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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 Board of Environmental Quality, pursuant to authority granted in Chapters 1 and Chapter 36, Title 39, Idaho Code, adopted the following rules for the administration of a Wastewater Treatment Facility Grants Program in Idaho. (4-2-08)

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 to prepare an engineering report or facility plan. (4-2-08)

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." (4-2-08)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (4-2-08)

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. (4-2-08)

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." (4-2-08)

006. 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)

007. 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 Board of Environmental Quality. (4-2-08)

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 information document nor an environmental impact statement is required. (4-2-08)

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. Department. The Idaho Department of Environmental Quality. (1-3-78)

06. Director. The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)

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

08. Eligible Costs. Costs which are necessary for planning, and/or designing 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. (4-2-08)

09. Engineering Report. A report that addresses specific portions of the system(s) as they are being contemplated for design. These reports address specific purpose and scope, design requirements, a comparison of wastewater treatment facility alternative solutions and 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. (4-2-08)

10. Environmental Impact Statement (EIS). A document prepared by the applicant when the Department determines that the proposed wastewater project will 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. (4-2-08)

11. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed wastewater 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. (4-2-08)

12. Facility Plan. A plan that describes the overall system, including the collection system, the treatment system, and the disposal system. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the systems, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic 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. (4-2-08)

13. 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 environmental impact statement (EIS) will not be prepared. It shall include the environmental information document or a summary of it and shall note any other environmental documents related to it. (4-2-08)

14. Handbook. "Wastewater Facilities Loan Handbook of Procedures." (5-3-03)

15. **Ineligible Costs.** Costs which are described in Subsection 041.05. (4-2-08)
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. **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)
18. **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (1-1-82)
19. **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)
20. **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (4-2-08)
21. **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)
22. **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)
23. **Priority List.** A list of proposed projects rated by severity as described in Section 020. (5-3-03)
24. **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. (4-2-08)
25. **Rehabilitation.** The repair or replacement of limited segments of interceptor or collector sewers. (1-3-78)
26. **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)
27. **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. (4-2-08)
28. **State.** The state of Idaho. (3-15-85)
29. **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)
30. **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)
31. **Treatment Plant.** That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)

32. 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 wastewater treatment facility. (4-2-08)

33. 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)

34. 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)

008. -- 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. 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. (4-2-08)

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 Idaho Board of Environmental Quality or by a District Board of Health - fifty (50) points. (4-2-08)

b. Documented public health hazard identified by a District Health Department or the Department - fifteen (15) points. (4-2-08)

c. Special resource water protection needs documented by the Department for waters identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards" - fifteen (15) points. (4-2-08)

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 qualifying entity that is bypassed will be notified in writing of the reasons for being bypassed. (4-2-08)

021. -- 029. (RESERVED).

030. PROJECT FUNDING.

Grant funds awarded under this program will be used entirely to prepare an engineering report or facility plan which identifies the cost effective and environmentally sound wastewater system alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections 1251 et seq., and which is approvable by the Department. (4-2-08)

01. Engineering Report or Facility Plan. (4-2-08)

a. The engineering report or facility plan shall be certified by an Idaho licensed professional engineer. The engineering report or facility plan shall include, as a minimum, the following: (4-2-08)

i. Description of existing conditions for the proposed project area; (4-2-08)

ii. Description of future conditions for the proposed project area; (4-2-08)

iii. Development and initial screening of alternatives; (4-2-08)

iv. Final screening of principal alternatives and plan adoption; (4-2-08)

v. Selected plan description and implementation arrangements; (4-2-08)

vi. Relevant engineering data supporting the final alternative; and (4-2-08)

vii. Level of environmental review specified by the Department as described in Section 042. (4-2-08)

b. The engineering report or facility plan must be reviewed and approved by the Department. (4-2-08)

c. The planning period shall be twenty (20) years for all facilities except for conveyance systems which may be forty (40) years. (4-2-08)

d. At least one (1) public hearing shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project. (4-2-08)

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (4-2-08)

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. Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the 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. (4-2-08)

d. Design: (4-2-08)

i. Engineering report or facility plan; and (4-2-08)

ii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable. (4-2-08)

e. 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)

f. 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)

g. 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 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. (4-2-08)

h. 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. 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 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 or designing wastewater treatment facilities; (4-2-08)

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

c. Costs that are not ineligible as described in Subsection 041.05. (4-2-08)

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 engineering report for design of wastewater treatment facilities, and any other relevant information in the application that describes the scope of the project to be funded. (4-2-08)

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 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. (4-2-08)

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 such as salaries and expenses of a mayor, city council members or a city attorney; (4-2-08)

b. Contracts for professional and consulting services; (4-2-08)

c. Planning directly related to the water pollution control projects; (5-3-03)

d. Sewer system evaluations; (5-3-03)

e. Financial and management capability analysis; (5-3-03)

f. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

g. Public participation for alternative selection; (5-3-03)

h. Development of user charge and financial management systems; (5-3-03)

i. Development of sewer use ordinance or resolution; (4-2-08)

j. Staffing plans and budget development; (5-3-03)

- k.** Certain direct and other costs as determined eligible by the Department; (5-3-03)
- l.** Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
- m.** Costs of complying with the federal Clean Water Act, 33 U.S.C Sections 1251 et seq., loan requirements applied to specific projects; and (4-2-08)
- n.** Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost-effective alternative in the report and for land for purchase through future State Revolving Fund loan funding. (4-2-08)
- 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.** Personal injury compensation or damages arising out of the project; (5-3-03)
 - c.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
 - d.** Costs outside the scope of the approved project; (5-3-03)
 - e.** Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, or district personnel costs and acquiring project funding; and (4-2-08)
 - f.** 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. 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. (4-2-08)

042. ENVIRONMENTAL REVIEW.

- 01. Environmental Documentation.** The applicant shall complete an environmental review as part of and in conjunction with an engineering report or a facility plan. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall consult with the Department at an early stage in the preparation of the engineering report or facility plan to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the applicant shall complete one of the following, per the Department's instruction: (4-2-08)

 - a.** Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)
 - b.** Prepare an Environmental Information Document (EID) in a format specified by the Department; (4-2-08)
 - c.** Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (4-2-08)

02. Categorical Exclusion. If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (4-2-08)

a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department shall publish a notice of CE in a local newspaper, following which the engineering report or facility plan can be approved; or (4-2-08)

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the applicant of the need to prepare an EID. (4-2-08)

03. Environmental Information Document Requirements. When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: (4-2-08)

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. (4-2-08)

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. (4-2-08)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or draft a “finding of no significant impact” (FONSI). (4-2-08)

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation 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 mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the engineering report or facility plan. (4-2-08)

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: (4-2-08)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (4-2-08)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (4-2-08)

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and (4-2-08)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (4-2-08)

06. Final 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 mitigative measures which shall be required of the applicant. The engineering report or facility plan can be completed once the final EIS has been approved by the Department. (4-2-08)

07. Use of Environmental Reviews Conducted by Other Agencies. If an 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 notification process of the other agency. (4-2-08)

08. 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 sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period the grant funds may be offered to the next project of priority. (4-2-08)

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, and management of the project; and (4-2-08)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports or facility plans, and design; and (4-2-08)

d. Requirement for the prime engineering firm(s) 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. (4-2-08)

e. The project documents shall be in accordance with the current edition of Idaho Standards for Public Works Construction (ISPWC) unless the grantee otherwise has approved and adopted acceptable public works construction standards approved by the Department. (4-2-08)

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. (4-2-08)

07. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the project review has been completed or deferred, or after final approval of the engineering, or completion of the environmental review process. (4-2-08)

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: (3-3-03)

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; or (4-2-08)

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, IDAPA 58.01.02, "Water Quality Standards." (4-2-08)
- 082. -- 999. (RESERVED).**

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