

STATE OF MISSISSIPPI
WATER POLLUTION CONTROL
REVOLVING LOAN FUND
PROGRAM REGULATIONS

EFFECTIVE FOR PROJECTS FUNDED ON AND AFTER OCTOBER 1, 2000

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

OFFICE OF POLLUTION CONTROL

P. O. BOX 10385

JACKSON, MISSISSIPPI 39289-0385

<http://www.deq.state.ms.us>

PHONE 601/961-5171

FAX 601/961-5187

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTORY PROVISIONS	
A. SCOPE OF REGULATIONS	I-1
B. FEDERAL EQUIVALENCE AND CROSS-CUTTER REQUIREMENTS	I-1
II. PROGRAM REQUIREMENTS	
A. ELIGIBLE APPLICANT DETERMINATION	II-2
B. INTENDED USE PLAN	II-2
C. RESERVES	II-2
D. PUBLIC COMMENT AND REVIEW	II-2
E. WPCRLF USES	II-2
F. WPCRLF FINANCIAL ASSISTANCE	II-3
G. STATE CAPITALIZATION GRANT APPLICATION	II-4
H. WPCRLF PROGRAM ADMINISTRATION	II-4
I. RESPONSIBILITY	II-4
J. OTHER APPROVALS	II-4
III. PROJECT REQUIREMENTS	III-5
A. FACILITIES PLANNING	III-5
(1) PREPLANNING GUIDANCE AND CONFERENCE	III-5
(2) CONTENTS OF THE FACILITIES PLAN	III-5
(3) STATE ENVIRONMENTAL REVIEW PROCESS	III-6
(4) APPROVAL OF THE FACILITIES PLAN	III-7
B. APPLICATION FOR WPCRLF LOAN	III-7
(1) PREAPPLICATION GUIDANCE AND CONFERENCE	III-7
(2) CONTENTS OF AN APPLICATION PACKAGE	III-7
C. OFFER OF A WPCRLF LOAN	III-8
D. DESIGN	III-9
(1) GUIDANCE AND CONFERENCE	III-9
(2) PLANS, SPECIFICATION AND CONTRACT DOCUMENTS	III-9
(3) SUBMITTAL OF PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS	III-11
(4) APPROVAL OF PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS	III-11
E. CONSTRUCTION BIDDING AND LOAN AMENDMENT	III-12
F. CONSTRUCTION	III-12
(1) AWARDED CONSTRUCTION CONTRACTS AND PRECONSTRUCTION CONFERENCE	III-12
(2) OBSERVATION DURING CONSTRUCTION	III-13
(3) CONSTRUCTION DEFICIENCIES	III-13
(4) CHANGE ORDERS	III-14
(5) CONTRACTOR BANKRUPTCY OR DEFAULT	III-15
(6) DESIGN AND CONSTRUCTION PHASE SUBMITALS, APPROVALS AND ACTIONS	III-15
G. POST CONSTRUCTION PHASE	III-17
H. PAYMENTS TO WPCRLF LOAN RECIPIENTS	III-18
I. WPCRLF LOAN REPAYMENT REQUIREMENTS	III-20
J. ADMINISTRATIVE FEE	III-20

IV. APPENDICES

A.	DETERMINATION OF ELIGIBLE AND ALLOWABLE COSTS	A-1
B.	ENVIRONMENTAL REVIEW PROCESS	B-1
C.	PROCUREMENT REQUIREMENTS FOR WPCRLF LOAN RECIPIENTS	C-1
D.	MBE/WBE REQUIREMENTS	D-1
E.	DEBARMENT AND SUSPENSION	E-1
F.	WPCRLF LOAN RECIPIENT/DEPARTMENT DISPUTES PROCEDURES	F-1
G.	WASTE, FRAUD AND ABUSE	G-1
H.	LOAN RECIPIENT ACCOUNTING AND AUDITING REQUIREMENTS	H-1
I.	PROCUREMENT PROTEST PROCEDURES	I-1
J.	APPLICABLE STATE AND FEDERAL LAWS, REGULATIONS AND EXECUTIVE ORDERS	J-1
K.	DEFAULTS AND REMEDIES	K-1
L.	LOAN RECIPIENT/CONTRACTOR CLAIMS AND DISPUTES	L-1
M.	DEFINITIONS	M-1

I. INTRODUCTORY PROVISIONS

A. Scope of Regulations.

These regulations, adopted pursuant to Sections 49-17-81 through 89, Mississippi Code of 1972, as amended, shall govern the Mississippi Water Pollution Control Revolving Loan Fund (WPCRLF) Program beginning in federal fiscal year 2001. These WPCRLF regulations may be superceded by the WPCRLF loan agreement and repayment agreement when such a variance is determined prudent by the Executive Director and when not in conflict with any state or federal law, regulation, or executive order.

B. Federal Equivalence and Cross-Cutter Requirements.

Federal regulation 40 CFR 35.3135(f) requires that “equivalency” projects funded under the State Water Pollution Control Revolving Fund must comply with sixteen specific requirements of Title II (the EPA Construction Grants Program) of the Federal Water Pollution Control Act. “Equivalency” projects are generally defined as wastewater projects constructed with funds which equal the amount of the federal grants to the State for this program.

Similarly, 40 CFR 35.3145 requires that the State must also require all recipients of funds which equal the amount of the federal grants to the State to comply with certain other “cross-cutting” federal authorities. Cross-cutting authorities are federal laws and authorities that apply to these projects independent of the federal Water Pollution Act and subsequent amendments.

Since the beginning of this program in FY-89 and continuing through FY-00, the Department has required that all projects receiving loan funding meet federal equivalency and cross-cutter requirements, and has banked the amount of these loan awards in excess of the federal capitalization grants toward meeting equivalency and cross-cutter requirements of future federal capitalization grants. The Department has determined that the amount of loans awarded in excess of the federal capitalization grants through FY-00 should equal or exceed the federal capitalization grants expected for this program from FY-01 and after. Accordingly, the Department has determined that projects funded in FY-01 and after will not be required to meet all federal equivalency and cross-cutter requirements.

These regulations apply to projects that receive loan awards in FY-01 and after. Thus, almost all of these federal equivalency and cross-cutter requirements are excluded from these regulations. However, certain of these requirements have been retained in order to secure a reasonable assurance that the Department funds projects that are environmentally sound, that the loan recipient can construct, operate, and maintain the project and repay the loan, that these public funds are adequately protected and expended only for their intended purpose, and as otherwise required by EPA.

II. PROGRAM REQUIREMENTS

A. Eligible Applicant Determination.

To be eligible for financial assistance, an applicant must meet the definition of an eligible applicant as described in Appendix M of these regulations, as determined by the Department.

B. Intended Use Plan (IUP).

In each fiscal year for which funds are available in the WPCRLF, the Commission will establish and publish an IUP in conformance with federal requirements. The IUP includes a mechanism developed by the Department to prioritize potential projects for uses of the available funds. The IUP describes the intended use of the funds in the WPCRLF and how the uses support the goals of the program.

C. Reserves.

The Commission may reserve certain percentages of the State's federal Title VI allotment from each fiscal year for administration of the WPCRLF program and for planning under Sections 205(j) and 303(e) of the Act, consistent with the Act and state law. The Commission may also charge administrative fees to loan recipients for administration of the WPCRLF program, as established in each year's IUP.

D. Public Comment and Review.

In accordance with the Act, the Commission will establish and provide for public comment on and review of the annual IUP. The Department may take into consideration any comments prior to adoption of the annual IUP. After adoption by the Commission, modification to these documents may be adopted by the Commission as provided for in the IUP without further public comment and review.

E. WPCRLF Uses.

The fund may be used for the following purposes, or as established in the IUP, for a given fiscal year.

- (1) To make loans to eligible applicants on the condition that:
 - (a) Such loans are made at or below market interest rates, at terms not to exceed 20 years after project completion, or for such period as may be allowed by federal law.
 - (b) The loan applicant shall establish a dedicated source of revenue for repayment of loans.
 - (c) The fund shall be credited with all payments of principal and interest on all loans.

- (d) The loan applicant is in compliance with WPCRLF regulations.
- (2) Under the conditions in (1) above, to refinance the debt obligation of loan recipients when such debt obligations were incurred and construction began on or after such date as established in the IUP for a given fiscal year, and where such projects have complied with the WPCRLF Regulations. The loan applicant agrees that, by pursuing such a refinancing arrangement, it does so at its own risk and thereby relieves the Commission and Department of all responsibility and liability should costs later be determined unallowable for any reason or should funding not become available for any reason.
- (3) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of such bonds will be deposited in the WPCRLF and provided such authority is established in state law.
- (4) For the reasonable costs of administering the WPCRLF program and conducting activities under Title VI of the Act.
- (5) To earn interest on WPCRLF accounts.

F. WPCRLF Financial Assistance.

- (1) The WPCRLF has been established to provide loans to eligible loan applicants for the purpose of funding:
 - (a) Construction of publicly owned treatment works as defined in Section 212 of the Act.
 - (b) Implementation of nonpoint source pollution management programs established under Section 319 of the Act.
 - (c) Development and implementation of estuary conservation and management plans under Section 320 of the Act.
- (2) Basic financial assistance requirements are as follows:
 - (a) Section 212 projects shall be included on the fundable or planning portion of the Priority List in the current year's IUP.
 - (b) Terms of any financial assistance shall be as established in the IUP for the projects to be funded in each fiscal year and shall be further established in the loan agreement.

- (c) The loan applicant or recipient shall comply with the requirements of the Act, as amended, all applicable state laws, requirements, regulations, and the annual IUP.
- (d) The applicant must not be in violation of any provisions of a previously awarded WPCRLF, WPCELF or WPALP loan agreement.
- (e) The applicant must not be in arrears in repayments to the WPCRLF, the WPCELF, the WPALP or on any other loan.
- (f) Funds will not be disbursed to loan recipients until the loan recipient has entered into a WPCRLF loan agreement with the Department.
- (g) The WPCRLF program will provide assistance only to projects that are consistent with any water quality management plans developed under sections 205(j), 208, 303(e), 319 and 320 of the Act as applicable.

G. State Capitalization Grant Application.

After the Commission adopts each annual IUP, the Executive Director may submit the IUP with an application to the appropriate federal agency for any available federal funds.

H. WPCRLF Program Administration.

The WPCRLF Program will be administered by the Commission acting through the Department, in accordance with the Act, applicable federal regulations, state law and these regulations.

I. Responsibility.

The applicant/loan recipient is responsible for compliance with all applicable state and federal laws and regulations, and for the proper planning, design, construction, operation, maintenance, replacement, performance, and fiscal integrity of the project. The Department's approval of any document does not relieve the applicant/loan recipient or any others of any liabilities or responsibilities. Department review and/or approval of any document is for loan eligibility/allowability purposes and does not establish or convey any such liability or responsibility.

J. Other Approvals.

The applicant/loan recipient must obtain approval of all necessary documents from each state, local, and federal agency having jurisdiction over or funding in the project, if so required by that agency.

III. PROJECT REQUIREMENTS

All water pollution control projects funded by the WPCRLF must comply with the following requirements. Non-point source pollution control projects and estuary management projects must comply with these requirements to the extent described in the loan application and loan agreement, as established by the Department.

A. Facilities Planning.

(1) Preplanning Guidance and Conference.

The Department will provide facilities planning guidance to the potential applicant and/or its engineer. The potential loan applicant and/or its engineer should attend a preplanning conference with the Department as early in the planning process as practical. During the conference the staff will provide information on the required facilities planning documents necessary to comply with these regulations. All facilities plans must be prepared by or under the responsible supervision of a professional engineer registered under Mississippi law.

(2) Contents of the Facilities Plan.

The facilities plan must comply with the Department's guidance, including updates, Appendices A, B and J of these regulations and any other requirements of the Department pursuant to review of the facilities plan. The facilities plan must generally contain the following, as determined appropriate by the Department:

- (a) A description of the existing water pollution control facilities, if any, owned by the applicant.
- (b) A description of the existing and/or future water pollution problem or threat to be addressed by the proposed project.
- (c) Documentation of sufficient flow monitoring and/or estimation to quantify wastewater, infiltration and inflow, applicable effluent limitations, and any other technical data necessary to provide the basis for preliminary engineering design of the project.
- (d) A description of the proposed facilities, costs, location, and how the proposed facilities will address the existing and/or future water pollution problem or threat identified in the plan.
- (e) A demonstration that minorities within the jurisdictional boundaries of the loan applicant will not be systematically excluded from the benefits of the proposed projects.

- (f) A specific indication that each applicable intergovernmental review agency has been contacted regarding the proposed project, any adverse comments from the applicable intergovernmental review agencies, and an indication of all necessary permits and clearances that must be obtained for this project. Intergovernmental review agencies are as follows:
 - (i) Mississippi Department of Archives and History (for archaeological/cultural resources review under the State Antiquities Law)
 - (ii) Mississippi Department of Wildlife, Fisheries, and Parks-Natural Heritage Program (for vegetative/wildlife review under the Nongame and Endangered Species Conservation Act.)
 - (iii) U.S. Army Corps of Engineers, Regulatory Functions Branch (for Wetlands, Section 10, and floodplain impact review)
 - (iv) Mississippi Department of Marine Resources (Jackson, Harrison, and Hancock County Projects only; for Mississippi Coastal Program and applicable Mississippi law review)
 - (v) U.S. Forest Service (projects located in a federally designated Wild and Scenic River Basin only, for federal Wild and Scenic Rivers Act compliance)
- (g) For projects defined under Section 212 of the Act, a comparative evaluation of the no-action alternative and the proposed alternative, which accounts for beneficial and adverse consequences that each alternative would have on existing and future environmental resources, as required by Appendix B.
- (h) A financial capability summary using planning level cost estimates.
- (i) For projects defined under Section 212 of the Act, (1) a copy of the notice to the public of the proposed project and for the opportunity to comment on alternatives and to examine environmental review documents, including the facilities plan and any comments, permits, or clearances from the intergovernmental review agencies, (2) a copy of any comments received from the public, and (3) a description of how all comments were addressed.
- (j) For projects defined under Section 212 of the Act and determined by the Department to be controversial, (1) a copy of the public hearing notice published in a local newspaper of general circulation providing at least a 30 day advance notice of a public hearing to be held by the loan applicant, (2) a copy of the transcript of the public hearing and (3) a description of how all comments were addressed.

(k) Calculations showing the necessary user charges for the project using planning level cost estimates.

(3) State Environmental Review Process.

For projects defined under Section 212 of the Act, prior to approval of the facilities plan, the Department will complete the appropriate portions of the state environmental review process described in Appendix B of these regulations, based upon information provided in the facilities plan.

(4) Approval of Facilities Plan.

The Department will approve the facilities plan after completing any applicable state environmental review process and after determining that all facilities planning requirements appear to be met.

B. Application for WPCRLF Loan.

(1) Preapplication Guidance and Conference.

The Department will provide a loan application package to the potential loan applicant and/or its engineer. The potential loan applicant and/or its engineer may request a preapplication conference with the Department as early in the application process as practical.

(2) Contents of an Application Package.

Forms provided by the Department must be used and may not be altered. The WPCRLF loan application may request assistance only for costs that are allowable in accordance with Appendix A of these regulations and may include a construction contingency, as determined by the Department, in the project budget. The application package must conform to these regulations, and must include the following:

- (a) A WPCRLF loan application form with original signature.
- (b) A draft user charge system and ordinance.
- (c) All proposed or executed contracts for all administration, legal, facilities planning, design, testing, construction observation and any other services. An allowable cost certification must be submitted with each executed contract.
- (d) A procurement certification from the loan applicant and the loan applicant's legal counsel.
- (e) A financial capability summary using the most recent cost estimates, if different from planning estimates.

- (f) Copies of all required intergovernmental review agency permits/clearances, or copies of letters from the appropriate intergovernmental review agencies which state that no permits or clearances are required.
- (g) A legal certification from the loan applicant and the loan applicant's legal counsel.
- (h) A certified copy of a resolution by the loan applicant's governing body which 1) authorizes the submission of the application and 2) designates an authorized representative or office to make application for assistance and to sign documents, on behalf of the applicant, required to undertake and complete the project.
- (i) A copy of all existing or proposed interlocal agreements related to the project, if applicable. Such agreements must be executed by all appropriate parties and must be approved by the Department prior to loan offer.
- (j) All waste disposal permit applications, if not previously submitted.
- (k) All other permits, forms, documents, and supporting information required by the Department.

C. Offer of a WPCRLF Loan.

- (1) Upon determination by the Department that (a) all applicable requirements of the WPCRLF loan application have been met, (b) the facilities plan has been approved, (c) the project is on the current year priority list and (d) funds are available for the amount of the WPCRLF loan application, the Executive Director will execute and transmit a WPCRLF loan offer to the loan recipient. In addition to the estimated allowable project costs as described in Appendix A of these regulations, the loan offer may include a construction contingency, as determined by the Department, in the project budget.
- (2) Upon receipt of the WPCRLF loan offer, the loan recipient must execute and return it to the Department, along with a certified copy of a resolution by the loan recipient's governing body authorizing acceptance of the loan offer, within the time frame established in the WPCRLF loan offer. The loan offer becomes void if not executed and returned within the time frame specified, unless extended by the Executive Director.

D. Design.

- (1) Guidance and Conference.

The Department will provide design guidance to the loan applicant/recipient and/or its engineer, who may request a predesign conference with the Department.

(2) Plans, Specifications and Contract Documents.

- (a) The engineer must prepare plans, specifications, and contract documents on all appropriate elements of the project. These documents must conform to Department requirements, to Appendices A, B, C, D, E, and J of these regulations, and to the technical requirements of the Departmental document “State of Mississippi Requirements for the Design of Municipal Wastewater Treatment Facilities,” or its successor.

Plans, specifications, and contract documents must also conform to such contract language, conditions, and forms as may be required by the Department.

(b) Contents.

In addition to the above, the plans, specifications, and contract documents must minimally contain the following:

- (i) Provisions assuring compliance with these regulations and all relevant federal and state laws.
- (ii) Forms by which the bid bond, performance bond and payment bonds will be provided.
- (iii) A contractor’s assurance which must warrant compliance by the contractor with all applicable federal laws and regulations and all laws and regulations of the State.
- (iv) Provisions for the applicant to retain a certain percentage of the progress payments otherwise due to the contractor, in accordance with state law.
- (v) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage.
- (vi) Provisions giving authorized representatives of the loan recipient access to all construction activities, books, records, and documents of the contractor for the purpose of observation, audit and copying during normal business and/or working hours.
- (vii) Provisions for compliance with any applicable Minority Business Enterprise/Women Business Enterprise (MBE/WBE) requirements as described in Appendix D of these regulations.
- (viii) Provisions for change orders.

- (ix) Provisions for liquidated damages.
- (x) Those conditions, specifications, and other provisions set forth or required by the Department.

(c) Related submittals.

The following documents, if applicable to the project, must also be submitted by the deadline in the loan agreement for submission of the plans, specifications, and contract documents, or at other times as may be required by the loan agreement:

- (i) A copy of the issued NPDES permit or the state operating permit, if required.
- (ii) A copy of the issued solid waste disposal permit, if required.
- (iii) Written waivers from all adjoining property owners when it is not possible to provide required buffer zones, if the project includes wastewater or sludge treatment facilities.

(iv) Real Property.

- (1) For all loan ineligible real property and easements (including power and other utilities), completion of the applicable and appropriate requirements of state law regarding acquisition of real property, and certification forms from both the loan applicant and the title counsel which indicate that all such loan ineligible real property and easements for the entire project have been secured by at least one of the following actions:

- Clear title.
- Execution by both parties of a bonafide option to purchase or a lease valid for the expected life of the project.
- Initiation of condemnation by filing such action in court.

Prior to advertisement for construction bids, clear title certification forms for all real property and easements from both the loan applicant and the title counsel must be submitted for all loan ineligible real property and easements (including power and other utilities).

(2) For all loan eligible real property, completion of the appropriate requirements of state law regarding acquisition of real property, an appraisal, and a written request to the Department for approval of the purchase price of all loan eligible real property. Prior to advertisement for construction bids, the loan applicant must secure approval of the purchase price by the Department, must complete purchase of all loan eligible real property and easements, and must submit clear title certificates from the loan recipient and title counsel for all such loan eligible property.

(3) Submittal of Plans, Specifications and Contract Documents.

By the date specified in the loan agreement the applicant must submit complete plans, specifications and contract documents for the entire project to the Department.

(4) Approval of Plans, Specifications and Contract Documents.

The Department will approve the plans, specifications, and contract documents upon determining that these documents:

- (a) Appear to conform to the requirements of these regulations,
- (b) Appear to be approvable pursuant to a technical review by the Department, and
- (c) Appear to be consistent with the approved facilities planning documents and environmental determinations required by these regulations.

E. Construction Bidding and Loan Amendment.

(1) Within the time frame established in the loan agreement and upon a) approval of the plans, specifications, and contract documents by the Department, b) issuance of any other permits or clearances required for the project, and c) submittal of clear title certificates from the loan recipient and title counsel for all real property and easements required for the project, the loan recipient must then advertise the project for construction bids. All procurement actions by the loan recipient must comply with state law and these regulations.

(2) Upon receipt of construction bids, the loan recipient must then submit a) the completed MBE/WBE documentation as required by Appendix D of these regulations, b) the completed bid package, c) all necessary executed contracts and amendments as described in Section III.B(2)(c), and d) a loan agreement amendment request (consistent with as-bid construction costs, a construction

contingency as determined by the Department, and any professional services contracts and amendments) to the Department within the time frame established in the loan agreement.

- (3) Upon the receipt of the completed MBE/WBE documentation, bid package, professional services contracts and amendments, and loan agreement amendment request from the loan recipient, the Department will review these documents, determine whether any request for an increased loan amount is justified and allowable and that funds are available and, after determining that all documents are approvable, will transmit to the loan recipient approval to execute the construction contracts.
- (4) After receipt, review and approval of the loan agreement amendment request, the Department will prepare and transmit an amended WPCRLF loan offer to the loan recipient. The loan offer will include in the project budget (a) the approved as-bid amounts for construction contracts, (b) the amounts for professional services contracts, and (c) a construction contingency as determined by the Department. Upon receipt of the amended WPCRLF loan offer, the loan recipient must execute and return it to the Department within the timeframe established in the offer letter. After execution of the amended WPCRLF loan offer, the WPCRLF loan amount may not be increased except for funding of a subsequent portion of a segmented project as identified in the Intended Use Plan for a later fiscal year. Any increased project costs in excess of the amended WPCRLF loan amount must be paid by the loan recipient from sources other than WPCRLF loan funds.

F. Construction.

- (1) Awarding Construction Contracts and Preconstruction Conference.

Upon receipt of the approval to execute the construction contract and issue the notice to proceed, the loan recipient must do so and transmit a copy of the executed construction contract and the notice to proceed to the Department within the time frame specified in the loan agreement.

The loan recipient is responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertisement for bids and awarding the construction contracts. The plans, specifications, and executed contract documents must not vary from those approved by the Department.

The loan recipient may arrange and hold a preconstruction conference and must allow attendance and participation by the Department if such a conference is held.

- (2) Observation During Construction.

During all times that construction work is being performed, the loan recipient must provide for full-time observation of the project by the engineer or his staff and must require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the WPCRLF loan agreement and the approved plans, specifications, contract documents and approved change orders.

Less than full-time observation may be allowed when properly justified and approved by the Department.

The Department is authorized to observe the construction of any project at any time for compliance with the terms of the loan agreement and to determine if the loan recipient and engineer are assuring that plans, specifications and contract documents are being followed. Such observation will not subject the Department to any legal action for claims, damages or any other liability. Such observation will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents or the engineer from determining compliance with the requirements of the contract documents or the loan recipient from insuring compliance with the contract and the terms of the loan agreement.

The contractor, engineer, and the loan recipient must furnish the Department with every reasonable opportunity and means for determining whether the loan recipient and engineer are assuring that the work is in accordance with the requirements of the approved plans, specifications and contract documents. The Department is authorized to observe and require submission by the loan recipient of daily logs, record drawings, file notes, and any other documents prepared in relation to the WPCRLF funded project.

(3) Construction Deficiencies.

- (a) In the event that it appears to the Department that the loan recipient and engineer are not assuring that the construction work, materials, equipment or supplies are in conformity with approved plans and specifications, and contract documents, the Department may determine these items are unallowable for WPCRLF loan participation, unless the loan recipient takes action, through the engineer if applicable, in the manner provided for in the construction contract to correct any such deficiencies.
- (b) The Department may immediately withhold WPCRLF loan payments for such time that it appears that the loan recipient and engineer are not assuring that construction work, materials, equipment or supplies are in accordance with the approved plans, specifications and contract documents, and may require the loan recipient to repay any previously paid amounts related to such work within 30 days of such notification.

(4) Change Orders.

(a) General.

In the event a determination is made by a loan recipient after a construction contract is executed that changes or modifications to the original contract are necessary or would better serve the purpose of the loan recipient, the loan recipient may, at its discretion, execute such change orders pertaining to the construction that are necessary under the

circumstances, as provided in the contract documents and when in accordance with state law.

Change orders must not change, vary, or alter the basic purpose or effect of the project. Change orders must be technically adequate, the costs must be necessary and reasonable, and eligible/ineligible costs must be appropriately separated.

(b) Change Order Submittals.

After completion of the change order negotiation process and/or claims resolution between the loan recipient and the contracting party, an executed change order must be submitted to the Department for review and approval, in order to obtain a WPCRLF loan eligibility/allowability determination.

If any change order is submitted to the Department that is not complete and executed by the loan recipient, the contracting party, and the engineer if appropriate, the Department may return such change order without review. However, unilateral change orders executed by the loan recipient, and the engineer if appropriate, and identified as such, that are issued in accordance with the contract documents may be submitted to the Department for review and approval, in order to obtain a WPCRLF loan eligibility/allowability determination.

The loan recipient may submit a complete change order which has been executed conditional upon a WPCRLF loan eligibility/allowability determination by the Department.

If possible, approval of a change order should be secured from the Department before the work is started. Approval may also be secured after the work is started; however, the loan recipient must bear the cost if the work is later determined to be ineligible or unallowable.

When the eligible cost of a project will be significantly reduced by a change order(s), the Department may issue an amendment to the loan agreement decreasing the loan amount, and the loan recipient must execute the amendment within the time frame established by the Department.

(c) Department Review.

In order to allow the Department to perform a technical and loan allowability review, requests for change order approvals must conform to Department guidance, requirements and regulations.

(d) Time Extensions.

Change orders which include time extensions exceeding 30 days beyond the original contract completion date, and/or documentation that the loan recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required, must be submitted to the Department as specified in Section III.F(6)(i) of these regulations. Justification for contract time extensions included in a change order must be prepared, but need not be submitted to the Department unless the total time extensions for the contract exceed 30 days after the original contract completion date, in which case justification for all time extensions must be submitted to the Department for an allowability determination.

(5) Contractor Bankruptcy or Default.

In the event of a contractor bankruptcy or default, any proposed agreements with the bonding company (other than the bonding company serving as general contractor or hiring another contractor acting as their agent) must be submitted for a WPCRLF loan allowability determination by the Department prior to execution. If the loan recipient determines that re-award of the construction contract or a portion thereof is necessary due to contractor bankruptcy or default, such proposed re-award contracts must be submitted for a WPCRLF loan allowability determination by the Department prior to execution. The loan recipient will be responsible for assuring that every appropriate procedure and incidental legal requirement are observed in advertising for bids or otherwise re-awarding a construction contract, if this course of action is taken.

(6) Design and Construction Phase Submittals, Approvals, and Actions.

The following submittals, approvals, and actions will be required during the design and construction phase of the project. The Department may establish additional time frames within the loan agreement.

- (a) By the date established by the Department in the loan agreement, the loan recipient must submit a complete set of plans, specifications and contract documents to the Department.
- (b) Within 90 days after approval of the plans, specifications, and contract documents by the Department, (1) all construction related contracts must be advertised for bids and proof of such advertisement must be submitted, (2) all local funds necessary for the project must be secured and proof of such local funds must be submitted, and (3) clear title certificates from the loan recipient and title counsel for all loan eligible real property must be submitted.

- (c) Within 120 days after approval of the plans, specifications, and contract documents by the Department, the loan recipient must receive bids on all construction contracts.
- (d) Within 14 days after receipt of bids, the loan recipient must submit all MBE/WBE and related documents.
- (e) Within 21 days after receipt of bids, the loan recipient must submit all bid packages.
- (f) Within 60 days after receipt of bids, the loan recipient must execute all construction contract documents, must submit a copy of all executed contract documents, and must issue and submit a copy of the notice to proceed on all such contracts.
- (g) By the date established by the Department in the loan agreement (which is based upon 90% of construction contract time) the loan recipient must enact the approved user charge system and submit a copy of the enacted ordinance to the Department.
- (h) Within 10 days after construction completion of each construction contract, the loan recipient must notify the Department of construction completion.

The Department will perform a final construction observation within 30 days after the current construction contract completion date, unless further delayed by the Department pursuant to review of the loan recipient's request and justification for such delay. Should the Department decide that the construction completion is being unreasonably delayed, a final construction observation may be immediately performed by the Department. The final construction observation by the Department is only for the purpose of determining final loan allowable costs.

- (i) Within 30 days after the current construction contract completion date, all change orders which include time extensions exceeding 30 days beyond the original contract completion date, and/or documentation showing the loan recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required, must be submitted to the Department for an allowability determination.
- (j) Within 30 days after the Department's final construction observation, the loan recipient must submit: final loan payment requests, approvable summary change orders for all construction contracts; record drawings for the entire project funded in whole or in part with WPCRLF funds; the engineer's certification of compliance with plans, specifications, and contract documents; final professional services contract amendments, if any; and all other administrative forms and documents required by the loan agreement. **Loan payment requests submitted after this date are not allowable, regardless of when the costs were incurred.**

- (k) Any other submittals or actions required by the loan agreement must be performed when required and are subject to review and approval by the Department.

G. Post Construction Phase.

- (1) Following final payment of WPCRLF loan funds to the loan recipient, or upon expiration of any deadlines established by the loan agreement or the Department, the Department or other designated parties may perform an audit of the WPCRLF loan project for the purpose of determining compliance with the WPCRLF loan agreement and to determine final allowable costs, payments made to date, and any additional payments due the loan recipient or repayment due the Department.
- (2) Upon completion of the WPCRLF audit (or if an audit is not performed, following approval of the final payment request of WPCRLF loan funds to the loan recipient or upon expiration of any deadlines established by the loan agreement or the Department), the Department will transmit to the loan recipient a copy of the audit report, if performed, and a final determination of allowable costs and payments due the loan recipient or repayments due the State. The final determination will also establish a 30-day appeal deadline, as required by (3) below, and will require repayment of any overpayments with an interest penalty to begin accruing on the appeal deadline.
- (3) Within 30 days after the date of the above final determination, the loan recipient may submit a written appeal of the final determination, including a written justification of the reason for the appeal, and supporting documentation for any disputed costs of the final determination. Otherwise, the final determination of allowable costs will become the final allowable costs for purposes of WPCRLF loan payments and the WPCRLF loan agreement.
- (4) Should an appeal be submitted, the disputes procedures established in Appendix F of these regulations will be followed in order to resolve the dispute and establish the final allowable costs.
- (5) Upon expiration of the final determination appeal period, or upon resolution of a dispute of the final determination, the Department will transmit to the loan recipient a final WPCRLF loan agreement between the loan recipient, the Department, and the State Tax Commission. The loan recipient must execute and submit the final loan agreement to the Department within the deadline established by the Department.
- (6) Upon receipt of an executed final loan agreement from the loan recipient, the Department will transmit the final loan agreement to the State Tax Commission for execution and return to the Department.
- (7) Upon receipt of the executed final loan agreement from the State Tax Commission, the Department will transmit a copy to the loan recipient.

Repayment of the WPCRLF loan will commence under the terms of the executed final loan agreement.

- (8) If the project fails to perform properly at any time within the first year after the final construction observation performed by the Department, the loan recipient must immediately notify the Department of the reasons for lack of performance, submit an approvable schedule of corrective actions, and implement the corrective actions in accordance with the approved schedule.

H. Payments to WPCRLF Loan Recipients.

Payments from the WPCRLF may be made under the following conditions:

- (1) Payments may only be requested by and made to loan recipients, in accordance with the WPCRLF loan agreement and the loan recipient's executed and approved contracts for eligible and allowable services and construction, for work performed within the project scope and budget period.
- (2) Payments may be requested no more often than on a monthly basis, except as allowed by the Department.
- (3) The loan recipient must deduct from all WPCRLF payment requests the amount of funds provided or to be provided from all other state and federal agency funding sources for allowable WPCRLF project costs.
- (4) Payment requests must be submitted by the loan recipient to the Department and must include the following:
 - (a) WPCRLF payment request form.
 - (b) Cumulative invoices, in accordance with the contracts for such work, for all costs for which payment is requested.
 - (c) Any other documents required by the loan agreement.
- (5) The timing of WPCRLF payments to the loan recipient will be as follows, provided the loan recipient is in compliance with the requirements of these regulations and provisions of the WPCRLF loan agreement:
 - (a) Upon execution of the loan agreement all incurred facilities planning and application costs may be requested and paid. No further payments may be requested and paid except as allowed below.
 - (b) Payments for eligible land may be requested and paid immediately after loan agreement execution, if the Department has approved the purchase price and the loan recipient has submitted a bonafide option to purchase.

- (c) Upon (1) approval of all plans, specifications, and contract documents, and (2) submittal of clear site certificates from the loan recipient and title counsel for all loan eligible and ineligible real property, costs incurred to date in accordance with the contracts for administration, engineering, legal, and any other professional services may be requested and paid. No further payments may be requested and paid except as allowed below.
 - (d) Upon receipt by the Department of all executed construction contract documents and notices(s) to proceed, costs incurred in accordance with the contracts for administration, engineering, legal, and any other professional services may be requested and paid.
 - (e) Payments for allowable construction work may be requested and paid based upon in-place work or delivered materials and equipment as specified in the construction contract and as supported by invoices and verified as accurate by the engineer and loan recipient, less any retainage.
 - (f) No more than 95% of all construction phase costs will be paid until submission of the determination of construction completion; performance of the final construction observation by the Department; submission of the final pay request; submission of approvable summary change orders on all construction contracts; submission of record drawings on all construction contracts; submission of the engineer's certification of compliance with plans, specifications and contract documents; submission of loan recipient's resolution of acceptance of each construction contract; submission of final professional services contract amendments, if any, and compliance with all other applicable provisions of the WPCRLF loan agreement. Upon completion of these actions, the remainder of all costs may be paid.
- (6) Any payments made to the loan recipient which are at any time determined by the Department to be for costs not in accordance with the WPCRLF loan agreement, for ineligible or unallowable costs, or for costs apparently related to waste, fraud, abuse or illegal acts under state or federal law, must be repaid to the WPCRLF fund within 30 days of such notification by the Department. Interest may be charged on such delinquent repayments after expiration of the 30-day period at a rate of ten (10) percent per annum, compounded monthly. Alternatively, the Department may withhold such amounts including interest from subsequent payment requests.

I. WPCRLF Loan Repayment Requirements.

All WPCRLF loan repayments are subject to the following requirements:

- (1) Interest on amounts paid to the loan recipient will commence on the latest original construction contract completion date, or one year after initiation of the earliest construction contract, whichever occurs first.

- (2) The amount of interest accrued between the date established in (1) above and the initiation of the repayment process will be added to the final allowable project costs to determine the principal amount to be repaid by the loan recipient.
- (3) The term of the loan repayment will be from the time of transmittal of the final loan agreement to the loan recipient to the end of the term as established in the IUP under which the project is funded, or a reduced term if requested by the loan recipient.
- (4) Repayments shall be made on a monthly basis and shall commence when determined by the Department. Repayments shall be made through monthly withholding of sales tax reimbursements or homestead exemption tax loss reimbursements in accordance with state law, if the amount of such reimbursement is sufficient to make the monthly payment. Otherwise, repayment shall be made by submission of monthly payments directly to the State.
- (5) The repayment interest rate and the frequency of interest compounding will be as established in the IUP under which the project is funded.

J. Administrative Fee.

An administrative fee in the amount of five percent (5%) of the final loan principal amount will be collected from the loan repayment amounts to defray the costs of administering the WPCRLF program. Beginning with the initiation of the repayment process and until such time that the total administrative fee is collected, the interest portion of each repayment will not be charged, and, in lieu of the interest portion, an equal amount of the repayment will be collected as the administrative fee.

APPENDIX A

Determination of Eligible and Allowable Costs

CONTENTS

	<u>Page</u>
A. General	A-2
B. Professional Services	A-3
(1) Allowable	A-3
(2) Unallowable	A-4
C. Construction	A-4
(1) Allowable	A-4
(2) Unallowable	A-6
D. Equipment, Materials, and Supplies	A-6
(1) Allowable	A-6
(2) Unallowable	A-8
E. Change Orders	A-9
F. Claims	A-10
(1) Allowable	A-10
(2) Unallowable	A-10
G. Mitigation	A-11
(1) Allowable	A-11
(2) Unallowable	A-11
H. Publicly Owned Onsite Systems	A-11
(1) Allowable	A-11
(2) Unallowable	A-12
I. Real Property and Existing Improvements	A-12
(1) Allowable	A-12
(2) Unallowable	A-13
J. Miscellaneous Costs	A-13
(1) Allowable	A-13
(2) Unallowable	A-16
K. Project Income From Bid Bond Forfeitures, Liquidated Damages, and Interest on WPCRLF Loan Payments	A-17

A. General

Eligible costs are those costs in which WPCRLF loan participation is authorized pursuant to applicable statute. Allowable costs are eligible costs that meet the following general criteria in addition to any specific identification as an allowable cost within Appendix A:

- (1) Are necessary and reasonable for the proper and efficient administration and construction of the project, be allocable to the project, and not be a general expense required to carry out the overall responsibilities of the loan recipient.
- (2) Are authorized or not prohibited under state or local laws or regulations.
- (3) Conform to any limitations or exclusions set forth in state laws or other governing limitations as to types or amounts of cost items.
- (4) Are consistent with policies, regulations, and procedures that apply uniformly to both state assisted and other activities of the loan recipient.
- (5) Are accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.
- (6) Are not allocable to, or included as, a cost of any other federally or state financed program in either the current, prior, or future period.
- (7) Are determined allowable by the Department after review of necessary books, records and other documents related to the costs. Failure to cooperate with the Department regarding access to project records or refusal to provide such records when requested by the Department may result in costs being determined unallowable for WPCRLF participation.
- (8) Are within the scope and budget period of the project as described in the loan agreement.
- (9) Are determined without regard to any previous federal grant, WPALP, WPCRLF or WPCRLF loan funding provided for facilities to be replaced, upgraded, or rehabilitated, except as described in Section II F.(2)(d) and (e) of these regulations.
- (10) Notwithstanding this appendix, are eligible and allowable under the federal Clean Water Act and any implementing federal regulations.
- (11) Are procured in accordance with Appendix C.

B. Professional Services

The term professional services refers to engineering, legal, administrative, and similar services.

- (1) Allowable costs include:
 - (a) Costs that are normally included in the fringe benefits and indirect cost of the firm except those costs specifically excluded in these regulations.
 - (b) Profit, not to exceed the amount normally charged by the firm for similar work.
 - (c) Preparing the facilities plan.
 - (d) Preparing the plans, specifications, and contract documents, including value engineering.
 - (e) Preparing the loan application package.
 - (f) Costs associated with the acquisition of real property, permanent and temporary construction easements and compliance with the requirements of the Mississippi Real Property Acquisition Policies Law.
 - (g) The costs of services incurred during the advertisement, award and construction of a project.
 - (h) The costs associated with acquiring minority and women's business services.
 - (i) The costs of legal, engineering, and other services incurred by the loan recipient in deciding procurement protests and defending their decisions in protest appeals under Appendix I are allowable regardless of the outcome of the protest, provided there was not an attempt by the loan recipient to violate or circumvent state purchase laws.
 - (j) The cost of developing an operation and maintenance manual.
 - (k) Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.
 - (l) Administrative services associated with the construction of the project and administering the WCPRLF loan.
 - (m) The cost of services, other than engineering services during construction, such as railway or highway flagmen, or utility or highway inspectors, required during the construction of the project, are allowable provided that:

- i. The entity responsible for the affected railway, highway, or utility requires such services for all parties conducting similar types of work, regardless of the source of construction funding for the project, or the services are required by law.
 - ii. The cost of such services has not been included in the construction contractor's bid price.
- (n) Engineering services or other services necessary to correct omissions in the facilities plan, design drawings and specifications or other documents to the extent that such costs would have been allowable for preparing omission free documents.
- (2) Unallowable costs include:
 - (a) Engineering services or other services necessary to correct defects in the facilities plan, design drawings and specifications, or other documents.
 - (b) Public liaison services.
 - (c) Bad debt.
 - (d) Entertainment costs.

C. Construction

Eligible projects may include treatment works, nonpoint source management projects, and estuary conservation and management projects.

- (1) Allowable costs include:
 - (a) The costs of contracts for allowable construction work on the project, including prime contracts, subcontracts and the direct purchase of equipment, materials and supplies by the loan recipient.
 - (b) The costs of sewer system rehabilitation (including rehabilitation of allowable service lines) necessary to eliminate or prevent infiltration/inflow, bypasses or overflows, or to provide proper operation of the treatment works.
 - (c) The cost of treatment works capacity adequate to transport and treat infiltration/inflow that will remain in the system.
 - (d) Treatment works which serve industrial or commercial users when such works are publicly owned.

- (e) Reserve capacity within a design period of up to twenty years (forty years for interceptors, including pump stations and force mains serving as interceptors).
- (f) Implementation of a nonpoint source management program established under Section 319 of the Act and development and implementation of an estuary conservation and management plan under Section 320 of the Act.

On projects which are also designed to provide for drainage, flood control, or any purposes other than control of pollutants or estuary conservation, only the portion of the project needed for control of pollutants or estuary conservation shall be allowable.

- (g) Construction of treatment and transportation facilities for control of pollutant discharges from a separate or combined storm sewer system.

On such projects which are also designed to provide for drainage, flood control, or any purposes other than control of pollutants, only the portion of the project needed for control of pollutants is allowable.

- (h) The cost associated with the preparation of the project site before, during and, to the extent provided in the loan agreement, after construction. These costs include:

- (i) The cost of demolition of existing structures on the project site if construction cannot be undertaken without such demolition. Demolition of existing structures on the project site when not required for constructing the project, will be considered to be an allowable cost only if the existing structures constitute a real and present hazard to safety, public health, or water quality which can best be abated by the removal of the existing structures.

- (ii) The cost of removal, relocation or replacement of utilities, provided the loan recipient is legally obligated to pay for such by law.

- (iii) The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

- (i) For wastewater collection projects which provide sewers to existing buildings, service lines between the public sewer and the point five (5) feet from the outside wall of existing residences and public buildings are allowable. Service lines between the public sewer and the property line of existing businesses are allowable.

- (2) Unallowable costs include:
- (a) Construction and construction related costs which occur more than 30 days after the current allowable completion date are not allowable unless the Department determines that the loan recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required.
 - (b) Treatment works which serve federal users exclusively or almost exclusively.
 - (c) Bonus payments for completion of construction before a contractual completion date unless required by state law.

D. Equipment, Materials, and Supplies

- (1) Allowable costs include:
- (a) The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.
 - (b) The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation.
 - (c) The cost of shop equipment installed at the treatment works necessary to the operation of the works. The need will depend on the specific item, its frequency of expected use, and the size and complexity of the treatment facility. Larger treatment facilities will have a greater need for installed shop equipment than smaller ones. Where the proposed items of equipment are inappropriate to the size and/or complexity of the treatment works, the Department may determine that the proposed equipment is unallowable.
 - (d) The costs of necessary and reasonable safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.
 - (e) The costs of necessary and reasonable collection system maintenance equipment.
 - (f) The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:
 - (i) Portable stand-by generators.

- (ii) Large portable emergency pumps to provide “pump-around” capability in the event of pump station failure or pipeline breaks.
 - (iii) Sludge or septage tankers, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or onsite systems) to the treatment facility or disposal site.
 - (iv) Tillage, planting, landspreading and harvesting equipment that is documented as necessary and reasonable for land treatment process and other vehicles demonstrated necessary to the facility and approved in advance by the Department.
- (g) Replacement parts identified and approved in advance by the Department as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:
- (i) not immediately available and/or whose procurement involves an extended “lead-time,” or
 - (ii) identified as critical by the equipment supplier(s), or
 - (iii) critical but not included in the inventory provided by the equipment supplier(s).
- (h) Wastewater and drinking water flow metering devices used for wastewater billing purposes.
- (i) The cost of furnishings, office equipment, and maintenance equipment dedicated solely to the pollution control project. Necessary and reasonable office furnishings and equipment include chairs, desks, file cabinets, typewriters, coffee tables, telephones, office supplies, calculators, copiers, book cases, shelves and lamps. Ordinary site and building maintenance equipment such as lawnmowers, rakes, shovels, brooms, picks, hedge trimmers, and other such equipment. Hand tools such as screw drivers, pliers, socket wrenches, electric drills or saws, etc.
- (j) Computers. Computers, display monitors, and computer software which are designed into the control system for the daily operations of the treatment works.

Computers are also allowable if they are to be used for the operational control and analysis of the treatment works. Examples of such allowable uses include the scheduling of equipment maintenance and replacement, the operation of the loan recipient’s pretreatment program, including the scheduling of tests to verify industrial compliance with pretreatment requirements, and for accounting and billing services.

The cost of computer software specifically designed for the operation and maintenance of the treatment works is also allowable for loan participation. This includes the cost of developing unique operation programs for the specific loan funded project.

- (2) Unallowable costs include:
 - (a) The costs of equipment or material procured in violation of Appendix C.
 - (b) The cost of vehicles for the transportation of the loan recipient's employees, including buses, trucks, cars, motorcycles, golf carts, bicycles, etc.
 - (c) Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hoses, belts, etc.
 - (d) Radios, televisions, VCRs, camcorders, and other items of a similar nature.
 - (e) Large stocks of laboratory and other chemicals and supplies above a reasonable inventory necessary to initiate plant operations.

E. Change Orders

- (1) Change order costs are allowable provided they are:
 - (a) Necessary and reasonable.
 - (b) Within the scope of the project.
 - (c) Not caused by the loan recipient's mismanagement.
 - (d) Not caused by the loan recipient's vicarious liability for the improper actions of other.
 - (e) In conformance with the WPCRLF regulations.
- (2) Provided the above requirements are met, the following costs are allowable change orders.
 - (a) Construction costs resulting from defects in the plans, design drawings and specifications or other contract documents only to the extent that the costs would have been incurred if the contract documents on which the bids were based had been free of the defects and excluding the costs of any rework, delay, acceleration or disruption caused by such defects.

If the defect is realized after substantial construction work has been completed, and therefore required rework, delay, or additional work beyond that which would have been required by defect free drawings, the cost would still be allowable, but the additional cost of rework or delay is unallowable.

The additional cost is measured as the difference between the cost which would have been included in the bid based on defect free drawings and the actual cost of the change order.

- (b) Equitable adjustments for differing site conditions.

F. Claims

- (1) Allowable costs, provided the costs are properly documented, incurred and requested prior to the end of the 30 day period established by Section III.F.(6)(e) of these regulations, include:
 - (a) The costs of legal, engineering, and other services incurred by the loan recipient in deciding procurement protests and defending their decisions in protest appeals under Appendix I are allowable regardless of the outcome of the protest, provided there was not an attempt by the loan recipient to violate or circumvent state law.
 - (b) The costs of assessing the merits of, negotiating, or defending against a claim against the loan recipient are allowable, regardless of the outcome, provided that the matter under dispute is not the result of fraudulent or illegal actions or mismanagement on the part of the loan recipient.
 - (c) Amendments or change orders in construction, engineering, legal, etc., contracts as a result of settlements, arbitration awards, or court judgements are allowable to the same extent that they would have been allowable had there not been a claim.
- (2) Unallowable costs include:
 - (a) Claims arising from work outside the scope of the loan.
 - (b) Claims resulting from fraudulent or illegal activities.
 - (c) Claims resulting from mismanagement by the loan recipient.
 - (d) Claims resulting from the loan recipient's vicarious liability for the improper action(s) of others.
 - (e) The cost of settlements, arbitration awards or court judgements over and beyond the allowable costs had there not been a claim, as established in these regulations.

G. Mitigation

(1) Allowable costs include:

- (a) Costs necessary to mitigate only direct, adverse, physical impacts resulting from construction of the project.
- (b) The costs of reasonable site screening necessary to comply with facilities plans and necessary to screen adjacent properties.
- (c) The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from construction of the project.

The extent of the allowable costs for groundwater monitoring facilities is decided on a case-by-case basis and depends on the size and complexity of the project and the present and potential future use of the groundwater.

(2) Unallowable costs include:

- (a) The costs of solutions to aesthetic problems, including design details which require expensive construction techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the treatment works nor reflect regional architectural tradition.
- (b) The cost of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review.

H. Publicly Owned Onsite Systems

(1) Allowable costs include:

- (a) The cost of major rehabilitation, upgrading, enlarging, and installation of onsite systems.

Major rehabilitation may include the demolition and removal of an existing privately or publicly owned onsite system in accordance with Section C(1)(h)(i) of this appendix.

- (b) Collection or service lines to an offsite treatment unit which serves a cluster of buildings.
- (c) The cost of restoring individual system construction sites to their original condition.

- (2) Unallowable costs include:
 - (a) Those portions of treatment works which have surface discharges from individual residences or clusters, unless each discharge has a valid NPDES permit.
 - (b) Modification to physical structure of homes, commercial buildings, or any other structures which are not a part of the public treatment works project.
 - (c) Wastewater generating fixtures such as commodes, sinks, tubs, and drains.

I. Real Property and Existing Improvements

- (1) Allowable costs include:
 - (a) The cost of land that will be an integral part of the treatment process, such as for land treatment facilities, acquired in accordance with the Mississippi Real Property Acquisition Policies Law in fee simple title or by easement. Except as allowed under Section I.(2) below, such land must be acquired at fair market value based on an appraisal or a condemnation proceeding, unless the purchase price of a parcel is \$10,000 or less. These costs include:
 - (i) The cost of a reasonable amount of land acquired for the construction of land treatment works, considering the need for buffer areas, berms, and dikes. Buffer areas may be designed as part of the project to conform with Mississippi Environmental Quality Permit Board regulations, to screen sites from public view, to control public access, and to improve aesthetics.
 - (ii) The cost of land acquired for land application of sludge, composting or temporary storage of compost residues which result from wastewater treatment.
 - (iii) Where properties are only partially acquired for project purposes, necessary compensation of property owners for the reduced value of their remaining land.
 - (b) The cost of acquiring all or part of an existing publicly or privately owned wastewater treatment works and necessary land for a consolidation project, provided all of the following criteria are met:
 - (i) The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;

- (ii) The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and
 - (iii) The acquisition does not circumvent federal, state or local requirements.
 - (c) The cost of complying with the requirements of the State's Real Property Acquisition Policies Law.
- (2) Unallowable costs include:
- (a) For parcels costing over \$10,000, any amount paid by the loan recipient for allowable land in excess of fair market value, based on an appraisal or any condemnation proceeding.
 - (b) For parcels costing over \$10,000, an amount other than the determination of fair market value may be found allowable through an administrative settlement if the loan recipient provides sufficient written documentation to the Department that it is reasonable, prudent and in the public interest, such as when negotiated purchase is unsuccessful and condemnation action may entail a long delay or excessive costs. Documentation may include evidence of purchase negotiations, real property sales data, estimated court settlement and legal costs based on previous condemnation proceedings.
 - (c) The cost of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review.

J. Miscellaneous Costs

- (1) Allowable costs include:
- (a) On force account projects, the costs of equipment, materials and supplies necessary for the project.
 - (b) Unless otherwise specified in these regulations, the costs of meeting specific legal requirements directly applicable to the project.
 - (c) Costs for necessary travel directly related to accomplishment of project objectives, such as costs of loan recipient employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works.
 - (d) Cost of royalties for the use of, or rights in, a patented process or product.

Royalties associated with the procurement of the right to use, or the rights in, a patented product, apparatus, or process are allowable costs, provided that they are based on a published fee schedule or on reasonable fees charged to other users under similar conditions.

(e) Buildings

Allowable costs for buildings include those portions of the buildings which are directly related to the project, including buildings housing equipment and unit processes, laboratories; employee locker rooms; workshop areas, storage facilities for operational supplies, spare parts and equipment; necessary lavatory facilities, operator office space; etc. Those portions of an administration building which are not necessary for the daily operation and maintenance of the project are unallowable costs, including portions of the building used for public works functions (other than wastewater treatment), general accounting functions, conference rooms with associated audio-visual equipment, or other general uses not necessary for the operation of the project. Where larger facilities include conference rooms to be used exclusively for training of employees, such space is allowable if reasonable and if approved by the Department as part of the loan award.

Where unallowable building space is included in an otherwise allowable administration building, the allowable cost is determined by using the ratio of allowable floor space divided by the total floor space in the building. The costs of buildings and portions of buildings which are unallowable are to be deducted from the allowable project construction costs for loan computation purposes. Costs associated with unallowable buildings and portions of buildings (e.g., landscaping, driveways, parking spaces, electrical service, and other utility costs) are also unallowable and must be deducted proportionately from the allowable construction costs.

(f) Facilities For Income Generation from Processed Sludges and Crops

Facilities which have the potential for generating project income to offset O&M costs are allowable if they are necessary to provide stabilized and processed sludges which are to be managed for income generation or crops which are grown for sale as an integral part of the wastewater land treatment or sludge utilization process.

Facilities and equipment built for processing crops grown on land to which sludge or wastewater has been applied may be an allowable cost if the recipient has all financial interest in the crop and if those facilities are necessary and reasonable to prepare the crop for prompt delivery to its market.

Facilities built for processing crops or sludge into marketable products such as compost or heat-dried pellets may be allowable if those facilities are necessary and reasonable to cost-effectively prepare the product for prompt delivery to its market. Facilities to store the marketable products to get more favorable prices, to transport the product for sale to a market, or to optimize marketing of the product, such as bagging operations, are also allowable.

- (2) Unallowable costs include:
- (a) Ordinary operation expenses of the loan recipient including salaries and expenses of the loan recipient's employees and elected and appointed officials and preparation of routine financial reports and studies.
 - (b) Administrative, engineering and legal activities associated with the establishment of departments, agencies, commissions, regions, districts or other units of government.
 - (c) Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them.
 - (d) Personal injury compensation or damages arising out of the project.
 - (e) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures, and related legal expenses.
 - (f) Costs outside the scope or budget period of the approved project.
 - (g) Costs for which payment has been or will be received from another state or federal source.
 - (h) If a treatment works includes any reserve capacity which induces development on environmentally sensitive lands such as wetland, flood plains, etc, the cost of the entire treatment works will be unallowable.
 - (i) Operation and maintenance costs of the treatment works.
 - (j) Lease payments.
 - (k) Periodic payment of royalties for the right to operate under a patent is considered an operational cost and is unallowable for loan participation.

K. Project Income From Bid Bond Forfeitures, Liquidated Damages, and Interest on WPCRLF Loan Payments:

- (1) Bid bond forfeitures shall have no effect on the determination of allowable and unallowable costs.

- (2) Liquidated damages shall have no effect on the determination of allowable and unallowable costs, except as required by Section C.(2)(a) of this Appendix.
- (3) Interest income on WPCRLF payments to loan recipients shall have no effect on the determination of allowable and unallowable costs.

APPENDIX B

State Environmental Review Process [For Projects Defined Under Section 212 of the Act]

A. Facilities Plan Description of Environmental Impacts

Each project's facilities plan must contain a comparative evaluation of the no-action alternative and the proposed alternative which accounts for the beneficial and adverse consequences to the existing and future environmental resources as follows and any corresponding mitigative measures necessary to protect these resources:

- (1) Surface and groundwater resources.
- (2) Archaeological/historical/cultural resources.
- (3) Vegetative/wildlife resources.
- (4) Wetlands and navigable waterways.
- (5) Floodplains.
- (6) Coastal zones.
- (7) Wild and scenic rivers.
- (8) Air Quality.

B. Environmental Review.

The information, processes, and premises that influence an environmental determination are as follows. The Department will take one or more of the following actions pursuant to the review of the facilities plan description of environmental impacts and any comments generated by the Intergovernmental Review Agencies:

- (1) Finding of No Significant Impact on the Environment.

The Department will issue a Finding Of No Significant Impact (FONSI) when, based upon review of the facilities plan and any intergovernmental review agency comments, it appears that a project will not have a significant adverse environmental impact.

- (2) Environmental Impact Statement.

If the Department determines that the project does not qualify for a FONSI, an Environmental Impact Statement (EIS) will be prepared in general conformance with EPA regulation 40 CFR Part 6, or as deemed appropriate by the Department.

(3) Amendments.

Amendments are occasionally needed to describe changes to proposed facilities that have already been described in a FONSI or EIS. The Amendment will describe the changes and any expected new impacts on the environment due to the changes.

(4) Reaffirmation of an Environmental Action.

If five years will pass between the issuance of a FONSI, EIS or Amendment and the offer of WPCRLF funding, the environmental impact of the project will be reevaluated. If there have been no significant changes, the Department will issue a reaffirmation of the environmental action. If the original environmental action cannot be reaffirmed, the Department will issue a new environmental action, as appropriate.

(5) No Further Action.

The Department will issue a FONSI or EIS for all WPCRLF projects. If there are significant changes in the project after the issuance of the environmental document, those changes will be described in an Amendment. Some changes are minor, however, and the Department may determine that a separate Amendment need not be issued. Such minor changes may include, but are not limited to:

- (a) Changes in the size of pump stations, force mains, interceptor sewers, or collection sewers.
- (b) Minor changes in the size of wastewater treatment unit processes.
- (c) Minor rerouting of sewer lines when the new route will not adversely affect cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas, or other environmental resources. All affected property owners must be notified of the rerouting by the loan recipient and must be provided an opportunity to comment on the proposed rerouting prior to initiation of construction.

C. Issuance of the Environmental Action.

Copies of all environmental actions will be provided to the appropriate intergovernmental review agencies listed in Section III.A.(2)(f). Copies of environmental actions will also be sent to any agency, group or individual requesting them. All environmental actions will also be published in an appropriate local newspaper.

All environmental actions will provide for at least a thirty day period from the date of publication to receive comments from agencies groups, or individuals. All such comments will be evaluated by the Department before finalizing any environmental action.

D. Resolution of Adverse Comments.

Adverse comments received as a result of the environmental review process will be addressed in the following manner:

- (1) The Department will first require the loan recipient to attempt to resolve the adverse comments.
- (2) If the loan recipient is unable to resolve the adverse comments, the Department will render a decision concerning the adverse comments.
- (3) Should the loan recipient or the party which originally made the adverse comments desire to appeal the above decision, a request for an informal hearing must be received by the Department within 30 days after the date of such decision. Upon receipt of such a request, an informal hearing will be held with staff members, as designated by the Executive Director, and the affected parties. The Executive Director will render a decision on the appeal as a result of the informal hearing.
- (4) Should the loan recipient or the party which originally made the adverse comments desire to appeal the above informal hearing decision, a request for a formal hearing by the Commission must be received by the Department within 30 days after the date of such decision. Upon receipt of such a request, the Commission will hold a formal hearing to consider the matter and will render a decision.
- (5) Appeals of the above formal hearing decision may be made to the Chancery Court in accordance with state law.

APPENDIX C

Procurement Requirements for WPCRLF Loan Recipients

In the procurement of all construction, equipment, materials, supplies, professional and non-professional services and all other costs related to the WPCRLF project, all loan recipients must comply with state purchasing laws as they relate to local governments.

The procurement and conduct of all professional engineering and land surveying services must also be in accordance with the Code of Conduct and other guidance and interpretations established by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors.

The procurement and conduct of all construction contracts must also be in accordance with the rules and regulations of the Mississippi State Board of Contractors and other guidance and interpretations established by the Mississippi State Board of Contractors.

All loan recipients must submit a procurement certification stating that the loan recipient has reviewed the proposed costs in sufficient detail to determine that these costs are reasonable and indicating that all of the above referenced requirements have been and will be met. If any of the above procurement requirements are violated, the Department may determine that the related costs are unallowable and may require repayment of all WPCRLF Loan funds paid for such costs, in accordance with Section III.H.(6) of these regulations.

APPENDIX D

Minority and Women's Business Enterprise Requirements (MBE/WBE)

These MBE/WBE requirements apply to all projects funded within a fiscal year in which federal capitalization grants to the Department require such compliance. The Department will establish "fair share" objectives for participation by minority and women's business enterprises in WPCRLF funded projects. The loan recipient must undertake the following steps in the procurement of materials, equipment, supplies, and construction:

- (1) Include qualified minority and women's businesses on solicitation lists,
- (2) Assure that minority and women's businesses are solicited whenever they are potential sources,
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by minority and women's businesses,
- (4) Establish delivery schedules, when practical which will encourage participation by minority and women's businesses,
- (5) Use the services of the Office of Minority Business Enterprises of the Mississippi Department of Economic and Community Development and the Contract Procurement Centers of the U.S. Department of Commerce, as appropriate, and
- (6) Require the contractor to take the five (5) steps listed above, if the contractor awards subcontracts.

The loan recipient, engineer, and prime contractor(s) must also follow the guidance in the Department document "Utilization of Minority and Women's Business Enterprises."

Minority and women's business enterprises must be certified by the Mississippi Department of Economic & Community Development, Office of Minority Business Enterprises or the Mississippi Department of Transportation.

APPENDIX E

Debarment and Suspension

The Department is prohibited from entering into loan agreements with loan applicants that have been debarred or suspended by any state or federal agency.

Loan recipients are prohibited from entering into contractual agreements with individuals, businesses, organizations, or any other entities that have been debarred or suspended by any state or federal agency.

Loan recipients are responsible for ensuring that prime contractors utilized on the project are not debarred or suspended. Likewise, prime contractors are responsible for ensuring that subcontractors utilized on the project are not debarred or suspended.

Anyone may contact the Department concerning the existence of a cause for debarment or suspension. The Department may refer the matter to the State Attorney General or other appropriate office for further investigation. If, after review or investigation, the Department reasonably believes that a cause for debarment exists, the Department may propose debarment or suspension and may initiate procedures similar to, but not necessarily identical to, federal regulation 40 CFR Part 32: Debarment and Suspension Under EPA Assistance Programs.

Such above described debarment or suspension actions will not affect existing executed contractual agreements, unless such agreements have been terminated or suspended under the terms of the agreement by the loan recipient.

APPENDIX F

WPCRLF Loan Recipient/Department Disputes Procedures

Only WPCRLF loan recipients may submit a notice of dispute (disagreement) with a decision made by the Department, with the exception of decisions regarding Appendix B, State Environmental Review Process, of these regulations. The following procedures will be used to resolve disputes between the loan recipient and the Department:

- (1) Within any deadlines established by the Department, the loan recipient must submit a written notice of dispute with a Department decision, including a summary of the dispute and reasons the loan recipient believes the Department decision should be reversed.
- (2) The Department staff will then render a written decision on the dispute and will include reasons for the decision.
- (3) Should the loan recipient desire to appeal the Department staff decision, a request for an informal hearing must be received by the Department within 30 days after the date of the Department staff decision. Upon receipt of such a request, an informal hearing will be held with staff members, as designated by the Executive Director, and the affected parties. The Executive Director will render a decision on the appeal as a result of the informal hearing.
- (4) Should the loan recipient desire to appeal the above informal hearing decision, a request for a formal hearing before the Commission must be received by the Department within 30 days after the date of such decision. Upon receipt of such a request, the Commission will hold a formal hearing to consider the matter and will render a decision.
- (5) Appeals of the above formal hearing decision may be made to the Chancery Court in accordance with state law.

APPENDIX G

Waste, Fraud and Abuse

The loan recipient is responsible for preventing, detecting, and prosecuting waste, fraud, abuse, and all other corrupt practices which occur in relation to the WPCRLF loan project.

If the loan recipient becomes aware of any allegation, evidence, or the appearance of corrupt practices, the loan recipient must:

- (1) Immediately inform the Department in writing.
- (2) Promptly pursue available state and local legal, administrative, and contractual remedies.

The Department may disallow costs under the WPCRLF loan agreement when the costs are determined to be related to waste, fraud, abuse or other corrupt practices. The Department may also require repayment of WPCRLF loan funds paid for such costs in accordance with Section III.H.(6) of these regulations.

APPENDIX H

Loan Recipient Accounting and Auditing Requirements

All WPCRLF loan recipients must maintain project accounts in accordance with generally accepted government accounting standards, as defined by the Guidelines of the Municipal Accounting and Audit Manual, as prescribed by the State Auditor's Office. Charges to the project account must be properly supported, related to allowable construction costs, and documented by appropriate records. These project accounts must be maintained as separate accounts.

APPENDIX I

Procurement Protest Procedures

This Appendix sets forth the process for the resolution of procurement protests filed with the loan recipient by an adversely affected party. The Loan Recipient's protest procedures must include these requirements:

- (1) Prior to advertisement for bids, the loan recipient must establish its own procedures for prompt consideration of initial protests concerning solicitations or contract awards. A "protest" is a written complaint concerning the loan recipient's solicitation or award of a contract. The protest must be filed with the loan recipient by a party with a direct financial interest adversely affected by a loan recipient's procurement action and must be filed in accordance with and within the time frame established by the loan recipient's protest procedures.
- (2) Any party which transmits any document concerning the protest during the course of a protest and protest resolution must simultaneously furnish all other affected parties with a copy of all documents in the transmittal.
- (3) Upon receipt of a protest, the loan recipient must make a determination on the protest in accordance with the loan recipient's protest procedures within thirty (30) calendar days after such protest or sooner, if so required by the loan recipient's procurement protest procedures.
- (4) The party with a direct financial interest adversely affected by a loan recipient's determination of the protest may appeal such a determination only through the appropriate court of competent jurisdiction, provided such appeal is initiated within seven (7) calendar days after receipt of the determination.
- (5) Any delay due to a protest or protest resolution will not relieve the loan recipient of the requirement to meet the project schedule established in the loan agreement, nor will such delays prevent the Department from pursuing the remedies for default established in the loan agreement.

APPENDIX J

Applicable State and Federal Laws, Regulations, and Executive Orders

During the planning, design, construction, and operation of the project, the loan recipient shall comply with all applicable laws and regulations and shall acquire all applicable permits as described in the Departmental publication "Environmental Permit Directory," or its successor. The applicable related state laws and regulations are listed below. The WPCRLF regulations are not complete without these laws and regulations:

State Laws and Regulations

- A. Guidelines for Review of Siting Criteria in Applications for Air and Water Pollution Control Permits.
- B. Mississippi Water Quality Criteria for Intrastate, Interstate and Coastal Waters.
- C. Mississippi Nonhazardous Waste Management Regulations.
- D. Mississippi Coastal Wetlands Protection Law, Section 49-27-1 through 49-27-69 of the Mississippi Code, annotated, (supp. 1989), et. seq.
- E. Mississippi Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants.
- F. Wastewater Permit Regulations for National Pollutant Discharge Elimination System (NPDES), Underground and Injection Control (UIC) and State Operating Permits.
- G. The Nongame and Endangered Species Conservation Act, Sections 49-5-101 through 45-5-119 of the Mississippi Code.
- H. The State Antiquities Law, Section 39-7-3 et. seq. of the Mississippi Code of 1972.
- I. State of Mississippi Regulations for the Certification of Municipal and Domestic Wastewater Facility Operators.
- J. Mississippi Municipal and Domestic Water and Wastewater System Operators Certification Act of 1986, Sections 21-27-201 through 21-27-221 Mississippi Code of 1972, annotated.
- K. Mississippi State Purchasing Laws, Title 31, Mississippi Code 1972, annotated.
- L. Mississippi State Engineering and Surveying Law, Sections 73-13-1 through 73-13-99 Mississippi Code 1972, annotated, and rules and regulation of procedure promulgated thereunder by Mississippi State Board of Registration for Professional Engineers and Land Surveyors.
- M. Mississippi Real Property Acquisition Policies Law Section 43-37-1 through 13.

Federal Laws and Executive Orders

- A. Age Discrimination Act of 1975, Pub. L. 94-135.
- B. Civil Rights Act of 1964, Pub. L. 88-352.
- C. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act).
- D. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250).

APPENDIX K

Loan Agreement Defaults and Remedies

Each of the following events is a default of a loan agreement:

- (1) Failure of the Loan Recipient to make any loan repayment when it is due and such failure shall continue for a period of thirty (30) days.
- (2) Failure to comply with the provisions of the Agreement or in the performance or observance of any of the covenants or actions required by the Agreement.
- (3) Any warranty, representation or other statement by, or on behalf of, the Loan Recipient contained in the Agreement or in any information furnished in compliance with, or in reference to, the Agreement, which is false or misleading in any material respect.
- (4) An order or decree entered, with the acquiescence of the Loan Recipient, appointing a receiver of any part of the Project or Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Loan Recipient, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof.
- (5) Any proceeding instituted, with the acquiescence of the Loan Recipient, for the purpose of effecting a compromise between the Loan Recipient and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Revenues of the Project.
- (6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Loan Recipient under federal or state bankruptcy or insolvency laws now or hereafter in effect and, if instituted against the Loan Recipient, is not dismissed within sixty (60) days after filing.
- (7) Failure to give timely notice of default as required below when such failure shall continue for a period of thirty (30) days.

The Loan Recipient shall give the Department immediate written notice of an event of default. Upon any event of default and subject to the rights of bondholders with prior liens, the Department may enforce its rights by utilizing one or more of the following remedies:

- (1) By mandamus or other proceeding at law or in equity, cause to establish and collect fees and charges for use of the Project and to require the Loan Recipient to fulfill the Agreement.
- (2) By action or suit in equity, require the Loan Recipient to account for all moneys received from the Department or from the ownership of the Project and to account for the receipt, use, application or disposition of the Revenues.

- (3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.
- (4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the Project, establish and collect fees and charges, and apply the Revenues to the reduction of the obligations under this Agreement.
- (5) By certifying to the Tax Commissioner delinquency on loan repayments, the Department may intercept the delinquent amount, plus ten (10) percent annual penalty interest on the amount due to the Department, from any unobligated funds due to the Loan Recipient under any revenue or tax sharing fund established by the State. Penalty interest shall accrue on any amount due and payable beginning on the thirtieth (30th) day following the date upon which payment is due. The penalty interest shall be compounded monthly.
- (6) By notifying financial market credit rating agencies.
- (7) By administratively charging or suing for payment of amounts due, or becoming due, plus ten (10) percent annual penalty interest which shall accrue on any amount due and payable beginning on the thirtieth (30th) day after such notification by the Department, together with all costs of collection, including attorneys' fees. The penalty interest shall be compounded monthly.
- (8) By accelerating the repayment schedule or increasing the interest rate.
- (9) By withholding payments to the Loan Recipient.
- (10) By terminating the Agreement, after providing thirty (30) days written notice of such intent to terminate the Agreement. Such termination will not affect the duty of the Loan Recipient to repay loan funds paid thus far.

No delay or omission to exercise any right or power accruing upon event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver of any default under this Agreement shall extend to or affect any subsequent event of default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

APPENDIX L

Loan Recipient/Contractor Claims and Disputes.

The Department is not a party to any contract between the WPCRLF loan recipient and construction contractor(s), engineer(s), attorney(s), equipment supplier(s), subcontractor(s) or any other parties.

Upon execution of any contract between the loan recipient and any other party in regard to a WPCRLF funded project, the Department does not assume any authorities, duties, responsibilities, or liabilities under such a contract.

The Department does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims or disputes under the contract(s) between the loan recipient and any other party.

No actions taken by the Department, either directly or indirectly, in regard to the WPCRLF loan funded project constitute or establish any determinations, authority, duty, responsibility, or liability under the contract(s) between the loan recipient and any other party.

The loan recipient and the contracting party must resolve all claims and disputes by negotiation, arbitration, litigation, or other means as provided in the contract documents and state law, prior to submission of any related change order or contract amendment to the Department for review and approval, in order to obtain a WPCRLF loan allowability determination.

APPENDIX M

Definitions

The following words and terms, when used in this regulation, will have the following meanings, unless the context clearly indicates otherwise:

- (1) Act – The Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq., including any amendments.
- (2) Administration Fees – Those fees charged to the loan recipient by the Commission to defray the reasonable costs of administering the revolving fund.
- (3) Allowable Costs – Those project costs that are eligible, reasonable, necessary, allocable to the project, within the established project scope and budget, in conformance with the WPCRLF regulations, and determined allowable by the Department.
- (4) Authorized Representative – The signatory agent of the applicant authorized and directed by the applicant’s governing body to make application for assistance and to sign documents on behalf of the applicant, as required to undertake and complete the project. The signatory agent must be a member or an employee of the applicant’s governing body and may not be under a separate contract with the applicant at any time during the execution of the project.
- (5) Binding Commitment – A WPCRLF loan offer, as described in these regulations.
- (6) Budget Period – The time period beginning on the date established in the loan agreement and ending on the date 30 days after the Department’s final construction observation, during which allowable costs may be incurred.
- (7) Change Order – The documents, including supporting documentation, executed by the loan recipient and the construction contractor, upon recommendation of the engineer if required by the contract documents, authorizing a change, alteration, or variance in the plans, specifications, and contract documents, including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs or time for work performed after execution of the contract.
- (8) Collector Sewer – The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewater directly from facilities which convey wastewater from individual systems or from private property.
- (9) Commission – The Mississippi Commission on Environmental Quality or its successors.
- (10) Consolidation Project – The acquisition of an existing entity or its treatment works by another or the merger of two entities.

- (11) Construction – Any one or more of the following: erection, building, acquisition, alteration, repair, improvement or extension of treatment works.
- (12) Department – The Mississippi Department of Environmental Quality, and its designated representatives or successors.
- (13) Eligible Applicant – Any county, municipality, municipal public utility, authority, district, political subdivision or other governmental unit created under state law which has authority to dispose of domestic wastewater, industrial wastewater, wastewater sludges resulting from the treatment of such wastewater, stormwater, or nonpoint sources of pollution, has the authority under State law to receive WPCRLF loan assistance, has the ability to comply with these regulations and the requirements of the WPCRLF loan agreement, and which is not in arrears in repayments to the Water Pollution Control Revolving Fund, the Water Pollution Control Emergency Loan Fund, the Water Pollution Abatement Loan Fund or any other loan.
- (14) Eligible Costs – Costs in which WPCRLF loan participation is authorized pursuant to applicable statute.
- (15) Engineer – Unless otherwise indicated, the engineer, or engineering firm, registered by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors, retained or employed by the loan recipient to provide professional engineering services during the planning, design and/or construction of the project.
- (16) Executive Director – The executive director of the Mississippi Department of Environmental Quality or his designee.
- (17) Financial Capability Summary – A financial analysis of a water pollution control system to determine whether the system has the capability to reliably meet the financial obligations on a long term basis.
- (18) Force Account – Involves the use of the loan recipient’s employees, equipment for construction, construction related activities and/or architectural and engineering services.
- (19) Infiltration – Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.
- (20) Inflow – Water other than wastewater that enters a sewer system (including sewer service connections) as a result of rainfall or rainfall induced soil moisture 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.

- (21) Interceptor Sewer – A sewer which is designed for one or more of the following purposes:
- (a) To intercept wastewater from a final point in an existing or proposed collector sewer and convey such wastes directly to a treatment facility or another interceptor or pump station.
 - (b) 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.
 - (c) To transport wastewater, together with quantities of infiltration and inflow that are not admitted intentionally, from one or more municipal collector sewers to another municipality or to a regional facility for treatment.
 - (d) To intercept an existing discharge of raw or inadequately treated wastewater for transport directly to another interceptor, pump station or to a treatment plant.
- (22) Interlocal Agreement – An agreement or contract between the loan applicant/recipient and other entities relating to use, enforcement or finances of the project or treatment works, which may be necessary to ensure completion and operation, and maintenance of a useful project.
- (23) Loan Agreement – A legal and binding agreement between the Department and the loan recipient through which the Department provides WPCRLF assistance for eligible and allowable costs and the recipient agrees to repay any administrative fees to the Department and the principal sum and interest to the WPCRLF over a period and at an interest rate established in the loan agreement.
- (24) Loan Applicant – An eligible applicant that applies or intends to apply for financial assistance from the WPCRLF program
- (25) Loan Recipient – An eligible applicant that executes a WPCRLF loan agreement.
- (26) Overflows and Bypasses – Polluted water, such as sewage, which overflows or bypasses any portion of the treatment works prior to complete and final treatment and discharge in accordance with the permit.
- (27) Project – The scope of work for which financial assistance is provided under the WPCRLF loan agreement.
- (28) Project Completion – The date of the final construction observation as performed by the Department for the purpose of a loan allowability determination.
- (29) Repayment – Administrative fees, principal and interest repayments on WPCRLF loans as established in the loan agreement.

- (30) Service Line – A conduit intended to carry wastewater, together with quantities of infiltration and inflow that are not admitted intentionally, from residences, public buildings and businesses to a collector sewer.
- (31) Title Counsel or Legal Counsel – The attorney(s) of record, legally practicing, who provide(s) legal advice and certifications relating to the project for the loan applicant/recipient.
- (32) Treatment Works – Any devices and systems which are used in the storage, treatment, transportation, recycling, and reclamation of domestic, industrial, and/or commercial wastewater, including intercepting sewers, outfall sewers, sewage collection systems, service lines, pumping, power, and other equipment and their appurtenances; extensions, improvements, repair, additions, and alterations thereof; and any works, including the land that will be an integral part of, or used in connection with, the treatment process (including land used for the storage of treated water in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; and any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of domestic, industrial, and/or commercial wastewater, stormwater runoff, wastewater in combined stormwater and sanitary sewer systems, and nonpoint source pollution.
- (33) User Charge Ordinance – A legally enforceable ordinance, regulation or corporate resolution enacted by the loan recipient which includes, at least by reference, the user charge system, and establishes user charge rates, to generate adequate revenues to cover all costs of the treatment works, as required by the user charge system.
- (34) User Charge System – The system by which the loan recipient charges users of the treatment works rates that produce adequate revenues required for operation, maintenance, replacement of equipment, retirement of existing debt, and repayment of the WPCRLF loan for the project.
- (35) Value Engineering – A specialized cost control technique which uses a systematic and creative approach to identify and focus on high costs in a project in order to arrive at a cost saving without sacrificing the purpose, reliability or efficiency of the project.
- (36) WPALP – The Water Pollution Abatement Loan Program
- (37) WPCELF – The Water Pollution Control Emergency Loan Fund.
- (38) WPCRLF – The Water Pollution Control Revolving Loan Fund.

