

**Chapter 595: STATE REVOLVING FUND**

SUMMARY: The State Revolving Fund (SRF) provides funding for the planning, design, and/or construction of municipal wastewater treatment works and other water pollution control facilities or practices. The State Revolving Fund Rule, 06-096 CMR Chapter 595, contains eligibility requirements for applicants seeking loans from the SRF for treatment works.

**A. Introduction Provisions**

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

- (a) **Act.** "Act" means the Federal Water Pollution Control Act, as amended, found at 33 USC §§ 1251 *et seq.*
- (b) **Applicable Interest Rate.** "Applicable Interest Rate" 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. The bank shall take the Applicable Interest Rate into consideration when setting the interest rate on individual SRF loans.
- (c) **Authorized Representative.** The "Authorized Representative" 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" means the Maine Municipal Bond Bank.
- (e) **Best Practicable Waste Treatment Technologies (BPWTT).** The "BPWTT" 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" 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.
- (g) **Building.** "Building" means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.
- (h) **Capitalization Grant.** "Capitalization Grant" means the Federal grant assistance awarded to the State of Maine for deposit in the State Revolving Fund.
- (i) **Change Order.** "Change Order" means documents issued by the loan recipient, upon recommendation of the Project Engineer and, with the approval of the Department, 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.** "Closing" means the date on which an Eligible Applicant borrows funds or otherwise is granted Financial Assistance from the SRF.
- (k) **Collector Sewer.** "Collector Sewer" means the common sewers within a publicly owned treatment system that are primarily installed to receive wastewater directly from individual systems or from private property.
- (l) **Construction Fund.** "Construction Fund" 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.** "Cost-effectiveness Analysis" 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.** "Effluent Limitation" 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" 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" means the U. S. Environmental Protection Agency.
- (r) **Facilities Plan.** "Facilities Plan" means plans and studies that directly relate to the treatment works needed to comply with 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" means the use of a municipality's own work force to design, build or inspect portions of a project.
- (u) **Infiltration.** "Infiltration" 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" 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" 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".
- (x) **Intended Use Plan.** "Intended Use Plan" 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 40 CFR § 3150. The Project Priority List is part of the Intended Use Plan.
- (y) **Interceptor Sewer.** An "Interceptor Sewer" means a sewer that is designed for one or more of the following purposes:
- (1) to intercept wastewater from a final point in a Collector Sewer and convey such wastes directly to a treatment facility or another interceptor;
  - (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;
  - (3) to transport wastewater from one or more municipal Collector Sewers to another municipality or to a Regional Facility for treatment; and
  - (4) 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 federal requirements for the participation of minority and women owned business enterprises (MBE/WBE) ~~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" 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" 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.
- (dd) **Project.** The "Project" means the scope of work for which a loan or other Financial Assistance is sought by an Eligible Applicant from the SRF.

- (ee)Project Account.** A "Project Account" 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" means the 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 Certification.** The "Project Performance Certification" means 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" 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 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" means the sum allocated or re-allocated to the State of Maine for a federal fiscal year, from funds appropriated by Congress pursuant to the Act.
- (kk)SRF.** The "SRF" means the ~~State Revolving Fund created by Chapter 751 of Public Law approved April 21, 1988~~ Revolving loan fund in Title 30-A MRSA §6006-A.
- (ll) Substantial Completion.** "Substantial Completion" 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" means any devices and systems that are used in the storage, treatment, recycling, and reclamation of waste or 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 practices that implement a nonpoint source pollution management program under section ~~340~~ 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).

**(nn) Value Engineering.** "Value Engineering" means a specialized cost control technique 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 Permit.** A "Waste Discharge Permit" means the 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 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 will maximize financial resources available to the State, while providing eligible applicants with the most cost effective capital financing possible within the limits of the fund, to fund needed treatment 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 applicants the program is meant to serve.

~~(d) Applicable Interest Rate on Loans and Principal Forgiveness. Loans will be made at 2% below the rate the Bank could obtain on a Bond sale of equivalent credit and term in its current market conditions. In establishing the Applicable Interest Rate the Bank will take into account the true interest cost of leveraged funds including issuance costs, the risks associated with operating a loan program, the inflation rate, 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. Once established, the Applicable Interest Rate for 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 of 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.~~

The Bank shall have the discretion, subject to federal and state law, to set the interest rate on all loans made in a manner that furthers the goals and objectives of the SRF program. In

setting the rates, the Bank shall consult with the Department and shall consider the Applicable Interest Rate, market conditions, affordability, and the goal of maintaining the fund in perpetuity. The Bank will regularly review market conditions so that it sets rates from time to time reflective of then current conditions. Loans may be made at interest rates that are at or below 0% and allow principal forgiveness where it is determined by the Bank, after consultation with the Department, to be necessary to meet program goals. If any fees are being charged for the operation of the program at the time the loan made from funds in the SRF is made, any interest rate for the loan must be adjusted downward to accommodate the fees so there will be no increase in cost to the borrowers. If fees are being charged on loans made from funds in the SRF at interest rates that are at 0% or below, the requirement to further reduce the interest downward in an amount equal to the cost of the fee shall not apply, except to the extent that the sum of fees charged causes the cost of the loan to exceed market rates. The interest rate for loans funded with Bank funds held outside of the SRF may, at the discretion of the Bank, be adjusted downward to account for any fees charged. In all cases, any fees charged on a loan shall be limited to the maximum amounts allowable under Section B(4)(f) of this rule. The Bank, in consultation with the Department, will establish the interest rate and maturity schedule for each loan consistent with this rule. Terms and conditions for each loan shall be fixed for the life of the loan, unless the borrower agrees to any changes in the loan terms that may be made on the borrower's behalf or for the borrower's benefit. A loan may have as a fixed term a provision that allows for the interest rate to vary from time to time based upon objective criteria or market conditions.

- (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.

## **B. Program Requirements**

- 1. Obligation Period.** Funds allotted to the State 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.** 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)) also allows states to use up to four percent of all grant awards to administer the SRF.
- 3. Intended Use Plan.** After providing for public comment, the Department shall prepare an annual plan identifying the intended use of the funds available.
- 4. Types of Financial Assistance.** The SRF has been established to assist and encourage eligible applicants to design and construct treatment 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 eligible applicants pursuant to 30-A MRSA §§5953-A and 6006-A.

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- (ii) To make loans to refund bonds or notes of eligible applicants issued after March 7, 1985, for the purpose of financing the construction of any capital improvement described in §5953-A(1), and certified under §5953-A(3);
  - (iii) To guarantee or insure, directly or indirectly, the payment of notes or bonds issued or to be issued by eligible applicants 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 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 loan payment obligations of eligible applicants, and
  - (vii) To pay the costs permitted pursuant to the Federal Water Pollution Control Act, Title VI.
- (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 Project Priority List.
  - (ii) The Project has complied with requirements of Subsection C of this 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) The Project must comply with all applicable statutes and rules.
  - (v) The eligible applicant shall enter into legal and binding commitments with the Bank to complete the financing and repay the loan.
  - (vi) The eligible applicant shall complete an application for financing with the Bank.
  - (vii) The eligible applicant shall establish a dedicated source of funds for repayment of the loan, if applicable.
  - (viii) The eligible applicant 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 may not be disbursed from the Bank without prior Department approval, which approval may not be unreasonably withheld.
  - (d) Sources of Financial Assistance. The Bank may provide Financial Assistance utilizing any amounts in the SRF and available therefor. 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) 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 loan servicing fees that shall be shared in accordance with a Memorandum of Understanding that may not exceed five percent (5%) of aggregate annual regularly scheduled debt service payments on the loans. The Bank will deduct these fees from payments received prior to depositing such payments in the SRF. For the same purposes, the Department may establish a project management fee which shall not exceed three percent (3%) of the original principal amount on the loan (including interim loans and Bank leveraged bond funds, if blended with the SRF). At the request of the Department, the Bank will deduct this fee from payments received prior to depositing such payments in the SRF or Bank Funds. These fees shall not be part of any loans and must be held outside the SRF or Bank funds. If interest is being charged on any loans made from funds in the SRF on which fees are being assessed, the interest rate will be adjusted down to accommodate the fees so there will be no increase in cost to the borrowers. On all loans made from funds in the SRF where the interest rate is 0% or less, the requirement to further adjust the interest rate down to accommodate the fees shall not apply, except to the extent that the sum of all fees causes the cost of the loan to exceed market rates. In all cases, the total cost of a loan to a borrower (including all fees and interest) must remain at or below market rates. 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.** The Department shall submit 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 receive assistance from the SRF with funds directly made available by Capitalization Grants must meet the requirements listed below.
- (a) MBE/WBE. Federal requirements for the participation of minority and women owned businesses (MBE/WBE) apply to assistance in an amount equaling the Capitalization Grant.
  - (b) Federal Requirements. Any other applicable federal requirements.

~~All Projects that receive loan assistance from the fund with funds directly made available by Capitalization Grants must meet requirements for the participation of minority and women owned~~

~~businesses (MBE/WBE). Such requirements apply to assistance in an amount equaling the Capitalization Grant, in accordance with 40 CFR § 35.3145.~~

## **7. Project Priority List**

- (a) Project Priority List. The Project Priority List is a listing of Projects eligible to receive Financial Assistance from the SRF. Loan assistance may be provided regardless of the rank on the State Project Priority List.
- (b) Preparation and Submission. The Department will prepare and revise the Project Priority List in accordance with Subsection B(3) of this rule (relating to Intended Use Plan) as necessary to efficiently manage the SRF. The Department shall submit the final Project Priority List to EPA.
- (c) Effective Period. The Project Priority List shall become effective and supersede all previous lists upon submittal to and acceptance by EPA and shall remain effective until changed by the Department.

## **8. Intended Use Plan**

- (a) Intended Use Plan. Each fiscal year, concurrent with preparation of the Project Priority List, the Department prepares an Intended Use Plan that is subjected to a public comment period and approved by EPA. The Intended Use Plan identifies Projects 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 40CFR § 35.3150.
- (b) Added Projects. The Department may move Projects from the Project Priority List to the Intended Use Plan as necessary to utilize available funds.

## **C. Application for Assistance**

### **1. Preplanning and Preapplication**

- (a) Preplanning. Potential applicants should confer with the staff of the Department and the Bank as early in its planning process as practical. 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.
- (b) Preapplication Meeting. An eligible applicant seeking Financial Assistance should make an appointment for a meeting with the staff of the Department and the Bank. At a minimum, the preapplication 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 Bank. The information listed below is required for each 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.
    - (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 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 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 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 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.
  - (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 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
    - (EE) Total amount in dollars of taxes collected.
  - (ii) If the eligible applicant is newly created, or if it has never exercised its taxing power, the applicant 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

- (BB) Maximum tax rate permitted by law per \$1000 of assessed valuation.
- (d) Debt Limitations. The eligible applicant shall give details of any limitation governing the amount of bonded or general obligation debt which eligible applicant may incur.
- (e) Outstanding Bonds. If eligible applicant has bonds outstanding that are payable wholly or in part from ad valorem taxes, the applicant 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 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. 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 for financing the Project under consideration, the eligible applicant shall provide a schedule of proposed rates 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 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 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 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 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 Election 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 being held. The eligible applicant must provide the Bank with the date and results of each proposition submitted.
- (b) Resolution. The eligible applicant 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 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 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 must submit to the Bank a copy of any actual or proposed contracts from which applicant will receive gross income.
- (e) Draft Ordinance. If applicable, the eligible applicant 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 must contain sections providing:
  - (i) That a Project Account must be created 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 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 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 maintain insurance coverage on the Project in an amount adequate to protect the Bank's interest for the term of the loan. The Bank must be named as Loss Payee;
  - (vi) That the eligible applicant 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 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, the eligible applicant shall establish a rate, charge or assessment schedule in order to pay principal and interest. Such rate charge or schedule 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 shall demonstrate the ability to pay reasonably anticipated costs of operating and maintaining the financed 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 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) Land interest. The eligible applicant 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 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;
  - (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.
- (h) Other Information. The eligible applicant must submit other information, plans, and specifications requested by the Department or the Bank that are reasonably necessary for an adequate understanding of the Project.

## **5. Required Environmental Review and Determinations**

- (a) General. 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 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 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. 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 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 are required for loan projects involving only refinancing of existing debt obligations or projects such as 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 Environmental Determinations.** There are three basic environmental determinations that 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; or
- (VI) The construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.

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- (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 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)(f)(iii) and C(5)(g) 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 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) Other Required Determinations.

- (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)(f)(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) 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, 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 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)(c)(i) of this rule. At a minimum, this documentation will consist of:
  - (AA) A brief, complete description of the proposed Project, its costs and a construction schedule;
  - (BB) A statement indicating that the Project is cost-effective, 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;
  - (CC) A plan map or maps of the proposed Project showing:
    - (I) The location of all construction areas,
    - (II) The facilities planning area boundaries,
    - (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 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 meeting on the proposed Project and on the EID, and provide the Department with a summary of the 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 meeting notice and of the meeting. The meeting will be advertised no less than 14 days nor more than 30 days prior to the meeting in a local newspaper of general circulation in the municipality. Concurrent with the advertisement, a notice of the public meeting and availability of the EID will be sent to all relevant local, state, and federal agencies and to interested public and private parties.
- (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 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 must be given.
  - (III) A description of the alternatives available to the Department including:
    - (aa) Providing Financial Assistance to the proposed Project;

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(bb) 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 mitigation measures; and

(cc) Not providing Financial Assistance.

(IV) A description of the alternatives available to other local, state, and federal agencies 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) 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)(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)(g)(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)(f)(ii)(BB) of this rule prior to the Department making any environmental determination.

## **6. Facilities Plan**

- (a) Pre-Planning Consultation. As early as practical, pursuant to subsection C(1) of this rule (relating to Pre-Planning and Pre-Application), if the proposed project requires a Facilities Plan as determined by the Department, the eligible applicant's engineers and appropriate staff shall consult with Department staff to obtain current planning information, to obtain guidance on the scope of the Facilities 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. The Facilities Plan 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 Best Practicable Waste Treatment Technologies (BPWTT). Technology 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, 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) Complete analysis and description of the proposed or existing user charge system 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) 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) 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
  - (xii) Other information deemed necessary, by the Department.
- (c) Approval of Facilities Plan. The Department will approve the Facilities Plan after the requirements of subsection C(6)(b) have been met.

## **7. Review of Eligibility**

- (a) Review Criteria for Eligibility. The Department shall review the eligibility of the eligible applicant and of the Project for funds and certify to the Bank that:
  - (i) The Project is on the Project Priority List;
  - (ii) The eligible applicant has satisfactorily completed a Facilities Plan, if applicable, in accordance with subsection C(6) of this rule (relating to Facilities Plan) or other appropriate report, as determined by the Department;
  - (iii) 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 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;
  - (vii) The eligible applicant has 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 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 (iv) of this Chapter have been confirmed and
  - (ii) Any other information requested by the Bank or Department as necessary to a review of the application has been provided.
- (c) Return of incomplete information. The Department shall return any request not in substantial compliance with this Chapter with notations indicating deficiencies.

## **D. Engineering Design**

### **1. Value Engineering**

Applicability. If the estimated cost of building the treatment works is more than \$10 million, the applicant may conduct value engineering, during the design of the project, and prepare a value engineering report. One copy of any value engineering report must be submitted to the Department 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 on all significant elements of the Project. The plans and specifications may incorporate the accepted recommendations of any value engineering performed in accordance with subsection D(1) of this rule (relating to value engineering). One copy of the documents must be submitted to the Department.
- (b) Contents. The Plans and Specifications must contain the following:
- (i) Provisions assuring compliance with the Department's rules and all relevant federal and State of Maine statutes;
  - (ii) Forms 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;
- (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 conditions, specifications, and other provisions provided by or 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 any facilities plans, if applicable, and environmental determinations required by subsection C(5)(c) of this rule (relating to required environmental review and determinations) and subsection C(6) of this rule (relating to facilities 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. Release of Funds.** No release of funds may be made under subsection E(1) of this Chapter until such time as:
  - (a) 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 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;

- (b) 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;
- (c) Eligible. The eligible applicant and the Project to be financed by the proceeds of the loan have been designated by the Department 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);
- (d) Department Certification. The Department 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 C(7) of this Chapter, and
- (e) The eligible applicant certifies that it has secured all permits, licenses and approvals necessary to construct the improvements to be financed by the loan.

## **F. Building Phase**

- 1. 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 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;
    - (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;
    - (vi) Evidence of advertising; and
    - (vii) 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.
- (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. Such inspection, however, shall never subject the 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 that is financed in whole or in part by SRF funds. Each recipient of financial assistance from the Bank 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 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 Approved Plans and Specifications.** If, after the Department approves the plans and specifications, it becomes apparent that changes are necessary, a change order and justification must be submitted to the Department for review and approval. Any change in previously approved plans and specifications may not alter the basic purpose or effect of a Project. When possible, such a change order must be submitted well in advance of the proposed alteration. The Department must receive a written copy of all change orders. 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. After approval of the proposed alterations, copies of the approved change order 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 by the Department. All Project contractors must be bonded. The eligible applicant 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 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 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;
  - (d) Substantial Completion and Initiation of Operation Dates. Certificates of Substantial Completion and notification of Initiation of Operation dates will be submitted to the Department upon completion of Project construction; and
  - (e) Other Submittals. Any other Building phase submittals required as part of the loan documents will be submitted for the Department's approval.
- 7. Progress Payments.** Disbursements from the Construction Fund established by the Bank require approval by the Department and the Bank. Certified requests for payment 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.

**8. Retainage.** 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 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 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 must 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) Mitigation Measures. Eligible applicants required to implement 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.

**2. 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~~ January 1, 2009, 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.

#### BASIS STATEMENT FOR EMERGENCY RULEMAKING (AMENDMENTS)

The most recent amendments to this chapter were adopted under an emergency rulemaking and are effective for 90 days from the date they take effect. The Department of Environmental Protection (Department) and the Maine Municipal Bond Bank (Bank) find that immediate adoption of this rule by procedures other than those set forth in 5 MRSA 8052 and 8053 is necessary to avoid an immediate threat to public health, safety or general welfare because:

- The economy of the State of Maine is experiencing a recession with projected increases in unemployment to reach 10% in 2009;
- Maine's infrastructure has in excess of \$130M in maintenance, repair, and upgrading projects available for immediate bidding;
- A federal economic stimulus package will make significant additional funds available in early February to help meet this need with stipulations that some or all be expended within 90 days of Congressional authorization;
- Amendments to this chapter are needed to allow expenditures to occur in line with Congressional intent;
- The speed of this federal action on economic stimulus necessitates that rule amendments be adopted under emergency rulemaking procedures other than the filing requirements described in 38 M.R.S.A. §8056.

The Department and the Bank intend to initiate joint non-emergency rulemaking to adopt amendments to this chapter within the required timeframes.

Although APA requirements as written, other than the filing requirements at 38 M.R.S.A. §8056, cannot be followed due to the time frame, the Department and the Bank are providing for some public comment through publication of newspaper notice and publication on the web, following by a shortened public comment period. Staff of the Department and the Bank will consider comments received, and suggest any needed changes in response to comments to the Board of Environmental Protection (BEP) and the Bank Board of Trustees when the boards consider adoption of the rules.

AUTHORITY: 30-A M.R.S.A., §5959

EFFECTIVE DATE: October 27, 1990

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

AMENDED: May 5, 2007 – filing 2007-172 and 173 (a joint chapter of the  
Department of Environmental Protection and the  
Maine Municipal Bond Bank)

EFFECTIVE DATE OF EMERGENCY AMENDMENT: