

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01N - DRINKING WATER STATE REVOLVING FUND RULES

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 01N .0101 PURPOSE

Loans for public water systems from the Drinking Water State Revolving Fund established by the Water Infrastructure Act S.L. 2005-454 (HB 1095) shall be made in accordance with this Subchapter.

15A NCAC 01N .0102 DEFINITIONS

The following definitions shall apply to this Subchapter:

- (1) "Act" means the N.C. Drinking Water Act, G.S. 130A-311 et. seq;
- (2) "Division" means the Division of Environmental Health, Department of Environment and Natural Resources;
- (3) "Fund" means the Drinking Water State Revolving Fund established by G.S. 159G-22;
- (4) "Intended Use Plan" (IUP) means an annual plan to identify the proposed uses of the amount available in the Fund;
- (5) "MCL" means maximum contaminant level which is the permissible level of a contaminant in water which is delivered to any user of a public water system; and
- (6) "Receiving agency" means the Division.

15A NCAC 01N .0103 APPLICABLE PROCEDURES

Loans from the Fund shall be made in accordance with 40 CFR Part 9 and 35, Subpart L which are hereby incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Free copies may be obtained from the U.S. Environmental Protection Agency by telephoning 1-800-426-4791. Copies are also available on-line at <http://www.deh.enr.state.nc.us/pws/srf/Rules/OperatingAgreement10-25-07.pdf> and <http://www.epa.gov/fedrgstr/EPA-WATER/2000/August/Day-07/w19783.htm>.

SECTION .0200 - AVAILABILITY OF LOANS

15A NCAC 01N .0201 AVAILABILITY OF LOANS

- (a) Loans shall be available only for projects that appear on the state approved intended use plan submitted to the U.S. Environmental Protection Agency and that comply with the requirements of this Subchapter.
- (b) Proposed projects may be added to the IUP to address emergency situations. The qualifying criteria is that a serious public health hazard or a drought emergency is present or imminent for a public water supply system. Such actions will be reported in the Annual Report.
- (c) Fifteen percent of the annual allocation shall be available to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated in accordance with Rule .0701 of this Subchapter.
- (d) During any fiscal year a maximum of five percent of the annual allocation may be used for loans for project planning purposes only.

15A NCAC 01N .0202 LOANS RESTRICTIONS

- (a) Loans shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized under this Subchapter and the purchase is from a willing seller.
- (b) Except as provided in Paragraph (c) of this Rule no assistance shall be provided to a public water system that does not have the technical, managerial, and financial capacity to ensure compliance with the requirements of the Act or to a public water system that is in significant non-compliance with any requirement of the Act or with a variance authorized under the Act as evidenced by administrative penalty, administrative order or court action against the water system. A determination of technical, managerial, and financial capacity shall be based upon a review of finances; compliance with applicable public health, environmental and utility laws; and the experience and certification level of the water system operator as evidenced by the submission of a water system management plan as required by Section .0400 of this Subchapter.

- (c) A public water system in significant non-compliance with the Act may receive assistance if the assistance shall ensure compliance with the Act. A public water system that does not have technical, managerial, and financial capacity may receive assistance if the owner or operator shall agree to undertake changes in operation of the water system that will ensure the system will achieve technical, managerial, and financial capacity over the long-term.
- (d) Each applicant shall establish a dedicated source of revenue or demonstrate that there is adequate security for repayment of the loan.
- (e) Funding shall be limited to the most cost-effective solution for the compliance or public health problem identified in a proposed project.
- (f) Funding shall be limited to the eligible portions of a project containing ineligible segments.
- (g) Funding shall not be available for federally owned public water systems.

15A NCAC 01N .0203 ADMINISTRATIVE EXPENSES

Agreement to a debt instrument by a loan applicant shall include payment of a two percent administrative fee which is an eligible project cost. These monies shall accrue to be used only for the reasonable costs of administering the Fund.

SECTION .0300 - ELIGIBILITY REQUIREMENTS

15A NCAC 01N .0301 DETERMINATION OF ELIGIBILITY

- (a) Eligibility of applicants shall be determined in accordance with G.S. 159G-31.
- (b) Applications shall be returned to ineligible applicants.
- (c) An application may not be filed after the award of a construction contract on a project, except when an applicant is subject to an administrative order or deadline issued by the Division or the project qualifies as an emergency situation.

15A NCAC 01N .0302 ELIGIBLE PROJECTS

- (a) Projects that will facilitate compliance with the North Carolina Drinking Water Act or federal Safe Drinking Water Act or further health protection under the criteria of Rule .0602 of this Subchapter shall be eligible for funding under this Subchapter. Eligible projects include those that:
 - (1) Rehabilitate or develop sources to replace contaminated sources of drinking water;
 - (2) Install or upgrade treatment to meet state or federal regulations;
 - (3) Install or upgrade eligible storage to prevent entry of microbiological contamination;
 - (4) Install or replace transmission or distribution pipes to prevent contamination;
 - (5) Consolidate or restructure water systems; or
 - (6) Purchase capacity in another water system.
- (b) Types of projects which are not eligible for funding are:
 - (1) Dams or rehabilitation of dams;
 - (2) Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;
 - (3) Reservoirs, except for finished water reservoirs and those reservoirs that are part of treatment process and are located on the property where the treatment facility is located;
 - (4) Laboratory fees for monitoring;
 - (5) Operation and maintenance expenses;
 - (6) Projects needed mainly for fire protection; or
 - (7) Projects primarily intended to serve future growth.

15A NCAC 01N .0303 ELIGIBLE PROJECT COSTS

- (a) Project construction costs eligible for a loan under this Subchapter are limited to:
 - (1) Planning, including system and needs assessment, the preparation of a local water supply plan and the preparation of a water system management plan;
 - (2) Environmental assessment reports, including all federal cross-cutters;
 - (3) Design;
 - (4) Construction;
 - (5) Legal, fiscal, and administrative costs;
 - (6) Contingency costs; and
 - (7) Land acquisition integral to the project and acquired from a willing seller.

(b) Loans may be up to 100 percent of allowable construction project costs.

15A NCAC 01N .0304 MAXIMUM LOAN AMOUNT

History Note: Repealed Eff. August 1, 2004.

SECTION .0400 – APPLICATIONS

15A NCAC 01N .0401 FILING DEADLINES

Complete applications for loans shall be postmarked or delivered to the Division of Environmental Health on or before September 30 of each year in order to be considered for loan funds available during the following fiscal year except those applications for emergency projects as defined in Rule .0201(b) of this Subchapter may be submitted at any time.

15A NCAC 01N .0402 APPLICATION PROCEDURES

- (a) Applications for loans shall be submitted on forms provided by the Division and shall be accompanied by all documents such as the Preliminary Engineering Report (PER), assurances, and other information required by the instructions for completing and filing the applications. Information concerning any grant or loan funds from any other source for which the applicant has applied shall be disclosed on the application.
- (b) Every application shall be accompanied by an adopted resolution or other documentation as required by G.S. 159G-37. The resolution or documentation shall be certified or attested to as a true and correct copy as adopted.
- (c) An applicant shall furnish additional information upon the request of the Division as required by these Rules.
- (d) A project shall not receive a priority rating unless the application contains sufficient information on the day of rating for the receiving agency to review and assign priority points.
- (e) An application may be withdrawn from consideration upon request of the applicant but if it is resubmitted it shall be considered as a new application subject to Rule .0401 of this Subchapter.

15A NCAC 01N .0403 PROJECT SCHEDULE AND RESOLUTION

History Note Repealed Eff. February 1, 2008.

SECTION .0500 - REVIEW AND ASSIGNMENT OF PRIORITIES

15A NCAC 01N .0501 PRIORITY REVIEW PERIOD

The priority review period shall be from October 1 until June 30 of the following year.

15A NCAC 01N .0502 ASSIGNMENT OF PRIORITIES

- (a) During each review period the Division shall assign a priority rating to each eligible application for inclusion in the state intended use plan; the priority rating shall be determined in accordance with the rating criteria and points established pursuant to G.S. 159G-35.
- (b) The Division may establish a priority rating when two or more applications receive the same number of priority points. The project receiving more points for affordability shall receive the higher priority. If the affordability points awarded the projects are equal, the project with the smaller population shall receive the greater priority.
- (c) Only the eligible portions of a project shall receive a priority rating.
- (d) The Division may assign a different priority rating to each substantially independent part of a proposed project.
- (e) Any applications that are not awarded assistance during a review period shall be held over and considered for a second review in accordance with G.S. 159G-39(c).

15A NCAC 01N .0503 INTENDED USE PLAN

A state intended use plan containing the priority rating of each eligible project will be prepared by the Division. The intended use plan shall include a comprehensive priority list identifying which projects are intended to be funded in the current year and in future years. The projects that are expected to be funded in the current year shall be so noted. The priority rating of eligible projects shall be published and an opportunity for public hearing will be provided before funds are awarded.

SECTION .0600 - PRIORITY CRITERIA

THIS ENTIRE SECTION HAS BEEN REPLACED BY THE FOLLOWING INFORMATION FOUND IN SECTION S.1 OF THE OPERATING AGREEMENT:

As authorized by NC S.L. 2005-454 Section 159G-35, see:

<http://www.ncleg.net/enactedlegislation/statutes/pdf/bysection/chapter159g/gs159g-35.pdf>, the following criteria apply to projects funded by the NCDWSRF:

(a) GENERAL CRITERIA

In determining the priority to be assigned each eligible application, the Division shall consider whether the project will:

- i) Address the most serious risk to human health,
- ii) Facilitate compliance with the N.C. Drinking Water Act or the federal Safe Drinking Water Act, and
- iii) Assist systems most in need on a per household basis.
- iv) The total priority points received shall be the sum of all points awarded for each categorical element.

(b) PUBLIC HEALTH AND COMPLIANCE

Public health and compliance points may be awarded to a project based on the following criteria. A proposed project shall be necessary to facilitate compliance with the N.C. Drinking Water Act or the federal Safe Drinking Water Act and to alleviate the type of public health concern for which points are awarded. A project shall receive only points in the highest sub-category for which it may qualify:

- i) Applications will be assigned a category as follows:
 - (1) All applications for a project that eliminates by consolidation/dissolution a public water system demonstrating a lack of technical, financial, and/or management capacity in accordance with the Safe Drinking Water Act, Sections 1402(b)(1) and 1414(h), and NCAC 15A 18C .0300, shall be placed in Category 1. The Division may generate the application for such a project.
 - (2) All applications for a project that eliminates compliance problems due to existing violations of the NC Drinking Water Act or anticipated violations based on data and state or federal rulemaking shall be placed in Category 2.
 - (3) All applications for a project addressing source or treatment needs by improving the available water supply or treatment capacity to supply existing users, improving treated water quality, or providing a permanent or emergency interconnection between systems shall be placed in Category 3.
 - (4) All other eligible public water system projects shall be placed in Category 4.
- ii) All applications in Category 1 will be funded in priority order before applications in Category 2. Similarly all applications in Category 2 will be funded in priority order before applications in Category 3, and all applications in Category 3 will be funded in priority order before applications in Category 4.

(c) RELIABILITY

A maximum of five points shall be awarded in the reliability categorical element to projects that propose to increase the reliability of the water system; points may be awarded for both Items (i) and (ii) up to the maximum, as follows:

- i) Projects that provide redundancy to critical treatment or delivery functions, such as interconnection, but excluding projects that provide emergency backup electrical power source, 3 points;
- ii) Projects that provide emergency backup electrical power source, 3 points.

(d) AFFORDABILITY

Points for affordability shall be determined by comparing the projected monthly residential user cost at the completion of the project with the median household income (MHI). User cost shall be calculated from water rates based on a use of 4,500 gallons. The median household income shall be determined in the service area of the water system. If median household income data is not available for the service area, data from the nearest comparable community area shall be used. The Division may use countywide median household income data if data for the service area or nearest comparable community area are not available. Points shall be awarded on the following scale:

- i) Rates = 0% to .25% MHI 0 points
- ii) Rates = 0.26% to .50% MHI 5 points
- iii) Rates = .51% to .75% MHI 10 points
- iv) Rates = .76% to 1.0% MHI 15 points
- v) Rates = 1.01% or greater MHI 20 points

(e) SOURCE PROTECTION AND MANAGEMENT

The maximum value to be given for source protection and management categorical elements is 15 points. Points shall only be awarded for existing activities or programs that efficiently protect the public health, as follows:

- i) Participation in source water protection activities; points may be awarded in Sub-Items (1) and (2) of this Item up to the maximum, as follows:
 - (1) Voluntary surface Source Water Protection program approved by the Division, pursuant to the Safe Drinking Water Act, Section 1454 five points, or
 - (2) Voluntary wellhead protection program approved by the Division, pursuant to the Safe Drinking Water Act, Section 1428 five points.
- ii) Efficient water use, as shown by the applicant's establishment and administration of the described programs; points may be awarded in Sub-Items (1), (2), and (3) of this Item up to the maximum, as follows:
 - (1) Water loss reduction program, which includes water audits, comprehensive metering, and hidden leak detection, three points;
 - (2) Cross-connection control program, three points;
 - (3) Demand management strategies, such as:
 - (a) A water conservation incentive rate structure;
 - (b) Incentives for new or replacement installation of low flow faucets, showerheads and toilets, or;
 - (c) A water reclamation or reuse system.Three points per strategy.

(f) PROJECT PLANNING

The maximum value - 3 points, the value of this categorical element is the sum of the points awarded to Item (i) and the points assigned to Item (ii):

- (i) The project is compatible with the State Water Supply Plan and the applicable local water supply facility plan submitted under G.S. 143-355(1) - 1 point.
- (ii) The project demonstrates long range planning, through inter-local agreements, leading to systems of regional water supply - 2 points.

SECTION .0700 - AWARD, COMMITMENT AND DISBURSEMENT OF LOANS

15A NCAC 01N .0701 DETERMINATION OF AWARDS AND BYPASS PROCEDURES

- (a) All funds appropriated for a fiscal year and all other funds accruing from loan principal repayments, interest payments, interest earned on funds, excess funds not awarded in the previous priority review period, and any other source shall be available for loans during the priority review period.
- (b) The funds available in a priority review period shall be awarded in the form of a binding commitment in descending order of priority rating upon EPA approval of that IUP considering Rule .0201 of this Subchapter to those eligible projects that are ready to proceed. A project is defined as ready to proceed when the following conditions have been met:
 - (1) Project plans and specifications are approved by the Division;
 - (2) Any environmental review required is complete;
 - (3) One hundred percent funding necessary for the project is committed; and
 - (4) Authorization To Construct is issued by the Division.
- (c) Except as provided in Paragraph (d) of this Rule, the maximum principal amount of loan commitment from any fiscal year's allocation made to an applicant shall be three million dollars (\$3,000,000) for a construction project or twenty-five thousand dollars (\$25,000) for project planning purposes.
- (d) Any funds remaining after the initial allocation of Paragraphs (b) and (c) of this Rule shall be awarded in descending order of priority rating to those eligible projects in any approved IUP subject to the limitation of Paragraph (c) of this Rule for each 'pass' through the remaining available funding.

15A NCAC 01N .0702 CERTIFICATION OF ELIGIBILITY

- (a) The receiving agency shall create a certificate of eligibility for each applicant for which a loan has been made.
- (b) The certificate of eligibility shall indicate that the applicant meets all eligibility criteria and that all other requirements of the Act have been met.
- (c) The certificate of eligibility shall also indicate the amount and the fiscal year of the loan commitment.

15A NCAC 01N .0703 CRITERIA FOR LOAN ADJUSTMENTS

Upon receipt of bids, a loan commitment may be adjusted as follows:

- (1) The loan commitment may be decreased by the receiving agency provided; the project cost as bid is less than the estimated project cost;
- (2) The loan commitment may be increased a maximum of 10 percent by the receiving agency provided: the project cost as bid is greater than the estimated project cost; the project as bid is in accordance with the project for which the loan commitment was made; the receiving agency has reviewed the bids and determined that substantial cost savings would not be available through project revisions without jeopardizing the integrity of the project; and adequate funds are available in the Fund. Increases greater than 10 percent of the loan commitment require approval by the Local Government Commission.

15A NCAC 01N .0704 DISBURSEMENT OF LOANS

- (a) Disbursement of loan monies shall be made at intervals as work progresses and expenses are incurred. No disbursement shall be made until the receiving agency receives documentation of incurred costs. At no time shall disbursement exceed the allowable costs which have been incurred at that time.
- (b) No disbursement shall be made until the receiving agency receives documentation of compliance with applicable federal and state laws.
- (c) The receiving agency shall authorize the Controller's Office of the Department of Environment and Natural Resources to make loan disbursements.

15A NCAC 01N .0705 TERMINATION OF LOANS

Loan commitments may be terminated by the receiving agency when recipients do not meet project schedules, if they fail to award contracts within one year, or if they fail to comply with applicable federal requirements.

SECTION .0800 - LOAN REPAYMENTS

15A NCAC 01N .0801 INTEREST RATES

The interest rate to be charged on loans under this Subchapter shall be set in each priority review period at the lesser of four percent per annum or one half the prevailing national market rate as derived from the Bond Buyer's 20-Bond Index in accordance with G.S. 159G-40.

15A NCAC 01N .0802 REPAYMENT OF PRINCIPAL AND INTEREST

- (a) The debt instrument setting the terms and conditions of repayment of loans under this Subchapter shall be established after the receipt of bids. Adjustments to the loan may be made only under Rule .0703 of this Subchapter.
- (b) The maximum maturity on any construction loan shall not exceed 20 years.
- (c) The maximum maturity on any project planning loan shall not exceed five years.
- (d) Interest on the debt instrument shall begin to accrue on the original date that a project's contracts are scheduled to be completed. Extensions of this deadline are not allowed.
- (e) All principal payments shall be made annually on or before May 1 or November 1. The first principal payment is due not earlier than six months after the date of completion of the project.
- (f) All interest payments shall be made semiannually on or before May 1 and November 1 of each year. The first interest payment is due not earlier than six months after the date of completion of the project.
- (g) All principal and interest payments shall be made payable to the Fund.

SECTION .0900 - INSPECTION AND AUDIT OF PROJECTS

15A NCAC 01N .0901 INSPECTION

Inspection of a project to which a loan has been committed may be made by the receiving agency to determine the percentage of completion of the project for disbursements, and for compliance with all applicable laws and rules.

15A NCAC 01N .0902 AUDIT

All projects to which a loan has been committed shall be audited in accordance with G.S. 159G-35 and G.S. 159-40.