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**IDAPA 58
TITLE 01
CHAPTER 12**

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

000. LEGAL AUTHORITY.

The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 36, Title 39, Idaho Code, did adopt the following rules for the administration of a Water Pollution Control Loan 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 58.01.12, "Rules for Administration of Water Pollution Control Loans." (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state loan program for providing financial assistance to eligible applicants of water pollution control projects. The U.S. Environmental Protection Agency provides a capitalization grant to the state of Idaho for this program. Financial assistance projects must be in conformance with the requirements of the Subchapter VI of the federal Clean Water Act (33 U.S.C. Sections 1381 et seq.) (5-8-09)

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. 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)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (5-8-09)

02. Availability of Referenced Material. The "Wastewater Facilities Loan Handbook of Procedures" (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, <http://www.deq.idaho.gov>. (5-8-09)

005. 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)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the Water Pollution Control Loan 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 of Environmental Quality 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. (3-30-01)

007. DEFINITIONS.

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

01. Applicant. A municipality or nonpoint source project sponsor which has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (5-8-09)

02. Best Management Practice. A practice or combination of practices, techniques or measures

developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

- 03. Board.** The Idaho Board of Environmental Quality. (5-8-09)
- 04. 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 information document nor an environmental impact statement is required. (5-8-09)
- 05. Close or Closing.** The date on which the borrower issues and physically delivers to the Department the bond or note evidencing the loan to the borrower, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (3-19-07)
- 06. 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. (1-1-89)
- 07. 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; the inspection and supervision of the construction; and for projects funded with federal moneys the costs incurred during the one (1) year project certification period. (1-1-89)
- 08. Department.** The Idaho Department of Environmental Quality. (1-1-89)
- 09. Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)
- 10. Eligible Costs.** Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)
- 11. Engineering Report.** A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or collection alternatives for the system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (5-8-09)
- 12. Environmental Impact Statement (EIS).** A document prepared by the applicant, under the Department's direction, when the Department determines that the proposed construction project may significantly affect the environment. 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. The environmental review procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (5-8-09)
- 13. Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant, under the Department's direction, describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an EIS is warranted. (5-8-09)
- 14. Facility Plan.** A plan that describes the overall system, including collection, treatment processes and facilities, and waste disposal. It is a comprehensive planning document for the existing infrastructure and

includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrographic, and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. (5-8-09)

15. Financial Management System. Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

16. Finding of No Significant Impact (FONSI). 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 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. (5-8-09)

17. Handbook. "Wastewater Facilities Loan Handbook of Procedures." (5-8-09)

18. Implementation Plan. Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. (3-30-01)

19. Ineligible Costs. Costs which are described in Section 041.05. (5-3-03)

20. 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. (1-1-89)

21. 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). (3-30-01)

22. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)

23. Nonpoint Source Pollution. Water pollution that enters the waters of the state from nonspecific and diffuse sources and is the result of runoff, precipitation, drainage, seepage, hydrological modification or land disturbing activities. (5-8-09)

24. Nonpoint Source Project Sponsor. Any applicant for water pollution control loan funds for a nonpoint source pollution project. (5-8-09)

25. O & M Manual. For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-30-01)

26. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up and operation of the wastewater treatment facility or for implementation of water pollution control projects. (5-3-03)

27. 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 to the waters of the state. This term as used in these rules 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. (5-8-09)

28. 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. (1-1-89)

29. Priority List. An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020. (5-3-03)

30. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (5-3-03)

31. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)

32. Sewer Use Ordinance/Sewer Use Resolution. An ordinance or resolution 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. (5-8-09)

33. State. The state of Idaho. (12-31-91)

34. Supplemental Grants. A grant awarded in conjunction with a loan from the water pollution control loan account. (5-8-09)

35. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)

36. Unified Watershed Assessment. Federal watershed assessment that encompasses the State list of impaired waters. (3-30-01)

37. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)

38. 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, operation and maintenance, and replacement of the installed equipment or structures. (3-30-01)

39. 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. (1-1-89)

40. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used 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, land disposal systems; a sewage treatment plant. (1-1-89)

41. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

008. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. (5-8-09)

009. (RESERVED).

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. (5-3-03)

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with substantiating documentation. The information may include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. (5-8-09)

02. Incorporated Nonprofit Applicants. (7-1-93)

a. In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: (3-30-01)

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; (5-8-09)

ii. The corporation is authorized to incur indebtedness to construct, improve or repair wastewater treatment facilities and/or implement water pollution control projects; (5-8-09)

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; (5-8-09)

iv. The corporation exists either perpetually or for a period long enough to repay a wastewater treatment facility loan or water pollution control project loan; and (3-30-01)

v. The corporation is capable of raising revenues sufficient to repay a loan. (3-30-01)

b. The Department may impose conditions on the making of a wastewater treatment facility loan or water pollution control project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36, Title 39, Idaho Code. (3-30-01)

03. Cost Allocation. An applicant proposing a point source or nonpoint source water pollution control project designed to serve two (2) or more 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: (5-8-09)

a. The basis upon which the costs are allocated; (5-8-09)

b. The formula by which the costs are allocated; and (1-1-89)

c. The manner in which the cost allocation system will be implemented. (1-1-89)

04. Waivers. 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; (5-8-09)

b. There is documentation of a service relationship in the absence of a formal agreement; or (1-1-89)

c. An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the

applicants fails to participate. (5-8-09)

011. -- 019. (RESERVED).

020. INTEGRATED 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 loan 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. An integrated priority rating system shall be utilized by the Department to annually allot available funds to water quality projects determined eligible for funding assistance under the water pollution control loan program 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, compliance, 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 (with a maximum allowable point total of one hundred and fifty (150)): (5-8-09)

a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department or by a District Board of Health – one hundred and fifty (150) points. (5-8-09)

b. Regulatory compliance issues -- one hundred (100) points. (5-8-09)

c. Watershed restoration -- one hundred (100) points. (5-8-09)

d. Watershed protection from impacts -- one hundred (100) points. (5-8-09)

e. Preventing impacts to uses (nonpoint source pollution projects) -- one hundred (100) points. (5-8-09)

f. Secondary incentives (e.g. readiness to proceed, financial ability) -- fifty (50) points. (5-8-09)

03. Department Guidelines. Secondary ranking under each factor in Subsection 020.02 will be established by Department guidelines, which will be approved and advertised each year. The additional ranking will include but not be limited to the following: nexus/benefit to the municipality; project water quality effectiveness; readiness to proceed; cost effectiveness; etc. (5-8-09)

04. Integrated Priority List. A list shall be developed annually from projects rated according to Subsection 020.02 and 020.03. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)

a. 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. (1-1-89)

b. Priority Target Date. An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed loan application will be established. (5-3-03)

c. 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 loan funds may be bypassed, substituting in its place the next highest ranking project(s) that is ready to proceed. A project that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)

05. Amendment of Integrated Priority List. The Director may amend the Integrated Priority List as

set forth in Section 995 of these rules. (5-8-09)

021. SUPPLEMENTAL GRANTS.

In conjunction with loans, the Department may award supplemental grants, not to exceed ninety percent (90%) of total eligible costs, to applicants in the following manner: (5-8-09)

01. Projects Not Funded by Loans. Planning and design projects may receive grant assistance up to ninety percent (90%) funding of eligible costs not funded by a loan; and (1-1-89)

02. Costs in Excess of Financial Ability. (3-30-01)

a. Applicants may receive supplemental grant assistance for eligible costs that exceed the amount a loan recipient is able to pay. In order to qualify for a supplemental grant, a loan recipient must have the following: (5-8-09)

i. An annual cost per household which exceeds one and one-half percent (1 1/2%) of the median household income from the most recent census data. If the applicant's service area is not within the boundaries of a municipality, the applicant may use the census data for the county in which it is located or may use an income survey approved by the Department; and (5-8-09)

ii. The annual cost includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades, being financed with state revolving funds. (5-8-09)

b. If an applicant meets the requirement of Subsections 021.02.i. and 021.02.ii., a supplemental grant may be made for the amount of the project that causes the annual cost of wastewater service per household to exceed one and one-half percent (1 1/2%) of the median household income, subject to available funds. (5-8-09)

03. Accrued Interest on Loans with Supplemental Grants. Interest will not be accrued during the design and construction phases on loan projects that also have a supplemental grant. (3-30-01)

022. -- 029. (RESERVED).

030. PROJECT FUNDING.

01. Nonpoint Source Implementation Funding. Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: (3-30-01)

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-30-01)

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-30-01)

c. Completed project implementation plan or work plan. (3-30-01)

d. Project commitment documentation through demonstrated ability for loan repayment. (3-30-01)

e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (e.g., Maintenance Agreement). (3-30-01)

f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. (3-30-01)

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-30-01)

02. Wastewater Treatment Facility Funding. Projects may be funded in steps: (3-30-01)

- a. Step 1. Facility plan or engineering report prepared in accordance with the Handbook. (5-8-09)
- b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. (1-1-89)
- c. Step 3. Construction, which includes bidding and actual construction of the project. (1-1-89)
- d. Step 4. A combination of Step 2 and Step 3. (1-1-89)
- e. Combination Step Funding. Projects may be funded in any combination of the steps with the approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans will be amortized and a repayment schedule prepared by the Department. (1-1-89)
- f. Cost Effective Requirement. Step 2, Step 3 or Step 4 loans will not be awarded until a final cost effective alternative has been selected by the Step 1 facility plan as approved by the Department. The cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by affected users within the jurisdiction of the eligible applicant and conducted in accordance with state law. (5-3-03)
- g. 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. (1-1-89)

031. LIMITATION OF PRELOAN ENGINEERING REVIEWS.

Preloan 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. LOAN FEE.

01. Loan Fee. The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program, to provide planning assistance, or to otherwise facilitate the operation of the Clean Water Act State Revolving Fund (CWSRF) effort. The Department may impose a loan fee on loans scheduled to close after January 4, 2006. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (5-8-09)

02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall charge the same loan fee on all loans closed during any one fiscal year. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(c) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider: (3-19-07)

a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead; (3-19-07)

b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; (5-8-09)

c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and (3-19-07)

d. The anticipated demand for planning assistance to supplement regular appropriations and other related needs to support the CWSRF loan program. (5-8-09)

03. Effect on Loan Interest Rate. The loan interest rate, as described in Subsection 050.05, will be reduced by the corresponding percentage of the loan fee. (3-19-07)

04. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (3-19-07)

033. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

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 on 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. A lawful resolution passed by the governing body authorizing an elected official or officer of the applicant to execute a loan contract and sign subsequent loan disbursement requests; (5-8-09)

b. Contracts for engineering 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; (5-8-09)

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

i. Be procured for design and/or services during construction or previously procured for planning services through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; (5-8-09)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; (5-8-09)

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. of these rules. A certification of liability insurance shall be included in the application. (5-8-09)

d. 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; (5-8-09)

e. 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 for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; (5-8-09)

f. Step 1 -- Scope of work describing the work tasks to be performed in the facility plan if required in accordance with Subsection 030.02, a schedule for completion of the work tasks and an estimate of man hours and costs to complete the work tasks; (5-8-09)

g. Step 2 -- Design, or Step 4 -- Design and Construction: (1-1-89)

i. Facility plan or engineering report, including a final environmental document and decision in accordance with Section 042; (5-8-09)

ii. Financial and management capability analysis as provided in Subsection 010.01; and (12-31-91)

- iii. Intermunicipal service agreements between all entities within the scope of the project, if applicable; (5-8-09)
- h.** Step 3 -- Construction: (1-1-89)
 - i. Documented evidence of all necessary easements and land acquisition; (5-8-09)
 - ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; (5-8-09)
 - iii. A plan of operation and project schedule; (5-8-09)
 - iv. A user charge system, sewer use ordinance and financial management system; and (1-1-89)
 - v. A staffing plan and budget; (5-8-09)
- i.** Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.h. prior to advertising for bids on construction contracts; (5-8-09)
- j.** Nonpoint Source Implementation Funding: (5-8-09)
 - i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; (5-8-09)
 - ii. Data that substantiates a nonpoint source pollution problem or issue exists; (5-8-09)
 - iii. A project implementation plan or workplan; (5-8-09)
 - iv. Project commitment documentation that demonstrates the ability for loan repayment; (5-8-09)
 - v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; (5-8-09)
 - vi. A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project; and (5-8-09)
 - vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. (5-3-03)

03. Determination of Completeness of Application. The Department shall review the application to determine whether it includes all of the information required by Subsection 040.02. (5-3-03)

04. 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)

05. Reapplication for Loan. The action of disapproving, recalling or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (1-1-89)

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 or implementation of water pollution control projects; (5-3-03)

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

c. Costs that are not ineligible as described in Subsection 041.05. (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 for design and construction of wastewater treatment facilities, the project implementation plan or work plan for nonpoint source projects, 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 for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. (5-8-09)

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 applicant incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)

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, a negotiated 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 applicant is legally obligated to pay; (5-8-09)

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, wastewater land application sites 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 mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)
 - 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; and (5-8-09)
 - j.** Reserve funds. (5-8-09)
- 06. Notification Regarding Ineligible Costs.** Prior to providing a loan offer, the Department shall notify the applicant if 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 Loan Offer.** The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan 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 loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.

Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. (5-8-09)

01. Environmental Documentation. Projects may be a nonpoint source activity or a wastewater treatment facility or other point source facility. For eligible nonpoint source projects funded solely with non-federal funds (i.e. State Revolving Loan Fund repayments), see Subsection 042.10. For eligible point source projects, the applicant shall complete an environmental review as part of and in conjunction with an engineering report or facility plan. The applicant shall consult with the Department at an early stage in the loan process to determine the required level of environmental review. Based on review of existing information, and assessment of environmental impacts, the applicant shall complete one (1) of the following per the Department's instruction: (5-8-09)

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (5-8-09)

b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (5-8-09)

or

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (5-8-09)

02. Categorical Exclusions. If an applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (5-8-09)

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper in the geographical area of the proposed project to inform the public of this action, following which the engineering report or facility plan can be approved and the loan award can proceed; or (5-8-09)

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department shall notify the applicant to prepare an EID. (5-8-09)

03. Environmental Information Document Requirements. When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: (5-8-09)

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders; (5-8-09)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources; and (5-8-09)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a "finding of no significant impact" (FONSI). (5-8-09)

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a local newspaper in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the preliminary engineering report or facility plan. (5-8-09)

05. Environmental Impact Statement (EIS) Requirements. If an (EIS) is required, the applicant shall: (5-8-09)

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; (5-8-09)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (5-8-09)

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and (5-8-09)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (5-8-09)

06. Final Environmental Impact Statement (EIS). Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigation measures which shall be required of the applicant. The loan agreement can be completed once the final EIS has been approved by the Department. (5-8-09)

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (5-8-09)

08. Use of Environmental Reviews Conducted by Other Agencies. If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public participation process of the other agency. (5-8-09)

09. Validity of Review. Environmental reviews are valid for five (5) years. If a loan 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 views and shall: (5-8-09)

a. Reaffirm the earlier decision; or (1-1-89)

b. Require supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of CE, FONSI, or record of decision. (5-8-09)

10. Exemption From Review. Loan projects funded solely with CWSRF repayment monies or with state monies may be exempt from certain federal crosscutting authorities at the discretion of the Department. (5-8-09)

043. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer a eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient

vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (5-3-03)

04. Estimate of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; (5-8-09)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; (5-8-09)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports, design and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act requirements for projects funded with loan moneys of federal origin; (5-8-09)

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 insurance 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 phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; (5-8-09)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the applicant has approved and adopted acceptable public works construction standards approved by the Department; (5-8-09)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-8-09)

g. The loan fee pursuant to Section 032; (5-8-09)

h. All loans must be fully amortized within a period not to exceed twenty (20) years after project completion, unless the project qualifies for extended financing (Section 603(d)(2) of the Clean Water Act (33 U.S.C. 1383(d)(2)). The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The borrower may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and (5-8-09)

i. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

Applicants receiving loans must maintain project accounts in accordance with generally accepted accounting principles. Eligible nonpoint source water pollution control implementation funding project sponsors may be audited on an annual basis according to government auditing standards issued by the U.S. General Accounting Office. (5-8-09)

052. -- 059. (RESERVED).

060. DISBURSEMENTS.

01. Loan Disbursements. Requests to the Department for actual disbursement of loan proceeds will be made by the loan recipient on forms provided by the Department. (3-30-01)

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. (1-1-89)

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost the loan amount will be reduced proportionately. (1-1-89)

04. Project Review to Determine Final Eligible Costs. A project review by the Department or a Department designee will determine the final eligible costs. (3-30-01)

05. Final Disbursement. The final loan disbursement will not be made until final inspection, final review and a final loan repayment schedule have been completed. (3-30-01)

061. LOAN CONSOLIDATION.

If two (2) or more loans are consolidated into one (1) loan, the interest rate for the consolidated loan will be at the same rate as the loan being consolidated with the lowest interest rate. (3-30-01)

062. -- 079. (RESERVED).

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.

01. Causes. The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents, including engineering firm(s), contractor(s) or subcontractor(s) to perform. A loan contract 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 (1-1-89)

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 (1-1-89)

c. Violation(s) of any term of the loan contract; or (1-1-89)

d. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or (5-3-03)

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. (1-1-89)

02. Notice. The Director will notify the loan recipient in writing and by certified mail of the intent to suspend or terminate the loan contract. The notice of intent shall state: (1-1-89)

a. Specific acts or omissions which form the basis for suspension or termination; and (1-1-89)

b. That the loan recipient 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 Loan. Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exists, the Director may, if funds are available reinstate the loan contract. If a

suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (1-1-89)

05. Reinstatement of Terminated Loan. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (1-1-89)

081. -- 994. (RESERVED).

995. WAIVER OF REQUIREMENTS AND AMENDMENT OF INTEGRATED PRIORITY LIST.

The Director may amend the Integrated Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan applicant requesting the waiver that the following conditions exist. See also Subsection 020.05 of these rules. (5-8-09)

01. Health Hazard. A significant public health hazard exists; (5-8-09)

02. Water Contamination. A significant water contamination problem exists; (5-8-09)

03. Pollution. A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards"; (5-8-09)

04. Affordability Criteria Exceeded. The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted; or (1-1-89)

05. Availability of Federal Funds. The waiver will not affect the availability of federal funds for the project where such funding is required by the applicant requesting the waiver. (5-8-09)

996. -- 999. (RESERVED).

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