan repayments received prior to depositing such loan repayments in the SRF. The Department may ask the Bank to deduct this the Department fee from loan repayments received prior to depositing such loan repayments in the SRF. For the same purposes, tThe Department may establish an origination a project management fee which shall not exceed one three percent (1-3%) of the principal origination amount on the loan (including interim loans and Bank leveraged bBond fFunds, if blended with the SRF). and may ask At the request of the Department, tThe Bank will may to deduct this fee from loan repayments received prior to depositing such loan repayments in the SRF or Bank Funds. These fees are not part of any loans and shall-must be held outside the SRF or Bank Funds. The interest rate for loans made from funds in the SRF will be adjusted down to accommodate the fees so there will be no increase in cost to the borrowers. The total cost to the borrowers (including all fees and interest) shall remain at or below market rates. The interest rate for loans made with Bank funds not deposited into the SRF may, at the discretion of the Bank, be adjusted downward to accommodate any fees charged.~~

5. **Capitalization Grant Application.** ~~After the Board approves the Intended Use Plan and Priority List, the~~ The Department shall submit these items the Intended Use Plan and Project Priority List with an application signed by the Bank and the Department for the Capitalization Grant for that fiscal year to EPA.
6. **Capitalization Grant Requirements.** All Projects ~~that~~which receive loan assistance from the fund and will be constructed in whole or in part before fiscal year 1995 with funds directly made available by Capitalization Grants must meet the requirements listed below. A description of the federal statutory requirements. These requirements expire on October 1, 1994
  - ~~(a) Section 201(b), which requires that Projects apply best practicable waste treatment technology (see 40 CFR 35.2005(b)(7): Definition of BPWTT; 40 CFR 35.2030(b)(2): Facilities Planning);~~
  - ~~(b) Section 201(b)(1), which limits assistance to Projects for secondary treatment, advanced treatment, or any cost effective alternative, new interceptors and appurtenances, land infiltration inflow correction. This section retains the discretionary set aside of the governor by which a State can use up to 20 percent of this allotment for other purposes, as defined in section 319 of the Act (40 CFR 35.2015(b)(2)(ii iv): State Priority System and Project Priority List);~~
  - ~~(c) Section 201(g) (2), which requires that alternative technologies be considered in Project design (40 CFR 35.2030: Facilities Planning);~~
  - ~~(d) Section 201(g)(3), which requires the applicant to show that, the related sewer collection system is not subject to excessive infiltration (40 CFR 35.2030(b)(4): Facilities Planning; 40 CFR 35.2120: Infiltration/ Inflow;~~

- ~~(ed)~~ — Section 201(g)(5), which requires that applicants study innovative and alternative treatment technologies and take into account opportunities to construct revenue producing facilities and to make more efficient uses of energy, and resources (40 CFR 35.2030: Facilities Planning);
- ~~(fe)~~ — Section 201(g)(6), which requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facility (40 CFR 35.2030(b)(5): Facilities Planning);
- ~~(gf)~~ — Section 201(n)(1), which provides that funds under section 205 may be used for water quality problems due to discharges of combined sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a State (40 CFR 35.2015(b)(2)(iv): State Priority Systems categories of need and 35.2024(a): Combined Sewer Overflows);
- ~~(hg)~~ — Section 201(e), which calls on the Administrator (“State” under a Capitalization Grant) to encourage and assist communities in the development of capital financing plans;
- ~~(ih)~~ — Section 204(a)(1) and (2), which require that Treatment Works Projects be included in plans developed under sections 208 and 303(c), (40 CFR 35.2101: Water Quality Management Plans);
- ~~(jia)~~ — Section 204(b)(1), which requires communities to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate, and maintain the Treatment Works (40 CFR 35.2208: Adoption of Sewer Use Ordinance and User Charge System; 35.2130: Sewer Use ordinance; 35.2140: User Charge System; 35.2214" Grantee Responsibilities; 35.2122: Approval of User Charge System and proposed Sewer Use Ordinance; 35.2110: Access to Individual Systems, and 35.2206(a): Operation and Maintenance);
- ~~(kjb)~~ — Section 204(d)(2), which requires that, one year after the date of completion of construction and initiation of operation the owner/operator of the Treatment Works must certify that the facility meets design specifications and effluent limitations included in its permit (40 CFR 35.2218(c),(d) and (e)(2): Project Performance);
- ~~(lk)~~ — Section 211, which provides that major rehabilitation or replacement of collectors is not eligible, under the Governor’s 20 percent discretionary authority of 201(g)(1), unless the collector is needed to assure the total integrity of the Treatment Works or that for a new collector, adequate capacity exists at the facility (40 CFR 35.2116 (Collection Capital System); (Note: the 1987 Amendments extend the prohibition for funding separate storm sewers, unless they are part of a CSO separation project, through fiscal year 1990);
- ~~(ml)~~ — Section 218, which assures that treatment systems are cost effective and requires that Projects of over \$10 million include a value engineering review (40 CFR 35.2030(b)(3): Cost Effectiveness, facilities Planning, and 35.2114: Value Engineering);
- ~~(nm)~~ — Section 511©(1), which applies the Environmental Impact Statement requirement of the National Environmental Policy Act to Projects receiving Title II grants (40 CFR 35.2113: Environmental Review);

~~(c) Section 513, which applies Davis-Bacon labor wage provisions to Treatment Works construction (see 29 CFR Part 5). Wages paid for the construction of Treatment Works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (Section 513, applies 40 U.S.C. 276 et seq.).~~

~~(a) MBE/WBE. R requirements for the participation of minority and women owned businesses (MBE/WBE). Such requirements will apply to assistance in an amount equaling the original Capitalization Grant, in accordance with (40 CFR § 35.3145~~

~~(db) Federal Requirements. Any other federal requirements.~~

## 7. Project Priority Priority List

~~(a) SRF Priority Project Priority List. The Project Priority Priority List is a listing of Projects or applicants eligible to receive Financial Assistance from the SRF. Loan assistance may be provided regardless of the rank on the sState Project Priority Priority List.~~

~~(b) Preparation and Submission. The Board Department will prepare and/or revise the Project Priority Priority List in accordance with Subsection B(3) of this rule (relating to public hearings Intended Use Plan) as necessary to efficiently manage the SRF. After the Board adopts the final Priority, List, t The Department shall submit it the final Priority Project Priority List to EPA.~~

~~(c) Effective Period. A The Project Priority Priority List shall become effective and supersede all previous lists upon the date of submittal to and acceptance by EPA approval and shall remain effective until changed by the Board Department.~~

## 8. Intended Use Plan

~~(a) Intended Use Plan. Each fiscal year, concurrent with preparation of the Priority Project Priority List, the Department will prepares an Intended Use Plan which that is shall be subjected to a public hearing comment period and approved by Board Department EPA. The Intended Use Plan identifies Projects which that are eligible to receive Financial Assistance from appropriations in that fiscal year and may include contingency Projects from the Project Priority List to substitute for Projects which are delayed. The Intended Use Plan must comply with SSection 606(e) of the Act and 33 USC §1386(e) 40 CFR §35.3150. It will includes the following items:~~

~~(i) A description of both the short and long term goals and objectives of the fund;~~

~~(ii) A list of Intended Projects for that year for planning, design or construction of sewage facilities Treatment Works which that are included on the Priority Project Priority List:~~

~~(AA) Name of the recipient;~~

~~(BB) Facility description;~~

~~(CC) Project treatment/use categories and~~

~~(DD) Treatment requirements; and Priority Rating ranking.~~

~~(EE) — General terms of Financial Assistance.~~

~~(biii) Added Projects. The Department may add move -Projects from the Project Priority List to the Intended Use Plan as necessary to utilize available funds. Such Projects must comply with all requirements applicable to Projects listed on the Board approved Intended Use Plan.~~

## C. Application for Assistance

### 1. Preplanning and Preapplication

- (a) ~~Preplanning Conference.~~ Potential applicants ~~shall~~ may ~~should~~ confer with the staff of the Department and the Bank as early in its planning process as practical. ~~During the conference~~ ¶The Department will provide information, advice, instruction, and guidance on the scope of work and level of effort needed to define eligible Projects in order to ensure that the applicant expeditiously complies with all state and federal requirements. ~~environmental and Facilities Planning requirements dictated by the Act...~~
- (b) ~~Preapplication Conference Meeting.~~ An eligible applicant seeking Financial Assistance ~~will~~ may ~~should~~ make an appointment for a joint meeting with the staff of the Department and the Department and the Bank. At a minimum, the preapplication ~~conference~~ meeting should be attended by a member of the governing body of the municipality and the applicant's engineer and fiscal representative. If possible the applicant should bring information documenting the existence of, or a proposal for, a dedicated source of revenue for repaying the loan and of the establishment or proposed establishment of a system of user fees. The primary purpose of the meeting is to acquaint the applicant with program requirements and to assist the applicant in preparing an application. Also, a preliminary evaluation of whether the Project will qualify for funding will in most cases be made at this meeting.

### 2. Required General Information.

An ~~Eligible Applicant~~ shall file two copies of an application with the ~~Department~~ Bank. The information listed below is required for each ~~each applicant participating the application.~~

- (a) Eligible Applicant. Name and address of the eligible applicant;.
- (b) Authorized Representative. Name and addresses of the Authorized Representative for the eligible applicant and each participating political subdivision;.
- (c) Principal Officers. Name and address of the principal officers, including the managing official of the eligible applicant and each participating political subdivision;.
- (d) Project Engineer. Name and address of the Project Engineer, if applicable;.
- (e) Legal counsel. Names and addresses of legal counsel for the eligible applicant. If an application for Financial Assistance envisions a contractual loan agreement or the purchase of the applicant's bonds by the Bank, the name and address of bond counsel (from the Bank's approved bond counsel list) is also required (if other than legal counsel) and the name and address of any financial advisor or consultant;.
- (f) Authority. The authority of law under which the eligible applicant was created, if applicable;.

- (g) Project Description. A brief description of the Project including, but not limited to, the following:
- (i) Location;
  - (ii) A comprehensive statement clearly demonstrating the Project need and timing of need in sufficient detail to support and justify the Project; ~~and.~~
  - ~~(iii)~~ The total estimated cost and construction schedule of the Project prepared by the engineer.
  - ~~(iv)~~ The projected water quality improvements or outcomes to be made as a result of the Project.
- (h) Source of Funds. Source of funds and other information from which the Bank can determine whether the applicant has the financial ability to repay its loans.
- (i) Permits. Status of any proceedings to obtain a permit or other authorization from the Department or any other state or federal agency.
- (j) Audits. Copies of the preceding three years of audited financial statements.
- (k) ~~Supplemental~~ Supplemental Information. The Department and the Bank reserve the right to request any supplemental information as necessary.
- 3. Required Fiscal Data.** The applicant shall submit a statement by the Project Engineer of the most current estimate of Project cost itemized as to major facilities or items including land and the total right-of-way costs, fees of engineers, all legal fees, fees of financial advisors and/or consultants, contingencies, and interest during construction. The Bank ~~shall have~~ has ultimate responsibility to approve and determine financial feasibility and reserves the right to reject any potential recipient on the basis of the lack of financial feasibility ~~and/or~~ total feasibility.
- (a) Debt. The following information is to be furnished when the applicant proposes to issue debt to finance the Project, whether the purchasers of the debt ~~are to~~ will be the Bank or others.
- (i) Citation of statutory authority for issuance;
  - (ii) Type of debt (i.e., general obligation, revenue, or combination). If revenues are to be pledged, state the source and nature of such revenue;
  - (iii) Amount of the issue;
  - (iv) Full name of issue(s);
  - (v) Approximate date of issue(s);
  - (vi) Proposed maturities;
  - (vii) Details of options for prior payments; ~~and.~~

- (viii) Refinancing plans (i.e. bond anticipation rates followed by long term debt).
- (b) Funds. The eligible applicant shall submit the amount and source of any funds to be expended on the project.
- (c) Taxes. If the eligible applicant is authorized by law to levy and collect ad valorem taxes, the applicant shall give the following information:
- (i) If the eligible applicant has previously exercised such right and power, the applicant ~~shall~~ must give the following information for each of the five preceding years:
    - (AA) Assessed valuation of taxable property;
    - (BB) Ratio of assessed valuation to actual market value in a specified year;
    - (CC) Maximum tax rate permitted by law per \$1000 of assessed valuation;
    - (DD) Aggregate rate of all taxes levied and aggregate amount in dollars of taxes collected; ~~and;~~ and
    - (EE) Total amount in dollars of taxes collected.
  - (ii) ~~if~~ If the eligible applicant is newly created, or if it has never exercised its taxing power, the applicant ~~shall~~ must give the following information:
    - (AA) Assessed valuation of taxable property if valuations have been established, and if not, the estimated total amount of the assessed valuation of taxable property. Indicate whether the figure represents actual valuation or an estimate; ~~and;~~ and
    - (BB) Maximum tax rate permitted by law per \$1000 of assessed valuation.
- (d) Debt Limitations. The ~~E~~eligible ~~A~~applicant shall give details of any limitation governing the amount of bonded or general obligation debt which ~~E~~eligible ~~A~~applicant applicant may incur.
- (e) Outstanding Bonds. If eligible applicant has bonds outstanding ~~which~~ that are payable wholly or in part from ad valorem taxes, the applicant ~~shall~~ must provide the following information:
- (i) A complete description of each such issue of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options;
  - (ii) For all issues of bonds, a consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements;
  - (iii) A direct and overlapping debt statement;
  - (iv) Date of sale, date of last maturity, schedule of interest and principal payments, outstanding principal amount, amount of any reserve fund, amount of accrued interest and principal payments since date of last payment, date or dates of annual payment, and rating, if any associated with each series of bonds outstanding; and

- (v) If available, a copy of the official statement or loan agreement describing each series outstanding debt unless such outstanding debt was sold or issued through the Bank.
- (f) Loans or Bonds Paid by Taxes. If the financing of the Project will involve entering into a contractual loan agreement or sale of bonds or other securities payable wholly or in part from ad valorem taxes, the applicant ~~shall~~ must provide the following information:
- (i) Schedule of proposed future maturities of principal and interest of the proposed bonds plus total maturities of any outstanding bonds from subsection C(3)(a)(ii) of this rule; and
  - (ii) Rate of interest assumed in computing future interest maturities on proposed bonds.
- (g) Payable by User Charges~~Improving Existing Facility~~ If the Project for which the SRF loan is desired is for the purpose of extending, enlarging or improving an existing system or facility, the following must be submitted to the extent available for each of the five preceding years:If the financing of the Project will involve entering into a contractual loan agreement or sale of bonds or other securities payable wholly or in part from user charges, the applicant shall provide the following information:
- (i) Comparative operating statement;
  - (ii) Schedule of water and sewer rates or service charges;
  - (iii) Number of customers or patrons of the system; and
  - (iv) List of any significant users who contribute more than 5% of the waste water to the system with approximate percentage of capacity attributed to these users.
- (h) Proposed Rates. If a rate increase is required ~~The eligible applicant shall provide a schedule of proposed rates required for financing the Project under consideration, the eligible applicant shall provide a schedule of proposed rates~~ or and a schedule for adopting those rates if they are not then in place.
- (i) Outstanding Bonds Paid by Revenues. If eligible applicant has bonds outstanding which are payable either wholly or in part from net revenues of a system or facility which is connected or related to the Project applied for, the eligible applicant ~~shall~~ must submit the following information:
- (i) A complete description of each such issue of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options; and
  - (ii) For all issues of bonds, a consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements.
- (j) Proposed Loans or Bonds Paid by Revenues. If financing of the Project will require entering into a loan agreement or require the sale of bonds or other securities payable either wholly or in part from net revenues of one or more facilities or systems, the eligible applicant ~~shall~~ must submit the following information:

- (i) Schedule of proposed future bonds plus total maturities of any outstanding bonds referred to in subsection C(3)(i)(ii) of this rule; and
- (ii) Rate of interest assumed in computing future interest requirements on proposed bonds.
- (k) Statement on Default. The eligible applicant shall provide a statement as to whether or not there has been a default in the payment of items of matured principal or interest and if so, give details.
- (l) Annual Audit. The eligible applicant ~~shall~~ must provide an annual audit to the Bank prepared by an independent auditor of applicant's financial report as of the close of the preceding fiscal year and for the preceding two years. Eligible applicants must comply with the federal Single Audit Act when receiving more than \$500,000 in federal funds. However, no audit is required if the eligible applicant has no operational history. Where there is no audit the eligible applicant may be required to provide a third party feasibility analysis demonstrating the financial feasibility of the proposed system.
- (m) Schedule of Income and Expense. Where the Project envisions either a contractual loan agreement or the sale of revenue bonds, the eligible applicant ~~shall~~ must provide a schedule of the Project Engineer's estimate of future income and expense, showing the estimated amount of net revenue to accrue in each year during the life of any bonds to be issued.

#### 4. Required Legal Data

- (a) Bond eElection #Results. If a bond referendum is required by law to authorize the issuance of bonds to finance the Project, approval of a loan by the Bank shall be subject to such referendum—shall being held, prior to consideration of the application by the Bank. The eligible applicant ~~shall~~ must provide the Bank with the date and results of each proposition submitted.
- (b) Resolution. The eligible applicant ~~shall~~ must submit a certified copy of a resolution of its governing body requesting Financial Assistance from the Bank authorizing the submission of the application and designating the Authorized Representative.
- (c) Interlocal Contracts. The eligible applicant ~~shall~~ must submit a copy of any actual or proposed Interlocal Contract under which any portion of the eligible applicant's sewerage capacity is utilized by another municipal entity. Before a loan is closed, a certified copy of such contract ~~shall~~ must be submitted to the Bank.
- (d) Other Contracts. If financing of the Project will require a contractual loan agreement or the sale of bonds to the Bank payable either wholly or in part from revenues of contracts with others, the eligible applicant ~~shall~~ must submit to the Bank a copy of any actual or proposed contracts from which applicant ~~shall~~ will receive gross income.
- (e) Draft Ordinance. If applicable, ~~the~~ eligible applicant ~~shall~~ must submit a certified copy of an ordinance, resolution, vote or similar instrument adopted by the governing body authorizing the execution of a contractual loan agreement and the issuance of each of the bond issues described in subsection C(3)(a)(i) of this Rule (relating to Required Fiscal data). Such ordinance, resolution, or similar instrument ~~shall~~ must contain sections providing:

- (i) That a Project Account ~~shall~~ must be created ~~which shall be that is~~ separate from all other accounts of the ~~Eligible Applicant~~. If operating revenues are to be used to retire the debt, a sub-account will be established;
  - (ii) That Project Account ~~shall~~ must be maintained in accordance with standards set forth by the Bank and in accordance with generally accepted government accounting standards;
  - (iii) That a final accounting ~~shall~~ must be made to the Bank of the total cost of the Project upon completion of the Project Performance Certification as set out in subsection G(3) of this Rule. The Bank reserves the right at its sole discretion to be provided with a cost certification of the Project as built;
  - (iv) That an annual audit of the eligible applicant, and single audit, if applicable, prepared by a certified public accountant or licensed public accountant be provided to the Bank for the term of the loan;
  - (v) That the eligible applicant ~~shall~~ shall maintain insurance coverage on the Project in an amount adequate to protect the Bank's interest for the term of the loan. The Bank ~~shall~~ must be named as Loss Payee;
  - (vi) That the eligible applicant ~~will~~ shall comply with any special conditions specified by the Department's environmental determination until all financial obligations to the state have been discharged;
  - (vii) That the eligible applicant ~~must~~ shall certify to the Bank that it has secured all permits, licenses and approvals necessary and that it has a dedicated source of revenue for repayment;
  - (viii) If the loan will not be supported by a general obligation of ad valorem taxes of the system, That the eligible applicant ~~must~~ shall establish a rate, charge or assessment schedule in order to pay principal and interest. Such rate charge or schedule ~~shall~~ must provide total operations and debt service coverage at a level at which the coverage for the Bank is sufficient.
  - (ix) That the eligible applicant ~~must~~ shall demonstrate the ability to pay reasonably anticipated costs of operating and maintaining the financed ~~p~~Project; and
  - (x) That the eligible applicant agrees to abide by the rules of the Department, the Bank and relevant statutes of the State of Maine.
- (f) Affidavit. The eligible applicant ~~shall~~ must submit an affidavit executed by the Authorized Representative stating that the facts contained in the application are true and correct to his or her best knowledge and belief.
- ~~(g) Construction contract.~~
- ~~(i) The applicant shall submit a copy of any existing or proposed construction contract to the Department for approval.~~

- ~~(AA) All proposed contracts shall have provisions assuring compliance with the rules of the Department, the Bank and all relevant statutes of the State of Maine.~~
- ~~(BB) The applicant shall submit such other provisions as may be deemed necessary to provide the Department, the Bank and the applicant adequate control to ensure that materials furnished or work performed conform with the provisions of the construction contracts.~~
- ~~(ii) The applicant shall be represented by the Project Engineer who shall inspect the Project at each phase of construction to assure construction in substantial compliance with the plans and specifications in accordance with sound engineering principles and the terms and provisions of the construction contracts.~~
- ~~(h) Consultants contracts. The applicant shall submit copies of any proposed or existing contracts for consultant services necessary for construction of the proposed Project and included as part of the total cost of the Project for the Department's approval.~~
- (ig) Land interest. The eligible applicant ~~shall~~ must submit a copy of any proposed or existing lease or other agreement transferring interests in any land acquired, or to be acquired, with assistance from the SRF. Regardless of the source of funds in the acquisition, the eligible applicant ~~shall~~ must:
- (i) Describe what real property interests and acquisitions are necessary for the construction of the Project;
  - (ii) Explain the status of and steps to be taken to purchase the property interests; ~~and~~
  - (iii) Provide a certification that it has the necessary legal powers and authority to obtain the property interests; ~~and~~
  - (iv) Provide assurances to the Department that land acquired will be used for its initial intended purpose for the useful life of the project.
- (jh) Other Information. The eligible applicant ~~shall~~ must submit other information, plans, and specifications requested by the Department or the Bank ~~which~~ that are reasonably necessary for an adequate understanding of the Project.

## 5. Required Environmental Review and Determinations

- (a) (a) ~~General. As required by the provisions of §602 (b)(6) [33 USC §602(b)] of the Act, ¶~~The Department will conduct an interdisciplinary environmental review of the Project proposed for funding through the SRF. This review will insure that the Project will comply with the applicable local, state and federal laws and Department rules relating to the protection and enhancement of the environment. Based upon the staff review, the Department will make formal determinations regarding the potential social and environmental impacts of the proposed Project. If necessary, the determinations of the Department will include ~~mitigative~~ mitigation provisions as a condition of the provision of Financial Assistance for construction. No Financial Assistance for construction will be provided until a final environmental determination has been made by the Department, or until the Department has accepted a previous determination made by EPA, Rural

~~Development Utility Services, or other funding agency using a NEPA-like environmental review process, as allowed by the memorandum of understanding signed by EPA, HUD and USDA on May 12, 1997 has been accepted.~~ Nothing in these rules prohibits any public, private or governmental party from seeking administrative or legal relief from the determinations of the Department. Potential applicants to the fund should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the Department and the environmental information ~~which~~ that the applicant will be required to submit in support of the proposed Project.

(b) Environmental Reviews Required. Environmental Reviews are required for all new construction loans for projects that may have an environmental impact. No Environmental Reviews will be are required for loan projects involving only refinancing of existing debt obligations or projects such as sand /salt sheds, non point source agricultural projects, the purchase of timber harvesting equipment or septic system replacement. For projects under the jurisdiction of another agency, such as non point source agricultural projects, the agency with jurisdiction must provide evidence to the Department that the projects meets all applicable environmental standards.

(c) Basic eEnvironmental eDeterminations. There are three basic environmental determinations that will may apply to Projects proposed to be implemented with assistance from the fund that require an environmental review. These are: (1) a determination to categorically exclude a Project from a formal environmental review, (2) a finding of no significant impact (FNSI) based upon a formal environmental review supported by an environmental information document (EID) and, (3) a determination to provide or not to provide Financial Assistance based upon a record of decision (ROD) following the preparation of an environmental impact statement (EIS). The appropriate determination will be based on the following criteria.

(i) The categorical exclusion (CE) determination applies to categories of Projects that have been shown over time not to entail significant impacts on the quality of the environment.

(AA) Projects which meet the following criteria may be categorically excluded from formal environmental review requirements.

(I) The Project is directed solely toward the rehabilitation, minor upgrading and minor expansion of existing facilities, toward the functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities.

(II) The Project is an unsewered area of less than 1,000 persons where on-site technologies are proposed.

(BB) CEs will not be granted for Projects that entail:

(I) The construction of new collection lines;

(II) A new discharge or relocation of an existing discharge;

(III) A substantial increase in the volume or loading of pollutants which measurably degrade receiving waters;

- (IV) The provision of capacity for a population 30 percent or greater than the existing population within a 10 year period;
  - (V) Known or expected impacts to cultural resources, to threatened or endangered species, or to other environmentally sensitive areas; ~~and~~ or
  - (VI) The construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.
- (CC) The Department may exclude other categories of Projects for which there is sufficient documentation demonstrating that the Projects are not likely to have significant effects on the quality of the environment.
- (ii) All eligible applicants whose projects do not meet the criteria for a CE will be required to prepare an EID. The Department staff will review the EID and prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that the preparation of an EIS will be required by the applicant. The Department's issuance of a FNSI will be based upon the EA that document ~~which shall~~ that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.
- (iii) The ROD may only be based upon an EIS in conformance with the format and guidelines described in subsections C(5)(ef)(iii) and C(5)(fg) of this rule. An EIS will be required when the Department determines any of the following:
- (AA) The Project will significantly affect the pattern and type of land use or growth and distribution of the population;
  - (BB) The effects of the construction or operation of the project will conflict with local or state law or policies;
  - (CC) The Project may have significant adverse impacts upon:
    - (I) Wetlands,
    - (II) Floodplains,
    - (III) Threatened ~~and~~ or endangered species or their habitats,
    - (IV) Cultural resources including parklands, preserves, and other public land or areas of recognized scenic, recreational, agricultural, archeological or historic value;
  - (DD) The Project will displace population or significantly alter the characteristics of existing residential areas;
  - (EE) The Project may directly or indirectly (e.g., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quantity or quality, fish, shellfish, wildlife or their natural habitats;

(FF) The Project may generate significant public controversy; or

(GG) The treated effluent will be discharged into a body of water, the classification of which is too lenient or is being challenged as too low to protect present uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.

(d) ~~(e)~~ Other Required Determinations. ~~That the Department is required to make.~~

(i) When five or more years have elapsed before the beginning of construction of a Project, or five or more years have elapsed between phases of the same Project, or a Project has been altered after an environmental determination was issued, the Department will examine the plans and specifications, loan application, and related documents for consistency with the environmental determination. If changes are found, the Department may revoke a CE and require the preparation of an EID and, if appropriate, an EIS, consistent with the criteria of subsection C(5)(~~ef~~)(iii) of this section, or require the preparation of amendments to an EID or if appropriate supplements to an EIS. Based upon staff review of the amended Project and EID, the Department will:

(AA) Reaffirm the original environmental determination through the issuance of a public notice or statement of finding;

(BB) Issue a FNSI for a Project for which a CE has been revoked, or issue a public notice that the preparation of an EIS will be required;

(CC) Issue an amendment to a FNSI, or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or

(DD) Issue a supplement to a ROD, or revoke a ROD that included funding and issue a public notice that Financial Assistance will not be provided.

(e) ~~(d)~~ ~~other~~ Other determinations that the Department may make.

(i) An eligible applicant may request advance authority to construct part of the proposed wastewater treatment Project prior to completion of the necessary environmental review when the part of the Project to be constructed will:

(AA) Immediately remedy a safety emergency or a severe public health, ~~or safety emergency, or a~~ water quality or environmental problem;

(BB) Not preclude any reasonable alternatives identified for the complete system;

(CC) Not cause significant direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire Project; and

(DD) Not be highly controversial.

(ii) Based upon the review of the information required by subsection C(5)(f) of this rule, if the Department finds that the part to be constructed meets the requirements of subsection C(5)(c) above, the Department will issue a FNSI an environmental determination so conditioned as to prohibit construction of the remainder of the Project until a complete

environmental review of the entire Project has been performed and an environmental determination has been issued.

(f) Required Environmental Information. A minimum of one paper copy and one electronic copy (if available) of all information required in this subsection must be submitted to the Department.

(i) Eligible Applicants seeking a CE will provide the Department with sufficient documentation to demonstrate compliance with the criteria of subsection C(5)(b)(i) of this rule. At a minimum, this documentation will consist of:

(AA) A brief, complete description of the proposed Project, ~~and~~ its costs and a construction schedule;

(BB) A statement indicating that the Project is cost-effective, ~~and that~~ the eligible applicant is financially capable of constructing, operating and maintaining the facilities, and that none of the issues listed in subsection C(5)(c)(iii) apply to the Project; ~~and and~~

(CC) A plan map or maps of the proposed Project showing:

(I) The location of all construction areas,

(II) The facilities planning area boundaries, ~~and~~

(III) Any known environmentally sensitive areas; and

(DD) Results of any preliminary discussions with relevant review agencies for the proposed Project.

(ii) An EID must be submitted by those applicants whose proposed Projects do not meet the criteria for a CE.

(AA) In addition to such other information as the Department may require, the contents of an EID will include:

(I) A description of the Project including population to be served, if appropriate. Population projections will be consistent with State Implementation Plans developed under the Clean Air Act;

(II) The environmental setting of the Project and the future of the environment without the Project;

(III) The alternatives to the Project including an evaluation of direct and indirect impacts, cost effective analysis and socioeconomic effect of each, including the no action alternative;

(IV) The potential environmental impacts of the Project, including those which cannot be avoided;

- (V) The relationship between the short term uses of the environment and the maintenance and enhancement of its long term productivity;
  - (VI) A description of public participation activities conducted, issues raised, and changes to the Project ~~which~~ that have been or may be made as a result of the public participation process; and
  - (VII) Documentation of coordination with appropriate governmental agencies.
- (BB) The eligible applicant will hold a public ~~hearing meeting~~ on the proposed Project and on the EID, and provide the Department with a ~~transcript summary~~ of the ~~hearing meeting~~, a list of people in attendance, copies of written testimony and the applicant's responses to the issues raised. The Department will provide guidance to the eligible applicant regarding the contents of the ~~hearing meeting~~ notice and of the ~~hearing meeting~~. The ~~hearing meeting~~ will be advertised no less than 14 days nor more than ~~45~~ 30 days prior to the ~~hearing meeting~~ in a local newspaper of general circulation in the municipality. Concurrent with the advertisement, a notice of the public ~~hearing meeting~~ and availability of the EID will be sent to all relevant local, state, and federal agencies and to interested public and private parties, ~~that have expressed an interest in the proposed Project.~~
- (iii) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the selected alternative, and their environmental, economic and social impacts. The following format must be followed by the eligible applicant unless the Department determines there are compelling reasons to do otherwise.
- (AA) A cover sheet identifying the eligible applicant, the Project(s), the program through which Financial Assistance is requested, and the date of publication.
  - (BB) Summary of the critical issues of the EIS in sufficient detail to enable the reader to become familiar with the proposed Project and its cumulative effects on the environment. The summary will include:
    - (I) A description of the existing problem;
    - (II) A description of each alternative and its environmental impacts;
    - (III) A listing of ~~mitigative~~ mitigation measures and any areas of controversy; and
    - (IV) Any conclusions.
  - (CC) The body of the EIS, which will contain the following information:
    - (I) A complete and clear description of the purpose and need for the proposed Project that clearly identifies its goals and objectives.
    - (II) A description of each alternative considered by the eligible applicant. The descriptions will include the size and location of facilities and pipelines, land requirements, operation and maintenance requirements, and construction

schedules. The alternative of no action will be discussed. Alternatives that were rejected will be presented and the reasons for the applicants rejection ~~shall~~ must be given.

(III) A description of the alternatives available to the Department including:

(aa) ~~p~~Providing Financial Assistance to the proposed Project;

(bb) ~~r~~Requiring that the proposed Project be modified prior to providing Financial Assistance to reduce adverse environmental impacts, or providing assistance with conditions requiring the implementation of ~~mitigative~~mitigation measures; and

(cc) ~~n~~Not providing Financial Assistance.

(IV) A description of the alternatives available to other local, state, and federal agencies ~~which~~ that may have the ability to issue or deny a permit, provide Financial Assistance or otherwise effect or have an interest in any of the alternatives.

(g) ~~(f)~~—Procedures for Developing the EIS

(i) Upon making the determination- that an EIS will be required of a proposed Project, the Department will publish and distribute a notice of intent to prepare an EIS.

(ii) As soon as possible after the notice of intent has been issued, the Department will convene a meeting of the affected federal, state and local agencies, the eligible applicant, and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the Notice of Intent or prepared as in subsection C(5) ~~(e)~~(f)(ii)(BB) of this rule. As part of the scoping meeting the Department will, at a minimum:

(AA) Determine the significance of issues and the scope of those issues to be analyzed in depth in the EIS;

(BB) Identify the preliminary range of alternatives to be considered;

(CC) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(DD) Discuss the method for EIS preparation and the public participation strategy;

(EE) Determine the relationship between the preparation of the EIS and the completion of the Facilities Plan and any necessary arrangements for coordination of the preparation of both documents.

(iii) Following the scoping process the Department will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this including a list of the significant issues identified will be provided to the eligible applicant and other interested parties. The EIS

will be prepared by a consultant hired by the eligible applicant subject to approval by the Department.

The consultant will be required to execute a disclosure statement prepared by the Department signifying they have no financial or other conflicting interest in the outcome of the Project.

- (iv) The draft EIS will be provided to all local, state and federal agencies and public groups with an interest in the proposed Project and be made available to the public for review. The comment period will be no less than 30 days.
- (v) The final EIS will include all objections and comments made before and during the draft EIS review process. The final EIS must include a discussion of any such comments that have led to a change in either the Project or EIS. The Department will try to resolve any conflicts that may have arisen between permitting agencies prior to the issuance of a final EIS.
- (vi) Material incorporated into an EIS by reference will be organized to the extent possible into a Supplemental Information Document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in subsection C(5)(fg)(iv) of this rule. The final EIS will be distributed and made available for public review in a fashion consistent with the requirements of subsection C(5)(ef)(ii)(BB) of this rule prior to the Department making any environmental determination.

## 6. **Facilities ~~Planning Report Plan~~**

- (a) ~~Pre-application conference.~~ Pre-Planning Consultation. As early as practical, pursuant to subsection C(1) of this rule (relating to Pre-Planning and Pre-Application-~~Conference~~), if the proposed project warrants a Facilities Plan, as determined by the Department, the eligible applicant's engineers and appropriate staff shall ~~may meet~~ consult with Department staff to obtain current planning information, to obtain guidance on the scope of the Facilities ~~Planning Report Plan~~, and if appropriate, to get an early determination under subsection C(5) of this rule (relating to Required Environmental Review and Determinations). The eligible applicant shall utilize the guidance provided by the Department staff to the maximum extent feasible. The eligible applicant shall submit two copies of its Facilities Plan.
- (b) Contents of Facilities Plan. ~~Pursuant to §602(b)(6) of the Act (33 USC §1382 (b)(6)),~~ the Facilities Plan shall ~~must~~ contain the following information:
  - (i) Identification of the Facilities Planning area boundaries and characteristics, the existing problems and needs related to wastewater management, and the projected needs and problems for the next 20 or more years;
  - (ii) Demonstration that each sewer collection system feeding into the facility is not or will not be subject to excessive infiltration;
  - (iii) Systematic identification screening, study, evaluation, and cost-effectiveness analysis of ~~conventional~~ Best Practicable Waste Treatment Technologies (BPWTT) technologies as well as innovative and alternative technologies, processes, and techniques. ~~Innovative~~

~~and alternative technologies~~ options are to address, as appropriate, the ultimate disposal of residues and sludge, the ability of the facility to produce revenue, and, to the extent practicable, the more efficient use of energy and resources;

- (iv) Adequate evaluation of the environmental impacts of alternatives in accordance with subsection C(5) of this rule (relating to environmental review and determination) to support the cost-effectiveness analysis;
  - (v) Description of the proposed Project in terms of unit quantities in each category of work, capital costs, and operation and maintenance costs;
  - (vi) If collection lines are included, establishment determination of whether they are for replacement or major rehabilitation necessary to the total integrity and performance of the waste treatment works servicing the community, or whether they are for a new collection system in an existing community with sufficient existing or planned wastewater treatment capacity;
  - (vii) Documentation of the consistency of the Project with the approved elements of any applicable water quality management plan approved under §208 (33 USC §1288) or § 303 (e) (33 USC §1313(e)) of the Act, if applicable.
  - ~~(viii) Documentation of the consistency of the Project with the approved elements of any applicable water quality management plan approved under section §208 of the Act (33 USC §1288) or §section 202 (e) (33 USC §1313(e)) of the Act, if applicable. Documentation of the consistency of the Project with the approved elements of any applicable water quality management plan approved under §208 (33 USC §1288) or §303(e) (33 USC §1212(e)) of the Act;~~
  - (viii) Complete analysis and description of the proposed or existing user charge system ~~which~~ that will proportionately distribute operation, maintenance and replacement costs to each user or user class (system may allow subsidizing of low-income residential user);
  - ~~(ix) A capital financing plan including a projection of future needs (through 10 or more years) needs for construction and reconstruction and an explanation of how and when the financing will be obtained;~~
  - (x) The date on which the preliminary engineering design will be available;
  - ~~(xi) An analysis of potential recreation and open space opportunities for the proposed Project;~~
  - ~~(xii) A valid schedule for implementation of the Project, covering design through construction including the date by which an application can be submitted to the Department and a payment schedule; and~~
  - ~~(xiii) Other information deemed necessary, by the Department.~~
- (c) Approval of Facilities Plan. The Department will approve the Facilities Plan after ~~confirming that the appropriate environmental determinations have been completed in accordance with subsection C(5) (e) of this rule (relating to environmental review and determinations) the requirements of subsection C(6)(b) have been met. And that the loan recipient has agreed to incorporate all mitigating measures.~~

## 7. Review of ~~Application Eligibility~~ by the Department

- (a) Review ~~e~~Criteria for ~~loans~~ Eligibility. The Department shall review the ~~application~~ eligibility of the eligible applicant and of the Project for funds and ~~present~~ certify it to the Bank ~~only after confirming the following that~~:
- (i) The Project is on the ~~Intended Use Plan or~~ Project Priority List;
  - (ii) The ~~eligible~~ applicant has satisfactorily completed a ~~facility planning report~~ Facilities Plan, if applicable, in accordance with subsection C(6) of this rule (relating to Facilities ~~Planning Report Plan~~) or other appropriate report, as determined by the Department;
  - ~~(iii) The Project is consistent with the area wide water quality management planning of the state. The Department has performed an environmental review and determination, if applicable, according to subsection C(5);~~
  - ~~(iv) The categories of proposed work are eligible for SRF financing and are in accordance with State Law PL770 regarding designated growth areas;~~
  - (v) The ~~eligible~~ applicant has adopted or has agreed to adopt a user charge system and sewer use ordinance acceptable to the Department;
  - (vi) The ~~eligible~~ applicant has the necessary legal, ~~financial~~ and managerial capability to complete, ~~operate and maintain~~ the Project, ~~and~~
  - (vii) The ~~eligible~~ applicant has ~~submitted~~ agreed to submit a schedule acceptable to the Department for the initiation and completion of the Project, ~~and~~
  - ~~(viii) Any management program to be financed complies with all applicable state and federal laws and all rules and regulations adopted under those laws.~~
- (b) Review criteria for refinancing. The Department shall review ~~an application~~ the eligibility for refinancing of construction costs and present it to the Bank only after confirming the following.
- (i) All of the items in subsection C(7)(a)(i) ~~and (iiiiv), and (iv)~~ of this rule Chapter have been confirmed, ~~and~~
  - ~~(ii) The Plans and Specifications have been approved by the Department in accordance with subsection D(3) of this rule (relating to Approval of Plans and Specifications).~~
  - ~~(iii) The executed contract documents have been submitted and approved by the Department.~~
  - ~~(iv) An inspection and, if necessary, appraisal of any completed work has been performed and the findings demonstrate that the Project is consistent with the Department's rules.~~
  - ~~(v) Any other information requested by the Bank or Department as necessary to a review of the application has been provided.~~

- (c) Return of incomplete ~~application information~~. The Department shall return any ~~application request~~ not in substantial compliance with ~~these rules~~ this Chapter with notations indicating deficiencies.

## D. Engineering Design

### 1. Value Engineering

- (a) Applicability. If the estimated cost of building the treatment works is more than \$10 million, the applicant ~~shall~~ may conduct value engineering, during the design of the project, and ~~shall~~ may prepare a value engineering report. One copy of any value engineering report must be submitted to the Department for review and approval.
- (b) ~~Guidance. The applicant shall utilize the Department's guidance for the value engineering analysis. Two copies of the associated value engineering reports shall be submitted for review and approval.~~

### 2. Plans and Specifications

- (a) Submittals. The eligible applicant shall submit copies of any proposed or existing contracts for consultant services necessary for planning, design and construction of the proposed Project and included as part of the total cost of the Project for the Department's approval. The eligible applicant shall prepare a 10% preliminary design report and plans and specifications and a final engineering design report on all significant elements of the Project. The plans and specifications shall may ~~must~~ incorporate the accepted recommendations of any value engineering performed in accordance with subsection D(1) of this rule (relating to value engineering). ~~Two copies~~ One copy of the documents ~~shall~~ must be submitted to the Department.
- (b) Contents. The Plans and Specifications ~~shall~~ must contain the following:
- (i) Provisions assuring compliance with the Department's rules and all relevant federal and State of Maine statutes;
  - (ii) Forms of detailing the performance and payment bonds that will be provided;
  - (iii) Provisions requiring the successful contractor and subcontractors to pay all laborers and mechanics employed on the Project not less than the prevailing State minimum wage rates, ~~as determined by the United States Secretary of Labor, in accordance with the Davis Bacon Act 40 U.S.C. §276a-7);~~
  - (iv) Provisions relating to retainage in accordance with subsection F(8) of this rule (relating to retainage);
  - (v) Provisions requiring the contractor to obtain and maintain insurance coverage of the Project;
  - (vi) Provisions giving authorized representatives of the Department access to the construction site and to all books, records, and documents of the contractor for the purpose of inspection, audit and copying during normal business hours; and

- (vii) Those general conditions, ~~supplementary~~ supplementary conditions, specifications, and other provisions provided by or ~~requested~~ required by the Department.

### 3. Approval of Plans and Specifications

- (a) Approval. The Department's approval of the plans and specifications does not relieve the eligible applicant of any liability or responsibility with respect to the design, construction, operation, or performance of the Project. The Department will approve the Plans and Specifications if all applicable permits have been obtained, and if they:
- (i) Conform to the requirements listed in subsection D(2) of this rule (relating to Plans and Specifications);
  - (ii) Are consistent with all relevant federal and State of Maine statutes;
  - (iii) Pass a bidability, operability, and constructability review by the Department; and
  - (iv) Are consistent with ~~the~~ any facilities plannings, documents if applicable, and environmental determinations required by subsection C(5)(~~d~~) of this rule (relating to required environmental review and determinations) and subsection C(6) of this rule (relating to facilities planning report plans).
- (b) Advertisement for Bids. The applicant shall obtain authorization from the Department before advertising for bids on the Project.

### E. Prerequisites ~~To~~ Release Of Funds

1. ~~Loan Closing~~ Release of Funds No loan may be made under subsection E(1) of this Chapter until such time as:
- (a) ~~Submittals for loan closing.~~ Prior to the closing of a loan for construction funds the applicant shall submit for approval to the department the following documents:
    - (i) ~~The plans and specifications approved in accordance with subsection D(3) of this rule (relating to approval of plans and specifications);~~
    - (ii) ~~A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;~~
    - (iii) ~~Two originals of each construction contract for building the project containing the appropriately executed bonds, insurance certificates, act of assurance, wage rates and other documents required by subsection E(2) of this rule (relating to plans and specifications);~~
    - (iv) ~~A certification that all required acquisitions, leases, easements, right of way, relocations, (both voluntary and involuntary) have been obtained in order for the Project to be built;~~
  - (b) ~~Eligibility Certification.~~ No loan to a municipality release of funds may be made under subsection E(1) of this ~~rule~~ Chapter until such time as:

- (~~ia~~) Rate Schedule. The eligible applicant demonstrates to the Bank that it has established a rate, charge or assessment schedule which will generate annually sufficient revenue to pay, or has otherwise provided sufficient assurances that it will pay, the principal of and interest on the municipal bond or other debt instrument ~~which~~ that evidences the loan made by the Bank to the municipality under subsection E(1) of this rule and to pay reasonably anticipated costs of operating and maintaining the financed Project and the system of which it is a part;
- (~~ib~~) Dedicated Revenue. The eligible applicant certifies to the Bank that it has created a dedicated source of revenue, which may constitute general revenues of the eligible applicant through a general obligation pledge of the applicant, for repayment of the loan;
- (~~ic~~) Eligible. The eligible applicant and the Project to be financed by the proceeds of the loan have been designated by the Department of ~~Environmental Protection~~ as eligible to participate in a construction program funded wholly or in part by the State and from the proceeds of the revolving loan fund, in accordance with subsection C(7); and
- (~~id~~) Department Certification. The Department of ~~Environmental Protection~~ certifies to the Bank that the loan eligibility priority established under 30-A MRSA §6006-A(3) entitles the applicant to immediate financing or assistance under subsection ~~E(1)~~ C(7) of this ~~rule~~ Chapter, and,
- (e) The applicant certifies ~~to the bank~~ that it has secured all permits, licenses and approvals necessary to construct the improvements to be financed by the loan.

## F. Building Phase

- 1. ~~4.~~ Awarding Construction Contracts.** The eligible applicant shall be responsible for assuring that all procedures and legal requirements are observed in advertising for bids and awarding the construction contract. The text of the construction contract ~~shall~~ may not vary from the text of the copy submitted to the Department.
- (a) Submittals for Contract Award. Prior to contract award, the eligible applicant shall submit for approval to the department the following documents:
- (i) The plans and specifications approved in accordance with subsection D(3) of this rule (relating to approval of plans and specifications);
  - (ii) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;
  - (iii) The proposed low bid proposal;
  - (~~iii~~) An original of each construction contract for building the project containing the appropriately executed bonds, insurance certificates, act of assurance, wage rates and other documents required by subsection D(2) of this rule (relating to plans and specifications);
  - (iv) A certification that all required acquisitions, leases, easements, right-of-way, relocations, (both voluntary and involuntary) have been obtained in order for the Project to be built;

- (v) Documentation of MBE and WBE efforts by the proposed low bid Prime Contractor, if applicable;
  - (vi) A Notice of Intent to Award;
  - (vii) Evidence of advertising; and
  - (viii) A revised Project Cost Summary.
- (b) Force Account. All significant elements of the Project will be performed with skilled personnel hired through a competitive bidding process. However, the Department may approve the use of Force Account for design, inspection and/or construction when the eligible applicant demonstrates that it possesses the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the Force Account method, or emergency circumstances dictate its use.
- ~~(c) Competitive bidding will not be required for direct eligible applicant purchases and sole source procurement with prior Department approval. Concerning sole source procurement, the eligible applicant must demonstrate a compelling need, such as matching existing equipment, to obtain Department approval. Small contracts under \$40,000 will not require formal competitive bidding.~~
- ~~(d) Executed Documents. Within 15 days of contract signing, the eligible applicant shall submit to the Department a copy of the executed documents containing the executed contract agreement, executed bonds, insurance certificates, act of assurance, wage rates. Notice to Proceed and any other documents required by subsection D(2) of this Chapter (relating to plans and specifications);~~
- 2. Inspection During Construction.** After the construction contract is awarded, the eligible applicant shall provide for adequate inspection of the project by the project engineer and require his/her assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and in accordance with sound engineering principles and building practices. The Department is authorized to inspect the project at any time during construction in order to assure that plans and specifications are being followed and that the project is being built in accordance with sound engineering principles and building practices; ~~but s~~Such inspection, however, shall never subject the ~~s~~State of Maine to any liability or action for damages. The Department ~~shall~~ notify the eligible applicant and the project engineer of any variances from the approved plans and specifications. Upon notification, the eligible applicant and the project engineer shall immediately initiate any necessary corrective action.
- 3. Audits.** The Department is authorized to conduct engineering audits. The Bank is authorized to conduct financial and program audits of every Project ~~which~~ that is financed in whole or in part by SRF funds. Each recipient of financial assistance from the Bank ~~must~~ shall provide the Bank with annual audited financial statements prepared by a professional accountant or accounting firm. For purposes of this section, the following definitions are applicable:
- (a) Financial audit. - A review of all files for historical background for the Project, a visit to the Project offices or site to gather sufficient information to perform a detailed review of documents which substantiate the Project expense, a tabulation of expenses, and the issuance

of an audit report establishing that expenses financed from the fund are or are not in conformance with terms and provisions of loan documents.

- (b) **Engineering audit.** - A physical inspection of the Project to analyze the Project and compare it with the approved plans and specifications, and the issuance of an inspection technical report which finds the project in compliance with the plans and specifications or which outlines any variances from the construction contract and approved plans and specifications and which recommends corrective action.
- (c) **Program audit.** - ~~a~~ review of all files and records to determine and ensure compliance with Title VI of the Amendments of the Clean Water Act in order to be eligible for and comply with the terms of any financial assistance provided by the Bank.

4. **Alterations in ~~a~~Approved ~~p~~Plans and ~~s~~Specifications.** If, after the Department approves the plans and specifications, it becomes apparent that changes are necessary, a change order and justification ~~shall~~ must be submitted to the Department for review and approval. Any change in previously approved plans and specification lmay not alter the basic purpose or effect of a Project. When possible, such a change order ~~shall~~ must be submitted well in advance of the proposed alteration. ~~The Department may approve and authorize a change in previously approved plans and specifications if the change does not alter the basic purpose or effect of a Project.~~ The ~~Bank~~ Department ~~shall~~ must receive a written copy of all change orders. ~~Any change order that results in a cumulative expenditure from the contingency which is greater than fifty (50) percent of the contingency shall require approval of the Bank.~~ If there is immediate danger to life or property, tentative approval of change orders may be secured via telephone and confirmed by letter. A request for a change order should contain sufficient information, including plans or drawings and cost estimates for review of the proposal. ~~Engineering computations shall be included if structural changes are involved.~~ After approval of the proposed alterations, copies of the approved change order ~~shall~~ must be forwarded to the project engineer. If a proposed change order would exceed 50% of the cost of the original contract, the work must be put out to bid as a separate contract.
5. **Contractor Bankruptcy.** In the event of a contractor bankruptcy, any agreements regarding any settlement proposed to be entered into with the bonding company (other than a bonding company serving as general contractor or fully bonding another contractor acting as their agent) must be submitted for approval ~~of~~ by the Department. All Project contractors must be bonded. The eligible applicant ~~shall be~~ is responsible for assuring that all procedural and legal requirements are observed in advertising for bids and awarding a construction contract.
6. **Building Phase Submittals.** During the ~~B~~building phase of the Project, the eligible applicant shall submit or perform the following:
  - (a) User Charge System and Sewer Use Ordinance . Prior to placing the treatment works into operation, if applicable, the eligible applicant will adopt its user charge system and sewer use ordinance and submit a copy of each the enacted ordinance to for the Department's approval. Further, the loan recipient will implement the user charge system for the useful life of the Project;
  - (b) Operation and Maintenance Manual. For new treatment works or major upgrades, ~~A~~ final operation and maintenance manual will be submitted for the Department's approval prior to placing the treatment works into operation.;

- (c) ~~As Built Drawings. A complete set of as-built drawings will be submitted to the owner upon completion of all construction. As built drawing for the treatment facility will be submitted to the Department.~~
- (d) ~~Substantial Completion and Initiation of Operation Dates. Notice of completion of construction~~ Certificates of Substantial Completion and notification of Initiation of Operation dates will be submitted to the Department ~~and the Bank~~ upon completion of Project construction; ~~and which notice shall include an attested statement that all funds made available to the Applicant for the Project by the Bank or the Department have been used solely for eligible activities of the loan and the SRF.~~
- (e) ~~Other Submittals~~ Submittals. Any other Building phase submittals required as part of the loan documents will be submitted for the ~~Bank's~~ Department's approval.

7. **Progress ~~p~~Payments.** Disbursements from the Construction Fund established by the Bank ~~will~~ require approval by the Department and the Bank. Certified requests for payment ~~shall may~~ be submitted monthly, ~~or less frequently for small contracts, on forms provided by the Department.~~ Upon approval by the Department, the request will be forwarded to the Bank to authorize progress payments from the designated SRF Construction Fund for the Project and in turn to the separate account established by the applicant. ~~A request not approved or denied within 10 business days will be deemed approved.~~
8. **Retainage.** ~~During such time as the contract is less than 50~~ 95 percent completed, progress payments to the prime contractor shall be limited to ~~90~~ 95 percent of the work actually completed at the time of the payment request. ~~Once the contract is more than 50% completed the retainage may be reduced to 5 percent until the contract is completed and the Project is accepted by the owner. After the Project is accepted by the owner as Substantially Complete, the retainage may be reduced to 2 percent and shall be retained for one year by the Bank. Retainage will be held in accordance with general and supplementary conditions required by the Department and made part of the plans and specifications. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the Project Engineer may determine or the eligible applicant may withhold, including but not limited to liquidated damages:~~

(a) 95 percent of work completed (with the balance being retainage); and

(b) 95 percent of cost of materials and equipment not incorporated in the work (with the balance being retainage).

Upon Substantial Completion, the eligible applicant shall pay an amount sufficient to increase total payments to the Contractor to 98 percent of the work completed, less such amounts as the Project Engineer shall determine in accordance with the specifications. The remaining 2 percent retainage may be held for one year after Substantial Completion and retained by the Bank. This provision may be waived on projects co-funded with other funding agencies whose retainage policies conflict, on projects with interim financing or refinancing, or on a case by case basis when the eligible applicant presents a compelling case against this provision.

9. **Claims or Disputes.** All claims or disputes between the owner and the contractor must be settled ~~informally using the Department as a mediator or formally in a court of law. Formal arbitration~~

~~proceedings will not be allowed. All resolved disputed and claims must be submitted to the Department by change order for approval before payment in accordance with general and supplementary conditions required by the Department and made part of the plans and specifications.~~

- 10. Documents.** All documents provided to either the Bank or the Department must be available to both the Bank and the Department.

## G. Post Building Phase

- 1. Responsibilities of Eligible Applicant.** After the satisfactory completion of the Project, the eligible applicant shall be held accountable by the Department for the continuing validity of all of the eligible applicant's representations and assurances. To facilitate continuing cooperation and to enable the Department to protect the State's investment and the public interest, the following provisions ~~shall~~ must be observed:

- (a) Department Inspections. The Department is authorized to inspect the Project and the records of operation and maintenance of the Project at any time. If the Department finds that the Project is being improperly or inadequately operated and maintained to the extent that the purposes of the Project are not being properly fulfilled or that the integrity of the state's investment is being endangered, the Department ~~shall~~ must will require the applicant to take corrective action.
- (b) Operation and Maintenance. The Department or the Bank may request certified copies of all minutes, operating budgets, monthly operating statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the Project.
- (c) Fund Accounts. The eligible applicant shall maintain debt service fund accounts and other fund accounts related to the SRF debt in accordance with standards set forth by the Bank.
- (d) Mitigative Mitigation Measures. Eligible Applicants ~~which were~~ required to implement ~~mitigative~~ mitigation measures as a result of the environmental review process shall continue to implement those measures, if applicable.

- 2. Project Performance Certification.** One year after the initiation of operation the eligible applicant shall certify to the Department that the Project meets the project performance standards. If the eligible applicant cannot certify that the Project meets Project Performance Standards, the eligible applicant shall accomplish the following actions:

- (a) Problem Identification. Identify the problem and propose corrective action with a schedule of such action;
- (b) Corrective Action. Initiate corrective action in a timely manner which will enable the eligible applicant to make an affirmative certification; and
- (c) Certification. Submit an affirmative certification.

The project performance certification requirement may be waived for certain projects, such as refinancing of existing debt, non-point source projects, septic systems, sand/salt sheds and other projects at the Department's discretion.

- 3. Final Accounting.** Upon completion of the Project performance period, and after the eligible applicant certifies that the facility is meeting the Project Performance Standards, a final accounting will be made to the Bank in accordance with subsection C(4)(e)(iii) of this rule (relating to required legal data).

**H. References to Federal Regulations** Portions of this rule refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those regulations effective as of July 1, 2006, as they appear in volume 40 of the code of Federal Regulations (CFR). Copies are available from the US Government Printing Office, 732 North Capitol Street, NW, Washington DC 20401.

AUTHORITY: 30-A M.R.S.A., §5959

EFFECTIVE DATE: October 27, 1990~~October 27, 1990~~

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

~~EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996~~

#### BASIS STATEMENT

~~The Department of Environmental Protection (DEP) and the Maine Municipal Bond Bank (M.M.B.B.) were delegated joint responsibility to administer the state water pollution control revolving fund created by Chapter 751 of Public Law approved April 21, 1988. This program will replace replaced Maine's construction grants program which has provided funding for the planning design and construction of municipal wastewater treatment facilities in the state. This rule, "State of Maine Revolving Loan Fund Rules, Chapter 595", details the requirements Maine municipalities must comply with to be eligible for loans from the fund. The authority for DEP and MMBB to adopt these administrative rules is provided by 30 A M.R. S. A Section 5959.~~

~~During the 12 year of existence, certain federal requirements have changed. This revised Rule incorporated those changes and add provisions for expansion of the program.~~

~~The draft rules were widely distributed to the regulated communities within Maine. There were no comments received which resulted in changes to the draft.~~