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ENVIRONMENTAL PROTECTION AND

NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST

Financial Assistance Programs for Environmental Infrastructure Facilities

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

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

Authority: Water Conservation Bond Act of 1969 (P.L. 1969, c. 127); the Clean Waters Bond Act of 1976 (P.L. 1976, c.92); the Natural Resources Bond Act of 1980 (P.L. 1980, c. 70); the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181); the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.306); the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88); the Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act of 2003 (P.L. 2003, c. 162); the Water Supply Bond Act of 1981 (P.L. 1981, c.261); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:1A-1 et seq.; N.J.S.A. 58:10A-1 et seq.; N.J.S.A. 58:11A-1 et seq.; and N.J.S.A. 58:12A-1 et seq.; and future laws authorizing the Department of Environmental Protection to provide assistance for construction of environmental infrastructure projects, as to N.J.A.C. 7:22-2, 3, 5, 6, 7, 8, 9 and 10, and the New Jersey Environmental Infrastructure Trust Act (N.J.S.A. 58:11B-1 et seq.); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act Amendments (P.L. 1997, c.225); the Water Supply Bond Act Amendments (P.L. 1997, c.223); and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992 (P.L. 1992, c.88); the Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act of 2003 (P.L. 2003, c. 162) and future laws authorizing the New Jersey Environmental Infrastructure Trust to provide assistance for construction of environmental infrastructure projects as to N.J.A.C. 7:22-4, 5 and 9.

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

DEP Docket Number: 16-10-11

Proposal Number: PRN

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Submit written comments by March 19, 2011 to:

Alice A. Previte, Esq.
Attention: DEP Docket Number 16-10-11
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 4th Floor
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) and the Environmental Infrastructure Trust (Trust) request that commenters submit comments on disk or CD as well as on paper. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use of the electronically submitted comments. Submission of a disk or CD is not a requirement. Microsoft Word 6.0 or above is preferred. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The proposed readoption can be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules/notices.html>.

The agencies' proposal follows:

Summary

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

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the Financial Assistance Programs for Environmental Infrastructure Facilities rules, N.J.A.C. 7:22 were scheduled to expire on December 8, 2010. The filing of this proposal with the Office of

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Administrative Law on or before that date automatically extended the expiration date 180 days, until June 5, 2011, in accordance with the Administrative Procedure Act. (See N.J.S.A. 52:14B-5.1c.) The Department and the Trust have reviewed these rules and have determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Therefore, the Department and the Trust propose to readopt this chapter without change.

The New Jersey Environmental Infrastructure Financing Program was initially established as the Wastewater Treatment Financing Program in 1987. From 1987 through 1997, the Financing Program provided loans to a number of project types that are classified as wastewater treatment facilities, including sewage treatment plant improvements and expansions, new interceptor and collection sewers, sewer system rehabilitation (replacement and repair) and sludge management facilities. As substantial progress was made in addressing point source needs, the State began to expand the financing program to include various types of stormwater/nonpoint source management projects in 1997. In 1998, the Department and the Trust promulgated rules and developed the necessary program documents to implement the Drinking Water State Revolving Fund (SRF). The Drinking Water SRF was patterned after the wastewater program model, referred to as the Clean Water SRF. The Department administers both clean water and drinking water Federal SRF capitalization grants, monies available from the 1981 Water Supply Bond Act, the 1985 Wastewater Treatment Bond Act, the 1989 Stormwater Management and Combined Sewer Overflow Abatement Bond Act, the 1992 Green Acres, Clean Water, Farmland and Historic Preservation Bond Act, and the 2003 Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Bond Act and State appropriations

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through N.J.A.C. 7:22. The Trust administers several general loan funds and utilizes State monies available to it to establish debt service reserve funds to secure Trust bond issues.

N.J.A.C. 7:22 contains the rules of the Department and the Trust governing the financial assistance application and award procedures, as well as other related requirements, for project sponsors to qualify for State monies to finance environmental infrastructure projects, including wastewater treatment, water supply and stormwater/nonpoint source management facilities.

The rules proposed for readoption contain ten subchapters. Subchapter 1 is reserved. Subchapter 2, Matching Grant Procedures and Requirements, contains the rules that establish the matching State grants program for projects that received Federal Construction Grants for the planning, design or construction of wastewater treatment facilities.

Subchapters 3, 4, and 5 contain the rules governing the Environmental Infrastructure Financing Program. Subchapter 3, Fund Procedures and Requirements, establishes the procedures by which the Department provides loans to project sponsors for the construction of wastewater treatment, water supply and stormwater/nonpoint source management facilities. Subchapter 4, Environmental Infrastructure Trust Procedures and Requirements, establishes the procedures by which the Trust provides loans to project sponsors for the construction of environmental infrastructure facilities. Subchapter 5, Determination of Allowable Costs: Fund and Trust, sets forth policies for determining the allowability of costs for projects that are awarded Fund and Trust loans.

Subchapters 6 and 7 contain the rules governing the Pinelands Infrastructure Trust Financing Program. Subchapter 6, Pinelands Procedures and Requirements, establishes the procedures through which local government units apply for, and are awarded, funds from the

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Pinelands Infrastructure Trust Fund. Subchapter 7, Allowable Costs: Pinelands, sets forth policies for determining the allowability of costs for projects that are awarded funding through the Pinelands Infrastructure Trust Financing Program.

Subchapter 8, Minimum Standards of Conduct for Officers, Employees, Agents and Members of Authorities Participating in State Financial Assistance Programs for Environmental Infrastructure Facilities, establishes standards of ethical conduct and financial disclosure requirements for local government officers and employees of utilities that receive funding under these rules.

Subchapter 9, Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, establishes procedures for providing opportunities for socially and economically disadvantaged (SED) contractors and vendors to supply materials or services under contracts for the construction of environmental infrastructure facilities that are financed by the Department and the Trust. The subchapter governs socially and economically disadvantaged contractor participation requirements pursuant to this chapter and N.J.A.C. 7:22A (Sewage Infrastructure Improvement Act rules).

Subchapter 10, Environmental Assessment Requirements for State Assisted Environmental Infrastructure Facilities, establishes the requirements for environmental assessment that apply to project sponsors seeking financial assistance for the construction of environmental infrastructure facilities under N.J.A.C. 7:22 and 22A.

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Social Impact

The rules proposed for readoption are anticipated to have a positive social impact. The provisions of these subchapters establish a financing mechanism for the award of grants and loans to project sponsors for the construction of environmental infrastructure facilities, including equipment purchases and land acquisition projects, that help to prevent, reduce or treat pollutants so that they do not adversely impact groundwater, rivers, lakes and other waterbodies. In addition, these rules provide a mechanism to finance water supply facilities so that the water treatment systems provide safe public drinking water in conformance with the requirements of the Safe Drinking Water Act. The construction of these projects maintains and improves water quality and water-quality related activities (such as swimming, fishing and boating) and protects and enhances drinking water supplies. By maintaining and improving water quality and ensuring safe drinking water supplies, recreational activities and tourism within the State will be impacted in a positive manner.

Projects constructed with funds available through the Financing Programs are also required to make efforts to solicit participation from small business concerns owned and controlled by socially and economically disadvantaged individuals, including minority and women business enterprises. A positive social impact is expected to result by soliciting involvement from minority- and women-owned businesses and vendors to supply materials or services under contracts for the construction of environmental infrastructure facilities. Often these small businesses and vendors would otherwise not be involved or included in the contracting and subcontracting of services needed to construct these projects were it not for the requirements at N.J.A.C. 7:22-9.

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Economic Impact

The Department and the Trust anticipate that a number of positive economic impacts will result from the rules proposed for re adoption. The rules establish the framework to provide low-cost financial assistance to local government units and private entities to prevent or correct water quality problems and ensure the availability of safe drinking water supplies. Project sponsors will incur costs in order to meet the administrative, environmental and technical requirements of the rules.

However, the overall costs associated with the planning, design and construction of environmental infrastructure facilities will be reduced as a result of the financial assistance available through this chapter in comparison to the costs that a project sponsor would otherwise incur without the benefit of the State's financing programs. For every \$1 million borrowed through the current financing structure, borrowers in the traditional program can expect a savings of \$562,473 in interest costs over the 20-year loan term. Borrowers that qualify for the smart growth financing structure or principal forgiveness loans can expect even greater savings. Since the total project costs to be borne by the recipient will be reduced, the charges to be paid by the system's users, generally the public, will also be lower.

There will continue to be a minimal expense incurred by the Department and by project sponsors as a result of the reporting requirements of N.J.A.C. 7:22-9. The Department incurs expenses associated with two FTEs that review SED utilization plans, provide general guidance and reporting forms to project sponsors and monitor compliance. These are not new costs to the Department and the rules proposed for re adoption do not impose any new requirements on the

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project sponsor. Project sponsors will continue to incur costs associated with developing a SED utilization plan, completing reporting forms and appointing a compliance officer. In addition, the cost of constructing environmental infrastructure facilities may possibly be higher if the SED firms cannot perform for as low a price as a non-SED competitor. However, any additional costs incurred by the project sponsor to comply with N.J.A.C. 7:22-9 are offset by the positive economic impact that results from the 30 percent discounted financing available to borrowers.

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

Environmental Impact

The Department and the Trust anticipate that the rules proposed for readoption will have a positive environmental impact. Improperly planned or constructed environmental infrastructure facilities have the potential to have adverse impact on the environment and project area. The selection of sites, the sizing of facilities and the designation of service areas are all factors that determine the extent of the direct and indirect impacts on the environment. Wastewater treatment facilities, in particular, have the potential to induce adverse indirect impacts, such as growth in undesirable amounts or environmentally sensitive locations.

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

Federal Standards Analysis

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

The rules proposed for readoption do not exceed the standards imposed by Federal law. The Federal government provides monies to the State in the form of capitalization grants under the Environmental Infrastructure Financing Program, which is administered pursuant to the provisions of the rules contained within N.J.A.C. 7:22. Federal regulations at 40 CFR Part 35, Subpart K, establish requirements applicable to States for the implementation and management of State Revolving Funds (SRF). The regulations define eligible activities of the SRF and the types of projects that the SRF can finance, establish requirements that apply to recipients of SRF assistance, specify capitalization grant agreement requirements, environmental review requirements and financial requirements (including cash draw procedures, annual reports, audits and others). Extensive policy documents have also been issued by the US Environmental Protection Agency with respect to the SRF program, including the “Initial Guidance for State

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Revolving Funds” (January 1988), which better defines the applicability of the project-level requirements and elaborates on other Federal laws that impact the SRF program. Other requirements applicable to SRF recipients are also included as conditions to the award of the Federal capitalization grant agreements. N.J.A.C. 7:22 is designed to achieve conformance with these Federal requirements and to protect the use of public funds to ensure the self-perpetuating nature of the SRF.

Jobs Impact

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

Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4(a)2, the Department and the Trust have reviewed the rules proposed for re adoption and determined that they have the potential for positive impact upon the agricultural industry. The rules continue the State’s programs to address water pollution concerns, including those that impact agricultural operations, and to provide safe and plentiful

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water. The agriculture industry relies on clean and plentiful water to routinely manage and operate the farms and livestock activities in the State.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department and the Trust have determined that the rules proposed for re-adoption have the potential to impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Act. The purpose of this chapter is to provide financial assistance for the construction of environmental infrastructure facilities to eligible applicants. While the majority of the applicants will be local government units, some of the privately-owned water supply projects that may seek financial assistance are small businesses. However, application for financial assistance is voluntary. Only those businesses that choose to participate must comply with the rules.

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

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secure professional services, such as a licensed professional engineer, financial advisor and/or bond counsel.

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

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The rules proposed for readoption are expected to have a positive impact on Smart Growth in the State. The State's comprehensive Smart Growth Initiative focuses on several objectives, including making developed areas healthier, more appealing places - with cleaner air and water and more parks and open space; reducing the rate at which forests, open space, farmland and other undeveloped areas are being

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lost to development; and promoting and accelerating development in urban and suburban areas or other growth areas identified through sound planning. The rules proposed for readoption allow for the continuation of the State's financing programs to address water pollution concerns, including addressing the needs of those in the most urbanized areas of the State.

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

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4(a), the Department and the Trust have evaluated the rules proposed for readoption to determine what, if any, impact they will have on the affordability of housing. The rules do not impact the type or number of housing units, or increase or decrease the

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availability of affordable housing in any manner. The financing programs administered under the N.J.A.C. 7:22 do not directly implicate land use policies or development and, therefore, do not have any impact on the average cost of housing.

Smart Growth Development Impact

Pursuant to N.J.S.A. 52:14B-4(a), the Department and the Trust have evaluated the rules proposed for re-adoption to determine what, if any, impact they will have on smart growth development. As noted in the Smart Growth Impact above, the financing programs are integrated with the State Plan objectives in many ways. The program provides a lower interest rate to projects that help to redevelop urbanized centers, brownfield development areas, transit villages and transfer of development rights receiving areas. The program does not provide subsidies for additional capacity that a borrower may include in its project to serve more than the existing population. The rules proposed for re-adoption continue to encourage growth within Planning areas 1, 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:22.