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**IDAPA 58
TITLE 01
CHAPTER 04**

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and Chapter 36, Title 39, Idaho Code, did adopt the following rules for the administration of a Wastewater Treatment Facility Grants Program in Idaho. (5-3-03)

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants". (5-3-03)

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. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (5-3-03)

003. INCORPORATION BY REFERENCE.

These rules do not contain documents incorporated by reference. (5-3-03)

004. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Department of Environmental Quality to administer the Wastewater Treatment Facility Grant 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. (5-3-03)

005. 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 wastewater treatment facility grant funds. (5-3-03)

02. Board. The Idaho State Board of Environmental Quality. (12-31-91)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (5-3-03)

04. 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)

05. 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, other action necessary in the construction of wastewater treatment facilities, the inspection and supervision of the construction, and start-up of the associated facilities. (5-3-03)

- 06. Department.** The Idaho Department of Environmental Quality. (1-3-78)
- 07. Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)
- 08. 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)
- 09. Eligible Costs.** Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)
- 10. Environmental Information Document (EID).** Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)
- 11. Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed drinking water construction project will significantly affect the environment as described in Appendix C of the Handbook. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. (5-3-03)
- 12. Facility Plan.** Systematic evaluation by a professional engineer of feasible treatment alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective. (5-3-03)
- 13. Finding of No Significant Impact (FNSI).** A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (5-3-03)
- 14. Handbook.** "Wastewater Facilities Loan Handbook of Procedures." (5-3-03)
- 15. Ineligible Costs.** Costs which are described in Subsection 041.06. (5-3-03)
- 16. 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)
- 17. Municipality.** Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (5-3-03)
- 18. National Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (5-3-03)
- 19. Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (1-1-82)
- 20. 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)
- 21. Phasing.** One (1) 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)

22. 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)

23. Point Source. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (5-3-03)

24. 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)

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

26. Priority List. A list of proposed projects rated by severity as described in Section 020. (5-3-03)

27. 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)

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

29. 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)

30. 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)

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

32. Supplemental Grant. A grant awarded to a municipality in conjunction with a loan from the wastewater facility loan program. (5-3-03)

33. 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)

34. 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)

35. Treatment Plant. That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)

36. 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)

37. 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)

38. 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)

006. -- 009. (RESERVED).

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No grants shall be awarded for the design and construction phases 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. (5-3-03)

01. Information Needed. The applicant must submit legal, institutional, managerial and financial information on a form prescribed by the Department. (5-3-03)

02. Incorporated Nonprofit Applicants. To fully meet the requirements of Subsection 010.01, incorporated nonprofit applicants must demonstrate that all of the following items are included in its Articles of Incorporation and/or Bylaws: (5-3-03)

- a.** The corporation is nonprofit and incorporated according to Title 30, Chapter 3, Idaho Code. (5-3-03)
- b.** Membership in the corporation is limited to property owners only, with one (1) vote per lot or parcel. (5-3-03)
- c.** Voting rights are restricted to corporation members with improved property, except that a developer will have voting rights until the corporation becomes self-sustaining. (5-3-03)
- d.** Corporation membership is not eliminated by cancellation of voting rights. (5-3-03)
- e.** The purpose of the corporation is clearly defined. (5-3-03)
- f.** Funds generated to operate one (1) function of a multipurpose corporation, i.e., one (1) providing both water and sewer services, will be used for that designated purpose and not transferred or commingled for another function. (5-3-03)
- g.** The corporation owns the system it intends to maintain. (5-3-03)
- h.** Mutually agreeable access to a system owned by the corporation is provided by the property owners. (5-3-03)
- i.** 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. (5-3-03)
- j.** New members in the corporation are provided copies of the Articles of Incorporation, Bylaws and covenants and contracts of the corporation. (5-3-03)
- k.** No provision(s) restricts ownership of improved property. (5-3-03)
- l.** The corporation is capable of raising revenue by fixing and collecting user charges. (5-3-03)
- m.** The Board of Directors of the corporation has authority to raise revenue for emergency operation and maintenance without a majority vote of the membership. (5-3-03)

n. 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. (5-3-03)

o. 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. (5-3-03)

p. 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. (5-3-03)

q. Except as provided in Subsection 010.02.p., the corporation cannot discontinue operation or dispose of the sewage treatment plant without prior Department approval. (5-3-03)

r. A third entity is identified to execute the specified operation and maintenance function(s) in the event the operating corporation is incapable of performance. (5-3-03)

s. The corporation is able to plan and control how and at what time additional service functions will be extended or added. (5-3-03)

t. 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. (5-3-03)

u. 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. (5-3-03)

v. The corporation has defined service area boundaries. (5-3-03)

03. Cost Allocation. 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: (5-3-03)

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 RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Limited grant funds are awarded to

projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health and water quality criteria. (5-3-03)

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (5-3-03)

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 Environmental Quality Rules, IDAPA 58.01.02, Section 102, "Water Quality Standards" - 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 Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards" - 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. (5-3-03)

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 approved list will be contacted by the Department and a target date for submission of a completed grant application will be established. (5-3-03)

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 four (4) steps: (5-3-03)

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 the Handbook. (5-3-03)

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 environmentally sound 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. (5-3-03)

04. Supplemental Grants. In conjunction with loans provided to municipalities from the wastewater facility loan program, the Department may award supplemental grants in the following manners: (5-3-03)

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)

05. 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)

06. 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 030.06.a. and 030.06.b. shall be required to purchase the entire portion of their needed treatment capacity. (5-3-03)

08. Eligible and Ineligible Project Costs for Supplemental Grants. Eligible and ineligible costs for supplemental grants are delineated in Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Wastewater Treatment Facility Loans". (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 insurance in accordance with Subsection 050.05.d. (5-3-03)

032. -- 039. (RESERVED)

040. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form as prescribed by the Department. (5-3-03)

02. Application Requirements. Applications shall contain the following documentation as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services or other technical services, and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041. (5-3-03)

c. 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)

d. 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)

e. Step 3 Construction: (3-15-85)

i. Documented evidence of all needed easements and land acquisition; and (5-3-03)

ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; and (3-15-85)

iii. A plan of operation and project schedule; and (3-15-85)

iv. A user charge, sewer use ordinance and financial management system; and (3-15-85)

v. A staffing plan and budget. (3-15-85)

f. Step 4 Design and Construction. Application grantees must submit all documentation specified in Subsection 040.02.e. prior to advertising for bids on construction contracts. (5-3-03)

g. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application. (5-3-03)

h. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041. (5-3-03)

i. A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2320, 50-341 and 42-3212, Idaho Code. (5-3-03)

j. A statement regarding how the non-grant portion of the project will be funded. (5-3-03)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 040.02. (5-3-03)

04. 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)

05. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

06. 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. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning, designing and/or constructing wastewater treatment facilities; (5-3-03)

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 041.06. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan or preliminary engineering report for design and construction of wastewater treatment facilities, and any other relevant information in the application that describes the scope of the project to be funded. (5-3-03)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2320, 50-341 and 42-3212, Idaho Code. (5-3-03)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses of local government such as salaries and expenses of a mayor, city council members or a city attorney; (5-3-03)

- b.** Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)
- c.** Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; (5-3-03)
- d.** Planning directly related to the water pollution control projects; (5-3-03)
- e.** Sewer system evaluations; (5-3-03)
- f.** Financial and management capability analysis; (5-3-03)
- g.** Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)
- h.** Landscaping; (5-3-03)
- i.** Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)
- j.** Material acquired, consumed, or expended specifically for the project; (5-3-03)
- k.** A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)
- l.** Preparation of an operation and maintenance manual; (5-3-03)
- m.** Preparation of a plan of operation; (5-3-03)
- n.** Start-up services; (5-3-03)
- o.** Project identification signs; (5-3-03)
- p.** Public participation for alternative selection; (5-3-03)
- q.** Development of user charge and financial management systems; (5-3-03)
- r.** Development of sewer use ordinance; (5-3-03)
- s.** Staffing plans and budget development; (5-3-03)
- t.** Certain direct and other costs as determined eligible by the Department; (5-3-03)
- u.** Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
- v.** Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq., loan requirements applied to specific projects; and (5-3-03)
- w.** Site acquisition costs, including sewer right of way, sewage treatment plant site, sanitation landfills and sludge disposal areas. (5-3-03)
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)

 - a.** Basin or area wide planning not directly related to the project; (5-3-03)

- b.** Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
- c.** Personal injury compensation or damages arising out of the project; (5-3-03)
- d.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
- e.** Costs outside the scope of the approved project; (5-3-03)
- f.** Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney; (5-3-03)
- g.** Construction of privately owned wastewater treatment facilities; (5-3-03)
- h.** Cost of land in excess of that needed for the proposed project. (5-3-03)
- i.** Cost of refinancing existing indebtedness. (5-3-03)

06. Notification Regarding Eligible Costs. Prior to providing a grant offer, the Department shall notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Grant Offer. The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.

01. Overview of Process. The applicant will complete an environmental information document (EID) as part of and in conjunction with an engineering report. The review will be done in accordance with Chapter 5 of the Handbook. The applicant shall also consult with the Department at an early stage in the preparation of the engineering report to determine the required level of environmental review. The environmental information document (EID) will include, as a minimum, the following: (5-3-03)

- a.** Description of purpose and need for proposed action; (5-3-03)
- b.** Description of the proposed alternative, including the proposed action; (5-3-03)
- c.** Description of the affected environment; (5-3-03)
- d.** Discussion of the environmental impacts of the proposed action; (5-3-03)
- e.** The means to mitigate adverse environmental impacts; (5-3-03)
- f.** Description of public participation process; (5-3-03)
- g.** List of referenced documents; (5-3-03)
- h.** List of agencies consulted; and (5-3-03)
- i.** Mailing list of interested parties. (5-3-03)

02. Department Action. Based on review of the environmental information document (EID), the

Department shall take one (1) of the following actions: (5-3-03)

- a. Issue a Categorical Exclusion (CE) with supporting documentation; (5-3-03)
- b. Issue a Finding of No Significant Impact (FNSI). The Department shall first issue a draft FNSI and allow a thirty (30) day public comment period before making its final decision regarding significant impacts; or (5-3-03)
- c. Require the grantee to prepare an environmental impact statement (EIS). An EIS must be prepared when the Department determines the project will significantly affect the environment. A draft EIS must first be prepared and submitted to the Department. The applicant must also arrange for a thirty (30) day public comment period and a public hearing regarding the EIS. A final EIS following the public comment period must be submitted to the Department for approval. (5-3-03)

03. Use of Environmental Reviews Prepared by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, in its discretion, issue its own determination by adopting the document of the other agency. (5-3-03)

04. Validity of Review. Environmental reviews are valid for five (5) years. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: (5-3-03)

- a. Reaffirm the earlier decision; or (5-3-03)
- b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (5-3-03)

043. -- 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 the eligible cost of the project. Some eligible costs may be estimated and the grant payments may be increased or decreased as provided in Section 060. (5-3-03)

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 engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance 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. (5-3-03)
- e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the grantee otherwise has approved and adopted acceptable public works construction standards approved by the Department. (5-3-03)

051. -- 059. (RESERVED).

060. PAYMENTS.

- 01. Payments for State Grants.** Requests for payment will be submitted to the Department on a form provided by the Department. The Department will pay for those costs that are determined to be eligible. (5-3-03)
- 02. 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)
- 03. 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)
- 04. 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)
- 05. 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)
- 06. Final Project Review to Determine Actual Eligible Costs.** The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grantee may be reviewed by the Department. The review may be deferred until the review of the design/construction loan is performed. (5-3-03)
- 07. Final Payment.** The final payment consisting of five percent (5%) of the total state grant will not be made until final inspection, if the grant provides funding for construction, final approval of the engineering, completion of the environmental review process and final project review have been completed or deferred. (5-3-03)

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 its 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: (5-3-03)

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. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

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 Environmental Quality 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 APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (5-3-03)

997. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in

the Possession of the Idaho Department of Environmental Quality”. (3-15-02)

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 Environmental Quality Rules, IDAPA 58.01.04, “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)

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