

Administrative Procedures Act Rules

Title 11: Mississippi Department of Environmental Quality

Part 6: Wastewater Pollution Control Regulations

Part 6, Chapter 4: Mississippi Commission on Environmental Quality State Revolving Fund Loan Program Regulations (Effective for Projects Funded Prior to 10/1/2000)

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Rule 4.1 Introductory Provisions.

- A. **Scope of Regulations.** These regulations, adopted pursuant to Section 49-17-61, Mississippi Code of 1972, as amended, shall govern the Mississippi Water Pollution Control Revolving Fund Program. These regulations may be superceded by the SRF loan agreement when approved by the Department staff and when not in conflict with any state or federal law or executive order.

- B. Effective Date of Regulations. These regulations are effective December 1, 1999. These regulations shall also apply to loan agreements executed prior to this date unless the loan recipient requests that the previously effective regulations apply.
- C. Definitions. The following words and terms, when used in this regulation, shall 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 future amendments.
 - (2) Alternative Technology - Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; individual and onsite systems; and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.
 - (3) 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 required to undertake and complete the project, on behalf of the applicant. The signatory agent must be a member of, 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.
 - (4) Best Practicable Waste Treatment Technologies - The cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment works to meet the applicable provisions of federal and state effluent limitations, groundwater protection, or other applicable standards.
 - (5) Binding Commitment - A legal obligation, enforceable under State law, specifying the terms and schedules under which assistance is provided.
 - (6) Building - The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.
 - (7) Capitalization Grant - Federal grant assistance awarded to the State for the establishment of the State Water Pollution Control Revolving Fund.
 - (8) Change Order - The documents issued by the loan recipient, upon recommendation of the consulting engineer, authorizing a change, alteration, or variance in previously approved engineering 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 pursuant to the contract.

- (9) Collector Sewer - The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property.
- (10) Commission - The Mississippi Commission on Environmental Quality or its successors.
- (11) Construction - Any one or more of the following: erection, building, acquisition, alteration, remodeling, improvement or extension of treatment works.
- (12) Construction Fund - A dedicated source of funds, created and maintained by the applicant in a separate account at an official depository, or a designated depository approved by the Department staff, used solely for the purposes of construction and other allowable costs of a project funded by the Commission.
- (13) Consulting Engineer - The engineer or engineering firm retained by the loan recipient to provide professional engineering services during the planning, design, and/or construction of a project.
- (14) Cost-Effectiveness Analysis - An analysis performed to determine which waste treatment management system or component part will result in the minimum total monetary (resources) costs over time, without overriding nonmonetary considerations, to meet federal, state, and local requirements and objectives.
- (15) Department - The Mississippi Department of Environmental Quality and staff.
- (16) Effluent Limitation - Any restriction established by the Department or the EPA administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from a point source into waters of the State.
- (17) Eligible Applicant - A public waste treatment or collection management agency or any city, town, county, district, or other public body created by or pursuant to 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 and Federal law to receive SRF loan assistance, and has the ability to comply with this regulation and the requirements of the SRF loan agreement.
- (18) Enforceable Requirements of the Act - Those conditions and limitations of permits issued pursuant to the Act, Sections 402 and 404, which, if violated, could result in issuance of a compliance order or initiation of a civil or criminal action under the Act, Section 309. Where a permit has not been issued, but issuance is

anticipated, the term means any requirement which will be in the permit when issued.

- (19) Environmental Determination - A finding by the Department regarding the potential environmental impacts of a proposed project and describing what mitigative measures, if any, the applicant will be required to implement as a condition of financial assistance.
- (20) Environmental Information Document - A written analysis prepared by the applicant describing the potential environmental impacts of a proposed project, sufficient in scope to enable the Department staff to make an environmental assessment to allow an environmental determination to be made by the Department.
- (21) Environmental Review - The process whereby an evaluation is undertaken by the Department, consistent with the National Environmental Policy Act and other federal, state, and local laws and requirements, to determine whether a proposed project may have significant impacts on the environment.
- (22) EPA - The Environmental Protection Agency.
- (23) EPA Administrator - The chief officer of the Environmental Protection Agency appointed by the President of the United States.
- (24) Estuary Management Plan - A plan for the conservation and management of an estuary of national significance as described in Section 320 of the Act.
- (25) Executive Director - The executive director of the Mississippi Department of Environmental Quality, or his designee.
- (26) Facilities Planning - Those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Act and other eligible treatment works, and which consist of a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area and will demonstrate the selected alternative is cost-effective, practical to implement and environmentally sound.
- (27) Financial Assistance - Loans by the Commission from the Water Pollution Control Revolving Fund.
- (28) Fund - The State Water Pollution Control Revolving Fund, created pursuant to Section 49-17-61, Mississippi Code of 1972, as amended.
- (29) 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.

- (30) 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.
- (31) Innovative Technology - Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.
- (32) Intended Use Plan - A plan identifying the intended uses of the amount of funds available in the SRF for each fiscal year as described in Section 606(c) of the Act.
- (33) 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 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.
- (34) Nonpoint Source Pollution Plan - A plan for managing nonpoint source pollution as described in Section 319 of the Act.
- (35) Permit, Waste Discharge Permit - The authority granted by the Mississippi Environmental Quality Permit Board to discharge treated wastewater into or adjacent to waters of the state.

- (36) Plans, Specifications and Contract Documents - The engineering description of the project including engineering drawings, maps, technical specifications, design reports and construction contract documents in sufficient detail as required by the Department staff, to allow contractors to bid on and construct the work.
- (37) Point Source - Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.
- (38) Priority List - A list of projects for which SRF assistance has been requested, and which displays projects that are both fundable during the current fiscal year and are planned for possible future funding, consistent with the current Priority System.
- (39) Priority System - The method of ranking projects for which SRF funding assistance has been requested, in order of priorities established by the Commission.
- (40) Project - The scope of work for which assistance is awarded under the SRF.
- (41) Project Completion - The date of the final construction inspection as performed by the Department.
- (42) Project Performance Standards - The performance and operational requirements applicable to a project including, but not limited to, the enforceable requirements of the Act and the specifications, which the project is planned to meet.
- (43) Refinancing - To provide SRF assistance for a project or project portion where the debt obligation was incurred and construction began prior to the date of the SRF loan award.
- (44) Regional Facility - Wastewater collection and treatment facilities, which incorporate multiple service areas into an area wide service facility, thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state, the specified size of which is determined by any one or combination of population, number of governmental entities served, and/or service capacity.
- (45) Service Line - A conduit intended to carry wastewater, together with minor quantities of infiltration and inflow that are not admitted intentionally, from residences, public buildings and businesses to a collector sewer.
- (46) State Allotment - The sum allocated to the State of Mississippi for a federal fiscal year, from funds appropriated by Congress pursuant to the Act.

- (47) SRF - The State Revolving Fund.
- (48) Treatment Works - Any devices and systems which are used in the storage, treatment, recycling, and reclamation of waste or which are necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of 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 plant, disposal field, lagoon, canal, incinerator or other facilities installed for the purpose of treating, neutralizing or stabilizing wastewater or nonpoint source pollution or facilities to provide for the collection, control and disposal of wastewater or nonpoint source pollution.
- (49) Value Engineering - A specialized cost control technique which uses a systematic and creative approach to identify and focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the purpose, reliability or efficiency of the project.
- (50) Water Quality Management Plan - A plan prepared and updated annually by the State and approved by the Environmental Protection Agency which determines the nature, extent, and cause of water quality problems in various areas of the State and identifies cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

Source: *Miss. Code Ann. §§ 49-17-61 through 49-17-70, 49-17-81 through 89, 49-2-1, et seq. and 49-17-1, et seq.*

Rule 4.2 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 Rule 4.1.C.(17) of this regulation, as determined by the Department.
- B. Obligation Period. Federal funds allotted to the State shall be available for obligation for a period of one year after the close of the federal fiscal year for which the funds are authorized.
- C. Reserves. The Commission shall reserve a percentage of the State's Title VI SRF allotment from each fiscal year for administration of the fund and for planning under Sections 205(j) and 303(e) of the Act, consistent with the Act and state law.
- D. Public Comment and Review. In accordance with the Act, the Commission shall provide for public comment and review to consider adoption of the annual intended use plan, the

priority list, and the priority system. After adoption by the Commission, modifications to these documents may be adopted by the Commission as provided for in the Intended Use Plan without further public comment and review.

E. Types of Assistance. The fund may be used for the following purposes, subject to that established in the Intended Use Plan for a given fiscal year.

- (1) To make loans on the condition that:
 - (a) Such loans are made at or below market interest rates, at terms not to exceed 20 years.
 - (b) Monthly principal and interest payments will commence as further described in Rule 4.3.H. of this regulation, and all loans will be fully amortized not later than 20 years after project completion.
 - (c) The recipient of a loan will establish a dedicated source of revenue for repayment of loans.
 - (d) The fund will be credited with all payments of principal and interest on all loans.
- (2) To refinance the debt obligation of eligible applicants at or below market rates when such debt obligations were incurred and construction began on or after March 7, 1985; and where such projects have complied with all applicable Title II requirements of the Act, crosscutting federal laws and executive orders, and this regulation. The prospective loan recipient agrees that by pursuing such a refinancing arrangement, he does so at his own risk, and thereby relieves the Commission, the Department, and the Department staff of all responsibility and liability should costs later be determined unallowable for any reason or should such 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 fund, and provided such authority is established in state law.
- (4) For the reasonable costs of administering the fund and conducting activities under Title VI of the Act.
- (5) To earn interest on fund accounts.

F. State Capitalization Grant Application. After the Commission adopts the Intended Use Plan, including the Priority System and Priority List, the Executive Director or his designee shall submit these items with an application for the capitalization grant for that fiscal year to EPA.

G. Federal Title II Requirements. All projects which receive loan assistance from the fund and which will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants must meet the Title II requirements under Sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1) and 513 of the Act. Current EPA regulations promulgated under these sections of the Act will apply, except as noted below. These requirements will be superceded by any subsequent federal law or regulation if so specified by that law or regulation. The Department may establish state procedures accepted by EPA. In applying these EPA regulations, the word "Department" shall be substituted for the word "EPA" or "Regional Administrator" and the words "loan recipient" shall be substituted for the word "grantee". A summary of these Title II requirements and the applicable regulations is as follows:

- (1) Section 201(b), which requires that projects apply best practicable waste treatment technology (see 40 CFR 35.2005(b)(7): Definition of BPWTT; 40 CFR 35.2030(b)(2): Facilities Planning);
- (2) Section 201(g)(1), which limits assistance to projects for secondary treatment, advanced treatment or any cost-effective alternative, new interceptors and appurtenances, and infiltration-inflow correction. This section retains the Governor's discretionary set-aside by which a State can use up to 20 percent of its allotment for other projects within the definition of treatment works in Section 212(2), and for certain non-point source control and groundwater protection purposes, as defined in section 319 of the Act (40 CFR 35.2015(b)(2)(ii-iv): State Priority System and Project Priority List);
- (3) Section 201(g)(2), which requires that alternative technologies be considered in project design (40 CFR 53.2030: Facilities Planning);
- (4) Section 201(g)(3), which requires that applicants show that the related sewer collection system is not subject to excessive infiltration or inflow (40 CFR 35.2030(b)(4): Facilities Planning; 40 CFR 35.2120: Infiltration/Inflow);
- (5) Section 201(g)(5), which requires that applicants study innovative and alternative treatment technologies and take into account opportunities to construct revenue producing facilities and to make more efficient uses of energy and resources (40 CFR 35.2030: Facilities Planning);
- (6) Section 201(g)(6), which requires that the applicant analyze potential recreation and open space opportunities in the planning of the proposed facility (40 CFR 35.2030(b)(5): Facilities Planning);
- (7) Section 201(n)(1), which provides that funds under Section 205 may be used for water quality problems due to discharges of combined sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a State (40 CFR 35.2015(b)(2)(iv): State Priority Systems--categories of need and 35.2024(a): Combined Sewer Overflows);

- (8) Section 201(o), which calls on the Administrator ("State" under a capitalization grant) to encourage and assist communities in the development of capital financing plans;
- (9) Section 204(a)(1) and (2), which require that treatment works projects be included in plans developed under Sections 208 and 303(e) (40 CFR 35.2102: Water Quality management Plans);
- (10) Section 204(b)(1), which requires that communities develop user charge systems and have the legal, institutional, managerial and financial capability to construct, operate, and maintain the treatment works (40 CFR 35.2208: Adoption of Sewer Use Ordinance and User Charge System; 35.2130: Sewer Use Ordinance; 35.2140: User Charge System; 35.2214: Grantee Responsibilities; 35.2122: Approval of User Charge System and proposed Sewer Use Ordinance; 35.2110: Access to Individual Systems; and 35.2206(a):
- (11) Section 204(d)(2), which requires that, one year after the date of completion of construction and initiation of operation the owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit (40 CFR 35.2218(c), (d), (e)(1) and (e)(2): Project Performance); except that the provisions of 40 CFR 35.2032(c) will not apply;
- (12) Section 211, Federal regulation concerning collection systems (40 CFR 35.2116) do not apply, and are replaced by the following:
 - (a) SRF assistance may be provided for sewage collection systems, provided such assistance
 - (1) is for replacement or major rehabilitation of an existing collection system and is necessary to the total integrity and performance of the waste treatment works servicing such a community, or
 - (2) is for a new collection system in an existing community with sufficient existing or planned capacity to adequately treat such collected sewage and is consistent with Section 201 of the Act. For the purposes of this regulation, the term "existing community" means those residences, public buildings, and businesses that are correctly documented as existing in the approved SRF facilities plan. If assistance is awarded, the loan recipient must cause the existing buildings to be connected to the collection system within the time specified in the loan agreement;
- (13) Section 218, which assures that treatment systems are cost-effective and requires that projects of over \$10 million include a value-engineering review (40 CFR 35.2030(b)(3): Cost Effectiveness, Facilities Planning, and 35.2114: Value Engineering); except that the provisions of Rule 4.3.B.(2) of this regulation supercede these federal regulations where applicable;

- (14) Section 511(c)(1), which applies the National Environmental Policy Act to projects receiving Title II grants (40 CFR 35.2113: Environmental Review). The state environmental review requirements, which comply with this federal law, are discussed in greater detail in Appendix C;
- (15) Section 513, which applies Davis-Bacon labor wage provisions to treatment works construction (see 29 CFR Part 5). Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (Section 513, applies 40 U.S.C. 276, et seq.).

H. Intended Use Plan. Each fiscal year for which funds are available in the SRF, the Commission shall establish an intended use plan which shall be subjected to public comment and review prior to adoption by the Commission. The intended use plan will include the following items:

- (1) A description of both the short and long term goals and objectives of the fund.
- (2) A list of projects for construction of treatment works which are included on the fundable portion of the Priority List and a list of activities eligible for assistance under Sections 319 and 320 of the Act. The list of projects will include the following items:
 - (a) Name of the recipient.
 - (b) Facility description.
 - (c) Project treatment/use categories.
 - (d) Treatment requirements.
 - (e) Terms of financial assistance.
- (3) Assurances for meeting the requirements of Section 602(b) of the Act:
 - (a) The Department will enter into binding commitments equal to at least 120% of the capitalization grant payments within one year after the receipt of the grant payment.
 - (b) All funds will be expended in an expeditious manner.
 - (c) All capitalization grant funds will first be used toward compliance with the enforceable requirements of the Act, including the municipal compliance deadline of July 1, 1988, in accordance with EPA guidance.

- (d) All projects funded with funds directly made available by capitalization grants will meet the Federal Title II requirements as described in Rule 4.2.G. of this regulation.
 - (4) The Priority System which describes the method of ranking projects, the method for distribution of funds, and project action deadlines which all fundable projects must meet or be subject to bypass from the priority list.
- I. SRF Financing. The SRF has been established to provide low interest loans to assist and encourage communities to construct wastewater treatment and collection facilities required to improve water quality and public health. Types of assistance are itemized in Rule 4.2.E. of this regulation. Basic SRF financing requirements are as follows:
 - (1) All eligible applicants requesting SRF assistance shall meet the following requirements in order to receive such assistance.
 - (a) The applicant's project must be on the fundable portion of the current year's Priority List.
 - (b) The applicant must enter into legal and binding commitments with the Commission and the State Tax Commission to secure financing.
 - (c) Terms of any SRF assistance will be as established in the Intended Use Plan for the projects to be funded in each fiscal year, and will be further established in the SRF loan agreement and repayment agreement.
 - (d) The applicant must complete an application, and must secure approvals of all documents required by the Department.
 - (e) The applicant must comply with the requirements of the Water Quality Act of 1987 and all applicable state laws, requirements and regulations.
 - (f) The applicant must establish a dedicated source of funds for repayment of the loan.
 - (g) The applicant must not be in violation of, or delinquent on, any provision of a previously awarded SRF loan agreement and repayment agreement.
 - (2) Payments from the fund to the loan recipient shall be made no more often than monthly, generally as construction is progressing. Except for program administration expenses, funds will not be disbursed from the construction fund without first entering into a legal and binding commitment with the Commission. Project payments are further described in Rule 4.3.G.
- J. Responsibility. The applicant (or loan recipient) is responsible 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 (or loan recipient) or any others of any liabilities or responsibilities.

Department approval of any document is for administrative purposes only and does not establish or convey any such liability or responsibility.

- K. Other Approvals. The applicant (or loan recipient) shall 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.

Source: *Miss. Code Ann. §§ 49-17-61 through 49-17-70, 49-17-81 through 49-17-89, 49-2-1, et seq. and 49-17-1, et seq.*

Rule 4.3 Project Requirements. Until such time as the State satisfies the Title II funding limitations described in Rule 4.2.G. of this regulation, all wastewater projects (as described in Section 212 of the Act) funded by the SRF must comply with the Title II requirements of Rule 4.2.G. and the crosscutting requirements in Appendix H. In addition, the following project requirements also apply:

A. Facilities Planning.

- (1) Preplanning Conference. Potential applicants and/or their consulting engineer shall request and attend a preplanning conference with the Department staff as early in the planning process as practical. During the conference the staff will provide information, advice, instruction, and guidance on the scope of work and level of effort needed to define eligible projects, in order to ensure that the applicant expeditiously complies with the facilities planning requirements dictated by the Act and State regulations. All facilities plans must be prepared by or under the responsible supervision of a professional engineer, registered under Mississippi law.
- (2) Contents of Facilities Plan. All facilities plans must contain that described in the Department's guidance for SRF facilities plans, including all updates, and as may be required by Department staff pursuant to review of the facilities plan. The facilities plan must also be prepared in accordance with Appendices A, B, C, H, I, K, M, and N of this regulation. Should an applicant desire to omit or modify a portion of the facilities plan as required by the Department's guidance for SRF facilities plans, approval by the Department staff must be obtained prior to completion and submission of the facilities plan. The facilities plan must also include a financial capability analysis in accordance with Department guidance. The facilities plan must bear the seal of the registered professional engineer responsible for preparation of this document.
- (3) Environmental Review Process. Prior to approval of the facilities plan, the Department staff will complete the appropriate portions of the environmental review procedure described in Appendix C of this regulation, based upon the evaluation of environmental impacts of the selected alternative as described in the facilities plan.
- (4) Approval of Facilities Plan. The Department staff will approve the facilities plan after completing the appropriate environmental review procedure and after

determining that all facilities planning requirements have been met and are approvable.

B. Engineering Design.

- (1) **Pre-design Conference.** Potential applicants and/or their consulting engineer shall request and attend a pre-design conference with Department staff as early in the design process as practical. All plans, specifications and contract documents must be prepared by or under the responsible supervision of a professional engineer registered under Mississippi law.
- (2) **Value Engineering.**
 - (a) **Applicability.** The applicant shall conduct value engineering during the design of the project, if the estimated cost of building the treatment works is more than \$5 million. Value engineering for projects of less than \$5 million may be conducted at the discretion of the applicant. Applicants who conduct value engineering may receive an additional design allowance, as described in Appendix B, as a part of the loan award.
 - (b) **Guidance.** The applicant shall utilize the Department's guidance on the scope and performance of the value engineering analysis.
- (3) **Plans, Specifications and Contract Documents.**
 - (a) **General Requirements.** The applicant shall prepare plans, specifications and contract documents on all appropriate elements of the project. These documents shall conform to Department requirements, to Appendices A, C, D, E, F, H, I, K, L, M, and N of this regulation, and to the technical requirements of the Departmental document, "State of Mississippi Requirements for the Design of Municipal Wastewater Treatment Facilities," or its successor. Other recognized engineering publications may be used for unit processes or technologies not described in the "Requirements."

Plans, specifications, and contract documents must also conform to such contract language, conditions, and forms as may be required by Department staff. The plans and specifications shall incorporate the accepted recommendations of any value engineering performed in accordance with this regulation. The plans, specifications, and contract documents must bear the seal of the registered professional engineer responsible for preparation of these documents.
 - (b) **Contents.** The plans, specifications, and contract documents shall contain the following:
 - (1) Provisions assuring compliance with these regulations and all relevant federal and state laws.

- (2) Forms by which the bid bond, performance bond and payment bonds will be provided.
 - (3) Until such time as the State satisfies the Title II funding limitations described in Rule 4.2.G. of this regulation, provisions requiring the successful contractor and subcontractors to pay all laborers and mechanics employed on the project not less than the prevailing wage rates, as determined by the United States Secretary of Labor, in accordance with the federal Davis-Bacon Act (40 U.S.C. 276, et seq.).
 - (4) A contractor's assurance form to be executed by the contractor which shall warrant compliance by the contractor with all applicable federal laws and regulations and all law of the State of Mississippi and all regulations and published policies of the Commission.
 - (5) If determined to be necessary by the applicant, provisions providing for the applicant to retain a certain percentage of the progress payments otherwise due to the contractor until the building of the project is substantially complete, in accordance with state law.
 - (6) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage.
 - (7) Provisions giving authorized representatives of the Department access to all such construction activities, books, records, documents and other evidence of the contractor for the purpose of inspection, audit and copying during normal business and/or working hours.
 - (8) Provisions for compliance with the MBE/WBE requirements as described in Appendix E of this regulation.
 - (9) Those conditions, specifications and other provisions provided by or required by the Department staff.
- (c) Related Submittals. The following documents, if applicable to the project, must also be submitted prior to, or along with the plans, specifications, and contract documents; or at other times may be required by the Priority System:
- (1) A completed NPDES permit application.

- (2) A completed Section 404 and/or Section 10 permit application, or a letter from the Corps of Engineers which states that such permits are not needed.
 - (3) A completed solid waste disposal permit application.
 - (4) Approved archaeological/cultural resource surveys, or a letter from the Mississippi Department of Archives and History which states that such surveys are not needed.
 - (5) Approved vegetative/wildlife surveys, or a letter from the Mississippi Natural Heritage Program which states that such surveys are not needed.
- (4) Approval of Plans and Specifications.
- (a) Department Approval. The Department staff will approve the plans, specifications, and contract documents upon determining that these documents:
 - (1) Conform to the requirements listed in this regulation;
 - (2) Are consistent with all relevant federal and state laws;
 - (3) Pass a biddability, operability, and constructability review by the Department staff;
 - (4) Are consistent with the facilities planning documents and environmental determinations required by this regulation; and
 - (5) Are otherwise approvable pursuant to review by the Department staff.

C. Application for SRF Loan.

- (1) Preapplication Conference. Potential applicants and/or their consulting engineer shall request and attend a preapplication conference with Department staff as early in the application process as practical.
- (2) Contents of Application. All documents listed below must be complete and approvable when submitted to the Department staff.

An original and one copy of the SRF loan application shall be submitted to the Department staff. Only forms provided by the Department staff may be used, and they must not be altered. The SRF loan application may request assistance only for costs that are allowable in accordance with Appendices A and B of this regulation, and may include a construction contingency, as determined by the Department staff, in the project budget. The application amount shall include any

administration fee charged to the loan recipient by the Department, as established in the Intended Use Plan under which the project is funded. A complete application shall conform to this regulation, including all Appendices, and shall include the following:

- (a) A completed SRF loan application form.
- (b) A draft user charge system and ordinance. The user charge system shall be designed to produce adequate revenues required for operation, maintenance, replacement, retirement of existing debt and repayments of the State Revolving Fund Loan for the project and shall identify the dedicated source of funds, the basis of payment, and user charges for each user class.
- (c) A draft sewer use ordinance. The sewer use ordinance shall prohibit new connections of inflow sources, shall require that new sewers and connections are properly designed and constructed, shall prohibit combined sewers, shall prohibit the introduction of toxics or other pollutants in amounts or concentrations that endanger public safety or physical integrity of the treatment works, cause violation of effluent or water quality limitations, or preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.
- (d) A complete procurement package for all eligible engineering, inspection, architectural, administrative and legal services included in the SRF loan application. Procurement packages for the facilities planning and engineering design are not to be submitted. All procurement actions related to the SRF Loan project shall comply with state law and Appendix D of this regulation, and a certification from the applicant to this effect shall be included in all procurement packages.
- (e) (1) For all loan ineligible real property and easements (including power and other utilities), completion of the appropriate requirements of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 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:
 - (a) Clear title
 - (b) Execution by both parties of a bonafide option to purchase or lease.
 - (c) Initiation of condemnation by filing such action in court.

Prior to loan award, clear title certification forms 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, such as for land treatment projects, completion of the appropriate requirements of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, and a written request to the Department staff for approval of the purchase price of all such loan eligible real property. Prior to loan award, the applicant must secure approval of the purchase price by the Department staff and must submit and executed bona fide option to purchase.
- (f) A statement of the amount of all necessary local funds for the project and a certification form from the loan applicant which states that all local funds necessary for the project have been secured, or will be secured within 90 days after loan award, and a statement to this effect from the funding source. If local funds will be raised by a local bond issue, a certified copy of the authorizing resolution and an approvable bond issuance schedule may be submitted in lieu of a statement from a funding source.
- (g) A completed financial capability analysis using the most recent design level cost estimates in Rule 4.3.C.(2)(1).
- (h) Completion of the intergovernmental review process as described in Appendix K of this regulation, and the final comment letter from the State Clearinghouse, and all other intergovernmental review agency comments received.
- (i) A certification form from the loan applicant and the loan applicant's legal counsel, stating that (1) the loan applicant has authority under federal and state laws and regulations to receive SRF loan assistance, to collect user charges through an approved user charge system, to enforce the user charge system and sewer use ordinance, to repay the loan under the terms of the loan agreement, to comply with all other terms of the loan agreement, to own, operate, maintain and replace the facilities to be constructed with SRF loan funds, and that (2) there are no restrictions under federal or state laws or regulations regarding indebtedness which may prevent the loan applicant from executing the SRF loan agreement and implementing the project.
- (j) 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 for executing the application and to be the authorized representative on the project.

- (k) A copy of all actual or proposed interlocal agreements related to the project. Such agreements must be executed by all appropriate parties and must be approved by Department staff prior to loan award.
- (l) A copy of the bid forms from the plans and specifications filled out with the consulting engineer's cost estimates. The construction costs shown on the application must match those on the bid forms.
- (m) A certification regarding debarment, suspension and other responsibility matters, in accordance with Appendix F of this regulation.
- (n) All other forms, documents, and supporting information required by the Department staff.

D. Award of SRF Loan

- (1) Upon determination by the Department staff that (a) all applicable requirements of this regulation and applicable state and federal laws have been met, (b) all applicable documents have been approved, (c) all applicable permits have been issued or will be issued, (d) the project is on the fundable portion of the current year priority list and has not been bypassed by the Commission, and (e) funds are available for the amount of the SRF loan application, the Executive Director, or his designee, shall execute and transmit an SRF loan offer (includes an offer letter, loan agreement and initial repayment agreement) to the loan recipient. In addition to the estimated allowable project costs as described in Appendices A and B of this regulation, the loan offer may include a construction contingency, as determined by the Department staff, in the project budget. This contingency may be reduced after receipt of construction bids as described in Rule 4.3.D.5. below.
- (2) Upon receipt of the SRF loan offer, the loan recipient must completely execute and return it to the Department staff, along with a certified copy of a resolution by the loan recipient's governing body authorizing acceptance of the loan offer, within the timeframe established in the SRF loan offer. The loan offer becomes void if not executed and returned within the timeframe specified, unless extended by the Executive Director or his designee.
- (3) Upon return of the executed SRF loan offer to the Department staff, any administration fee established in the loan agreement will be processed accordingly and such fee will be paid to an appropriate Department administration fund.
- (4) Upon return of the executed SRF loan offer to the Department staff, the loan recipient must then advertise the project for construction bids within the timeframe established in the loan agreement. All procurement actions by the loan recipient must comply with state law and Appendix D of this regulation.
- (5) Upon receipt of construction bids, the loan recipient must then submit (a) the completed MBE/WBE documentation as required by Appendix E of this regulation, (b) the completed bid package, and (c) a completed loan agreement

amendment request (to reflect as-bid construction costs, a construction contingency as determined by the Department staff, and final allowances) to the Department staff within the timeframes established in the loan agreement.

- (6) Upon receipt of the completed MBE/WBE documentation, bid package and completed loan agreement amendment request from the loan recipient, the Department staff will review these documents, determine whether any request for an increased loan amount is justified, eligible, and that funds are available and, after determining that all documents are approvable, will transmit to the loan recipient an authority to award the construction contracts and an amended SRF loan offer, which includes in the project budget (a) the approved as-bid amounts for construction, (b) the final allowance amounts for facilities planning, engineering design, and construction phase services in accordance with Appendix B of this regulation, and (c) a construction contingency as determined by the Department staff. After execution of the amended SRF loan offer, the SRF loan amount may not be increased except for funding of a subsequent segment 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 SRF loan amount must be paid by the loan recipient from sources other than SRF loan funds.

E. Construction Phase

- (1) **Awarding Construction Contracts and Preconstruction Conference.** Upon receipt of the authority to award the construction contracts and issue the notice to proceed, the loan recipient must do so and must transmit a copy of the executed construction contracts and the notice to proceed to the Department staff within the timeframe specified in the loan agreement.

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

The loan recipient shall arrange and hold a preconstruction conference and shall allow attendance and participation by the Department staff.

- (2) **Observation During Construction.** During all times that construction work is being performed, the loan recipient shall provide for full-time observation of the project by the consulting engineer and shall require the consulting engineer's assurance that the work is being performed in a satisfactory manner in accordance with the SRF loan agreement and the approved plans, specifications and contract documents, approved change orders, and in accordance with sound engineering principles and building practices. Less than full-time observation may be allowed when properly justified and approved by the Department staff.

The Department staff is authorized to observe the building of any project at any time in order to assure that plans, specifications and contract documents are being followed and that the project is being built in accordance with sound engineering

principles and building practices. A representative may be stationed at the building site by the Department staff to report on the manner and progress of the building or to report conditions relating to the equipment or materials furnished and the compliance by the contractor with approved plans, specifications and contract documents for the project. Such observation shall not subject the Department to any action for damages or other liability. Such observation will not release the contractor from any requirements of the contract documents or the consulting engineer from determining compliance with the requirements of the contract documents or the loan recipient from insuring compliance with the terms of the loan agreement.

The contractor, consulting engineer and loan recipient shall furnish the Department staff with every reasonable facility for determining whether the work as performed is in accordance with the requirement and intent of the plans, specifications and contract documents. The Department staff is authorized to review and require submission of daily logs, record drawings, field notes, and any other document prepared by any party in relation to the SRF project.

- (3) Observation of Materials and Equipment. The Department staff is also authorized to observe all equipment and materials furnished, including observation of the preparation or manufacture of the equipment and materials to be used.
- (4) Construction Deficiencies
 - (a) In the event construction procedures, materials or equipment are determined by the Department staff to be substandard, otherwise unsatisfactory, and/or not in conformity with approved plans and specifications, the Department staff may order the loan recipient to take such action through the consulting engineer in the manner provided for in the construction contract to correct any such deficiency.
 - (b) The Department staff may immediately begin withholding SRF loan payments should such substandard or unsatisfactory construction work, materials, or equipment become evident and may require the loan recipient to repay any previously paid amounts related to such work, within 30 days of such notification. Interest may be charged on such delinquent repayments after expiration of the 30-day period at the rate established in Rule 4.3.G(6) of this regulation. Alternatively, the Department staff may withhold such amounts from subsequent payment requests.
 - (c) In those instances of dispute between the loan recipient or consulting engineer and the Department staff as to whether material or equipment furnished or work performed conforms with the terms of the construction contract, the Executive Director or his designee may order the loan recipient to reject unsatisfactory construction work, materials or equipment and/or initiate other action provided for in the construction contract, including suspension of work where necessary, until all disputed issues are resolved in accordance with the terms.

- (d) In addition to normal testing procedures required of the loan recipient, should questions arise concerning the construction work, materials or equipment, the Department staff may require the loan recipient to perform reasonable additional tests of construction materials, equipment or processes which the Department staff determines to be necessary during the construction of the project. All tests, whether for the Department staff or the consulting engineer, shall conform to current American Water Works Association, American Association of State Highway and Transportation Officials, or American Society of Testing and Materials published procedures, or similar criteria. The Department staff shall specify which tests are applicable, if not described in the approved plans, specifications, and contract documents. Samples for testing shall be furnished free of cost, if so requested, to the Department staff upon request on the construction site.
- (5) Change Orders. The loan recipient, consulting engineer and construction contractor shall comply with the EPA publication Management of Construction Change Orders. If after the construction contract has been executed it becomes apparent that changes in such plans, specifications or contract documents are necessary or appropriate, a proposed change order and justification shall be submitted to the Department staff for approval, well in advance of the construction change when possible. Approval of change orders may be secured from the Department either before or after such work is initiated, at the discretion of the loan recipient. The Department staff may identify eligible costs and may approve the change order to the previously approved engineering plans, specifications and contract documents including but not limited to additions or deletions of work to be performed pursuant to the contract. Such change order shall not change, vary or alter the basic purpose or effect of a project, shall be technically adequate, the costs shall be justified and reasonable, and eligible/ineligible costs shall be appropriately separated.

All requests for change order approvals shall contain (a) sufficient information and justification, (b) applicable plans or drawings, (c) construction contractor's cost breakdowns, (d) the consulting engineer's analysis of the cost breakdown, and (e) a memorandum of negotiations to enable the Department staff to review the change order. Engineering computations and sketches shall also be included if necessary to justify the change.

Justification for contract time extensions included in a change order shall be prepared but need not be submitted to the Department unless the total time extensions for the contract exceed 25% of the original contract time, in which case justification for all time extensions shall be submitted to the Department for review and approval. Construction work which occurs after the date representing a 25% time extension to the original contract time is not allowable, unless approved as such by the Department staff pursuant to review of the justification for all time extensions.

- (6) Contractor Bankruptcy or Default. In the event of a contractor bankruptcy or default, any agreements entered into with the bonding company (other than the bonding company serving as general contractor or fully bonding another contractor acting as their agent) shall be submitted for approval of the Department staff. The loan recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract, if this course of action is taken.
- (7) Construction Phase Submittals, Approvals, and Actions. The following submittals, approvals and actions will be required during the construction phase of the project. The Department staff may establish other timeframes within the loan agreement when properly justified.
- (a) Within 90 days after loan award, (1) proof of applicable flood insurance shall be submitted, (2) all construction related contracts shall be advertised for bids and proof of such shall be submitted and (3) all local funds necessary for the project shall be secured and proof of such shall be submitted.
 - (b) Within 14 days after receipt of bids, the loan recipient shall submit all MBE/WBE, EEO and related documents.
 - (c) Within 21 days after receipt of bids, the loan recipient shall submit all bid packages.
 - (d) Within 60 days after receipt of bids, the loan recipient shall execute and submit all construction related contract documents and shall issue and submit a notice to proceed on all such contracts.
 - (e) By the date initially established in the loan agreement (which is based upon approximately 50% of contract time), the loan recipient shall submit for review (1) a completed operation and maintenance manual for all facilities to be constructed in whole or in part with SRF loan funds and (2) a plan of how the loan recipient will insure that operators are hired and certified in accordance with state law by the date in f. below.
 - (f) By the date initially established in the loan agreement (which is based upon approximately 90% of contract time), the loan recipient shall (1) enact the approved user charge system and sewer use ordinance, (2) secure approval of the operation and maintenance manual, (3) hire and operators and (4) submit their names and submit the operator certification numbers for the operators certified in accordance with state law.
 - (g) Within 5 days after construction completion of each construction contract, the loan recipient shall submit a determination of construction completion and shall request a final construction inspection by the Department staff. The determination of construction completion shall be made by the consulting engineer and the loan recipient. The final construction

inspection may be delayed by the Department staff pursuant to review of the loan recipient's request and justification for such delay. Should the Department staff decide that the determination of construction completion and request for final construction inspection are being unreasonably delayed, a final construction inspection may be immediately performed by the Department staff.

- (h) Within 30 days after the final construction inspection performed by the Department staff, the loan recipient shall submit final payment requests, approvable summary change orders for all construction contracts, a complete set of as-built plans for the entire project funded in whole or in part with SRF loan funds, and all other administrative forms and documents required by the loan agreement. Payment requests submitted after this date are not allowable, regardless of when the costs were incurred.
 - (i) Any other submittals or actions required by the loan agreement shall be performed when so required and are subject to review and approval by the Department staff.
- (8) Retainage. The loan recipient may retain progress payments to any party under contract with the loan recipient, consistent with state law. Any such retained amounts may not be requested or paid to the loan recipient from SRF loan funds.

F. Post Construction Phase

- (1) Following final payment of SRF loan funds to the loan recipient, or upon expiration of any deadlines established by the loan agreement or the Department staff, the Department staff or other designated parties may perform an audit of the SRF loan project for the purpose of determining compliance with the SRF loan agreement and to determine final allowable costs, payments made thus far, and any additional payments due the loan recipient or repayments due the State.
- (1) Upon completion of the SRF audit (or, if an audit is not performed, following final payment of SRF loan funds to the loan recipient, or upon expiration of any deadlines established by the loan agreement or the Department Staff), the Department staff will transmit to the loan recipient a copy of the audit and a final determination of allowable costs and payments due the loan recipient or repayments due the State. This 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. the interest penalty will be as established in Rule 4.3.G.(6) of this regulation.
- (2) Within 30 days after the date of the above final determination, the loan recipient may submit a written appeal 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

allowable costs will become the final allowable costs for purposes of SRF loan payments and the SRF loan repayment agreement.

- (3) Should an appeal be submitted in accordance with paragraph (3) above, the disputes procedures established in Appendix G of this regulation 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 staff will transmit to the loan recipient a final SRF loan repayment agreement between the loan recipient and the State Tax Commission as established by state law. The loan recipient shall execute and submit to the Department the final loan repayment agreement within the deadline established by the Department.
- (6) Upon receipt of an executed final repayment agreement from the loan recipient, the Department staff will transmit the repayment agreement to the State Tax Commission for execution and return to the Department staff.
- (7) Upon receipt of the executed final repayment agreement from the State Tax Commission, the Department staff will transmit a copy to the loan recipient, and repayment of the SRF loan will commence under the terms of the repayment agreement.
- (8) On the date one year after initiation of operation of the project, which is defined as the date of the final construction inspection performed by Department staff, the loan recipient shall submit a certification that the project meets all of the project performance standards, in accordance with the SRF loan agreement and department requirements. If the loan recipient cannot certify that all project performance standards are being met, a negative certification shall be submitted on this date along with a corrective action report and an approvable schedule for meeting the project performance standards. All certifications shall be submitted on forms established by the Department staff. Failure to submit such certifications or to implement corrective actions in a timely manner may result in the Department staff determining all or a portion of the loan award unallowable and requiring repayment of such unallowable amounts within 30 days of such determination.

G. Payments to SRF Loan Recipients. Payments from the SRF may be made to SRF loan recipients under the following conditions:

- (1) Payments may be requested by and may be made only to loan recipient, in accordance with the SRF loan agreement and the loan recipient's contracts for services and construction for work performed within the project scope and budget period, unless specifically allowed other by the SRF loan agreement.
- (2) Payments may be requested and paid no more often than on a monthly basis.

- (3) The loan recipient shall deduct from all SRF payment requests the amount of funds provided or to be provided from all other state and federal agency funding sources for allowable SRF project costs.
- (4) Payment requests shall be submitted by the loan recipient to the Department staff and shall include the following:
 - (a) SRF payment request form
 - (b) Invoices for all allowable costs for which payment is requested, except that invoices need not be submitted for payment of the facilities planning and design allowance, as determined by Appendix B of this regulation and need not be submitted for any administrative fee included in the loan agreement.
 - (c) Any other documents required by the loan agreement.
- (5) The timing of SRF payments will be as follows, provided the loan recipient is in compliance with the requirements of this regulation and all provisions of the SRF loan agreement:
 - (a) Upon execution of the SRF loan agreement, 50% of the estimated facilities planning and design allowance, as determined by Appendix B of this regulation, may be requested and paid.
 - (b) Upon execution and submittal of all construction contracts within the project scope and upon issuance and submittal of the notice to proceed on all such contracts, the remainder of the final facilities planning and design allowance may be requested and paid.
 - (c) Payments for the construction phase services allowance, as determined by Appendix B of this regulation, may be requested and paid based upon incurred allowable costs. Such requested payment amounts are subject to verification by the Department staff. No more than 85% of the total construction phase services allowance will be paid pending submission of the determination of construction completion, performance of the final construction inspection by department staff, submission of the final pay request, submission of approvable summary change orders on all construction contracts, submission of as-built plans on all construction contracts, and compliance with all other applicable provisions of the SRF loan agreement. Upon completion of these actions, the remainder of the construction phase services allowance may be requested and paid.
 - (d) 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 consulting engineer and the loan recipient, less

any retainage. Such requested payment amounts are subject to verification by the Department staff.

(e) Payments for eligible land may be requested and paid immediately after loan agreement execution, provided the Department has approved the purchase price and provided the loan recipient has submitted a bonafide option to purchase within 30 days after purchase of the loan eligible real property, clear title certification forms from both the loan recipient and the title counsel shall be submitted to the Department.,

(6) Any payments made to the loan recipient which are at any time determined by Department staff to be for costs not in accordance with the SRF loan agreement, for ineligible or unallowable costs, or for related to waste, fraud, abuse or illegal acts under state or federal law, shall be repaid to the SRF fund with 30 days of such notification by the Department staff. 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 staff may withhold such amounts from subsequent payment requests.

H. SRF Loan Repayment Requirements. All SRF loan repayment agreements will be processed under the following requirements:

(1) Interest on paid amounts will commence on the original construction contract completion date.

(2) The amount of interest accrued between the original construction contract completion date 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 will be from the time of transmittal of the final loan repayment agreement to the loan recipient to the date 20 years after project completion. Project completion is defined as the date of the final construction inspection by the Department staff.

(4) Repayments are to be made on a monthly basis through state sales tax withholding or submission of monthly payments in accordance with state law and shall commence no sooner than 90 days after and no later than one year after the final construction inspection by the Department staff.

(5) The repayment interest rate and frequency of interest compounding will be established in SRF loan agreement and repayment agreement.

(6) Should a loan recipient desire to prepay the SRF loan prior to expiration of the repayment period, the remaining principal to be repaid will be calculated assuming all previous repayments included a fixed principal amount equal to the total loan amount divided by the number of repayments in the repayment agreement.

Source: *Miss. Code Ann.*, §§ 49-17-61 through 49-17-70, 49-17-81 through 49-17-89, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

APPENDIX A

Determination of Eligible and Allowable Costs

Eligible and allowable costs under SRF loan agreements will be as described in the EPA publication Handbook of Procedures, Chapter IX, with the following exceptions:

1. Federal procurement requirements do not apply. State law applies as further described in Appendix D of this regulation.
2. Reserve capacity within the design period (up to 20 years) is an eligible cost. Reserve capacity for interceptors, pumping stations, and force mains within a design period of up to 40 years is an eligible cost.
3. On wastewater collection projects which provide sewers to unsewered residences, public buildings and businesses, the service line between the public sewer and the point five (5) feet from the outside wall of residences and public buildings are eligible. Service lines for businesses are eligible between the public sewer and the property line of the business.
4. Construction work and construction related work which occurs by the date representing a 25% time extension to the original construction contract time is eligible. Construction work and construction related work which occurs after this date is eligible only to the extent approved by the Department staff pursuant to a review of the justification for all time extensions.
5. Costs for facilities planning and design are allowable up to the amount of the allowance determined by Appendix B, Table 1 of this regulation. Costs for construction phase services are allowable up to the amount of the allowance determined by Appendix B, Table 2 of this regulation, and as supported by invoices for costs incurred in accordance with the contracts for such services and to the extent such services are allocable to the SRF project.
6. On sewer system rehabilitation projects, the rehabilitation of service lines for residences and public buildings is eligible between the public sewer and the point five (5) feet from the outside wall of residences and public buildings. Such rehabilitation on service lines for businesses is eligible between the public sewer and the property line of the business.
7. Eligible costs include costs for the implementation of a non-point source management program established under Section 319 of the Act, and for development and implementation of an estuary conservation and management plan under Section 320 of the Act. Eligible and allowable costs will be determined in accordance with this Appendix.
8. Eligible costs include the costs of planning, design and construction of publicly owned and operated wastewater treatment and transportation facilities for the

purpose of serving industrial users. Eligible and allowable costs will be determined in accordance with this Appendix.

9. Eligible costs include the costs of planning, design, and construction of treatment and transportation facilities for control of pollutant discharges from a separate or combined storm sewer system. Eligible and allowable costs will be determined in accordance with this Appendix.
10. Eligible costs will be determined without regard to any previous EPA grant or SRF loan funding provided for facilities to be replaced, upgraded, or rehabilitated, except as described in Rule 4.2.I(1)(g).
11. Eligible costs include any administration fee charged to the loan recipient by the Department, as established in the Intended Use Plan under which the project is funded.

APPENDIX B

Allowance for Facilities Planning, Design and Construction Phase Services

The allowance for facilities planning and design will be determined using Table 1 of this Appendix. Projects for which the loan recipient must acquire easements or real property in accordance with the federal Uniform Relocation and Real Property Acquisition Policies Act may receive an additional 1% above the percentages shown in Table 1 for the planning and design allowance. Projects for which a value engineering study is conducted may receive an additional 1% above the percentages shown in Table 1 for the planning and design allowance.

The allowance for construction phase services (includes costs for construction engineering, resident observation, project administration, legal work, and all other costs for work, other than construction, performed in relation to the project) will be determined using Table 2 of this Appendix.

The estimated and final allowances will be determined in accordance with this Appendix and Tables 1 and 2. All allowance percentages will be calculated to four decimal places using linear interpolation. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost. The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending a treatment works, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

- a. The initial award amount of all prime subagreements for building the project.
- b. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project.
- c. The purchase price of eligible real property.

The estimated allowances are to be based on the estimate of the initial allowable building cost. The final allowances will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

The allowance Tables are not intended to be used to determine the compensation for facilities planning services, design services, or construction phase services. Compensation for these services should be based upon the nature, scope, and complexity of the services required by the community. The actual compensation justified for a particular project may be more or less than the amount of the allowance for these services.

Following execution of the SRF loan agreement, the loan recipient may request and receive payment for the facilities planning and design allowance and the construction phase services allowance in accordance with the procedures described in Rule 4.3.G. of this regulation. Advances of allowances will not be provided.

Table 1

Allowance for Facilities Planning and Design

<u>Allowable Building Cost</u>	<u>Allowance as a Percentage of Building Cost</u>
\$ 100,000 or less	14.4945%
\$ 120,000	14.1146%
\$ 150,000	13.6631%
\$ 175,000	13.3597%
\$ 200,000	13.1023%
\$ 250,000	12.6832%
\$ 300,000	12.3507%
\$ 350,000	12.0764%
\$ 400,000	11.8438%
\$ 500,000	11.4649%
\$ 600,000	11.1644%
\$ 700,000	10.9165%
\$ 800,000	10.7062%
\$ 900,000	10.5240%
\$ 1,000,000	10.3637%
\$ 1,200,000	10.0920%
\$ 1,500,000	9.7692%
\$ 1,750,000	9.5523%
\$ 2,000,000	9.3682%
\$ 2,500,000	9.0686%
\$ 3,000,000	8.8309%
\$ 3,500,000	8.6348%
\$ 4,000,000	8.4684%
\$ 5,000,000	8.1975%
\$ 6,000,000	7.9827%
\$ 7,000,000	7.8054%
\$ 8,000,000	7.6550%
\$ 9,000,000	7.5248%
\$10,000,000	7.4101%
\$12,000,000	7.2159%
\$15,000,000	6.9851%
\$17,500,000	6.8300%
\$20,000,000 or more	6.6984%

Table 2

Allowance for Construction Phase Services

<u>Allowable Building Cost</u>	<u>Allowance as a Percentage of Building Cost</u>
\$ 100,000 or less	23.0000%
\$ 200,000	19.5000%
\$ 300,000	17.5000%
\$ 400,000	16.0000%
\$ 500,000	14.8000%
\$ 600,000	14.0000%
\$ 700,000	13.3000%
\$ 800,000	12.7000%
\$ 900,000	12.1000%
\$ 1,000,000	11.7000%
\$ 1,250,000	10.8000%
\$ 1,500,000	10.1000%
\$ 1,750,000	9.7000%
\$ 2,000,000	9.5000%
\$ 2,500,000	9.1000%
\$ 3,000,000	8.9000%
\$ 3,500,000	8.8000%
\$ 4,000,000	8.6000%
\$ 5,000,000	8.3000%
\$ 6,000,000	8.1000%
\$ 7,000,000	7.9000%
\$ 8,000,000	7.8000%
\$ 9,000,000	7.7000%
\$10,000,000	7.6000%
\$20,000,000 or more	6.6000%

APPENDIX C

Environmental Review Process

Introduction

Each project which receives SRF funding will undergo a review to determine whether there will be any significant adverse environmental impacts. It should be recognized that wastewater treatment projects nearly always have a substantial beneficial impact.

For any project, one or more of the following environmental actions will be taken by the Department:

- a. Categorical Exclusion
- b. Finding Of No Significant Impact on the Environment
- c. Amendment to a Finding of No Significant Impact on the Environment
- d. Environmental Impact Statement
- e. Reaffirmation of an Environmental Action
- f. No Action

Categorical Exclusion

A project will receive categorical exclusion (CE) from environmental review if it meets all of the following criteria:

- a. The project will not create a new discharge or result in a significant relocation of an existing discharge.
- b. The project will not substantially increase the volume of discharge or load of pollutants to the receiving stream.
- c. The project will not have a significant adverse effect on the environment.
- d. The action will not adversely affect cultural resources, habitats of endangered or threatened species, or environmentally important natural resource areas.
- e. The action is cost effective and should cause no significant public controversy.

It is expected that most projects which include only sewer system rehabilitation will receive a CE.

The CE will be issued to the appropriate contact agencies and will be published in the Jackson Clarion-Ledger and an appropriate local newspaper. See Attachment 1.

The Department will generally wait 30 days after issuing a CE before funding a project. However, funding may be awarded immediately after issuing a CE, if necessary.

The Department may revoke a CE at any time if significant adverse information becomes available.

Finding of No Significant Impact on the Environment

If a project will not have any significant adverse environmental impact but does not qualify for a CE, a finding of no significant impact (FONSI) will be issued, along with an environmental assessment (EA). See Attachments 2 and 3.

The emphasis of the EA will be to summarize the need for the project (i.e., why the "no action" alternative is not acceptable) and to discuss the environmental impacts of the chosen alternative. The EA is not intended to be a summary of the facilities plan. The EA will not include a list of items eligible for funding.

All alternatives that were studied will be listed, but only the no action alternative and the chosen alternative will be described in detail. The reasons for choosing the chosen alternative will be discussed.

The FONSI will be issued to the appropriate contact agencies and will be published in the Jackson Clarion-Ledger and an appropriate local newspaper. See Attachment 2.

The Department will generally wait 30 days after issuing a FONSI before funding a project. However, a facilities plan may be conditionally approved and a loan agreement may be conditionally offered immediately after issuing the FONSI, if necessary. In such a case, no funds will be transferred to the loan recipient and authority to award construction contracts will not be given until the 30 day period has expired and all substantial adverse comments have been addressed. There will be no exceptions.

Amendment to a Finding of No Significant Impact on the Environment

FONSI amendments are occasionally needed to describe changes to proposed facilities that have already been described in a FONSI. Attachment 2 shows the amendment format. The EA that accompanies the amendment will describe the changes, the reasons for the changes, and any new impacts on the environment due to the changes. The EA amendment is intended to be read in conjunction with the original EA and is not a self supporting document. The original EA will be reissued with the EA amendment in those cases where it is deemed to be necessary to assure clarity.

The 30 day period requirement will be the same as for a FONSI.

Environmental Impact Statement

If the Department determines that an environmental impact statement (EIS) is needed, it will be prepared in accordance with EPA regulation 40 CFR Part 6.

Reaffirmation of an Environmental Action

If five years will have passed between the issuance of a CE, FONSI, Amendment to a FONSI, or an EIS and the award of SRF 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. See Attachment 4. The 30 day period requirement will be the same as for a CE.

If the original environmental action cannot be reaffirmed, the Department will issue a FONSI or an Amendment, as appropriate. The 30 day period requirement will be the same as for a FONSI.

A reaffirmation will not be required when a FONSI is over five years old but the most recent Amendment is less than five years old.

No Action

All SRF projects will receive a CE, FONSI, or EIS. If one of those documents has been issued and there are then significant changes in the project, those changes will be described in an Amendment. Some changes are minor, however, and the Department may determine that a separate Amendment will not be needed. Such changes include, but are not limited to:

- a. Addition of sewer system rehabilitation.
- b. Changes in the size of pump stations, interceptors, or collectors.
- c. Minor changes in the size of unit processes.
- d. Minor rerouting of sewer lines when the new route i) will be mostly on public property, and ii) will not adversely affect cultural resources, habitats of endangered or threatened species, or environmentally important natural resource areas. All affected property owners must be notified by the loan recipient.
- e. Changes in the average monthly user charge.

Public Participation

A loan recipient will be encouraged to hold a public hearing when the alternatives have been determined but before a chosen alternative has been selected and will be required to hold a public hearing before the facilities plan has been fully adopted. The hearings shall be advertised in the Jackson Clarion-Ledger and an appropriate local newspaper at least 30 days before the hearing. The recipient is also encouraged to notify local television and radio stations.

Topics to be discussed at the hearing include the facilities to be built, why they are needed, where they will be built, how much they will cost, the average monthly user charge, and the environmental impact.

If a project change is significant enough to require a FONSI amendment, a new public hearing will be required.

The recipient shall notify the public if the average monthly user charge will be substantially greater (about 20% or more) than was presented at the public hearing. Notification may be made in the newspaper or by a new public hearing.

Contact Agencies

Copies of all environmental actions will be sent to the appropriate contact agencies listed in Attachment 3; other agencies will be contacted as needed. Comments from those agencies and from the public will be carefully evaluated before finalizing any environmental action.

Resolution of Adverse Comments

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

- a. The Department staff will first require the loan recipient to resolve the adverse comments, subject to Department staff approval.
- b. If the loan recipient is unable to resolve the adverse comments and secure approval, the Department staff will render a decision concerning the adverse comments.
- c. 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 Head of the Office of Pollution Control, and the affected parties. The Office Head, or his designee, will render a decision on the appeal as a result of the informal hearing.
- d. 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 Department of Environmental Quality must be received by the Department within 30 days after the date of such decision. Upon receipt of such a request, the Commission on Environmental Quality will hold a formal hearing to consider the matter, and will render a decision.
- e. Appeals of the above formal hearing decision may be made to the Chancery Court in accordance with state law.

CATEGORICAL EXCLUSION FROM ENVIRONMENTAL REVIEW

(1) Recipient, Loan Number

(2) Date

All projects funded under the Mississippi Water Pollution Control Revolving Fund Act undergo a review to determine whether the proposed project will have a significant impact on the environment. In making this determination, it is assumed that all of the facilities and actions recommended in the facilities plan will be implemented.

The proposed project includes: *(3) new collectors, new interceptors, sewer system rehabilitation, upgrading or expanding the existing treatment plant facilities.

The Mississippi Office of Pollution Control has determined that the proposed project meets the criteria for receiving a categorical exclusion from further environmental review. However, this determination can be revoked if significant adverse information becomes available. If you have any comments regarding the proposed project, please send them to Mr. Mark Smith, Office of Pollution Control, P.O. Box 2261, Jackson, MS 39225, phone (601) 961-5171 no later than (4) date.

Sincerely,

Charles H. Chisolm
Office Head

Note: *(3) - Include as needed.

FINDING OF NO SIGNIFICANT IMPACT ON THE ENVIRONMENT
*(1) AMENDMENT

(2) Recipient, Loan Number

(3) Date

All projects funded under the Mississippi Water Pollution Control Revolving Fund Act undergo a review to determine whether the proposed project will have a significant impact on the environment. In making this determination, it is assumed that all of the facilities and actions recommended in the facilities plan will be implemented.

The proposed project includes: *(4) new collectors, new interceptors, sewer system rehabilitation, upgrading or expanding the existing treatment facilities, building new treatment facilities.

The Mississippi Office of Pollution Control has determined that the proposed project will not have a significant adverse impact on the environment and consequently is issuing this finding of no significant impact. However, this issuance can be revoked if significant adverse information becomes available. An environmental assessment is available on request. If you have any comments regarding the proposed project, please send them to Mr. Mark Smith, Office of Pollution Control, P.O. Box 2261, Jackson, MS 39225, phone (601) 961-5171 no later than (5) date.

Sincerely,

Charles H. Chisolm
Office Head

Note: *1 - Include if needed.

*4 - Include as needed.

ENVIRONMENTAL ASSESSMENT

Recipient , Loan Number

A. Summary Data

1. Facilities to be Built
New collectors, new interceptors, sewer system rehabilitation, upgrading or expanding existing treatment plant, building new treatment plant

2. Population and Flow

Current	Design
(19)	(20)

Population in planning area
Other pop. equivalent (specify)
Total equivalent population

Domestic wastewater flow, mgd
Industrial wastewater flow, mgd
I/I, mgd
Other flow (specify), mgd
Total flow, mgd

3. Project Costs

Total project cost: \$
Loan eligible cost: \$

4. Funding Sources

SRF loan amount: \$
Monthly payment on SRF loan: \$
Other sources (specify): \$
Other monthly payments: \$
Total monthly payments: \$

5. User Charges

Average monthly user charge, based on gallons per month:
\$ for debt retirement
\$ for OM&R
\$ total
Median annual household income: \$
Average annual user charge will be % of median income

6. NPDES Effluent Limits

<u>Summer</u>	Winter
---------------	--------

Flow, mgd
BOD5, mg/l
NH3-N, mg/l

DO, mg/l
Residual Cl₂, mg/l
SS, mg/l
FC, number/100 ml
Receiving stream:

B. Maps

Include a map or maps showing the location of the existing and proposed WWTP and major interceptors. Maps showing the location of individual collection lines will not usually be included. A schematic diagram of the WWTP will be included only if a narrative description of the unit processes will not give an accurate picture of the facilities to be built.

C. Existing Facilities

Describe the existing collection and treatment facilities. Describe the loadings on the unit processes if the information is pertinent to the need for the proposed project.

D. Need for the Project

Explain why the existing facilities will not be able to protect human health or the environment at future design flow and loading when the facilities are operated according to optimum O & M procedures.

In many cases the NPDES effluent limits will have been changed from secondary to tertiary limits. For example, if a town has an existing lagoon and the new limit requires a BOD of less than 30 mg/l, a simple statement that a lagoon cannot be expected to meet the new limit will establish a need.

A letter from the Mississippi State Department of Health stating that an area has a significant number of failing septic tank systems and further stating that septic tank systems cannot be expected to work because of small lot sizes or low soil permeability will establish a need.

E. Analysis of Alternatives

Discuss why the no action alternative was not chosen. List, but do not discuss, all of the other alternatives that were studied. State which alternative was chosen. Describe why it was chosen. In many cases a simple statement that the chosen alternative has the lowest present worth, will meet the effluent limits, and is environmentally sound will be adequate.

F. Proposed Facilities

List the unit processes that will be used for wastewater and sludge treatment and describe any that are unusual. State the design flow.

State the number of lift stations and the approximate total length of the interceptors and collectors. State what areas of town, if any, will receive new collectors or sewer system rehabilitation. State what kind of collection system will be used: conventional gravity, small diameter gravity, pressure, etc.

State what will be done with the existing facilities.

State that the above sizes and quantities are planning level estimates and are subject to change during project design.

G. Impact of the Chosen Alternative on the Environment

Describe the impacts of the proposed alternative on the following items:

1. Land use practices and population growth
2. Surface water quality
3. Groundwater quality
4. Wetlands, wildlife preserves, prime agricultural lands, other environments of special interest
5. Any other significant beneficial or adverse impacts

The environmental assessment will state that short term dust, noise, and erosion occurring during construction will be minimized by using appropriate construction techniques. The environmental assessment will also state that all wastewater facilities occasionally produce objectionable odors, but that the facilities will be operated to minimize the occurrences of odor problems. For many projects, these will be the only adverse environmental impacts.

Describe any actions that must be taken to mitigate other adverse impacts on the environment. State when the actions must be accomplished, if appropriate. Describe any actions that have already been taken by the time of FONSI issuance, if appropriate.

H. Public Participation and Agencies Consulted

Summarize the public hearing, emphasizing any public approvals or objections. List the public agencies consulted about the project. The following agencies will be consulted on most projects:

1. United States Army Corps of Engineers
2. United States Soil Conservation Service
3. Mississippi State Department of Health
4. Mississippi Department of Wildlife Conservation

5. Mississippi Department of Archives and History
6. Mississippi Department of Finance and Administration
(State Clearinghouse)

State that the Environmental Assessment was prepared by the Department based on information in the SRF facilities plan as prepared by the loan recipient.

REAFFIRMATION OF ENVIRONMENTAL ACTION

(1) Recipient, Loan Number

(2) Date

All projects funded under the Mississippi Water Pollution Control Revolving Fund Act undergo a review to determine whether the proposed project will have a significant impact on the environment. In making this determination, it is assumed that all of the facilities and actions recommended in the facilities plan will be implemented.

The proposed project includes: *(3) new collectors, new interceptors, sewer system rehabilitation, upgrading or expanding the existing treatment facilities, building new treatment facilities.

The Mississippi Office of Pollution Control has reaffirmed the *(4) finding of no significant impact on the environment/categorical exclusion from further environmental review that was originally issued on (5) date. However, this reaffirmation can be revoked if significant adverse information becomes available. If you have any comments regarding the proposed project, please send them to Mr. Mark Smith, Office of Pollution Control, P.O. Box 2261, Jackson, MS 39225, phone (601) 961-5171 no later than (6) date.

Sincerely,

Charle H. Chisolm
Office Head

Note: *(3) - Include as needed.

*(4) - Choose one.

APPENDIX D

Procurement Requirements for SRF Loan Recipients

In the procurement of all construction, equipment, material, supplies, professional services and non-professional services and all other costs related to the SRF project, all loan recipients shall comply with all applicable sections of the Mississippi Code of 1972, Annotated.

If funds will be received from other agencies, the loan recipient shall review that agency's procurement requirements and follow whichever is more stringent.

The procurement and conduct of all professional engineering and land surveying services shall 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 of all construction contracts shall be in accordance with the rules and regulations of the State Board of Contractors and other guidance and interpretations established by the Mississippi State Board of Contractors.

All loan recipients shall submit a procurement certification, as required by the Department staff, indicating that all of the above referenced requirements have been met. Should it be determined that any of the procurement requirements are violated, the Department may determine that the related costs are unallowable and may require repayment of all SRF Loan funds paid for such costs, in accordance with Rule 4.3.G.(6). of the SRF regulations.

APPENDIX E

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

EPA has determined that requirements for the participation of minority and women owned businesses will apply to SRF assistance in an amount equal to the state capitalization grants. To attain compliance with MBE/WBE requirements, the State and EPA shall negotiate an overall "fair share" objective for MBE/WBE participation on the SRF funded activities. A fair share objective should be based on the amount of the state capitalization grant award or other state established goals or standards. This fair share objective will be accomplished by requiring all such projects funded with SRF assistance to undertake the six affirmative steps described in federal regulation 40 CFR, Part 33.240.

For convenience, this federal regulation is included below as a part of Appendix E:

Section 33.240: Small, minority, women's, and labor surplus area businesses.

- (a) It is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction and services. Affirmative steps shall include the following:
 - (1) Including qualified small, minority, and women's businesses on solicitation lists;
 - (2) Assuring that small, minority, and women's businesses are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses;
 - (4) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses;
 - (5) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and
 - (6) If the contractor awards subagreements, requiring the contractor to take the affirmative steps in paragraphs (a)(1) through (5) of this Rule.
- (b) {Reserved}

- (c) EPA encourages recipients to procure supplies and services from labor surplus area firms.

Minority and women's business enterprises must comply with the definitions contained in federal regulation 40 CFR, Part 33.005.

APPENDIX F

Debarment and Suspension

SRF loan recipients are prohibited from entering into contractual agreements with individuals or organizations that have been debarred or suspended by the Environmental Protection Agency, any other federal or state agency, or by the Department. Individuals and/or businesses that have been debarred or suspended are identified in the General Services Administration (GSA) publication entitled "List of Parties Excluded from Federal Procurement or Nonprocurement Program." This list, along with information concerning debarment and suspension actions by the State, is available from the Office of Pollution Control.

The loan recipient is responsible for ensuring that the prime contractor utilized on the project is not on the federal or state debarment lists. Likewise, the prime contractor is responsible for ensuring that the subcontractors utilized on the project are not on the federal or state debarment lists.

Anyone may contact the Executive Director concerning the existence of a cause for debarment or suspension. The Executive Director may refer the matter to the State Attorney General or other appropriate office for further investigation. If, after review or investigation, the Executive Director reasonably believes that a cause for debarment exists, the Executive Director 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 shall 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 G

SRF Disputes Procedures

Only SRF loan recipients may submit a notice of dispute (disagreement) with a decision made by the Department, with the exception of that allowed by the resolution of adverse comments procedures included within the environmental review process of Appendix C. The following procedures will be used to resolve disputes between the loan recipient and the Department:

- a. The loan recipient must submit a written notice of dispute with a Department decision, including a summary of the dispute and reasons for why the loan recipient believes the Department decision should be reversed.
- b. The Department staff will then render a written decision on the dispute and will include reasons for the decision.
- c. 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 Head of the Office of Pollution Control, and the affected parties. The Office Head, or his designee, will render a decision on the appeal as a result of the informal hearing.
- d. Should the loan recipient desire to appeal the above informal hearing decision, a request for a formal hearing before the Commission on Environmental Quality must be received by the Department within 30 days after the date of such decision. Upon receipt of such a request, the Commission on Environmental Quality will hold a formal hearing to consider the matter, and will render a decision.
- e. Appeals of the above formal hearing decision may be made to the Chancery Court in accordance with state law.

APPENDIX H

Cross-Cutting Federal Laws and Authorities

A number of other federal laws and authorities that are not included in the list of federal Title II requirements outlined in Section II.G. of this regulation also apply to projects and activities funded by funds directly made available by capitalization grants to the state. These other federal laws and authorities apply by virtue of their own authority and are referred to as cross-cutting federal laws and authorities and are listed below:

Environmental:

- Archeological and Historic Preservation Act of 1974, PL 93-291
- Clean Air Act, 42 U.S.C. 7506(c)
- Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq..
- Coastal Zone Management Act of 1972, PL 92-583, as amended
- Endangered Species Act 16 U.S.C. 1531, et seq..
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Farmland Protection Policy Act, 7 U.S.C. 4201 et seq..
- Fish and Wildlife Coordination Act, PL 85-624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Section 1424 (e), PL 92-523, as amended
- Wild and Scenic Rivers Act, PL 90-542, as amended
- Historic Sites Act of 1935, PL 74-292

Economic:

- Davis-Bacon Act and Associated Labor Laws
- Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended

- Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Social Legislation:

- Age Discrimination Act, PL 94-135
- Civil Rights Act of 1964, PL 88-352
- Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
- Executive Order 11246, Equal Employment Opportunity
- Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
- Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)

Miscellaneous Authority:

- Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646
- Executive Order 12549 - Debarment and Suspension
 - Tax Reform Act of 1986

APPENDIX I

Waste, Fraud, and Abuse

It is the loan recipient's responsibility for preventing, detecting, and prosecuting waste, fraud, abuse, and all other corrupt practices which occur in relation to the SRF loan project.

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

- a. Immediately inform the Department in writing.
- b. Promptly pursue available state and local legal, administrative, and contractual remedies.

The Department may disallow costs under the SRF loan agreement where it is determined that such costs are related to waste, fraud, abuse or other corrupt practices. The Department may also require repayment of SRF loan funds paid for such costs in accordance with Rule 4.3.G.(6) of this regulation.

APPENDIX J

SRF Loan Recipient Accounting and Auditing Procedures

All SRF 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 eligible construction costs, and documented by appropriate records. These project accounts must be maintained as separate accounts.

APPENDIX K

Intergovernmental Review Process

The following outlines the Department's requirements for compliance with the Intergovernmental Review Process for State Revolving Fund Loan Program projects in Mississippi. These actions and deadlines are consistent with that required by the Priority System. The intergovernmental review agencies are as follows:

1. Department of Archives and History (For Archaeological/Cultural Review)
2. Natural Heritage Program (For Vegetative/Wildlife Review)
3. Army Corps of Engineers, Regulatory Functions Branch (For Wetlands and Section 10 Review)
4. Bureau of Marine Resources (Jackson, Harrison, and Hancock County Projects Only; for Coastal Barriers Resources Act Review)

U. S. Fish and Wildlife Service (Jackson, Harrison, and Hancock County Projects only; for Coastal Barriers Resources Act Review)

Addresses of these agencies are attached.

Facilities Planning

During preparation of the draft facilities plan, the appropriate intergovernmental review agencies should be consulted about the proposed project area concerning the existence of any known or possible archaeological/cultural sites, endangered vegetation/wildlife, wetlands, shellfish/coastal program impacts, or coastal barriers resources impact, with their input addressed in the draft facilities plan. If feasible, the project should avoid negative impacts on areas for which a concern has been expressed by an intergovernmental review agency. If not feasible to avoid negative impacts on these areas, the appropriate intergovernmental review agency should be consulted concerning the probability of obtaining clearance to construct the selected plan. Where an agency expresses substantial concern that clearance of the selected plan may not be obtained, appropriate modification, mitigation, and/or other sites should be pursued in coordination with the Department and the appropriate agency prior to submission of the draft facilities plan. This effort should avoid completion of a draft facilities plan which may not later receive intergovernmental review clearance. However, it should be recognized that subsequent surveys, applications, or other information may result in further intergovernmental review agency concerns which must be addressed prior to clearance.

By the deadline for the draft facilities plan to be submitted to the Department of Environmental Quality, the draft facilities plan shall also be submitted to the appropriate intergovernmental review agencies with a request for written comments and a determination on the need for

archaeological/cultural surveys, vegetative/wildlife surveys, Section 404/Section 10 Permits, Bureau of Marine Resources Permits, or other actions. The draft facilities plan or the transmittal letter shall include a map showing the proposed construction and the land use (i.e. residential, commercial, industrial, farmland, pasture, wooded, wetlands, or other) in the areas of construction. It is strongly suggested that photographs of the areas of construction also be included in order to expedite these determinations. The Department of Environmental Quality must be copied on the transmittal letters (including all attached maps, photographs, etc.) to all intergovernmental review agencies. These agencies should provide written comments and a determination on the need for archaeological/cultural surveys, vegetative/wildlife surveys, Section 404/Section 10 Permits, Bureau of Marine Resources Permits, or other actions.

The completed facilities plan shall contain all intergovernmental review agency comments, public hearing comments, plan revisions pursuant to comments, and a summary of how each comment was addressed.

Design

At least 90 days prior to the deadline for submission of plans, specifications, and contract documents to the Department of Environmental Quality, completed archaeological/cultural surveys shall be submitted to the State Department of Archives and History for approval; completed vegetative/wildlife surveys shall be submitted to the Natural Heritage Program for approval; and completed Section 404/Section 10 permit applications shall be submitted to the Army Corps of Engineers (and the Bureau of Marine Resources for Jackson, Harrison, and Hancock County projects). However, surveys and/or permit applications do not need to be performed or submitted if the appropriate intergovernmental review agency has determined they are not required. The Department of Environmental Quality shall be copied on the transmittal letters to the intergovernmental review agencies.

By the deadline for submission of the plans, specifications, and contract documents to the Department of Environmental Quality, approved archaeological/cultural surveys, approved vegetative/wildlife surveys, and copies of the issued Section 404/Section 10 permits and Bureau of Marine Resources Permits shall be submitted to the Department of Environmental Quality, if required for the project. Evidence of approval from the appropriate intergovernmental review agencies shall be included with the survey documents when submitted to the Department of Environmental Quality.

Loan Application

At least 60 days prior to the deadline for submission of the SRF loan application to the Department of Environmental Quality, a completed SRF loan application form, a brief narrative describing the project, a map showing the location of all proposed construction, the archaeological/cultural and vegetative/wildlife survey approval letters, and copies of the issued Section 404/Section 10 Permits and Bureau of Marine Resources Permits (or letters stating that surveys or permits are not required) shall be submitted to both the Department of Finance and Administration, Office of Policy Development and New Initiatives, and the local Planning and Development District. The Office of Policy Development and New Initiatives will solicit

comments from agencies and other interested parties and will provide the applicant with a clearance form, as appropriate.

The clearance form from the Office of Policy Development and New Initiatives, along with any comments received, shall be submitted to the Department of Environmental Quality by the deadline for submission of the SRF loan application.

- | | | | |
|----|--|----|--|
| 1. | State Historic Preservation Officer
Attention: Interagency Coordinator
Mississippi Department of Archives and History
Jackson, Mississippi 39205
Telephone: 601/359-6940 | 5. | U. S. Fish and Wildlife Service
Post Office Drawer 1190
Daphne, Alabama 36526
Telephone: 205/690-2181 |
| 2. | Natural Heritage Program
Natural Science Museum
Natural Science Museum
111 North Jefferson Street
Jackson, Mississippi 39202
Telephone: 601/395-7226 | 6. | Department of Finance and
Administration
Office of Policy Development and
New Initiatives
455 North Lamar Street
Jackson, Mississippi 39202
Telephone: 601/359-6765
(This is the State Clearinghouse) |
| 3. | Department of the Army
Mobile District, Corps of Engineers
Regulatory Functions Branch
Post Office Box 2288
Mobile, Alabama 36628
Telephone: 334/694-3781 | | |
| | Department of the Army
Vicksburg District, Corps of Engineers
Regulatory Functions Branch
Post Office Box 60
Vicksburg, Mississippi 39180
Telephone: 601/631-5289 | | |
| | Department of the Army
Nashville District, Corps of Engineers
Regulatory Functions Branch
Post Office Box 1070
Nashville, Tennessee 37202
Telephone: 615/251-5181 | | |
| | Department of the Army
Memphis District, Corps of Engineers
Regulatory Functions Branch
B-202 Clifford Davis Federal Building
Telephone: 901/521-3471 | | |
| 4. | Bureau of Marine Resources
2620 West Beach Boulevard
Biloxi, Mississippi 39531
Telephone; 228/385-5860 | | |

PLANNING AND DEVELOPMENT DISTRICTS IN THE STATE OF MISSISSIPPI

Central Mississippi Planning & Development District

Post Office Box 4935

Jackson, Mississippi 39216

Executive Director: Clarke Holmes

Telephone: 981-1511

East Central Mississippi Planning & Development District

Post Office Box 499

Newton, Mississippi 39345

Executive Director: Colbert Crowe

Telephone: 683-2007

Golden Triangle Planning & Development District

Post Office Drawer DN

Mississippi State, Mississippi 39762

Executive Director: John Allbritton

Telephone: 325-3855

North Central Mississippi Planning & Development District

Post Office Box 688

Winona, Mississippi 38967

Executive Director: Bob Williamson

Telephone: 283-2675

North Delta Planning & Development District

Post Office Box 1244

Clarksdale, Mississippi 38614

Executive Director: Leonard Morris

Telephone: 627-3401

Northeast Mississippi Planning & Development District

Post Office Box 600

Booneville, Mississippi 38829

Executive Director: Eugene Taylor

Telephone: 728-6248

South Delta Planning & Development District

Post Office Box 1776

Greenville, Mississippi 38702-1776

Executive Director: Billy Haney

Telephone: 378-3831

Southern Mississippi Planning & Development District

1020 32nd Avenue

Gulfport, Mississippi 39501

Executive Director: Leslie Newcomb Telephone: 868-2311

Southwest Mississippi Planning & Development District

110 South Wall Street

Natchez, Mississippi 39120

Executive Director: Wirt Peterson

Telephone: 446-6044

Three Rivers Planning & Development District
99 Center Ridge Drive
Pontotoc, Mississippi 38863
Executive Director: Randy Kelley

Telephone: 489-2415

APPENDIX L

SRF 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.

- (a) Prior to advertisement for such awards, the loan recipient shall establish its own procedures for prompt consideration of initial protests concerning solicitations or subagreement awards. A "protest" is a written complaint concerning the recipient's solicitation or award of a subagreement. It must be filed with the recipient by a party with a direct financial interest adversely affected by a recipient's procurement action, and must be filed in accordance with and within the time frame established by the recipient's protest procedures.
- (b) 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 and the Department with a copy of all documents in the transmittal.
- (c) Upon receipt of a protest, the loan recipient must make a determination on the protest in accordance with the recipient's protest procedures within thirty (30) days after such receipt, or sooner if so required by the recipient's procurement protest procedures.
- (d) 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 determination.
- (e) 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 M

Related State Laws and Regulations

The loan recipient shall comply with the following related state laws and regulations during the planning, design, construction, and operation of the project.

- Mississippi Regulations for the Certification of Municipal and Domestic Wastewater Facility Operators
- Mississippi Water Quality Criteria for Intrastate, Interstate and Coastal Waters
- Mississippi Nonhazardous Waste Management Regulations
- Coastal Wetlands Protection Law, Mississippi Code Annotated, Section 49-27-1 (Supp. 1989), et seq..
- Mississippi Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants.

APPENDIX N

NPDES and Siting Criteria Regulations

The loan recipient shall insure that all current regulations of the Commission on Environmental Quality and the Environmental Quality Permit Board are complied with during the planning, design, and construction of the SRF loan project. These regulations include "Wastewater Permit Regulations for National Pollutant Discharge Elimination System (NPDES), Underground and Injection Control (UIC) and State Operating Permits" and "Guidelines for Review of Siting Criteria in Applications for Air and Water Pollution Control Permits". It is the loan recipient's responsibility to insure that the project is in compliance with these regulations and all future amendments. Also, the loan recipient shall comply with the following requirements:

1. All planning documents submitted to the Department for review shall clearly indicate that a 150-foot buffer zone between the treatment facility and the nearest adjoining property line is provided. This shall be shown on a plan view of the treatment facility site. If it is not possible to provide a 150-foot buffer zone, the planning document shall indicate that a written waiver from the adjoining property owners will be necessary.
2. All design plans submitted to the Department for review shall clearly display the 150-foot buffer zone. If it is not possible to provide a 150-foot buffer zone, a written waiver from the adjoining property owners shall also accompany the design plans. When a waiver is necessary, it is strongly suggested that this be obtained prior to substantial work on the treatment facility design.

An NPDES permit application shall accompany all design plans for wastewater treatment facilities, if a permit or permit modification is required.

3. All appraisals, negotiations, purchase agreements, and site certificates shall include the required buffer zones, unless a waiver was previously submitted along with the design plans.