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**IDAPA 16
TITLE 01
Chapter 04**

16.01.04 - ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

000. LEGAL AUTHORITY.

The Idaho State Board of Health and Welfare, pursuant to authority granted in Chapter 36, Title 39, Idaho Code, did adopt the following rules for the administration of a Wastewater Treatment Facility Grants Program in Idaho.

(3-15-85)

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Health and Welfare Rules, IDAPA 16.01.04, "Rules Governing Rules for Administration of Wastewater Treatment Facility Grants". (12-31-91)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program for providing financial assistance to qualifying entities for the construction of wastewater treatment facilities. (3-15-85)

002. POLICY.

It is the policy of the Board to administer the Wastewater Treatment Facility Program for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution. It is also the intent of the Board to assign a priority rating to those projects which will most significantly improve the quality of the waters of the state and most adequately protect the public health. (12-31-91)

003. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Applicant. Any qualifying entity making application for grant funds. (3-15-85)

02. Board. The Idaho State Board of Health and Welfare. (12-31-91)

03. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (3-15-85)

04. Construction. The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of wastewater treatment facilities, and the inspection and supervision of the construction. (3-15-85)

05. Department. The Idaho Department of Health and Welfare. (1-3-78)

06. Director. The Director of the Idaho Department of Health and Welfare or his designee. (12-31-91)

07. Domestic Wastewater. Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. (3-15-85)

08. Eligible Costs. Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities. To be eligible, costs must be reasonable, allowable and allocable. (10-6-88)

09. Facility Plan. Systematic engineering evaluation of feasible treatment alternatives considering

demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective. (10-6-88)

10. Ineligible Costs. Costs which are not necessary for the planning, design and/or construction of wastewater treatment facilities or which are not reasonable, allowable or allocable. (10-6-88)

11. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (3-15-85)

12. Matching Grant. A coordinated award of funds to a qualifying entity through allocation by the State from the dedicated State Water Pollution Control Fund, pursuant to Chapter 36, Title 39, Idaho Code, and from the United States Government as provided by law. (3-15-85)

13. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (1-1-82)

14. O & M Manual. A guidance and training manual delineating the optimum operation and maintenance of the wastewater treatment facility or its components. (10-6-88)

15. Phasing. One portion of a design or construction project needed to complete the total eligible project. Each phase may be made up of several engineering or construction contracts. (1-1-82)

16. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up, operator training and operation of the wastewater treatment facility. (10-6-88)

17. Pollutant. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (3-15-85)

18. Preliminary Engineering Report. An engineering report which compares wastewater treatment facility alternatives and identifies the most cost effective, environmentally sound alternative. (10-6-88)

19. Priority List. A list of proposed projects rated by severity of pollution problems, public health needs, population affected, and need for protection of Idaho's water resources. (3-15-85)

20. Qualifying Entity. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater; municipality. (1-1-87)

21. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (1-3-78)

22. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-82)

23. Scope of Project. Those portions of the proposed facility, including administration, engineering and physical components that constitute a complete project as determined from the most cost effective, environmentally sound wastewater treatment facility alternative identified in a preliminary engineering report and approved by the Department. (10-6-88)

24. Sewer Use Ordinance. An ordinance adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (10-6-88)

25. State. The state of Idaho. (3-15-85)

26. Substantial Human Habitation. An area with population density equal greater than two (2) occupied households per acre. (10-6-88)
27. Supplemental Grant. A grant awarded to a municipality in conjunction with a loan from the wastewater facility loan account. (10-6-88)
28. Suspension. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (10-6-88)
29. Termination. An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (10-6-88)
30. Treatment Plant. That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)
31. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, and operation, maintenance, and replacement of the wastewater treatment facility. (10-6-88)
32. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (3-15-85)
33. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems and land disposal systems. (10-6-88)

004. -- 009. (RESERVED).

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No grants shall be awarded for the construction of projects unless the applicant has demonstrated that it has the legal, institutional, managerial, and financial capability to insure construction, operation and maintenance, including equipment replacement, of the proposed wastewater treatment facility, and including the qualifying entity's share of the cost of the project. (10-6-88)

01. Applicant. The applicant must submit legal, institutional, managerial and financial information on a form prescribed by the Department along with an analysis of that information. In association with this requirement, the applicant must also submit to the Department a signed copy of the Certification of Financial and Management Capabilities form. (10-6-88)
02. Incorporated Nonprofit Applicants. To fully meet the requirements of Subsection 010.01, incorporated nonprofit applicants must demonstrate that all items in Subsection 040.04.b.ii. are included in its Articles of Incorporation and/or Bylaws. (12-31-91)
03. Wastewater Facility Serving Two (2) or More Entities. An applicant proposing to construct wastewater treatment facilities designed to serve two (2) or more qualifying entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: (10-6-88)
- a. The basis upon which the costs are allocated; and (3-15-85)
 - b. The formula by which the costs are allocated; and (3-15-85)

- c. The manner in which the cost allocation system will be administered. (3-15-85)
- 04. Waiver. The requirement in Subsection 010.03 may be waived by the Department if the applicant can demonstrate: (12-31-91)
 - a. Such an agreement is already in place; or (3-15-85)
 - b. There is documentation of a service relationship in the absence of a formal agreement; or (3-15-85)
 - c. The entity providing wastewater treatment exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying wastewater fails to participate. (3-15-85)

011. -- 019. (RESERVED).

020. PRIORITY SYSTEM.

- 01. Purpose. A priority rating system will be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance under the construction grants program in accordance with these rules. (3-15-85)
- 02. Priority Rating. The priority rating system shall be based on a weighted numerical points system wherein each succeeding prevention, control or abatement need is weighted less heavily than the preceding need. Priority criteria, listed herein in descending numerical weight, shall contain the following points: (3-15-85)
 - a. Public health emergency certified by the Department - fifty (50) points. (10-6-88)
 - b. Documented public health hazard identified by District Boards of Health or the Department - fifteen (15) points. (3-15-85)
 - c. Special resource water protection needs documented by the Department for waters identified in Idaho Department of Health and Welfare Rules, IDAPA 16.01.02, Section 102, "Water Quality Standards and Wastewater Treatment Requirements" - fifteen (15) points. (12-31-91)
 - d. Potential public health hazard and/or water quality impact: (1-1-87)
 - i. Potential public health hazard which is suspected but may not be documented by District Boards of Health or the Department three (3) or five (5) or seven (7) points. (3-15-85)
 - ii. Potential water quality impacts other than public health which may affect the intended use of surface or groundwaters as identified in Idaho Department of Health and Welfare Rules, IDAPA 16.01.02, "Water Quality Standards and Wastewater Treatment Requirements" - three (3) or five (5) or seven (7) points. (3-15-85)
 - e. The points in Subsections 020.02.d.i. and 020.02.d.ii. shall be selected based on the proportion of the population in contact with the pollutant, or the quantity of wastewater discharged in relation to the volume of the receiving water, or the relation of the pollutant quantity to other pollutant sources. (12-31-91)
- 03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (12-31-91)
- 04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-15-85)
- 05. Priority Target Date. A qualifying entity whose project is on the adopted list will be contacted by the Department and a target date for submission of a completed grant application will be established. (3-15-85)

06. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project(s) that are ready to proceed. A municipality that is bypassed will be notified in writing of the reasons for being bypassed. (3-15-85)

021. -- 029. (RESERVED).

030. PROJECT FUNDING.

01. Project Step Funding. Projects may be funded in three (3) steps: (3-15-85)
- a. Step 1. Facilities planning, which will include: (3-15-85)
 - i. Preliminary engineering report prepared by an engineer licensed in the state of Idaho and on a form prescribed by the Department; or (3-15-85)
 - ii. Facility plan prepared in accordance with 40 CFR 35.2030 "Grants for Construction of Treatment Works; Final and Interim Rule". (3-15-85)
 - b. Step 2. Design and specifications, which includes the preparation of the detailed plans and specifications necessary for the bidding and construction of the project. (1-3-78)
 - c. Step 3. Construction, which includes bidding and actual construction of the project. (1-3-78)
 - d. Step 4. A combination of Step 2 and Step 3. (3-15-85)
02. Combination Step Funding. Projects may be funded in any combination of the steps in Subsection 030.01 with the approval of the Department. (12-31-91)
03. Cost Effective Requirement. Step 2, Step 3 or Step 4 grants will not be awarded until a final cost effective alternative has been selected by the Step 1 facility plan or preliminary engineering report as approved by the Department. The most cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by intended users within the jurisdiction of the qualifying agency and conducted in accordance with state law. (3-15-85)
04. Limitation on Funding Assistance. (7-1-93)
- a. No qualifying entity may receive more than twenty percent (20%) of total funds available for a fiscal year unless the selected alternative is of such a nature that it cannot be phased as determined by the Department or unless there are insufficient approved applicants to utilize all of the available funds. (3-15-85)
 - b. The maximum nonsupplemental grant funding provided in a state grant award shall not exceed seventy-five percent (75%) of total eligible costs for grants awarded after October 1, 1984. (10-6-88)
 - c. The maximum nonsupplemental combined grant funding for projects receiving state and EPA assistance shall not exceed seventy-five (75%) of total eligible costs for grants awarded after October 1, 1984, except those projects utilizing innovative or alternative technology. (10-6-88)
05. Supplemental Grants. In conjunction with loans provided to municipalities from the wastewater facility loan account, the Department may award supplemental grants in the following manners: (10-6-88)
- a. Planning and design projects may receive up to ninety percent (90%) funding of eligible costs; and (10-6-88)
 - b. Construction projects may receive up to ninety percent (90%) funding of eligible costs that exceed the amount a loan recipient is able to pay as determined by the Department's published guidelines. (10-6-88)

06. Funding for Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. (3-15-85)

07. Nondomestic Capacity Limitation. Grant funds, including supplemental grant funds, shall not be awarded for construction of treatment capacity for any single nondomestic source which is determined to be: (10-6-88)

a. Contributing ten percent (10%) or more of the organic or hydraulic loading of the sewage treatment works; or (1-1-82)

b. If the source requires installation of special treatment processes that add an increment of ten percent (10%) or more to the capital costs of the sewage treatment works; and (1-1-82)

c. Any nondomestic source discharge exceeding the provisions in Subsections 030.07.a. and 030.07.b. shall be required to purchase the entire portion of their needed treatment capacity. (12-31-91)

08. Collector Sewer Eligibility. Eligibility for funding new collector sewers will be determined by the following criteria: (3-15-85)

a. Each area to be served must meet the definition for substantial human habitation (Subsection 003.26). Substantial human habitation is that existing as of March 21, 1974, as determined by a city block or tracts of five (5) acres or less; and (12-31-91)

b. The bulk (generally two-thirds (2/3)) of the flow design capacity is to be for sewage originating from habitations existing on March 21, 1974; and (10-6-88)

c. When population density within the collector system is less than two (2) occupied households per acre, collection systems will not be considered cost effective unless a severe pollution or public health problem is determined by the Department and collector sewers are less costly than alternatives; and (10-6-88)

d. The collector system will not provide capacity for new habitations on environmentally sensitive wetlands or prime agricultural lands unless in the latter case an adopted comprehensive plan identifies those agricultural lands as new growth areas. Collection systems for new habitations on flood plains will not be funded unless those areas are covered by an adequate flood plain management program as determined by the Department; and (10-6-88)

e. The bulk of the design capacity will convey wastewater from principal residences. Collection systems serving second or recreational homes will not be eligible for funding unless so determined by Board action to protect public health or water quality; and (10-6-88)

f. Facilities which convey sewage from individual structures or private property to the public right of way are not eligible for funding. Connections from the collector sewer to the property line are eligible. (1-1-82)

09. Eligible Project Costs. Costs eligible for funding shall be determined from the scope of the project and may include, but not be limited to: (3-15-85)

a. Costs of salaries, benefits, and expendable material the grantee incurs in the project except as provided in Subsection 030.08.f.; (12-31-91)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (3-15-85)

c. Professional and consulting services; (1-1-82)

d. Facility planning directly related to the wastewater treatment facilities; (3-15-85)

- e. Sewer system evaluations; (1-1-82)
 - f. Financial and management capability analysis; (3-15-85)
 - g. Preparation of construction drawings, specifications, estimates, and construction contract documents; (1-1-82)
 - h. Landscaping; (1-1-82)
 - i. Removal and relocation or replacement of utilities for which the grantee is legally obligated to pay; (1-1-82)
 - j. Material acquired, consumed, or expended specifically for the project; (1-1-82)
 - k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (1-1-82)
 - l. Preparation of an operation and maintenance manual; (3-15-85)
 - m. Preparation of a Plan of Operation; (3-15-85)
 - n. Start up services; (1-1-82)
 - o. Project identification signs; (1-1-82)
 - p. Architectural/engineering subagreements utilizing only lump sum or cost plus fixed fee contracts; (1-1-82)
 - q. Public participation for alternative selection; (3-15-85)
 - r. Development of user charge and financial management systems; (3-15-85)
 - s. Development of sewer use ordinance; (3-15-85)
 - t. Staffing plans and budget development; and (3-15-85)
 - u. Certain direct and other costs as determined eligible by the Department; and (1-1-82)
 - v. Costs of assessing and defending contractor claims determined unmeritorious by the Department. (3-15-85)
10. Eligible and Ineligible Project Costs for Supplemental Grants. Eligible and ineligible costs for supplemental grants are delineated in Idaho Department of Health and Welfare Rules, IDAPA 16.01.12, "Rules for Administration of Wastewater Treatment Facility Loans". (10-6-88)
11. Ineligible Costs. Costs which are not necessary for the construction of the wastewater treatment facilities include but are not limited to: (3-15-85)
- a. Basin or area wide planning not directly related to the project; (1-1-82)
 - b. Bonus payments not legally required for completion of construction before a contractual completion date; (1-1-82)
 - c. Personal injury compensation or damages arising out of the project; (1-1-82)
 - d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (1-1-82)
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- e. Costs outside the scope of the approved project; (1-1-82)
- f. Interest on bonds or any other form of indebtedness required to finance the project costs; (1-1-82)
- g. Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney; (1-1-82)
- h. Site acquisition including sewer right of way, sewage treatment plant site, sanitation landfills, and sludge disposal areas unless it is an integral part of the treatment process or will be used for the ultimate disposal of residues resulting from such treatment; (1-1-82)
- i. Construction of privately owned treatment works; (1-1-82)
- j. Preparation of a grant application including a plan of study or project evaluation report; (1-1-82)
- k. Assessments or evaluation reports necessary to establish priority; (10-6-88)
- l. All costs related to assessment, defense and settlement of disputes through binding arbitration; (10-6-88)
- m. Costs of supplying required permits or waivers; (10-6-88)
- n. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; and (10-6-88)
- o. Architectural/engineering (A/E) costs incurred prior to approval of A/E contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department. (10-6-88)

031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.

Pre-grant engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability indemnification in accordance with Subsection 050.05.d. (10-6-88)

032. -- 039. (RESERVED)

040. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. The applicant shall submit to the Department, a completed application in a form as prescribed by the Department. (3-15-85)

02. Application Requirements. Applications shall contain a completed state grant application form and the following documentation approved or approvable by the Department in both content and form: (3-15-85)

- a. All grant applications: (3-15-85)
 - i. An authorizing resolution passed by a majority of the governing body authorizing an elected official or chief financial officer of the qualifying entity to commit funding; and (3-15-85)
 - ii. Contracts for architectural/engineering services, including justification for the firm selected and a certification of liability indemnification, as described in Subsection 050.05.d., which covers all such services rendered for all project steps whether or not such services or steps are state funded; and (12-31-91)
 - iii. Financial and management capability analysis as provided in Section 010. (12-31-91)

b. Step 1 Facility Planning. Plan of study describing the work tasks to be performed in the Preliminary Engineering Report or Facility Plan, a schedule for completion of the work tasks and an estimate of man hours and

- costs to complete the work tasks. (10-6-88)
- c. Step 2 Design or Step 4 Design and Construction: (3-15-85)
 - i. Preliminary engineering report or facility plan; and (3-15-85)
 - ii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable; and (3-15-85)
 - iii. Documented evidence of all needed easements and land acquisition. (3-15-85)
 - d. Step 3 Construction: (3-15-85)
 - i. Biddable plans and specifications of the approved wastewater treatment facility alternative; and (3-15-85)
 - ii. A plan of operation and project schedule; and (3-15-85)
 - iii. A user charge, sewer use ordinance and financial management system; and (3-15-85)
 - iv. A staffing plan and budget. (3-15-85)
 - e. Step 4 Design and Construction. Application grantees must submit all documentation specified in Subsection 040.02.d. prior to advertising for bids on construction contracts. (12-31-91)
03. Acceptance of Application. Applications will be accepted in accordance with the state priority list target dates and no applications will be accepted for projects not rated on the priority list unless approved by the Board in instances of a public health emergency as provided in Subsection 020.02.a. (12-31-91)
04. Basis of Evaluation of Applications. The evaluation by the Department for the approval of grant applications will include, but not be limited to, consideration of the following items: (1-1-87)
- a. Adequate justification for selected architectural/engineering services. An architect or engineer selected by the applicant must as a minimum: (1-1-87)
 - i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (1-1-87)
 - ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors or an architect licensed by the Idaho Board of Architectural Examiners, as applicable; and (1-1-87)
 - iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (10-6-88)
 - iv. Be covered by professional liability indemnification in accordance with Subsection 050.05.d. (12-31-91)
 - b. Demonstration of legal, institutional, managerial and financial capability. The applicant must show legal, institutional, managerial and financial capability as provided in Section 010 including: (12-31-91)
 - i. For all applicants, certification of capability using the Certification of Financial and Management Capabilities form in Section 010. (12-31-91)
 - ii. To fully demonstrate financial and management capability as required under Section 010 an incorporated nonprofit applicant must show by its Articles of Incorporation and/or Bylaws that: (12-31-91)

- (1) The corporation is nonprofit and incorporated according to Chapter 03, Title 30, Idaho Code. (1-1-87)
- (2) Membership in the corporation is limited to property owners only, with one (1) vote per lot or parcel. (1-1-87)
- (3) Voting rights are restricted to corporation members with improved property, except that a developer will have voting rights until the corporation becomes self-sustaining. (1-1-87)
- (4) Corporation membership is not eliminated by cancellation of voting rights. (1-1-87)
- (5) The purpose of the corporation is clearly defined. (1-1-87)
- (6) Funds generated to operate one (1) function of a multipurpose corporation, i.e., one providing both water and sewer services, will be used for that designated purpose and not transferred or commingled for another function. (1-1-87)
- (7) The corporation owns the system it intends to maintain. (1-1-87)
- (8) Mutually agreeable access to a system owned by the corporation is provided by the property owners. (1-1-87)
- (9) Membership and share, if any, in the corporation is tied to land ownership such that successive owners must acquire the preceding owner's membership, or voting shares, if any. (1-1-87)
- (10) New members in the corporation are provided copies of the Articles of Incorporation, Bylaws and covenants and contracts of the corporation. (1-1-87)
- (11) No provision(s) restricts ownership of improved property. (1-1-87)
- (12) The corporation is capable of raising revenue by fixing and collecting user charges. (1-1-87)
- (13) The Board of Directors of the corporation has authority to raise revenue for emergency operation and maintenance without a majority vote of the membership. (1-1-87)
- (14) The corporation is capable of suing and of being sued, and will maintain the capability to impose liens on the real property of those members (shareholders) who become delinquent in user charges and further has the capability to suspend services, providing such suspension will not jeopardize use by other members. (1-1-87)
- (15) Operation and maintenance functions of the corporation are identified in a manual for that purpose that is or will be approved by the Department. No changes can be made to the manual without consent by the Department. (1-1-87)
- (16) The conditions for dissolution of the corporation are specified in the Declaration of Covenants. Dissolution is limited to connection to municipal facilities or merger with another approved nonprofit entity having financial and management capability for the merged system. (1-1-87)
- (17) Except as provided in Subsection 040.04.b.ii.(16), the corporation cannot discontinue operation or dispose of the sewage treatment plant without prior Department approval. (12-31-91)
- (18) A third entity is identified to execute the specified operation and maintenance function(s) in the event the operating corporation is incapable of performance. (1-1-87)
- (19) The corporation is able to plan and control how and at what time additional service functions will be extended or added. (1-1-87)
- (20) If the Articles of Incorporation and/or Bylaws provide for proxy voting, such proxies will not be

binding on a new purchaser of the property. (1-1-87)

(21) Developers will contribute to the operation and maintenance functions until such time as the nonprofit corporation is self-sustaining. Consider either a specified period or when a specified number of lots or parcels have been sold. (1-1-87)

(22) The corporation has defined service area boundaries. (1-1-87)

05. Phasing of Project. Project phasing will be allowed through agreement between the municipality and the Department or as may be required by availability of funds. (1-1-82)

06. Notification of Approval. Written notification of approval will be sent to the applicant. (1-3-78)

07. Notification of Disapproval. Written notification of disapproval with the reasons for denial will be sent to the applicant. (1-3-78)

08. Reapplication for Grant. The action of disapproving, recalling or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when project deficiencies are resolved and project readiness is secured, provided the applicant remains on the approved priority list. (10-6-88)

041. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered to successful applicants by representatives of the Department or by registered mail. (3-15-85)

02. Acceptance of Grant Offer. Applicants have thirty (30) days in which to officially accept the grant offer on prescribed forms furnished by the State. The thirty (30) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the thirty (30) day period the grant funds may be offered to the next project of priority. (3-15-85)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grantee, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grantee has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. (3-15-85)

04. Estimate of Reasonable Cost. Each grant project contract will include an estimate of the reasonable eligible cost of the project. (1-3-78)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to: (3-15-85)

a. Terms consistent with this chapter and consistent with the Step covered by the grant offer; and (12-31-91)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; and (3-15-85)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports, design and construction; and (3-15-85)

d. Requirement for the prime architectural/engineering firm(s) and their principals retained for architectural/engineering services to carry professional liability indemnification to protect the public from the architect's/engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the architect's/engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the architect's/engineer's fee, whichever is greater. Professional liability indemnification must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (10-6-88)

e. The project shall be bid, contracted and constructed according to the Idaho Standards for Public Works Construction unless the grantee otherwise has approved and adopted acceptable public works construction standards. (10-6-88)

051. -- 059. (RESERVED).

060. PAYMENTS.

01. State Payment for Matching Grants. In matching grants, the grantee will send payment requests to the Department concurrently with the payment requests to the federal agency and the State will make payment in a proportionate amount of the eligible cost incurred. (3-15-85)

02. Payments for Separate State Grants. In separate state grants, notification that payment is warranted will be provided according to the latest approved payment schedule by submission of reports showing expenditures upon which state payments in a proportional amount of eligible costs will be made. (1-1-82)

03. Limitations on Advance Payments. Advanced payment will not be made on a project unless a written request from the grantee for a waiver is approved by the Board. (10-6-88)

04. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-15-85)

05. Increases for Bid Underestimates. Increases for bid underestimates may be considered for grant increase; however, errors of omission or engineering consultant errors will not be considered. (10-6-88)

06. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-15-85)

07. Final Project Audit to Determine Actual Eligible Costs. The final project audit by the federal agency will determine the actual eligible costs for state-federal matching grants and the final project audit by the Department will determine the actual eligible costs for separate state grants. (1-1-82)

08. Final Payment. The final payment consisting of five percent (5%) of the total state grant or state share of a federal/state matching grant will not be made until final inspection and preliminary audit have been completed. (10-6-88)

061. -- 079. (RESERVED).

080. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including his architectural/engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-15-85)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-15-85)

- b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-6-85)
 - c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-15-85)
 - d. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of architectural/engineering subagreements, or contracts for construction; or (3-15-85)
 - e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-15-85)
02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-15-85)
- a. Specific acts or omissions which form the basis for suspension or termination; and (3-15-85)
 - b. Availability of a hearing, conducted by the Director as hearing officer or by his designee as hearing officer, said hearing being conducted in an informal manner at a time and in a place specified by the Director. (3-15-85)
03. Determination. Upon the proof of the existence of cause(s) for suspension or termination by substantial evidence or by proof of judgement or conviction of offense(s), the Director shall make a written determination, sending the determination to the grantee by certified mail within seven (7) days of the hearing. (3-15-85)
04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the causes(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-15-85)
05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-15-85)

081. WAIVERS.

Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration by the entity requesting the waiver that: (10-6-88)

- 01. Public Health Hazard. A significant public health hazard exists; or (10-6-88)
- 02. Groundwater Contamination. A significant groundwater contamination problem exists; or (10-6-88)
- 03. Point Source Pollution. A significant point source of pollution exists, causing a violation of the Idaho Department of Health and Welfare rules for water quality standards and wastewater treatment requirements; or (10-6-88)
- 04. Affordability Criteria. The project will exceed affordability criteria, acceptable to the Department, in the event that the waiver is not granted. (10-6-88)

082. -- 995. (RESERVED).

996. ADMINISTRATIVE PROVISIONS.

Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings". (12-31-91)

997. CONFIDENTIALITY.

Information received by the Department from grant applicants and recipients is subject to the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing Protection and Disclosure of Department Records". (1-1-82)

998. INCLUSIVE GENDER.

As used in these rules, the masculine, feminine, or neuter gender, and the singular or plural number, will each be deemed to include the others whenever the context so requires. (3-15-85)

999. SEVERABILITY.

Idaho Department of Health and Welfare Rules, IDAPA 16.01.04, "Rules for Administration of Wastewater Facility Grants," are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the chapter. (1-3-78)