

**Administrative Procedures Act Rules**

**Title 11: Mississippi Department of Environmental Quality**

**Part 6: Wastewater Pollution Control Regulations**

**Part 6, Chapter 5: Mississippi Commission on Environmental Quality Water Pollution Control Emergency Loan Fund Program Regulations**

TABLE of CONTENTS

---

Rule 5.1 Introductory Provisions

Rule 5.2 Program Requirements

Rule 5.3 Project Requirements

Appendices

- A. Determination of Eligible and Allowable Costs
- B. Procurement Requirements for WPCELF Loan Recipients
- C. Debarment and Suspension
- D. WPCELF Disputes Procedures
- E. Waste, Fraud and Abuse
- F. WPCELF Loan Recipient Accounting and Auditing Requirements
- G. Intergovernmental Review Process
- H. WPCELF Procurement Protest Process
- I. Related Laws and Regulations

*Rule 5.1 Introductory Provisions.*

- A. Scope of Regulations. These regulations, adopted pursuant to Section 49-17-86, Mississippi Code of 1972, as amended, will govern the Water Pollution Control Emergency Loan Fund (WPCELF) Program. These regulations may be superseded by the WPCELF loan agreement when a variance or exception is made by the Department and when not in conflict with any state or federal laws or executive orders.

B. Definitions. The following words and terms, when used in these regulations, will have the following meanings, unless the context clearly indicates otherwise:

- (1) Act - The Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, Sections 49-17-81 through 49-17-89, Mississippi Code of 1972, as amended.
- (2) Administration Fee - Those fees collected from the loan recipient to defray the reasonable costs of administering the emergency fund.
- (3) Allowable Costs - Those project costs that are eligible, reasonable, necessary, allocable to the project, within the established project scope and budget period, in conformance with the WPCELF Regulations, and determined allowable by the Department.
- (4) Authorized Representative - The signatory agent or office 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 or office 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.
- (5) Budget Period - The time frame identified in the loan agreement as such, during which allowable costs may be incurred.
- (6) Change Order - The documents, including supporting documentation, executed by the loan recipient and the construction contractor, upon recommendation of the engineer if required by the contract documents, authorizing a change, alteration, or variance in the plans, specifications, and contract documents, including but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs or time for work performed after the execution of the contract.(7)
- (7) 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.
- (8) Commission - The Commission on Environmental Quality or its successors.
- (9) Consolidation project - The acquisition of an existing entity or its treatment works by another or the merger of two entities.

- (10) Construction - Any one or more of the following: repair, erection, building, acquisition, alteration, improvement or extension of water pollution control systems.
- (11) Contract - The contracting agreement made between the loan recipient and any other party, whether by written contract, quote, invoice, work order, or other legal arrangement, which establishes the parties to the agreement, the scope and price of goods or services to be provided, the timeframe for performance, and any other provisions required by these regulations and/or state law.
- (12) Contractor - The individual, company, party or other business enterprise awarded a contract by the loan recipient to construct any part of the project, or to supply materials, labor, equipment, or other necessary goods or services for the project. Contractor is not the same as Engineer, consultant, attorney, or other person or company providing professional services in conjunction with the project
- (13) Department - Mississippi Department of Environmental Quality and staff, and their designated representatives or successors.
- (14) Eligible Applicant - Any county, municipality, municipal public utility, district, authority, political subdivision or other governmental unit created under state law which has authority to dispose of domestic wastewater, industrial wastewater, wastewater sludges resulting from the treatment of such wastewater, stormwater, or nonpoint sources of pollution, has the authority under state law to receive WPCELF loan assistance, has the ability to comply with these regulations and the requirements of the WPCELF loan agreement, and which is not in arrears in repayments to the WPCRLF, the WPCELF or the WPALP.
- (15) Eligible Costs - Eligible costs are those costs in which WPCELF loan participation is authorized pursuant to applicable statute.
- (16) Emergency - Any circumstance caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of public health or environmental protection is necessary by reason of unforeseen event or condition, or when the immediate restoration of a condition of usefulness or construction of any water pollution control facilities appears advisable, or as required by a pollution control or public health regulatory agency.
- (17) Emergency Fund or Fund - The Water Pollution Control Emergency Loan Fund, created pursuant to Section 49-17-86, Mississippi Code of 1972, as amended.

- (18) Engineer - Unless otherwise indicated, the engineer, or engineering firm, registered by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors, retained or employed by the loan recipient to provide professional engineering services during the planning, design and/or construction of the project.
- (19) Executive Director - The executive director of the Department of Environmental Quality, or his designee.
- (20) Financial Assistance - Loans by the Commission, acting through the Department, from the Water Pollution Control Emergency Loan Fund.
- (21) Financial Capability Summary - A financial analysis of a water pollution control system to determine whether the system has the capability to reliably meet the financial obligations on a long term basis.
- (22) Improvements - Includes making necessary repairs to existing water pollution control systems to meet the emergency and may include new construction needed to provide a permanent correction to the problems which caused the emergency.
- (23) 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.
- (24) 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.
- (25) Interceptor Sewer - A sewer which is designed for one or more of the following purposes:
  - (1) 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.
  - (2) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

- (3) To transport wastewater from one or more municipal collector sewers to another municipality or system or to a regional facility for treatment.
- (4) To intercept an existing discharge of raw or inadequately treated wastewater for transport directly to another interceptor, pump station or to a treatment plant.
- (26) Interlocal Agreement - An agreement or contract between the loan applicant/recipient and other entities relating to use, enforcement, or finances of the project or treatment works, which may be necessary to ensure completion of a useful project.
- (27) Loan Agreement - A legal and binding agreement between the Department and the loan recipient through which the Department provides WPCELF funds for allowable assistance and the recipient promises to repay the principal sum and interest back to the WPCELF over a period not to exceed 10 years at an interest rate established by the Commission.
- (28) Loan Applicant - An eligible applicant, as defined above, that makes a WPCELF loan application for assistance from the Department.
- (29) Loan Recipient - An eligible applicant, as defined above, that receives a WPCELF loan from the Department.
- (30) May - Whenever used in the context of an action to be taken by the loan recipient, the word "may" will be interpreted as optional but is not mandatory.
- (31) May not - Whenever used in the context of an action by the loan recipient, such an action is prohibited by these regulations.
- (32) Must - Whenever used in the context of an action to be taken by the loan recipient, the word "must" will be interpreted as mandatory.
- (33) Nonpoint Source - Pollution caused by diffuse source(s) that are not regulated as point source(s) and normally is associated with agriculture, silviculture, urban runoff and runoff from construction activities, etc.
- (34) Overflows and Bypasses - Polluted water, such as sewage, which overflows or bypasses any portion of the treatment works prior to complete and final treatment and discharge in accordance with the permit.
- (35) Permit - Unless otherwise specified, the authority granted by the Mississippi Environmental Quality Permit Board or their designated staff to discharge treated wastewater into or adjacent to waters of the state in accordance with the stipulations of the relevant National Pollutant Discharge Elimination System

(NPDES) or State Operating Permit.

- (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 to allow contractors to adequately construct the work.
- (37) Plans, Specifications and Contract Documents Addendum - Any change made to the Plans, Specifications and Contract Documents after advertisement of the documents for bidding, but prior to opening of the bids.
- (38) Plans, Specifications and Contract Documents Revision or Amendment . Any change made to the Plans, Specifications and Contract Documents after completion of the initial documents, but prior to advertisement of the documents for bidding.
- (39) Point Source - Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, vehicle, 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.
- (40) Project - The scope of work for which assistance is awarded under the WPCELF.
- (41) Project Completion - The date of the final construction observation, as performed by the Department, for the purpose of an allowability determination.
- (42) Protest - A written complaint to the loan recipient concerning the loan recipient's solicitation or award of a contract. The protest must be filed with the loan recipient by a party with a direct financial interest adversely affected by a loan recipient's procurement action.
- (43) Record Drawings - A final, post-construction set of reproducible design plans, revised to describe the project as it was actually constructed, including all revisions, addenda, change orders and field changes that affect items shown on the drawings.
- (44) Repayment - Principal and interest repayments on WPCELF loans as established in the loan agreement.
- (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) Sewer - Any pipe, conduit, or related appurtenance used to convey sewage or wastewater, including collectors, interceptors, force mains and service lines.
- (47) Title Counsel or Legal Counsel - The attorney(s) of record, legally practicing, who provide(s) legal advice and certifications relating to the project for the loan applicant/recipient.
- (48) Treatment Works (or Water Pollution Control System) - Any devices and systems which are used in the storage, treatment, recycling, and reclamation of waste, including interceptor 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 any works, including site acquisition of the land used for or in connection with the treatment works; 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) Unilateral Change Order - Change order executed only by the loan recipient, and identified as such, in accordance with the contract documents.
- (50) User Charge Ordinance - A legally enforceable ordinance, regulation or corporate resolution enacted by the loan recipient which includes, at least by reference, the User Charge System, and establishes user charge rates to generate adequate revenues to cover all costs of the treatment works, as required by the User Charge System.
- (51) User Charge System - That system by which the loan recipient charges users of the treatment works, user rates that produce adequate revenues required for operation, maintenance, replacement of equipment, retirement of existing debt, and repayment of the WPCELF loan for the project.
- (52) Water Pollution Control System - see "Treatment Works."
- (53) Will - Whenever used in the context of an action to be taken by the loan recipient, the word "will" is to be interpreted as mandatory.
- (54) WPALP - Water Pollution Abatement Loan Program
- (55) WPCELF - Water Pollution Control Emergency Loan Fund.
- (56) WPCRLF - Water Pollution Control Revolving Loan Fund.

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

*Rule 5.2 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 5.1.B.(14) of these regulations, as determined by the Department.
- B. WPCELF Uses. The Emergency Loan Fund may be used for the following purposes, as determined by the Commission:
  - (1) To make loans to eligible applicants for projects that meet the definition of an emergency, for the purpose of making necessary repairs to existing water pollution control systems to meet the emergency;
  - (2) To make loans to eligible applicants for projects that meet the definition of an emergency, for the purpose of completing construction needed to provide a permanent correction to the problems which caused the emergency;
  - (3) For the reasonable costs of administering the WPCELF program, as allowed by state law; and
  - (4) To earn interest on fund accounts.
- C. Project Priority. These funds will be obligated on a first-come, first-served basis in order of those eligible applicants which complete all actions necessary to receive a loan award for eligible projects meeting the definition of an emergency, as defined in these regulations.

The Executive Director will determine whether a proposed project meets the definition of an emergency project and whether all actions necessary for loan award have been completed.

- D. WPCELF Financing. The WPCELF has been established to provide loans to assist eligible applicants in making emergency repairs to existing water pollution control systems and may, with Department approval, include new construction needed to provide a permanent correction to the problems which caused the emergency. Basic WPCELF financing requirements are as follows:
  - (1) WPCELF loans may not exceed \$350,000, as established by state law
  - (2) Loans will be made at the interest rate(s), terms and amounts determined by the Commission, and as further established in the WPCELF loan agreement and repayment agreement.
  - (3) Periodic principal and interest repayments will commence as further described in Rule 5.3.F of these regulations, and all loans will be fully amortized not later than ten (10) years after project completion.

- (4) Funds will not be disbursed from the emergency loan fund without first entering into a legal and binding loan agreement with the Commission.
  - (5) The fund will be credited with all repayments of principal and interest on all loans.
  - (6) The applicant must not be in violation of, or delinquent on, any provisions of a previously awarded WPCELF, WPCRLF, or WPALP loan agreement.
  - (7) The applicant must submit a completed application and must, in a timely manner, secure approvals of all documents required by the Department.
  - (8) The applicant must establish a dedicated source of funds for repayment of the loan.
- E. **Responsibility.** The applicant/loan recipient is responsible for the proper planning, design, construction, operation, maintenance, replacement, performance, and fiscal integrity of the project. The Department's review or approval of any document does not relieve the applicant/loan recipient or any others of any liabilities or responsibilities. Department review or approval of any document is for loan eligibility/allowability purposes only and does not establish or transfer any such liability or responsibility.
- F. **Other Approvals.** The applicant/loan recipient must obtain approval of all necessary documents from each state, local, and federal agency having jurisdiction over or funding in the project, if so required by that agency.

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

*Rule 5.3 Project Requirements*

- A. **Application for WPCELF Loan**
- (1) **Obtaining a Loan Application.** Potential applicants may request a WPCELF loan application package by contacting the Department. The Department will transmit the loan application package to the potential applicant.
  - (2) **Budget Period.** Costs for the project must be incurred within the Budget Period established in the loan agreement. When justified and when approved by the Department, the Budget Period may begin prior to loan award but may not begin more than 90 days prior to the issuance of a funding pre-commitment letter or receipt of the loan application by the Department. If project costs are incurred prior to loan offer, the prospective loan recipient agrees that he is proceeding at his own risk and relieves the Commission, the Department, and the Department staff of all responsibility and liability should such costs later be determined unallowable or should such funding not become available for any reason.

The end of the Budget Period will coincide with the 30 day deadline described in Rule 5.3.D.(2) of these regulations.

- (3) Contents of Application. All documents listed below must be complete and approvable when submitted to the Department.

An original WPCELF loan application package must be submitted to the Department. When forms are provided by the Department these forms must be used, and these forms may not be altered. The WPCELF loan application may request assistance only for costs that are allowable in accordance with Appendix A of these regulations and may include a construction contingency, as determined by the Department, in the project budget. The application must include in the Project Budget any administration fee charged to the loan recipient by the Department. A complete application must conform to these regulations, including all Appendices, and must include the following:

- (a) A completed WPCELF loan application form, which includes the amounts requested for construction, repairs, equipment, supplies, land/easements, testing contracts, contingency, contracts for planning, design, land acquisition, legal, engineering and other professional services during construction and any required administration fees.
- (b) A certified copy of a resolution by the loan applicant's governing body which:
  - (1) declares the existence of an emergency, which meets the definition of an emergency as defined in Rule 5.1.B.(16) of these regulations;
  - (2) agrees to implement, prior to final disbursement of WPCELF funds, an approved user charge system, as defined in Rule.5.1.B.(51)of these regulations, adequate to completely cover all costs, including repayment of the WPCELF loan;
  - (3) authorizes and designates an individual or office to serve as the authorized representative, to make application for assistance, and to sign documents required to undertake and complete the project on behalf of the applicant.
- (c) A report including a clear description of the emergency, the recommended course of action, and the estimated costs and schedule to remedy the emergency from the certified operator or engineer or other qualified personnel (i.e., contractor, equipment representative, electrician, etc.). If such project must be designed by a registered engineer in accordance with state law and the Rules and Regulations of the Mississippi State Board of

Registration for Professional Engineers and Land Surveyors, the report must include the seal of the engineer who prepared the report.

- (d) Engineer's plans and specifications, if applicable.
- (e) A procurement certification from the loan applicant and the loan applicant's legal counsel, stating that all procurement actions related to the WPCELF loan project have been, and will be, in compliance with state law and Appendix B of these regulations.
- (f) A draft user charge system and ordinance. The ordinance implementing this user charge system must be enacted prior to final disbursement of WPCELF loan funds and by the date established in the WPCELF loan agreement.
- (g) A statement of the amount of all local funds necessary for the project and a financial certification from the loan applicant which states that all local funds necessary for the project have been secured, or will be secured within 30 days after loan offer, and a statement to this effect from the funding source(s). If all funds for the project are being requested from the WPCELF program, this certification need not be submitted.
- (h) A completed financial capability summary.
- (i) A legal certification from the loan applicant and the loan applicant's legal counsel, stating that (1) the loan applicant has authority under state laws and regulations to receive WPCELF loan assistance, to collect user charges through an approved user charge ordinance, to enforce the user charge ordinance 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 WPCELF loan funds, and that (2) there are no restrictions under federal or state laws or regulations which may prevent the loan applicant from executing the WPCELF loan agreement and implementing the project.
- (j) If new real property or easements are necessary to construct the project, clear site certificates from the loan applicant and the title counsel indicating that the loan applicant has secured all such real property and easements (including power and other utilities).
- (k) Completion of the intergovernmental review process as described in Appendix G of these regulations, and submittal of a completed intergovernmental review certification, any intergovernmental review agency comments received, and the action required to address all comments prior to awarding contracts for construction.

- (1) All other permits, forms, documents, and supporting information that may be required by the Department.

B. Award of WPCELF Loan

- (1) Upon determination by the Department that (a) all applicable requirements of these regulations have been met, (b) all documents submitted with the application are approvable, (c) all applicable permits have been issued or will be issued, and (d) funds are available for the amount of the WPCELF loan application, the Executive Director will execute and transmit a WPCELF loan offer (includes an offer letter and loan agreement) to the loan recipient. In addition to the estimated allowable project costs as described in Appendix A of these regulations, the loan offer may include a construction contingency, as determined by the Department, in the project budget.
- (2) Upon receipt of the WPCELF loan offer, the loan recipient must execute and return it to the Department, along with a certified copy of a resolution, if not previously submitted, by the loan recipient's governing body authorizing acceptance of the loan offer within the time frame established in the WPCELF loan offer. The loan offer becomes void if not executed and returned within the time frame specified, unless extended by the Executive Director.
- (3) Upon return of the executed WPCELF loan agreement to the Department, any administration fee established in the loan agreement will be processed accordingly and such fee will be paid to the appropriate Department administration fund.

C. Construction Phase

- (1) Schedule. The following submittals, approvals, and actions will be required during the construction phase of the project. The Department may establish other time frames within the loan agreement when properly justified.
  - (a) Within 30 days after the original loan offer all local funds necessary for the project must be secured and proof of such must be submitted to the Department.
  - (b) Within 90 days after the original loan offer, the loan recipient (1) must execute and submit to the Department a copy of all contracts for construction/ equipment/supplies and engineering planning/design and construction phase services, including contracts for land acquisition, legal, and other professional services, and must issue any remaining notices to proceed, begin remaining construction work, begin purchase of any

remaining equipment/supplies funded under the loan agreement and transmit a copy of all notices to proceed to the Department, and (2) if any contracts must be bid, the loan recipient must also submit a completed loan agreement amendment request (to reflect as-bid and other executed construction contract amounts, all other executed contract amounts, a construction contingency as determined by the Department, and any original administration fee) to the Department.

The loan recipient will be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in awarding these contracts.

After review, the Department will determine whether a request for an increased loan amount is justified and eligible and whether funds are available. The Department may, if determined necessary and appropriate, transmit to the loan recipient an amended WPCELf loan offer, which includes in the project budget (a) as-bid (if applicable) and other executed construction contract amounts, (b) all other contract amounts, (c) a construction contingency as determined by the Department, and (d) any original administration fee. Upon receipt of an amended WPCELf loan offer, the loan recipient must execute and return the agreement to the Department within the timeframe established in the WPCELf loan offer letter. **After execution of the original loan agreement, or if applicable the amended WPCELf loan agreement, the WPCELf loan amount will not amount must be paid by the loan recipient from sources other than WPCELf funds.**

- (2) Preconstruction Conferences. If determined necessary by the loan recipient, the loan recipient may arrange and hold a preconstruction conference and, if held, must notify and allow attendance and participation by the Department.
- (3) Observation During Construction. During all times that construction work is being performed which requires the services of a registered engineer, the loan recipient must provide for full-time observation of the project by the engineer or his staff and must require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the WPCELf loan agreement and the approved plans, specifications, and contract documents, approved change orders, and in accordance with sound engineering principles and construction practices. Less than full-time observation may be allowed when properly justified and approved by the Department.

The Department is authorized to observe the construction of any project at any time for compliance with the terms of the loan agreement and to determine if the loan recipient is assuring that plans, specifications and contract documents are being followed. A representative may be stationed at the construction site by the Department. Such observation will not subject the Department to any action for

damages or other liability. Such observation will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents, nor the engineer from determining compliance with the requirements of the contract documents, nor the loan recipient from insuring compliance with the terms of the loan agreement.

The contractor, engineer, and the loan recipient must furnish the Department with every reasonable opportunity and means for observing whether the work as performed appears to be in accordance with the requirements of the loan agreement. The Department is authorized to observe and require submission of daily logs, record drawings, file notes, and any other documents prepared by any party in relation to the WPCELF funded project.

- (4) Observation of Materials and Equipment. The Department 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.
- (5) Construction Deficiencies
  - (a) In the event construction procedures, materials or equipment appear to the Department to be substandard, otherwise unsatisfactory, and/or not in conformity with these regulations or the loan agreement, the Department may determine such work unallowable for WPCELF loan participation, unless the loan recipient takes such action, through the engineer if applicable, in the manner provided for in the construction contract to correct any such deficiencies.
  - (b) The Department may immediately begin withholding WPCELF loan payments should such substandard or unsatisfactory construction work, materials, or equipment become apparent 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 5.3.E.(6) of these regulations. Alternatively, the Department may withhold such amounts from subsequent payment requests.
  - (c) In addition to normal testing procedures required of the loan recipient, should questions arise concerning the construction work, materials, or equipment, for WPCELF loan allowability purposes the Department may request the loan recipient to perform reasonable additional tests of construction materials, equipment, or processes which the Department determines to be necessary to answer such questions during or after the construction of the project. All tests, whether for the Department or the engineer, must 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 acceptable criteria. The Department will specify which tests are applicable, if not described in the plans, specifications, and contract documents for WPCELF loan allowability purposes. Samples for such testing must be furnished free of cost to the Department upon request.

(6) Change Orders

- (a) General. In the event a determination is made by a loan recipient after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the loan recipient, the loan recipient may, at its discretion, execute such change orders pertaining to the construction that are necessary under the circumstances, as provided in the contract documents and when in accordance with state purchasing law. Change orders must not change, vary, or alter the basic purpose or effect of the project unless allowed by the Department. Changes must be technically adequate, the costs and time extensions must be necessary and reasonable, and allowable/unallowable costs must be appropriately separated.
- (b) Change Order Submittals. After completion of the claims resolution and/or change order negotiation process between the loan recipient and the contractor, such changes on appropriate fully executed documents must be submitted to the Department in order to obtain a WPCELF loan eligibility/allowability determination.

All change order submittals shall include sufficient documentation for the Department's eligibility/allowability and technical review, as determined by the Department.

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

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

If possible, the allowability determination of a change order should be secured from the Department before the work is started, particularly for change orders requesting time extensions as per Rule 5.3.C.(6)(c) below.

This determination may also be secured after the work is started; however, the loan recipient must bear the cost if the work is determined to be ineligible or unallowable.

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

- (c) Time Extensions. Change orders which include time extensions and/or documentation that the loan recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required, must be submitted to the Department prior to the date of the Department's final construction observation, as specified in Rule 5.3.D.(1) of these regulations. Otherwise, construction and construction-related work which occurs after the current allowable contract completion date will be unallowable. Justification for contract time extensions included in a change order must be prepared, but need not be submitted to the Department unless the total time extensions for the contract exceed 25% of the original contract time, in which case justification for **all** time extensions must be submitted to the Department for an allowability determination.

Construction and construction-related work which occurs after the date representing a 25% time extension to the original contract time are allowable only to the extent determined as such by the Department, pursuant to review of the justification for all time extension change orders.

Construction and construction-related work which occurs after the date representing a 25% time extension to the original contract time, and for which a time extension change order cannot be adequately justified by the loan recipient and determined allowable by the Department, is not allowable unless the Department determines that the loan recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required.

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

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

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

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

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

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

#### D. Post Construction Phase

- (1) Within 10 days after construction completion of each construction contract, the loan recipient must submit a determination of construction completion and must request a final construction observation by the Department.

All change orders which include time extensions and/or documentation that the loan recipient is implementing all legal remedies provided in the contract documents for failure to complete construction when required must be submitted to the Department prior to the date of the Department's final construction observation; otherwise, construction and construction-related work which occurs after the current allowable contract completion date will be unallowable.

The final construction observation may be delayed by no more than 30 days after the current construction completion date, unless further delayed by the Department pursuant to review of the loan recipient's request and justification for such delay. Should the Department staff decide that the determination of

construction completion and request for final construction observation are being unreasonably delayed, a final construction observation may be immediately performed by the Department.

- (2) Within 30 days after the final construction observation performed by the Department, the loan recipient must submit: the final payment request; summary change order(s), if applicable, for all construction contracts; a complete set of record drawings for any and all other new construction work requiring design by a registered engineer and, if applicable, a certification from the engineer, or other qualified personnel when applicable, that the project has been constructed substantially in accordance with the design; final construction phase services contract amendments, if any; and all other administrative forms and documents required by the loan agreement and the Department. **Payment requests submitted after this date are not allowable, regardless of when the costs were incurred.**
- (3) Any other submittals or actions required by the loan agreement must be performed when so required and are subject to review and approval by the Department.
- (4) Following receipt of the final payment request from the loan recipient, or upon expiration of the deadline established in Rule 5.3.D.(2) above, the Department or other designated parties may perform an audit of the WPCELF loan project for the purpose of determining compliance with the WPCELF loan agreement and to determine final allowable costs, payments made to date, and any additional payments due the loan recipient or repayment due the Department.
- (5) Upon completion of the WPCELF audit, or if an audit is not performed, following expiration of the deadline established in Rule 5.3.D.(2) above, the Department will transmit to the loan recipient a copy of the audit, if performed, a final determination of allowable costs and payments due the loan recipient or repayments due the state, and a final loan agreement. The final determination will establish a 30-day appeal deadline, as required by Rule 5.3.D.(6) below, and will require repayment of any overpayment with an interest penalty to begin accruing on the appeal deadline. The interest penalty will be as established in Rule 5.3.E.(6) of these regulations.
- (6) Within 30 days after the date of the above final determination of allowable costs, the loan recipient may submit a written appeal of the final determination including a written justification of the reason for the appeal, and supporting documentation for any disputed costs of the final determination; otherwise, the final determination of allowable costs will become the final allowable costs for

purposes of WPCELF loan payments and the WPCELF loan repayment agreement.

- (7) Should an appeal be submitted in accordance with Rule 5.3.D.(6) above, the disputes procedures established in Appendix D of these regulations will be followed in order to resolve the dispute and establish the final allowable costs.
- (8) If an appeal is not submitted prior to expiration of the final determination appeal period, the loan recipient must execute and submit the final loan agreement to the Department within the deadline established by the Department.
- (9) Upon receipt of the executed final loan agreement from the loan recipient, the Department will transmit it to the State Tax Commission for execution and return to the Department.
- (10) Upon receipt of the executed final loan agreement from the State Tax Commission, the Department will transmit a copy to the loan recipient, and repayment of the WPCELF loan will commence under the terms of the loan agreement.

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

- (1) Payments may be requested by and may be made only to loan recipients, in accordance with the WPCELF loan agreement and the loan recipient's contracts for eligible and allowable services and construction for work performed within the project scope and budget period.
- (2) Excluding the payment request for the administration fee, payments may be requested no more often than on a monthly basis, except as required by state law. Payment requests cannot include costs incurred during two different state fiscal years; therefore, two payment requests may be submitted in July: one for costs incurred through June 30th and a second for costs incurred after June 30th.
- (3) The loan recipient must deduct from all WPCELF payment requests the amount of funds provided or to be provided from all other state and federal agency funding sources for allowable WPCELF project costs.
- (4) Payment requests must be submitted by the loan recipient to the Department and must include the following:
  - (a) Completed WPCELF payment request form;

- (b) Cumulative invoices, which clearly identify scope, time period and the particular project or contract, for all allowable costs for which payment is requested, except that invoices need not be submitted for any administration fee included in the loan agreement; and
  - (c) Any other documents required by the loan agreement;
- (5) The timing of WPCELF payments will be as follows, provided the loan recipient is in compliance with the requirements of these regulations and all provisions of the WPCELF loan agreement.
- (a) Payment for the administration fee must be the first payment request submitted and will be paid to the appropriate Department administration fund.
  - (b) Payments for design and construction phase services may be requested and paid based upon incurred allowable costs. Such requested payment amounts are subject to verification by the Department.
  - (c) 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(s), and as supported by invoices and verified as accurate by the consulting engineer, if applicable, and the loan recipient, less the retainage withheld by the loan recipient. Such requested payment amounts are subject to verification by the Department.
  - (d) Payments for allowable land may be requested and paid immediately after loan agreement execution, provided the Department has approved the purchase price and proof of the purchase price has been submitted with the payment request.
  - (e) The final loan payment will not be made until submission of all documents required by Rule 5.3.D.(2), enactment of the user charge ordinance as required by Rule 5.3.A.(3)(f), and determination that the loan recipient is in compliance with all other applicable provisions of the WPCELF loan agreement.
- (6) Any payments made to the loan recipient, which are at any time determined by Department to be for costs not in accordance with the WPCELF loan agreement, for ineligible or unallowable costs, or for costs related to waste, fraud, abuse or illegal acts under state or federal law, must be repaid to the WPCELF fund within 30 days of such notification by the Department. Interest may be charged on such delinquent repayments after expiration of the 30-day period at a rate of ten (10) percent per annum, compounded monthly. Alternatively, the Department may withhold such amounts from subsequent payment requests.

F. WPCELF Loan Repayment Requirements. All WPCELF loan repayments are subject to the following requirements:

- (1) Interest on amounts paid to the loan recipient 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 repayment period will be from the time of transmittal of the final loan repayment agreement to the loan recipient to the date not later than ten (10) years after project completion, or sooner, if so requested by the loan recipient.
- (4) Repayments are to be made by counties on a semi-annual basis through homestead exemption annual tax loss reimbursement withholdings, by municipalities on a monthly basis through state sales tax withholdings if adequate to provide such repayments, and by all other loan recipients through submission of monthly payments in accordance with state law, and must commence no sooner than 90 days after and no later than one year after project completion.
- (5) The repayment interest rate will be established in the WPCELF loan agreement and repayment agreement, in accordance with the appropriate Notice of Funds availability.
- (6) Interest will be compounded monthly.

Source: *Miss. Code Ann. §§ 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

#### CONTENTS

- A. General
- B. Construction
  - 1. Allowable
  - 2. Unallowable
- C. Equipment, Materials and Supplies
  - 1. Allowable
  - 2. Unallowable
- D. Change Orders
- E. Professional Services
  - 1. Allowable
  - 2. Unallowable
- F. Claims
  - 1. Allowable
  - 2. Unallowable
- G. Mitigation
  - 1. Allowable
  - 2. Unallowable
- H. Publicly Owned Small and Onsite Systems
  - 1. Allowable

- 2. Unallowable
- I. Real Property
  - 1. Allowable
  - 2. Unallowable
- J. Miscellaneous Costs
  - 1. Allowable
  - 2. Unallowable
- K. Project Income from Bid Bond Forfeitures, Liquidated Damages, and Interest on SRF Loan Payments

A. General

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

- (1) Be necessary and reasonable for the proper and efficient administration and construction of the project, be allocable to the project, and not be a general expense required to carry out the overall responsibilities of the loan recipient.
- (2) Be authorized or not prohibited under state or local laws or regulations.
- (3) Conform to any limitations or exclusions set forth in state laws, or other governing limitations as to types or amounts of cost items.
- (4) Be consistent with policies, regulations, and procedures that apply uniformly to both state assisted and other activities of the loan recipient.
- (5) Be accorded consistent treatment through the application of generally accepted accounting principles appropriate to the circumstances.
- (6) Not be allocable to, or included as, a cost of any other federally or state financed program in either the current, prior, or future period.
- (7) Be determined allowable by the Department after review of necessary books, records and other documents related to the costs. Failure to cooperate with the Department regarding access to project records or refusal to provide such records when requested by the Department may result in such costs being determined unallowable for WPCELF participation.
- (8) Be within the scope of the project and budget period as described in the loan agreement.
- (9) Be determined without regard to any previous federal grant, WPCELF or WPCRLF loan funding provided for facilities to be replaced, upgraded, or rehabilitated, except as described in Rule 5.2.D.(6) of these regulations.
- (10) Be within the scope of projects that meet the definition of an emergency and are allowed under Rule 5.2.B. of these regulations.
- (11) Be procured in accordance with Appendix B.

B. Construction

- (1) Allowable costs include:

- (a) The costs of contracts for construction work on the project, including prime contracts, subcontracts and the direct purchase of equipment, materials and supplies by the loan recipient.

Eligible items in the project may include treatment works (which includes wastewater treatment, interceptors, collectors, and other items; see the definitions), nonpoint source management programs, and estuary conservation and management plans.

- (b) Collectors, including conventional gravity, small diameter gravity, pressure, and vacuum systems.

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

- (c) The costs of sewer system rehabilitation (including rehabilitation of allowable service lines) necessary to eliminate or prevent bypasses or overflows, or to provide proper operation of the treatment works.

- (d) The cost of treatment works capacity adequate to transport and treat infiltration/inflow that will remain in the system.

- (e) Treatment works which serve industrial or commercial users when such works are publicly owned.

- (f) Reserve capacity within a design period of up to twenty years (forty years for interceptors, including pump stations and force mains serving as interceptors).

- (g) Construction of nonpoint source pollution control projects and estuary improvements projects.

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

- (h) Construction of treatment and transportation facilities for control of pollutant discharges from a separate or combined storm sewer system. On such projects which are also designed to provide for drainage, flood control, or any purposes other than control of pollutants, only the portion of the project needed for control of pollutants is allowable.

- (i) The cost associated with the preparation of the project site before, during and, to the extent provided in the loan agreement, after construction. These costs include:
  - i. The cost of demolition of existing structures on the project site if construction cannot be undertaken without such demolition. Demolition of existing structures on the project site when not required for constructing the project, will be considered to be an allowable cost only if the existing structures constitute a real and present hazard to safety, public health, or water quality which can best be abated by the removal of the existing structures.
  - ii. The cost of removal, relocation or replacement of utilities, provided the loan recipient is legally obligated to pay for such by law.
  - iii. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

(2) Unallowable costs include:

- (a) Construction and construction related costs which are incurred after the Department-determined allowable contract completion date (including allowable time extension change orders), unless approved by the Department pursuant to Rule 5.3.C.(6)(c) of these regulations.
- (b) Treatment works which serve federal users exclusively, or almost exclusively.
- (c) Bonus payments for completion of construction before a contractual completion date unless required by state law.
- (d) The cost of additional insurance (e.g., for a specific project) beyond that normally carried by the contractor.

C. Equipment, Materials and Supplies

(1) Allowable costs include:

- (a) The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

- (b) The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation.
- (c) The cost of shop equipment installed at the treatment works necessary to the operation of the works. The need will depend on the specific item, its frequency of expected use, and the size and complexity of the treatment facility. Undoubtedly, larger treatment facilities will have a greater need for installed shop equipment than smaller ones. Where the proposed items of equipment are inappropriate to the size and/or complexity of the treatment works, the Department may determine that the proposed equipment is unallowable.
- (d) The costs of necessary and reasonable safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.
- (e) The costs of necessary and reasonable collection system maintenance equipment.
- (f) The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:
  - i. Portable stand-by generators.
  - ii. Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks.
  - iii. Sludge or septage tankers, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or onsite systems) to the treatment facility or disposal site.
  - iv. Tillage, planting and harvesting equipment that is documented as necessary and reasonable for producing the crops which are an integral part of the land treatment process, and other vehicles demonstrated necessary to the facility and approved in advance by the Department.

Mobile equipment necessary for the operation of the overall wastewater treatment facility may also include vehicles necessary for the daily removal and disposal of grit. While vehicles used for other purposes (e.g., sludge tanks or trailers) would normally serve this purpose, large facilities may have a sufficient need to justify a separate vehicle to be used solely for the transportation and disposal of grit. Additionally, for projects which

involve the landspreading of sludge as the method of ultimate sludge disposal, the necessary vehicles and equipment for proper sludge application.

- (g) Replacement parts identified and approved in advance by the Department as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:
  - i. not immediately available and/or whose procurement involves an extended "lead-time," or
  - ii. identified as critical by the equipment supplier(s), or
  - iii. critical but not included in the inventory provided by the equipment supplier(s).
- (h) Flow metering devices used for billing purposes. The costs of constructing or installing flow metering devices and appurtenances used for billing intergovernmental and major user flows are allowable costs. Meters constructed or installed for the primary purpose of billing individual residential, commercial, public or industrial users are not allowable.
- (i) The cost of furnishings, office equipment, and maintenance equipment dedicated solely to the pollution control project. Necessary and reasonable office furnishings and equipment include chairs, desks, file cabinets, typewriters, coffee tables, telephones, office supplies, calculators, copiers, book cases, shelves and lamps. Ordinary site and building maintenance equipment such as lawnmowers, rakes, shovels, brooms, picks, hedge trimmers, and other such equipment. Hand tools such as screw drivers, pliers, socket wrenches, electric drills or saws, etc.
- (j) Computers. Computers, display monitors, and computer software which are designed into the control system for the daily operation of the treatment works.

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

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

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

#### D. Change Orders

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

Additional costs to correct defects (i.e., errors and omissions in the contract documents) and other costs caused by the impact of such defects on other portions of the project, are not allowable. For example, if the construction drawings had omitted return sludge piping from the secondary clarifiers to the aeration tanks and the engineer or contractor detected this before construction was undertaken,

the cost of a change order to include the piping would be an allowable cost, because:

- i. the piping would have been included in the original bid,
- ii. no additional construction or rework was required (beyond what would have been required if the work had originally been included), and
- iii. there was no cost impact on other portions of the project (since construction work had not begun).

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

The additional cost is measured as the difference between the cost which would have been included in the bid based on defect free drawings and the actual cost of the change order. For example, if a concrete tank had been constructed and was later found to be at an incorrect elevation due to an error in the design drawings and if it was necessary to demolish the tank and reconstruct it at the correct elevation, the entire change order would be unallowable, except for differences in excavation costs. If additional excavation was required to enable the tank to be constructed at the correct elevation (i.e., the incorrect elevation was too high), the cost of the additional excavation would be allowable. However, if too much excavation had been undertaken and fill was required to enable the tank to be constructed at the correct elevation (i.e., the incorrect elevation was too low), both the entire change order and the cost of the unnecessary excavation would be unallowable.

Regardless of the allowability or unallowability of construction costs to correct errors and omissions, in no case are additional engineering, legal, inspection, or other costs allowable, except for the cost of inspecting allowable construction work, to the extent that such inspection costs would have been incurred to inspect the same construction if such construction had originally been included in defect-free drawings.

- (b) Equitable adjustments for differing site conditions.

#### E. Professional Services

The term professional services refers to engineering, legal, administrative, and similar services. Should any costs for such professional services be incurred prior to loan award, such costs will be allowable provided the loan recipient has requested and obtained

Department approval of such costs and the loan agreement budget period includes the time period during which these costs are incurred.

(1) Allowable costs include:

- (a) Pre-award costs. These costs include all engineering and other costs that are incurred in applying for the loan, including, but not necessarily limited to:
  - i. Public notification and public hearings.
  - ii. Preparing the plans, specifications, and contract documents.
  - iii. Preparing the draft user charge ordinance and draft user charge system.
  - iv. Preparing interlocal agreements necessary for the project.
  - v. Surveys and all other work needed to obtain clearance or permits from all intergovernmental review agencies.
  - vi. Preparing the loan application, applications for permits required by federal, state or local laws, regulations or procedures.
  - vii. Compliance with the requirements of the Mississippi Real Property Acquisition Policies Law, if required.
- (b) The costs of services incurred during the advertisement, award and construction of a project to insure that it is built in conformance with the design drawings and specifications. These services are primarily engineering and construction management services provided during the advertisement, award and construction of the project, including inspection services, materials testing (e.g., concrete strength, soil compaction, etc.) required by the specifications, inspecting and expediting the delivery of equipment and material purchased directly by the loan recipient, review of shop drawings and record drawings, preparing change orders, payment processing, etc.
- (c) The costs of legal, engineering, and other services incurred by the loan recipient in deciding procurement protests and defending their decisions in protest appeals under Appendix H are allowable regardless of the outcome of the protest, provided there was not an attempt by the loan recipient to violate or circumvent state purchase laws.
- (d) The cost of development of an operation and maintenance manual.

- (e) Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management, provided these costs are incurred prior to the end of the 30 day period established in Rule 5.3.D.(2) of these regulations.
- (f) Administrative services associated with the construction of the project and administering the WCPELF loan.
- (g) Professional liability insurance premiums for a provider of professional services are allowable only for insurance which the provider maintains in connection with the general conduct of its business. The types and extent of coverage must be in accordance with sound business practice, and the rates and premiums must be reasonable under the circumstances. The maintenance of professional liability insurance is a sound business practice, and the premiums are allowable, but only as part of an indirect cost agreement.
- (h) The cost of services, other than engineering services during construction, such as railway or highway flagmen, or utility or highway inspectors, required during the construction of the project, are allowable provided that:
  - i. The entity responsible for the affected railway, highway, or utility requires such services for all parties conducting similar types of work, regardless of the source of construction funding for the project, or the services are required by law.
  - ii. The project work requiring such services is allowable, and is included in the scope of the approved project.
  - iii. The cost of such services has not been included in the construction contractor's bid price.
  - iv. The cost of such services is incurred directly by the loan recipient.
  - v. The cost is reasonable.

(2) Unallowable costs include:

- (a) Except as provided in Appendix A, Section D.(2)(a), engineering services or other services necessary to correct defects in design drawings and specifications, or other subagreement documents.
- (b) Public Liaison Services.

- (c) The cost of local travel (i.e., commuting expenses) between living quarters and the construction site for persons working at the site.
- (d) Acquisition of unallowable real property.
- (e) The cost of insurance (e.g., for a specific project), beyond that normally carried by the professional services firm.

F. Claims

- (1) Allowable costs, provided the costs are properly documented, incurred and requested prior to the end of the 30 day period established by Rule 5.3.D.(2) of these regulations include:
  - (a) Change orders to the construction contract as a result of settlements, arbitration awards, or court judgments, to the extent that they would have been allowable had there not been a claim.
  - (b) The costs of legal, engineering, and other services incurred by the loan recipient in deciding procurement protests and defending their decisions in protest appeals under Appendix H are allowable regardless of the outcome of the protest, provided there was not an attempt by the loan recipient to violate or circumvent state purchase laws.
  - (c) The costs of assessing the merits of, negotiating, or defending against a claim against the loan recipient are allowable, regardless of the outcome, provided that the matter under dispute is not the result of fraudulent or illegal actions, or mismanagement, on the part of the loan recipient.
  - (d) Alterations in construction, engineering, legal, etc. contracts as a result of settlements, arbitration awards, or court judgments are allowable to the same extent that they would have been allowable had there not been a claim.
- (2) Unallowable costs include:
  - (a) Claims arising from work outside the scope of the loan.
  - (b) Claims resulting from fraudulent or illegal activities.
  - (c) Claims resulting from mismanagement by the loan recipient.
  - (d) Claims resulting from the loan recipient's vicarious liability for the improper action(s) of others.
  - (e) The cost of settlements, arbitration awards or court judgments over and

beyond the allowable costs had there not been a claim, as established in these regulations.

## G. Mitigation

### (1) Allowable costs include:

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

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

### (2) Unallowable costs include:

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

## H. Publicly Owned Onsite Systems

### (1) Allowable costs include:

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

Major rehabilitation may include, as an allowable cost, the demolition and removal of an existing privately or publicly owned onsite system.

- (b) Collection or service lines to an offsite treatment unit which serves a cluster of buildings.

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

I. Real Property and Existing Improvements

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

- ii. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and
- iii. The acquisition does not circumvent federal, state or local requirements.

(2) Unallowable costs include:

For parcels costing over \$10,000, any amount paid by the loan recipient for allowable land in excess of fair market value, based on an appraisal or any condemnation proceeding. For parcels costing over \$10,000, an amount other than the determination of fair market value may be found allowable through an administrative settlement if the loan recipient provides sufficient written documentation to the Department that it is reasonable, prudent and in the public interest, such as when negotiated purchase is unsuccessful and condemnation action may entail a long delay or excessive costs. Documentation may include evidence of purchase negotiations, real property sales data, estimated court settlement and legal costs based on previous condemnation proceedings.

J. Miscellaneous Costs

(1) Allowable costs include:

- (a) The costs the loan recipient incurs for equipment, material and supplies necessary for the construction project.
- (b) Unless otherwise specified in these regulations, the costs of meeting specific legal requirements directly applicable to the project.
- (c) Costs for necessary non-local travel directly related to accomplishment of project objectives, such as costs of loan recipient employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works. Travel not directly related to a specific project, such as travel to professional meetings, symposia, technology transfer seminars, lectures, etc., may be recovered only under an indirect cost agreement.
- (d) Cost of royalties for the use of, or rights in, a patented process or product. Reasonable royalties associated with the procurement of the right to use, or the rights in, a patented product, apparatus, or process are allowable costs, provided that they are:
  - i. necessary,

- ii. based on a published fee schedule or on reasonable fees charged to other users under similar conditions.

Periodic payment of royalties for the right to operate under a patent are considered operating costs, and are unallowable for loan participation.

(e) Buildings

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

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

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

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

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

(g) Any administration fee charged to the loan recipient.

(2) Unallowable costs include:

(a) Ordinary operating expenses of the loan recipient including salaries and expenses of the loan recipient's employees and elected and appointed officials and preparation of routine financial reports and studies.

(b) Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government.

(c) Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them.

(d) Personal injury compensation or damages arising out of the project.

(e) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures, and related legal expenses.

(f) Costs outside the scope or budget period of the approved project.

(g) Costs for which payment has been or will be received from another state or federal source.

(h) Operation and maintenance costs of the treatment works.

(i) Lease payments.

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

(1) Bid bond forfeitures shall have no effect on the determination of allowable and unallowable costs. The loan recipient shall make the determination of whether or not a bid bond will be forfeited.

- (2) Liquidated damages shall have no effect on the determination of allowable and unallowable costs, except as required by Rule 5.3.C.(6)(c) of these regulations.
- (3) Interest income on WPCELF payments to loan recipients shall have no effect on the determination of allowable and unallowable costs.

## **APPENDIX B**

### **Procurement Requirements for WPCELF Loan Recipients**

In the procurement of all repairs, construction, equipment, materials, supplies, professional services and non-professional services and all other costs related to the WPCELF project, all loan recipients must comply with state purchasing laws. All allowable contracts must conform to the definition of a contract in these regulations.

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

The procurement of all construction contracts must also 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 must submit a procurement certification, as required by the Department, indicating that all of the above referenced requirements have been met. Should it be determined that any of the above procurement requirements are violated, the Department may determine that the related costs are unallowable and may require repayment of all WPCELF Loan funds paid for such costs, in accordance with Rule 5.3.E.(6) of these regulations.

## APPENDIX C

### Debarment and Suspension

Loan recipients are prohibited from entering into contractual agreements with individuals, businesses, organizations, or any other entities that have been debarred or suspended by the U.S. Environmental Protection Agency, any other federal agency, state agency or by the Department. Entities debarred or suspended by the federal agencies are identified in the General Services Administration (GSA) publication entitled "List of Parties Excluded from Federal Procurement or Nonprocurement Program."

Loan recipients are responsible for ensuring that prime contractors utilized on the project are not on the federal or state debarment lists. Likewise, prime contractors are responsible for ensuring that subcontractors utilized on the project are not on the federal or state debarment lists.

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

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

## APPENDIX D

### WPCELF Disputes Procedures

Only WPCELF loan recipients may submit a notice of dispute (disagreement) with a decision made by the Department. The following procedures will be used to resolve disputes between the loan recipient and the Department.

- (1) 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.
- (2) The Department staff will then render a written decision on the dispute and will include reasons for the decision.
- (3) Should the loan recipient desire to appeal the Department staff decision, a request for an informal hearing must be received by the Department within 30 days after the date of the Department staff decision. Upon receipt of such a request, an informal hearing will be held with staff members, as designated by the 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.
- (4) 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 will hold a formal hearing to consider the matter and will render a decision.
- (5) Appeals of the above formal hearing decision may be made to the Chancery Court in accordance with state law.

## **APPENDIX E**

### **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 may occur in relation to the WPCELF loan project.

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

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

The Department may disallow costs under the WPCELF 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 WPCELF loan funds paid for such costs in accordance with Rule 5.3.E.(6) of these regulations.

## **APPENDIX F**

### **WPCELF Loan Recipient Accounting and Auditing Requirements**

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

The Department and its representatives shall have access to and the right to audit, inspect, copy and examine all books, financial records and other documents relating directly to the receipt and disbursement of WPCELF funds. Failure to cooperate with the Department regarding access to project records or refusal to provide such records when requested by the Department may be considered justification for debarment of the Loan Recipient and/or its Contractor, Engineer, attorney, or other person or company providing any services in conjunction with the project.

## **APPENDIX G**

### **Intergovernmental Review Process**

The Intergovernmental Review (IGR) Agencies are as follows:

- (1) Mississippi Department of Archives and History (For archaeological/cultural resources review under the state Antiquities Law);
- (2) Mississippi Department of Wildlife, Fisheries and Parks, Natural Heritage Program (For vegetative/wildlife review under the Nongame and Endangered Species Conservation Act);
- (3) U.S. Army Corps of Engineers, Regulatory Functions Branch (For wetlands, floodplain impact and Section 10 - navigable waterway review);
- (4) Mississippi Department of Marine Resources (Jackson, Harrison, and Hancock County projects only; for shellfish and Mississippi Coastal Program review)
- (5) U.S. Forest Service (projects located in a federally designated Wild and Scenic River basin only, for federal Wild and Scenic Rivers Act compliance)

It is the loan applicant's/recipient's responsibility to take all actions necessary to satisfy the IGR agencies and obtain their concurrence in the project prior to awarding contracts for construction of the project. An intergovernmental review certification must be submitted as part of the WPCELF loan application package.

## APPENDIX H

### WPCELF Procurement Protest Procedures

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

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

## APPENDIX I

### Related Laws and Regulations

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

- A. Guidelines for Review of Siting Criteria in Applications for Air and Water Pollution Control Permits. The loan recipient shall also comply with the following related requirements:
  - (1) All design plans submitted to the Department for review shall clearly display that a 150-foot buffer zone between the treatment facility and the adjoining property lines (unless exempted by zoning) 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, 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.
  - (2) An NPDES or State Operating 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.
  - (4) In cases where a needed waiver cannot be obtained, the loan recipient may pursue a variance from the 150-foot buffer zone requirement as provided in section 3.(c) of the Permit Board's "Guidelines for Review of Siting Criteria in Applications for Air and Water Pollution Control Permits."
- B. State of Mississippi Water Quality Criteria for Intrastate, Interstate and Coastal Waters
- C. Mississippi Nonhazardous Waste Management Regulations
- D. Mississippi Coastal Wetlands Protection Law, Section 49-27-1 through 49-27-69, Mississippi Code Annotated, (Supp. 1989), et seq.
- E. Mississippi Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants
- F. Wastewater Permit Regulations for National Pollutant Discharge Elimination System

(NPDES), Underground and Injection Control (UIC) and State Operating Permits

- G. State of Mississippi Regulations for the Certification of Municipal and Domestic Wastewater Facility Operators
- H. Mississippi Municipal and Domestic Water and Wastewater System Operator's Certification Act of 1986, Sections 21-27-201 through 21-27-221, Mississippi Code of 1972, annotated.
- I. Mississippi Water Pollution Control Revolving Fund and Emergency Loan Fund Act, Sections 49-17-81 through 49-17-89, Mississippi Code of 1972, as amended.
- J. Mississippi state purchase law, Title 31, Mississippi Code of 1972, annotated.
- K. Mississippi State Engineering & Surveying Law, Sections 73-13-1 through 73-13-99, Mississippi Code of 1972, annotated, and Rules and Regulations of Procedure promulgated thereunder by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors.