

UNOFFICIAL

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD  
CHAPTER 50. FINANCIAL ASSISTANCE**

**Introduction:**

This document contains permanent amendments to Chapter 50 adopted by the Oklahoma Water Resources Board that became effective June 13, 2013. Also, this document was prepared by Oklahoma Water Resources Board staff as a convenience to the reader, and is not a copy of the official Title 785 of the Oklahoma Administrative Code. State law requires that the Secretary of State's office provide permission to copy the official Code. The rules in the official Oklahoma Administrative Code control if there are any discrepancies between the Code and this document.

Subchapter	Section
1. General Provisions.....	785:50-1-1
3. Projects and Entitles Eligible .....	785:50-3-1
5. Applications for Financial Assistance .....	785:50-5-1
7. Water and Sewer Program Requirements and Procedures .....	785:50-7-1
8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures.....	785:50-8-1
9. Clean Water State Revolving Fund Regulations.....	785:50-9-1
10. Drinking Water Treatment Revolving Loan Program Regulations.....	785:50-10-1
11. Miscellaneous Provisions .....	785:50-11-1
13. Oklahoma Water Conservation Grant Program.....	785:50-13-1

[**Authority:** 82 O.S. Sections 1085.2, 1085.31 et seq., 1085.51 et seq. and 1085.71 et seq.]

[**Source:** Codified 12-31-1991]

**SUBCHAPTER 1. GENERAL PROVISIONS**

Section
785:50-1-1. Purpose
785:50-1-2. Definitions
785:50-1-3. Program authority and description
785:50-1-4. Application of rules

**785:50-1-1. Purpose**

The rules in this Chapter are promulgated to provide standards, guidelines and policy statements related to the Board's Financial Assistance Program. The instant rules and regulations have been enacted for the purpose of implementing and administering the powers, duties and responsibilities of the Board as provided by 82 O.S. Sections 1085.31 through 1085.84, and other applicable laws, which provides generally for Board approved financial assistance in certain works and projects for the enhancement, development and utilization of water resources and sewage treatment facilities within the State of Oklahoma.

[**Source:** Amended at 12 Ok Reg 2715, eff 7-1-1995]

**785:50-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise, or unless defined differently in Subchapters 8 and 9 when used in those subchapters:

"**Applicant**" means the entity applying or having applied to the Board for financial assistance under the provisions of this Chapter.

**"Application"** means the application process or procedure through which an applicant applies to the Board for financial assistance. In context, this word shall also be understood to refer to the written application document(s), with attachments, through which application for financial assistance is made to the Board.

**"Board"** means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

**"Clean Water SRF"** means that fund or program created by Title 82 Oklahoma Statutes, Sections 1085.51 and following.

**"CWSRF"** means Clean Water SRF.

**"Department"** means the Oklahoma Water Resources Board.

**"Drinking Water SRF"** means that fund or program created by Title 82 Oklahoma Statutes, Section 1085.71 and following.

**"Drinking Water Treatment Project"** means:

(A) any engineering undertaking or work to control or develop drinking water treatment facilities of eligible entities for all useful and lawful purposes,

(B) any system necessary to improve or develop drinking water supply, treatment or distribution capabilities, or

(C) any implementation of water source protection programs as authorized by the federal Safe Drinking Water Act.

**"DWSRF"** means Drinking Water SRF.

**"Eligible entity"** means those entities determined by the Board to be eligible to obtain financial assistance from the Board for the financing of approved projects, all being as is more specifically provided for under Subchapter 3 of this Chapter.

**"Emergency"** means any situation where the life, health or property of the persons being served by an entity are endangered.

**"Financial assistance"** means the act, process or program of Board participation in the loaning, granting of, or contracting for, financial assistance funds to an applicant for the financing of a Board approved project, the same being as authorized and contemplated under the provisions of Title 82 O.S. Sections 1085.31 through 1085.84.

**"Investment Certificate"** means any note or bond, including any renewal note or refunding bond, authorized and issued by the Board pursuant to the provisions of Title 82 O.S. Sections 1085.31 through 1085.84.

**"Loan closing"** means the act and process of the loan transaction parties executing all required and final loan transaction documents, instruments and contracts at a designated point in time subsequent to financial assistance approval by the Board.

**"Participating lender"** means any entity, institution, person, firm or corporation, public, governmental or private, other than the Board, which is participating in the financing or funding of a project for which application is made to the Board.

**"Pledge"** means the act or process through which an applicant commits, obligates and encumbers its property, real or personal, or its revenues, existing or anticipated, all being of or from the projects or otherwise, to the Board as security and means for repayment of the loan made to the applicant by the Board.

**"Project"** means the applicant's works or undertaking for which application for financial assistance has been made to or approved by the Board. In this connection, projects and project

purposes for which financial assistance may be obtained shall be those described and defined in Subchapter 3 of this Chapter.

**"Project cost"** means applicant's direct and incidental costs of acquiring, constructing and furnishing the project for which assistance is sought and to those items of cost for which Board-provided financial assistance funds may be utilized and expended by an applicant for an approved project, all being as is more specifically described and contemplated within 785:50-3-1.

**"REAP"** means the Rural Economic Action Plan created by Title 62 Oklahoma Statutes, Sections 2003 and following, and the funding and grant program administered by the Board pursuant thereto.

**"Safe Drinking Water Act"** means the federal Safe Drinking Water Act as may be amended, or any successor statute.

**"Security"** means those items of real or personal property or money revenues in which an applicant possesses legal right, title and interest and which are pledged, committed and encumbered by the applicant to the Board to secure applicant's loan indebtedness and repayment to the Board.

**"SRF"** means a fund or program to be used for loans to eligible entities for qualified projects in accordance with Federal law, rules and guidelines administered by the U.S. Environmental Protection Agency and state law and rules in this Chapter administered by the Board. "SRF" is a Federal term referring to a state revolving fund. There are two separate SRF programs administered in Oklahoma: one is for the purpose of controlling water pollution (the CWSRF) and the other is for the purpose of providing safe drinking water (the DWSRF).

**"Water and Sewer program"** means the loan and grant program administered by the Board for making loans from bond proceeds, emergency grants from the Grant Account of the Water Resources Fund in the State Treasury, contract financial assistance, and related financial assistance for water and sewer projects.

[Source: Amended at 10 Ok Reg 3361, eff 6-25-1993; Amended at 12 Ok Reg 2715, eff 7-1-1995; Amended at 15 Ok Reg 2881, eff 7-1-1998; Amended at 16 Ok Reg 2692, eff 7-1-1999]

### **785:50-1-3. Program authority and description**

(a) The rules in this Chapter have been promulgated and adopted pursuant to and as authorized by 82 O.S. 1981, §1085.2, 75 O.S. 1981, §302, 82 O.S. 1981, §§1085.31 through 1085.49, §§1085.51 through 1085.65 as amended, 82 O.S. Supp. 1994, §§1085.71 through 1085.84, and as otherwise authorized under the laws of the State of Oklahoma.

(b) There are four major sources of financial assistance described as follows:

(1) The Water and Sewer program created under Sections 1085.31 through 1085.49 of Title 82 of the Oklahoma Statutes. That program consists of the following:

(A) Loans made pursuant to 82 O.S. Section 1085.36.

(B) Grants from the Grant Account of the Water Resources Fund pursuant to 82 O.S. Section 1085.39.

(2) The Clean Water SRF loan program created under Sections 1085.51 through 1085.65 of Title 82 of the Oklahoma Statutes.

(3) The Drinking Water SRF Loan program created under Sections 1085.84 of Title 82 of the Oklahoma Statutes.

(4) The Rural Economic Action Plan ("REAP") grant program created under Sections 2003 and following of Title 62 of The Oklahoma Statutes.

[Source: Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998]

**785:50-1-4. Application of rules**

(a) Due to the very specialized nature of the financial assistance program, the rules provided in this Chapter shall in all instances be subject to and given a liberal, reasonable, fair and impartial construction, interpretation and application to the end that the intent and purposes hereof may be obtained in compliance with the laws of the State of Oklahoma and the public purposes sought to be served thereby.

[Source: Amended at 12 Ok Reg 2715, eff 7-1-1995; Amended at 17 Ok Reg 2773, eff 7-1-2000]

**SUBCHAPTER 3. PROJECTS AND ENTITIES ELIGIBLE**

## Section

785:50-3-1. Project eligibility

785:50-3-2. Eligible entities

**785:50-3-1. Project eligibility****(a) Purposes for which assistance may be provided.**

(1) The financial assistance contemplated under the Water and Sewer program may be made available for the purpose of providing or assisting in providing for the acquisition, development and utilization of water and sewage storage and control facilities for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities constructed or hereafter constructed, modified or enlarged within the State of Oklahoma by the United States of America or Oklahoma or any agency, department, subdivision or instrumentality thereof and for the refinancing of existing indebtedness related to water and sewer systems.

(2) The financial assistance contemplated under the Clean Water SRF and Drinking Water SRF programs may be made available for projects as provided and authorized under the applicable federal legislation, and Sections 1085.51 through 1085.65 and Sections 1085.71 through 1085.84 of Title 82 of the Oklahoma Statutes.

**(b) Projects for which assistance may be obtained.****(1) Water and Sewer, REAP projects; exception for certain unqualified projects.**

(A) Financial assistance may be obtained through the Water and Sewer program and REAP grant program for any project within the State of Oklahoma which qualifies as *any engineering undertaking or work to conserve and develop surface or subsurface water resources or to control or develop sewage treatment facilities of the State for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including but not limited to underground storage projects, filtration and water treatment plants, including any system necessary to distribute water from storage or filtration plants to points of distribution, or from storage to filtration and treatment plants, facilities for distributing water therefrom to wholesale or retail purchasers, [82:1085.32(1)] floodplain restoration including but not limited to home relocations, bank stabilization, storm sewer and drainage improvements and any system necessary to improve or develop sewage treatment, collection or distribution capabilities [82:1085.32(1)]* of any area of the State. Such qualified projects are additionally understood to include financial assistance to acquire and own the lands required for the project, and to obtain the water supply and to construct appropriate treatment facilities.

(B) Notwithstanding any of the foregoing, a project is not qualified to receive financial assistance by emergency grant pursuant to Title 82 O.S. Section 1085.39 or REAP grant pursuant to Title 62 O.S. Section 2003 if the project is or would be subject to an arrangement whereby a person who is not a state or local governmental entity has or would have a right to use or make use of the project on a basis not available to members of the general public.

(2) **CWSRF projects.** Financial assistance may be obtained through the CWSRF program for any project within the State of Oklahoma which qualifies as any engineering undertaking or work to control or develop sewage treatment facilities of the state for all useful and lawful purposes, any system necessary to improve or develop sewage *treatment, collection or distribution capabilities, storm water and Brownfield activities that are administered under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or the Oklahoma Pollution Discharge Elimination Act, or any implementation of nonpoint source management programs as authorized by the federal Water Quality Act of 1987 and Section [82:1085.52(1)] 1085.65 of Title 82 of the Oklahoma Statutes.*

(3) **DWSRF projects.** Financial assistance may be obtained through the DWSRF program for any project within the State of Oklahoma which qualifies as any engineering undertaking or work to control or develop drinking water facilities of the State for all useful and lawful purposes, any system necessary to improve or develop drinking water treatment, collection or distribution capabilities as authorized by the federal Drinking Water Act and Section 1085.72 of Title 82 of the Oklahoma Statutes.

(c) **Project costs for which assistance funds may be expended.**

(1) Project financial assistance funds made available by the Board to an applicant for approved projects may be utilized and expended by an applicant toward applicant's payment and financing of project costs, as approved by the Board.

(2) Eligibility for project costs funded under the CWSRF program described in 785:50-1-3(b)(2) is limited to the restrictions of the federal Water Quality Act as amended.

(3) Eligibility for drinking water project costs funded under the DWSRF program described in 785:50-1-3(b)(3) is limited to the restrictions of the federal State Drinking Water Act as amended.

(4) For purposes of the Water and Sewer program, the REAP grant program, and subject to controlling federal and state law for the CWSRF and DWSRF programs, project costs include, but shall not be limited to, the following miscellaneous and general project cost items:

(A) Costs of acquiring the facilities comprising the project;

(B) Costs of acquiring and constructing other items included in the facilities, including obligations incurred for labor and materials by contractors, builders and materialmen;

(C) Costs of restoration or relocation of property damaged or destroyed in connection with any construction;

(D) Costs of premiums of contractors' performance, payment and completion bonds;

(E) Costs of title insurance premiums;

(F) Costs of machinery, equipment and related facilities acquired or purchased for inclusion in and identification primarily with the facilities and the cost of shipping, transportation and installation thereof;

(G) Taxes or other municipal or governmental charges levied or lawfully assessed against the facilities acquired during the period of acquisition;

- (H) Costs of insurance premiums in connection with acquisition of the facilities;
- (I) Costs of architects' and engineers' services related to the project prior to and during the period of acquisition;
- (J) Payment or reimbursement of the applicant for interim financing loans and advances and all costs thereof made in contemplation of receiving financial assistance;
- (K) Abstract and title opinion costs;
- (L) Costs of project legal fees and expenses of counsel for the applicant;
- (M) Costs of fees of other consultants of applicant;
- (N) Recording fees;
- (O) Loan insurance expenses;
- (P) Other costs of publishing and printing proceedings incident thereto; and
- (Q) Such other reasonable and necessary expenses as may be required to complete the proposed project.

(5) Force account labor costs may be eligible, under certain conditions as determined by the Board, for project financial assistance.

**[Source:** Amended at 9 Ok Reg 1683, eff 5-11-1992; Amended at 10 Ok Reg 3333, eff 7-1-1993; Amended at 11 Ok Reg 3007, eff 6-13-1994; Amended at 12 Ok Reg 2715, eff 7-1-1995; Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998; Amended at 16 Ok Reg 2693-2694, eff 7-1-1999; Amended at 17 Ok Reg 2773-2774, eff 7-1-2000]

### **785:50-3-2. Eligible entities**

(a) **Entities eligible for assistance.** The financial assistance made available through the Water and Sewer program, the REAP grant program, the CWSRF program, and the DWSRF program may be obtained, for an eligible project, by any duly constituted and existing political subdivision of the State of Oklahoma, including but not limited to counties, cities, towns and municipalities, and, by any duly constituted and existing special purpose water resource district, including but not limited to rural water districts, irrigation conservancy districts, and by any duly qualified and existing public trusts or authorities, individually or as agents, representatives or instrumentalities of any political subdivision.

(b) **Combination of eligible entities.** For purposes of qualifying for and obtaining the financial assistance contemplated herein, any group of eligible entities may combine and join in making application for project assistance, provided, each separate entity within the group so combined is eligible under (a) of this Section.

(c) **Proof of eligibility.** For purposes of qualifying for and obtaining the financial assistance contemplated in this Chapter, entities shall submit appropriate proof of eligibility.

**[Source:** Amended at 16 Ok Reg 2694, eff 7-1-1999; Amended at 18 Ok Reg 2248, eff 7-1-2001]

## **SUBCHAPTER 5. APPLICATIONS FOR FINANCIAL ASSISTANCE**

Section

785:50-5-1. Application form and required information

785:50-5-2. Application verification and approval

### **785:50-5-1. Application form and required information**

(a) **Application form.**

(1) Printed financial assistance application forms for the Water and Sewer program shall be, to the extent deemed appropriate, furnished by the Board.

- (2) Printed financial assistance application forms for the CWSRF program authorized in 82 O.S., §§1085.51 through 1085.65 shall be developed by the Board and furnished to applicants to be completed by the applicants and submitted to the Board.
  - (3) Printed financial assistance application forms for the DWSRF program authorized in 82 O.S. §§1085.71 through 1085.84 shall be developed by the Board and furnished to Department and applicants to be completed by the applicants and submitted to the Board.
  - (4) Printed financial assistance application forms for the Rural Economic Action Plan grant program shall be developed by the Board and furnished to qualified entities and COGs to be completed by the qualified entities or COGs and submitted to the Board.
  - (5) All applications for financial assistance must be completed by the applicant either on written forms as may be provided by the Board or in such other written form as the Board may require.
- (b) **Required general information.** The following general information must be submitted by applicant within each application for financial assistance unless deemed inapplicable and waived by the Board:
- (1) Applicant's full, true and correct legal name, official residence and mailing address if different from official residence.
  - (2) Authority of law under which applicant was created and established and applicant's independent legal authority under which application is made. Applicant must identify and describe the nature of its legal identification as a political subdivision, special purpose district or public trust.
  - (3) Applicant must provide certified copy of the resolution or other specific authorizing instrument reflecting applicant's authorization for making the subject application to the Board.
  - (4) Name and address of applicant's project engineer.
  - (5) Total amount of funds requested by applicant for project assistance from the Board including a statement of the specific uses and purposes for which such funds are intended to be applied.
  - (6) Applicant's anticipated project commencement and completion date.
  - (7) Applicant's firm estimate of annual (or other interval) revenues to be derived from the project or other available sources or revenue to be pledged by applicant to the Board for loan repayment and such additional project revenue information as may be necessary to evaluate general economic feasibility of the project.
  - (8) Information regarding the ability of the applicant to finance project development for which assistance is sought without Board participation.
  - (9) A statement of the manner and means by which applicant intends to finance the entire project including a statement when appropriate of the specific manner and means by which applicant proposes to make repayment to the Board from project revenues.
  - (10) Information reflecting whether applicant has any type of reserve or contingency funds available which could and would be used to meet actual project costs which may exceed applicant's original total estimated costs of the project (reserve or contingency fund for cost overrun). Such information should include the nature, source, amount and liquidity of such reserve or contingency funds and applicant's commitment and ability to utilize such funds when and if necessary for such purposes.
  - (11) A certified copy of applicant's previous four (4) years' annual audits, if available, and a statement of applicant's financial condition including a current statement of all outstanding indebtedness of applicant or related entities, including but not limited to all outstanding general obligation or revenue debt which such indebtedness might affect applicant's overall

financial condition. In this connection, applicant must list the security given for all such indebtedness.

(12) A brief but adequate description of the proposed project for which application is made, including but not limited to the following:

(A) Project location.

(B) Nature of project, including a preliminary engineering report showing such tentative project plans and specifications as may be necessary to reflect general engineering feasibility of the project.

(C) Comprehensive statement clearly demonstrating project need and the degree and extent of local support for the project.

(i) Such statement must be in sufficient detail to support and justify the project and should describe all aspects of present local support and approval for the project.

(ii) Applicant may include letters or statement of support from any interested persons or agencies.

(D) Anticipated total project cost.

(E) Listing of all financing institutions, lender, or other funding sources participating in financing the project, with, where applicable, the following related information:

(i) Statement by each participating entity reflecting the relative interest, support and commitment of the participating lender or other funding source in and to the project.

(ii) Statement reflecting total project cost allocation between lenders or other funding sources, and,

(iii) A statement and description of all project security or project revenues already pledged or to be pledged to other participating lenders or fund sources.

(F) An analysis of the cost effectiveness of the project, showing the feasibility of alternatives capable of meeting State and federal water quality and public health requirements.

(13) Nature and amount of security to be pledged to the Board for the financial assistance requested.

(14) If real or personal property, or any interest therein, is to be pledged by applicant to the Board for security, applicant must submit a current statement of the nature and extent of all outstanding liabilities or indebtedness against such property. If applicant is not the owner of such real or personal property to be pledged, applicant must state and describe the nature and extent of applicant's legal or equitable interest in such property, and, provide a statement setting forth who or what entity owns such property with a statement of all outstanding liabilities or indebtedness against such property.

(15) Description of nature and division of contemplated project ownership or other legal or equitable interest in the project if other than complete ownership by applicant.

(16) A statement reflecting the relevant history or current status of applicant's efforts toward obtaining all necessary and incidental rights and privileges needed for project commencement, completion and cooperation. This requirement includes but it not limited to all necessary legal rights including water rights, licenses or permits, whether existing under federal, state or local law or regulation, the relative status of secured or outstanding contracting arrangements, and the status of any incidental legal proceedings including, but not limited to any authorizations required by residents of the applicant.

(17) All applicants should submit, if not otherwise submitted, a comprehensive statement of project overview setting forth group effort in the project, debt, revenue and commitments to



the project and applicant's future capital improvement plans as may relate to the applicant's proposed project or the applicant generally.

(c) **Other necessary information.**

(1) Where applicable to the particular project for which financial assistance is sought, the following additional information must be submitted with the application:

(A) All estimated firm annual yields and proposed reservoir capacities for storage if assistance is sought for reservoir or storage facilities construction or if assistance is sought for a project incidental to an existing storage facility or reservoir.

(B) A statement containing the proposed purposes for which water will be stored or used and places of use or potential use for such water.

(C) A statement of relative allocation of project costs to each project purpose if for more than one purpose.

(D) A brief description of existing or proposed improvements in the project area and a description of all such improvements which may require relocation.

(2) The Board may require applicant to submit such further or additional project information as may be deemed necessary for proper project review under the particular facts and circumstances of any specific project financial assistance proposal.

**[Source:** Amended at 10 Ok Reg 3333, eff 7-1-1993; Amended at 12 Ok Reg 2715, Eff 7-1-1995; Amended at 13 Ok reg 3773, eff 7-18-1996; Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998; Amended at 16 Ok Reg 2694-2696, eff 7-1-1999]

**785:50-5-2. Application verification and approval**

(a) All applications for financial assistance must be duly verified and acknowledged by the applying entity (authorized representative) at the time of submission.

(b) Additionally, each application shall, at the time of submission, be approved as to legality by applicant's legal counsel.

**SUBCHAPTER 7. WATER AND SEWER PROGRAM (BOND PROCEED LOANS AND EMERGENCY GRANTS) REQUIREMENTS AND PROCEDURES**

Section

785:50-7-1. General procedures

785:50-7-2. Approval criteria

785:50-7-3. Evaluation procedures for grant applications

785:50-7-4. Evaluation procedures for funding special projects

785:50-7-5. Emergency grant priority point system

785:50-7-6. Terms and conditions

785:50-7-7. Disbursement of funds

**785:50-7-1. General procedures**

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review and consideration process for financial assistance under the water and sewer program authorized by 82 O.S., §§1085.31 through 1085.49 shall be as follows:

(1) **Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal financial and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

- (B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.
- (2) **Application.**
- (A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance.
- (B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.
- (3) **Preliminary review.** Upon receipt of the application by the Board, the submitted application shall be given preliminary review by Board staff for an initial determination of project eligibility, applicant eligibility and for completeness and accuracy of all required and necessary information.
- (4) **Final review.** Subsequent to preliminary review and based upon the determination of eligibility and adequacy of information submitted, the application shall thereafter be reviewed by Board staff in accordance with this Subchapter and for compliance with such other considerations and factors deemed relevant and necessary for staff recommendation purposes.
- (5) **Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (b) below.
- (b) **Board action.**
- (1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:
- (A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authority such further action as may be necessary to effectuate loan closing and/or the disbursement of funds.
- (B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and, the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.
- (C) The Board may reject and deny the application, in whole or in part.
- (D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available loan and/or grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.
- (2) Upon approval and grant of an application, the Board may authorize loan closing and the execution of all necessary closing documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

[Source: Amended at 12 Ok Reg 2715, eff 7-1-1995; Amended at 15 Ok Reg 2881, eff 7-1-1998]

### 785:50-7-2. Approval criteria

(a) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the water and sewer program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought.

(3) **Local need, support and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants. The Board shall also consider the extent and degree of local support, interest and commitment in and to the proposed project.

(4) **Availability of other assistance.** The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.

(5) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole including proposed revenues from the project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.

(6) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite for approval and funding that it is cost effective.

(7) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(8) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(b) **Criteria applicability.**

(1) The general criteria set forth in (a) and (c) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed appropriate for strict application and interpretation nor shall such criteria be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (a) and (c) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(c) **Criteria for denying an application.** The Board may deny an application for a bond proceed loan or an emergency grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.

(2) The applicant has had improper or unsound management in the past.

(3) The applicant's financial condition is not sound enough to assure the Board that the loan would be satisfactorily repaid (including but not limited to circumstances such as inability to meet debt service, inability to meet any applicable rate covenant or additional indebtedness requirements, a substantial increase in operator and maintenance costs due to the proposed project, substantial revenue collection problems, substantial negative financial trends, a default or record of late payment(s) on previous indebtedness, etc.)

(4) The economic conditions pertinent for the applicant show negative trends (including but not limited to conditions such as substantial declines in sales tax revenues, population, per capita income, building permits, or water and/or sewer connections; a substantial increase in unemployment; or detrimental changes in the bases of ten largest customers or ten largest taxpayers).

(5) The project is not cost effective.

(6) Any other reason based upon applicable law, applicable requirements of the pertinent bond resolution governing use of the bond proceeds, or the Board's judgment and discretion.

[Source: Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998]

### **785:50-7-3. Evaluation procedures for grant applications**

(a) In evaluating a grant request under the water and sewer program, a determination shall be made as to whether an emergency situation exists. For the purposes of this determination, an emergency situation shall be a situation where the life, health or property of the persons served by the entity are endangered. An emergency will be deemed no longer to exist, and a grant application based thereon will not be approved nor funded, after the passage of 180 days following the date the emergency last occurred, unless the Board finds, upon evidence satisfactory to the Board, that the emergency continues to exist as the date of approval and the date of funding.

(b) No emergency may be determined by the Board to exist absent an official declaration of emergency by the entity requesting the grant. The entity's declaration of emergency must be furnished to the Board and must set forth and described, among other matters, the nature and circumstances of the emergency.

(c) In addition to determining whether an emergency situation exists, the Board shall, in evaluating a grant request, take into consideration the following:

(1) The needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance;

(2) The availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;

(3) Whether the political subdivision can reasonably finance the project without assistance from the state;

(4) The relationship of the project to the overall statewide water and sewage treatment needs; and

(5) Whether or not the applicant has taken all reasonable measure to limit waste and conserve water.

(d) Upon a determination that an emergency situation does exist, the priority point system set forth in 785:50-7-5 shall be utilized to review pending grant applications and grant applications filed after the effective date of these rules.

(e) For purposes of evaluating, approving and funding an application for a grant, eligible project costs shall include, in addition to those project costs described in 785:50-3-1:

- (1) Architecture and/or engineer fees related to the project.
- (2) Fees for soil testing.
- (3) Fees for surveying.
- (4) Payments to contractor(s) for construction of the improvements.
- (5) Legal fees and expenses of counsel for the applicant which are related to the project.
- (6) Services of full-time or part-time inspector.
- (7) Administrative expenses shall not be eligible project costs.

[**Source:** Amended at 9 Ok Reg 1683, eff 5-11-1992; Amended at 12 Ok Reg 2715, eff 7-1-1995; Amended at 13 Ok Reg 777, eff 11-29-1995 (emergency); Amended at 13 Ok Reg 1753, eff 5-28-1996; Amended at 15 Ok Reg 2881, eff 7-1-1998; Amended at 18 Ok Reg 2248-2249, eff 7-1-2001]

#### **785:50-7-4. Evaluation procedures for funding special projects**

The following evaluation and selection criteria shall be considered by the Board in reviewing applications for special projects contract financial assistance under the water and sewer program:

- (1) The needs of the area to be served by the project in relation to the needs of other areas requiring state assistance;
- (2) The benefit of the project to the area to be served by the project;
- (3) Whether the applicant has previously received financial assistance by a grant from the Board;
- (4) The extent of local participation, if any, in the project;
- (5) As a prerequisite for application approval and funding, the project must be cost effective.

[**Source:** Amended at 15 Ok Reg 2881, eff 7-1-1998]

#### **785:50-7-5. Emergency grant priority point system**

##### **(a) Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the applicants and the proposed project in accordance with the requirements of the statutes by means of a formula awarding points for each criteria used in the evaluation. The maximum point total under the system is one hundred twenty (120). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 60 or more priority points. If the Board determines that the applicant with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 59 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The two primary statutory criteria are:

- (A) The emergency situation of the applicant.

- (B) Whether or not the applicant can reasonably finance the project without assistance from the state.
- (3) **Total priority points.** Total priority points will be calculated and awarded for individual projects; therefore, eligible entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among applicants.
- (b) **Priority formula for eligible entities other than school districts.**
- (1) **Formula.** The following formula has been devised to rank grant applications:  $P = E + WR + I + L + MHI + FP + AR + BP - AN$ , Where:
- (A) P = Priority ranking
  - (B) E = Emergency ranking
  - (C) WR = Water and sewer rate structure
  - (D) I = Indebtedness per customer
  - (E) L = Amount of local contribution toward project
  - (F) MHI = Median household income
  - (G) FP = Applicant's ability to finance project
  - (H) AR = Amount of grant requested
  - (I) BP = Benefit of project to other systems
  - (J) AN = Application number
- (2) **Explanation.** Each of these criteria are explained below:
- (A) **Emergency rankings (E).** Emergencies are ranked by severity with Category 1 being the most severe and Category 3 being the least severe. Points awarded range from a maximum of 50 points for Category 1 and a minimum of 30 points for Category 3. If an applicant requests funds to correct more than one emergency category need, only the amount of assistance needed to correct the most severe need will be considered in the calculation for the application ranking. The applicant will be informed that separate and additional applications must be filed for other needs and projects. An applicant who receives funding for a project under any of the listed emergencies may not reapply under the same emergency. The three (3) emergency ranking categories are as follows:
- (i) **Category 1.** Total loss of a water supply or sewage system or loss of a major component of a system due to a natural or unforeseen disaster which could not have been prevented by the exercise of reasonable care by the applicant. Examples of such disasters may include but are not necessarily limited to: tornado; flood; fire; severe weather; landslide; sudden loss of a water supply system; sudden collapse of a major structural portion of a system; signs of imminent failure of a public water supply lake dam, spillway or outlet structure such as settlement or slumping of the crest, excessive seepage, slides, cracks or sloughs along the upstream and downstream slopes of the dam. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quantity does not supply the basic needs of the residents. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provisions of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then

the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 1 emergencies receive 50 points.

(ii) **Category 2.** Water or sewer emergencies which could not have been prevented by the exercise of reasonable care by the applicant and which cause immediate danger or an imminent health hazard to the community or other nearby citizens. Such emergencies may include but are not necessarily limited to: users or systems whose water supply is deemed to be dangerous or unhealthy; systems whose supply source becomes contaminated by man-made pollution caused by a person other than the applicant; overflow of raw sewage into homes or streets due to structural failure in the collection mains and/or structural, mechanical, or electrical failure at a lift station due to disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides; sewage treatment systems which discharge raw or inadequately treated sewage effluent whose quality and/or quantity causes an immediate and imminent health or safety danger to a public water supply due to a structural, mechanical or electrical failure of a process unit(s) caused by disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quality is dangerous or unhealthy as a consequence of circumstances that could not have been prevented by the exercise of reasonable care by the applicant. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 2 emergencies receive 40 points.

(iii) **Category 3.** Water system improvements needed to meet the average and/or maximum daily demands of a system's customers caused by a large increase in the number of customers. The increase could result from annexation or the sale of treated water to another entity(ies) based on an engineering study that indicates purchasing to be the most cost effective alternative. Also included under this category is the construction of a new or extended water or sewer system to serve areas where residents are without sewer system service or without water. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 3 emergencies receive 30 points.

(B) **Water and Sewer rate structure (WR)**

(i) **For Systems Providing Water Service Only:**

- (I) If the cost per 5000 gallons is \$50.00 or greater, the applicant shall be given 10 points.
  - (II) If the cost per 5000 gallons is \$45.00 to \$49.99, the applicant shall be given 9 points.
  - (III) If the cost per 5000 gallons is \$40.00 to \$44.99, the applicant shall be given 8 points.
  - (IV) If the cost per 5000 gallons is \$35.00 to \$39.99, the applicant shall be given 7 points.
  - (V) If the cost per 5000 gallons is \$30.00 to \$34.99, the applicant shall be given 6 points.
  - (VI) If the cost per 5000 gallons is \$25.00 to \$29.99, the applicant shall be given 5 points.
  - (VII) If the cost per 5000 gallons is \$23.00 to \$24.99, the applicant shall be given 4 points.
  - (VIII) If the cost per 5000 gallons is \$21.00 to \$22.99, the applicant shall be given 3 points.
  - (IX) If the cost per 5000 gallons is \$19.00 to \$20.99, the applicant shall be given 2 points.
  - (X) If the cost per 5000 gallons is \$18.00 to \$18.99, the applicant shall be given 1 point.
  - (xi) If the cost per 5000 gallons is less than \$18.00, the applicant shall be given 0 points.
- (ii) **For Systems Providing Water and Sewer Services:**
- (I) If the cost per 5000 gallons is \$56.00 or greater, the applicant shall be given 10 points.
  - (II) If the cost per 5000 gallons is \$53.00 to \$55.99, the applicant shall be given 9 points.
  - (III) If the cost per 5000 gallons is \$49.00 to \$52.99, the applicant shall be given 8 points.
  - (IV) If the cost per 5000 gallons \$45.00 to \$48.99, the applicant shall be given 7 points.
  - (V) If the cost per 5000 gallons is \$41.00 to \$44.99, the applicant shall be given 6 points.
  - (VI) If the cost per 5000 is \$37.00 to \$40.99, the applicant shall be given 5 points.
  - (VII) If the cost per 5000 gallons is \$34.00 to \$36.99, the applicant shall be given 4 points.
  - (VIII) If the cost per 5000 gallons is \$32.00 to \$33.99, the applicant shall be given 3 points.
  - (IX) If the cost per 5000 gallons is \$31.00 to \$31.99, the applicant shall be given 2 points.
  - (X) If the cost per 5000 gallons is \$30.00 to \$30.99, the applicant shall be given 1 point.
  - (XI) If the cost per 5000 gallons is less than \$30.00, the applicant shall be given 0 points.
- (iii) **For Systems Providing Sewer Service Only:**
- (I) If the cost per connection per month is \$34.00 or greater, the



applicant shall be given 10 points.

(II) If the cost of connection per month is \$32.00 to \$33.99, the applicant shall be given 9 points.

(III) If the cost of connection per month is \$30.00 to \$31.99, the applicant shall be given 8 points.

(IV) If the cost of connection per month is \$28.00 to \$29.99, the applicant shall be given 7 points.

(V) If the cost of connection per month is \$26.00 to \$27.99, the applicant shall be given 6 points.

(VI) If the cost of connection per month is \$24.00 to \$25.99, the applicant shall be given 5 points.

(VII) If the cost of connection per month is \$22.00 to \$23.99, the applicant shall be given 4 points.

(VIII) If the cost of connection per month is \$20.00 to \$21.99, the applicant shall be given 3 points.

(IX) If the cost of connection per month is \$18.00 to \$19.99, the applicant shall be given 2 points.

(X) If the cost of connection per month is \$16.00 to \$17.99, the applicant shall be given 1 point.

(XI) If the cost of connection per month is less than \$16.00, the applicant shall be given 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water or sewer rate (unmetered) without regard to the amount of water or sewer used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under the category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

(i) If the indebtedness per customer is \$20.00 or greater, the applicant shall be given 10 points.

(ii) If the indebtedness per customer is \$17.50 to \$19.99, the applicant shall be given 9 points

(iii) If the indebtedness per customer is \$16.00 to \$17.49, the applicant shall be given 8 points.

(iv) If the indebtedness per customer is \$14.50 to \$15.99, the applicant shall be given 7 points.

(v) If the indebtedness per customer is \$13.00 to \$14.49, the applicant shall be given 6 points.

(vi) If the indebtedness per customer is \$11.50 to \$12.99, the applicant shall be given 5 points.

(vii) If the indebtedness per customer is \$10.00 to \$11.49, the applicant shall be given 4 points.

- (viii) If the indebtedness per customer is \$8.50 to \$9.99, the applicant shall be given 3 points.
  - (ix) If the indebtedness per customer is \$7.00 to \$8.49, the applicant shall be given 2 points.
  - (x) If the indebtedness per customer is \$5.50 to \$6.99, the applicant shall be given 1 point.
  - (xi) If the indebtedness per customer is less than \$5.50, the applicant shall be given 0 points.
- (D) **Local participation (L).**
- (i) The Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.
  - (ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions, or incurrence of additional debt through a loan. Grant funds received through other agencies will not be counted as local funding. Points awarded for participation are as follows:
    - (I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.
    - (II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.
    - (III) If the percentage of the project cost locally funded is at least 70% but less than 80%, the applicant shall be given 8 points.
    - (IV) If the percentage of the project cost locally funded is at least 60% but less than 70%, the applicant shall be given 7 points.
    - (V) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 6 points.
    - (VI) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 5 points.
    - (VII) If the percentage of the project cost locally funded is at least 30% but less than 40%, the applicant shall be given 4 points.
    - (VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.
    - (IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.
    - (X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.
    - (XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.
- (E) **Median household income (MHI).** The median household income is calculated according to the most current federal decennial census or American Community Survey data available.
- (i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.
  - (ii) Points are awarded as follows:
    - (I) If the median household income is less than \$17,000, the applicant shall be given 10 points.
    - (II) If the median household income is \$17,000 to \$20,999, the applicant shall be given 9 points.

- (III) If the median household income is \$21,000 to \$23,999, the applicant shall be given 8 points.
- (IV) If the median household income is \$24,000 to \$28,999, the applicant shall be given 7 points.
- (V) If the median household income is \$29,000 to \$31,999, the applicant shall be given 6 points.
- (VI) If the median household income is \$32,000 to \$36,999, the applicant shall be given 5 points.
- (VII) If the median household income is \$37,000 to \$39,999, the applicant shall be given 4 points.
- (VIII) If the median household income is \$40,000 to \$44,999, the applicant shall be given 3 points.
- (IX) If the median household income is \$45,000 to \$47,999, the applicant shall be given 2 points.
- (X) If the median household income is \$48,000 to \$51,999, the applicant shall be given 1 point.
- (XI) If the median household income is \$52,000 or greater, the applicant shall be given 0 points.

**(F) Ability to finance project (FP)**

- (i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.
- (ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 5% for 25 years is assumed. The cost per customer per month is calculated using the following formula:  $FP = \frac{AR \times (0.0710)}{(12) \times (C)}$ , Where:
  - (I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant request for the project.
  - (II) AR = Amount of grant request. For this calculation, the amount of available reserve not dedicated to the project will be deducted from the amount requested.
  - (III) (0.0710) = Annual rate factor for a 25 year loan at 5%
  - (IV) (12) = Number of months per year.
  - (V) (C) = Number of customers
- (iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.
- (iv) Points in the FP ranking are awarded as follows:
  - (I) If the ability to finance the project is \$10.00 or greater, the applicant shall be given 12 points.
  - (II) If the ability to finance the project is \$8.00 to \$9.99, the applicant shall be given 11 points.
  - (III) If the ability to finance the project is \$6.00 to \$7.99, the applicant shall be given 10 points.
  - (IV) If the ability to finance the project is \$5.00 to \$5.99, the applicant shall be given 9 points.

- (V) If the ability to finance the project is \$4.00 to \$4.99, the applicant shall be given 8 points.
- (VI) If the ability to finance the project is \$3.00 to \$3.99, the applicant shall be given 7 points.
- (VII) If the ability to finance the project is \$2.00 to \$2.99, the applicant shall be given 6 points.
- (VIII) If the ability to finance the project is \$1.75 to \$1.99, the applicant shall be given 5 points.
- (IX) If the ability to finance the project is \$1.50 to \$1.74, the applicant shall be given 4 points.
- (X) If the ability to finance the project is \$1.25 to \$1.49, the applicant shall be given 3 points.
- (XI) If the ability to finance the project is \$1.00 to \$1.24, the applicant shall be given 2 points.
- (XII) If the ability to finance the project is \$0.75 to \$0.99, the applicant shall be given 1 point.
- (XIII) If the ability to finance the project is less than \$0.75, the applicant shall be given 0 points.

**(G) Amount of grant requested (AR).**

(i) Points under this category for amount of grant requested are distributed as follows:

- (I) \$95,001 to \$100,000: -5
- (II) \$90,001 to \$95,000: -4
- (III) \$85,001 to \$90,000: -3
- (IV) \$80,001 to \$85,000: -2
- (V) \$75,001 to \$80,000: -1
- (VI) \$70,001 to \$75,000: 0
- (VII) \$65,001 to \$70,000: +1
- (VIII) \$60,001 to \$65,000: +2
- (IX) \$55,001 to \$60,000: +3
- (X) \$50,000 to \$55,000: +4
- (XI) \$45,001 to \$50,000: +5
- (XII) \$40,001 to \$45,000: +6
- (XIII) \$35,001 to \$40,000: +7
- (XIV) \$30,001 to \$35,000: +8
- (XV) \$25,001 to \$30,000: +9
- (XVI) \$25,000 or less: +10

(ii) If a project exceeds \$75,000 and the amount of funds needed over and above the OWRB grant request are being secured through a loan from OWRB, then there will be no deduction of points under this category.

**(H) Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

**(I) Number of grants.** Since it is anticipated that entities who have received emergency grants might submit additional grant applications for approval, points will be deducted from such applications according to the following schedule; provided, points shall not be deducted from such any emergency grant which was funded 10 or more

years prior to the date of Board action on the pending application and which has been subjected to a Board audit:

- (i) 1 prior grant = 5 reduction points
- (ii) 2 prior grants = 8 reduction points
- (iii) 3 prior grants = 10 reduction points
- (iv) 4 prior grants = 12 reduction points
- (v) 5 or more prior grants = 14 reduction points

(c) **Priority formula for school districts.**

(1) School districts, created under Article V of the 1971 School Code, 70 O.S. 1981, §5-101 et seq., are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's program.

(2) In evaluating and prioritizing grant applications from school districts similar criteria to those applied to municipalities, towns and rural water districts will be utilized.

(3) In developing a priority formula for school district applicants, again, the two primary statutory criteria are:

- (A) The emergency situation of the school district.
- (B) Whether the school district can reasonably finance the emergency project without the Board's assistance.

(4) The emergency aspect of each project is ranked with a maximum of 50 points being given to the most serious situations and a minimum of 30 points to the least serious. The emergency categories and points given for each are the same as those listed in (b)(2) of this Section.

(5) The school district's financial situation is given a maximum of 66 points and is derived by analyzing the following:

- (A) Local tax levies
- (B) Bonded indebtedness
- (C) Local contribution
- (D) Median household income within the school district's geographical area
- (E) Applicant's ability to finance project
- (F) Amount of grant requested
- (G) Application number

(6) Priority lists compiled and published by other Oklahoma state agencies shall be utilized to assess the seriousness of the emergency.

(7) Using the previously mentioned analysis, the following formula has been devised to rank school districts' grant applications:  $P = E + LT + BI + L + MHI + FP + AR - AN$ , Where:

- (A) P = Priority ranking total points
- (B) E = Emergency ranking
- (C) LT = Local tax levies
- (D) BI – Bonded indebtedness
- (E) L = School's contribution toward the project
- (F) MHI = median household income of population within a school district
- (G) FP = Applicant's ability to finance project
- (H) AR = Amount of grant requested
- (I) AN = Application number

(8) The criteria E, MHI, FP, AR and AN are the same as that set forth in (b) of this section. LT, BI and L are explained as follows:

(A) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

- (i) 95 to 100,00 mills = 13 points
- (ii) 90 to 94.99 mills = 11 points
- (iii) 85 to 89.99 mills = 10 points
- (iv) 80 to 84.99 mills = 8 points
- (v) 70 to 79.99 mills = 6 points
- (vi) 60 to 69.99 mills = 4 points
- (vii) 55 to 59.99 mills = 2 points
- (viii) 50 to 54.99 mills = 1 point
- (ix) 45 to 49.99 mills = 0 points
- (x) 40 to 44.99 mills = -1 points
- (xi) Less than 40 mills = -2 points

**(B) Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows: Percentage of Indebtedness Points

- (I) 95% to 100% of debt limitation = 10 points
- (II) 90% to 94.99% of debt limitation = 8 points
- (III) 80% to 89.99% of debt limitation = 7 points
- (IV) 75% to 79.99% of debt limitation = 6 points
- (V) 70% to 74.99% of debt limitation = 5 points
- (VI) 65% to 69.99 of debt limitation = 4 points
- (VII) 60% to 64.99% of debt limitation = 3 points
- (VIII) 55% to 59.99% of debt limitation = 2 points
- (IX) 50% to 54.99% of debt limitation = 1 point
- (X) 45% to 49.99% of debt limitation = 0 points
- (XI) 40% to 44.99% of debt limitation = -1 point
- (XII) 30% to 39.99% of debt limitation = -2 points
- (XIII) Less than 30% of debt limitation = -3 points

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

**(C) Local participation (L).**

(i) In order to achieve the maximum benefit from available grant funds, the Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions or incurrence of additional debt through a loan. Points awarded are as follows:

- (I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.
- (II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.
- (III) If the percentage of the project cost locally funded at least 70% but less than 80%, the applicant shall be given 8 points.
- (IV) If the percentage of the project cost locally funded at least 60% but less than 70%, the applicant shall be given 7 points.
- (V) If the percentage of the project cost locally funded at least 50% but less than 60%, the applicant shall be given 6 points.

(VI) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 5 points.

(VII) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 4 points.

(VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.

(IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.

(X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.

(XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(iii) Under the Ability to Finance Project (FP) category the Number of Customers (C) as previously discussed will be replaced by the Number of Families within a school district. Points awarded under the FP category are the same as discussed and shown in (b) of this Section.

**[Source:** Amended at 9 Ok Reg 1683, eff 5-11-92; Amended at 10 Ok Reg 3361, eff 6-25-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 13 Ok Reg 777, eff 11-29-95; Amended at 14 Ok Reg 2788, eff 7-1-97; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 16 Ok Reg 2696-2702, eff 7-1-99; Amended at 17 Ok Reg 2774-2782, eff 7-1-00; Amended at 18 Ok Reg 2249-2255, eff 7-1-01; Amended at 23 Ok Reg 3086, eff 7-27-06, Amended at 30 Ok Reg 976, eff 6-13-13]

#### **785:50-7-6. Terms and conditions**

##### **(a) Limitation.**

(1) For an approved project and application for financial assistance under the water and sewage program, the Board is authorized to loan and advance to the applicant sufficient funds as are necessary and approved for the project in compliance with applicable provisions of indentures for bonds or investments certificates issued by the Board to provide funding for such loans.

(2) The Board may not make grants exceeding the total amount of One Hundred Thousand Dollars (\$100,000.00) to any single eligible entity during any fiscal year.

(3) The Board shall not approve nor fund more than one emergency grant to any eligible entity in any twelve month period.

**(b) Evidence of indebtedness.** The financial assistance loans contemplated within this Chapter of these rules shall be provided by the Board for approved projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.

##### **(c) Loan interest and repayment.**

(1) The financial assistance loan repayment interest rate to be paid by applicant to the Board shall be as determined by the Board and shall be payable by applicant under such terms and conditions as the Board may require.

(2) The Board may, in its judgment and discretion, provide for the term, condition, manner, form and schedule of applicant's repayment to the Board of principal and interest, and the Board may, in its discretion, defer the repayment of principal or an installment on such assistance for a total cumulative deferment period not to exceed five (5) years.

##### **(d) Security for assistance.**

- (1) As security for the assistance loan provided by the Board to an approved applicant, applicant must provide if required by the Board a mortgage on any or all facilities of the project for which application is made.
- (2) The Board shall require a pledge and lien on revenues to be derived from the operation of the project.
- (3) For purposes of this rule, the pledge of and lien on project revenues shall be a pledge of an lien on such project revenues as is necessary to secure repayment of the loan obligation of applicant.
- (4) Also, for purposes of this section, if the specific project for which application is made and approved is not of itself a revenue producing unit, then such pledge of and lien on revenue shall be on the system of which the specific project is a part: and on such other additional revenue sources or systems which may be pledged by applicant to satisfy the loan security requirements necessary to obtain assistance from the Board.
- (5) The Board may require additional security which the Board deems necessary, which such additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems of and as may be tendered by the applicant.

[Source: Amended at 15 Ok Reg 2881, eff 7-1-1998]

#### **785:50-7-7. Disbursement of funds**

##### **(a) Conditions for disbursement.**

(1) After an application for financial assistance under the program authorized by Sections 1085.31 through 1085.49 of Title 82 of the Oklahoma Statutes has been approved by the Board, the following conditions and requirements shall be met prior to the release and disbursement of any assistance funds:

(A) Unless otherwise provided and approved by the Board, applicant must submit to the Board all plans, specifications and engineering reports for the project for staff approval. all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project.

(B) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(C) If not previously provided, applicant shall provide Board with a written and verified statement setting forth (i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project; (ii) and, information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(2) At the time of and upon compliance with the requirements in (1) of this subsection, the Board may release, advance and disburse financial assistance funds to the applicant for the approved project.

##### **(b) Disbursement of assistance funds.**

(1) Unless otherwise provided and approved by the Board, the total amount of financial assistance funds authorized for loan or grant under the program authorized by Sections 1085.31 through 1085.49 of Title 82 of the Oklahoma Statutes to the applicant shall not be released and disbursed to applicant in a total lump sum but instead shall be disbursed to applicant in partial amounts at agreed upon intervals and stages of construction, all as provided within the financial assistance agreement.



(2) In conjunction with the rule, the Board may require applicant to submit to the Board prior to any release or disbursement of funds such invoices, receipts, contracts, verifications, evidence of expenditure or encumbrance, construction status and progress reports or other information as the Board may require.

(3) Unless otherwise provided and approved by the Board, the Board shall not approve the release nor disbursement of more than ninety-five percent (95%) of the total loan funds authorized for loan until such time as the project has been completed, inspected by the project engineer and the Board, and accepted by the applicant. Furthermore, unless otherwise provided and approved by the Board, the Board shall not release nor disburse more than ninety-five percent (95%) of the total loan funds authorized for engineering services until the project engineer has prepared and submitted three sets of as built project plans (if different from original plans) to the applicant and one set to the Board.

(c) **Disbursement of grant funds.**

(1) Notwithstanding and in addition to the provisions set out in (a) of this Section, the following specific provisions shall apply in all instances of the disbursement of grant (financial assistance) funds under the Water and Sewer Financial Assistance Program.

(2) Upon approval of a grant application, the Board shall furnish to the applicant a letter notice of grant approval and Board commitment. The notice and commitment shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(3) Within ninety (90) days following the date of the letter notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released; provided, however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merit.

(4) For purposes of final disbursement of funds to the applicant, the grant amount initially approved may be lowered by the Board based on actual project costs.

(5) As the Board may determine and direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate under the project circumstances presented. However, prior to the disbursement of any grant funds to the applicant, the applicant must:

(A) Submit to the Board such evidence as the Board may require to establish that the emergency continues to exist; and

(B) Establish, in such manner as is acceptable to the Board or its staff, a special and separate federally insured fund or account (within applicant's accounting system) in and through which the grant proceeds shall be administered and accounted for by the applicant.

(6) In all instances, the Board reserves the right to impose additional reasonable and necessary conditions or requirements for the disbursement of grant funds, all as may be

deemed appropriate by the Board under the circumstances of the project for which grant assistance is made available.

(d) **Disbursement of contract funding.**

(1) Upon approval of an application for contract funding under the Water and Sewer Financial Assistance Program, the Board shall furnish to the applicant a letter containing notice of application approval and a draft contract.

(2) The contract shall contain, among others, the following provisions:

(A) A description of the project;

(B) The requirement that the applicant comply with applicable competitive bidding provisions in the acquisition of materials and services used for the project;

(C) The requirement that proper invoices be submitted monthly to the Board as funds are expended;

(D) The requirement that all books and records of applicant containing information pertaining to the project be available for inspection and audit.

(3) The funding contemplated by approval of the application and execution of the contract shall be paid to applicant upon submittal and acceptance of invoices for the work performed.

[Source: Amended at 9 Ok Reg 1685, eff 5-11-1992; Amended at 11 Ok Reg 3007, eff 6-13-1994; Amended at 12 Ok Reg 2715, eff 7-1-1995; Amended at 13 Ok Reg 777, eff 11-29-1995 (emergency); Amended at 13 Ok Reg 1753, eff 5-28-1996]

## **SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES**

### Section

785:50-8-1. Program description

785:50-8-2. Definitions

785:50-8-3. Application review and disposition

785:50-8-4. Applicable law; deadline for applications; eligible project costs

785:50-8-5. REAP grant priority point system

785:50-8-6. Disbursement of funds

### **785:50-8-1. Program description**

The Rural Economic Action Plan ("REAP") grant program is authorized by 62 O.S., §2003 and following. This law authorizes the Board and other governmental persons to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board. The Board's rules applicable to REAP grants shall be construed so as to consider only the REAP grant program administered by the Board, and shall not be construed so as to consider REAP grant programs administered by other governmental persons.

[Source: Added at 13 Ok Reg 3733, eff 7-18-1996 (emergency); Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998]

### **785:50-8-2. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Applicant"** means a qualified entity which submits an application for a REAP grant on its own behalf, or for whom an application is submitted by a COG; a COG shall be deemed not to be an applicant.

**"COG"** means one of the following organizations:

- (A) Association of Central Oklahoma Governments;
- (B) Association of South Central Oklahoma Governments;
- (C) Central Oklahoma Economic Development District;
- (D) Eastern Oklahoma Economic Development District;
- (E) Grand Gateway Economic Development Association;
- (F) Indian Nations Council of Governments;
- (G) Kiamichi Economic Development District;
- (H) Northern Oklahoma Development Association;
- (I) Oklahoma Economic Development Association;
- (J) Southern Oklahoma Development Association; and
- (K) South Western Oklahoma Development Authority.

**"Customer"** means a single household or commercial unit, and does not mean any service unit which provides or enables utility service for more than one household, residence, or industry.

**"Project"** means, in addition to those purposes and works described in 785:50-3-1, *sewer line construction or repair and related storm or sanitary sewer [62:2003] works, water line construction or repair, water treatment, water acquisition, distribution or recovery and related [62:2003] works.*

**"Qualified entity"** means any eligible entity as defined in 785:50-3-2; provided, any city or town with a population of 7001 or more according to the latest federal decennial census shall not be a qualified entity.

**[Source:** Added at 13 Ok Reg 3733, eff 7-18-1996 (emergency); Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998]

### **785:50-8-3. Application review and disposition**

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review and consideration process for financial assistance under the REAP grant program shall be as follows:

(1) **Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal, financial and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) **Application.**

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion, may be submitted by a COG for the benefit or on behalf of a qualified entity. A COG may assist a qualified entity in filling out or filing an application, but a COG may not exercise any power of review, approval or disapproval over an application. All applications filed with any COG shall be submitted by the COG to the Board. If an application submitted by a COG is approved, the money shall be disbursed directly to the qualified entity.

(B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.

(C) All applicants must have the verification form signed and notarized by the applicant representative, and must have a signature of an attorney representing applicant.

(3) **Preliminary review.** Upon receipt of the application by the Board, the submitted application shall be given preliminary review by Board staff for an initial determination of project eligibility, applicant eligibility and for completeness and accuracy of all required and necessary information. If Board staff find an application to be materially incomplete or inaccurate, the staff shall notify the applicant by letter stating the deficiency. An applicant shall file all documentation and information required by Board staff within 30 days after the date of the letter describing the deficiency, or else the application shall lapse and be deemed denied by operation of these rules. In the latter case, the file will be inactivated; an applicant may file a request to activate the file and consider the application, but such request shall be treated as a new application on its own merits.

(4) **Final review.** Subsequent to preliminary review and based upon the determination of eligibility and adequacy of information submitted, the application shall thereafter be reviewed by Board staff in accordance with this Subchapter for recommendation to the Board.

(5) **Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the REAP grant program, the Board shall follow the priority point system set forth in 785:50-8-5. The Board shall also give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be a qualified entity (or a COG applying on behalf of a qualified entity) and the proposed project must be for a qualified purpose as defined in 785:50-3-1 or 785:50-8-2.

(3) **Local need, support and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants. The Board shall also consider the extent and degree of local support, interest and commitment in and to the proposed project.

(4) **Availability of other assistance.** The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.

(5) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole.

(6) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite to application approval and funding that the project is cost effective.

(7) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development

needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(8) **REAP grant amount; availability of funds.** In sizing a REAP grant, the Board shall take into consideration the current and anticipated availability of REAP program funds.

(9) **Conservation Measures.** The Board shall consider whether or not the applicant has taken all reasonable measures to limit waste and conserve water.

(c) **Criteria applicability.**

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(d) **Criteria for denying an application.** The Board may deny an application for a REAP grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.

(2) Any other reason based upon applicable law or the Board's judgment and discretion.

(e) **Board action.**

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and, the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

[Source: Added at 13 Ok Reg 3733, eff 7-18-1996 (emergency); Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998; Amended at 16 Ok Reg 2702-2703, eff 7-1-1999]

**785:50-8-4. Applicable law; deadline for applications; eligible project costs**

(a) The Board shall administer applications for REAP funds in accordance with any provisions of law applicable to such applications and REAP funds.

(b) To be considered for and receive funding from funds available for REAP in any given fiscal year, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all attachments, and filed by the applicant and received by the Board on or before 5 p.m. the first business day of September of that fiscal year. However, if the deadline cannot be met due to circumstances beyond the applicant's control, the application may be accepted by the Board through the last business day of September with written proof of said circumstances. Any application not properly completed and filed shall not be considered for or funded from funds that may become available during that fiscal year. Furthermore, if no applications are received before the deadline from the area of a given COG, then the Board staff may extend the deadline for that COG through the first business day of November and contact an appropriate official for the COG and notify him or her of the available funds.

(c) A REAP grant application submitted for consideration in a prior fiscal year that was not approved for funding out of funds made available in that prior fiscal year shall expire and be deemed denied unless the applicant files and the Board receives a timely written request to consider said application during the current fiscal year, together with updated application materials as may be reasonably required by the Board. To be timely, such request and updated application materials must be received by the board on or before September 1, of the current fiscal year.

(d) For purposes of evaluating, approving and funding an application for a REAP grant, categories of project costs which are eligible for assistance shall including, in addition to those project costs described in 785:50-3-1:

- (1) Architecture and/or engineer fees related to the project. Provided, however, that in order for these costs to be eligible for award, applicants shall provide documentation that all construction funding is available. If construction funding is not available the request for these costs will be placed in a "pending" status until such time as the construction funding is available. If, however, an Engineering Report is a requirement of a Consent Order, an applicant under Consent Order may be awarded a grant to cover the engineering costs without construction funding being available.
- (2) Fees for soil testing.
- (3) Fees for surveying.
- (4) Payments to contractor(s) for construction of the improvements.
- (5) Legal fees and expenses of counsel for the applicant which are related to the project.
- (6) Services of full-time or part-time inspector.
- (7) Administrative expenses shall not be eligible project costs.

[**Source:** Added at 14 Ok Reg 173, eff 10-24-1996; Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998; Amedned at 17 Ok Reg 2782, eff 7-1-2000; Amended at 18 Ok Reg 2255, eff 7-1-2001; Amended at 19 Ok REg 2531, eff 7-1-2002, Amended at 30 Ok Reg 976, eff 6-13-13]

#### **785:50-8-5. REAP grant priority point system**

(a) **Basis of priority system and formula.**

- (1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The 39 or fewer shall be deemed denied, provided, such applications may be reevaluated if the

---

maximum point total under the system is one hundred fifteen (115). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority cots. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of

39 or fewer shall be deemed denied; provided, such applications may be reevaluated if the

applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The primary statutory criteria are:

(A) There shall be a higher priority for any city or town with a population less than one thousand seven hundred fifty (1,750) according to the Census Population than for any jurisdiction with a greater population according to the census;

and

(B) *Among other cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities [62:2003].* In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) **Priority formula for eligible entities other than school districts and counties.**

(1) **Formula.** The following formula has been devised to rank grant applications:  $T = P + WR + I + MHI + FP + N + AR + BP + PG$ , Where:

- (A) T = Total of priority points
- (B) P = Population
- (C) WR = Water and sewer rate structure
- (D) I = Indebtedness per customer
- (E) MHI = Median household income
- (F) FP = Applicant's ability to finance project
- (G) N = Need
- (H) AR = Amount of grant requested
- (I) BP = Project benefit to other systems
- (J) PG = Previous grant assistance

(2) **Explanation.** Each of these criteria are explained below.

(A) **Population (P).** Municipalities which have a population of less than 1,750 according to the latest federal decennial census shall be given 55 priority points. Rural water or sewer districts which have less than 525 non-pasture customers shall be given 55 points.

(B) **Water and Sewer rate structure (WR).**

(i) For systems providing water service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(i).

(ii) For systems providing both water and sewer services, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(ii).

(iii) For systems providing sewer service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(iii).

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons

above the minimum. Two points will be added for systems using an increasing block



rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

- (i) If the indebtedness per customer is \$20.00 or greater, the applicant shall be given 10 points.
- (ii) If the indebtedness per customer is \$17.50 to \$19.99, the applicant shall be given 9 points
- (iii) If the indebtedness per customer is \$16.00 to \$17.49, the applicant shall be given 8 points.
- (iv) If the indebtedness per customer is \$14.50 to \$15.99, the applicant shall be given 7 points.
- (v) If the indebtedness per customer is \$13.00 to \$14.49, the applicant shall be given 6 points.
- (vi) If the indebtedness per customer is \$11.50 to \$12.99, the applicant shall be given 5 points.
- (vii) If the indebtedness per customer is \$10.00 to \$11.49, the applicant shall be given 4 points.
- (viii) If the indebtedness per customer is \$8.50 to \$9.99, the applicant shall be given 3 points.
- (ix) If the indebtedness per customer is \$7.00 to \$8.49, the applicant shall be given 2 points.
- (x) If the indebtedness per customer is \$5.50 to \$6.99, the applicant shall be given 1 point.
- (xi) If the indebtedness per customer is less than \$5.50, the applicant shall be given 0 points.

(D) **Median household income (MHI).** The median household income is calculated according to the most current federal decennial census or American Community Survey data available.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

(ii) Points for this MHI criterion are awarded according to the scale set forth in Section 50-7-5(b)(2)(E)(ii).

(E) **Ability to finance project (FP).**

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 5% for 25 years is assumed. The cost per customer per month is calculated using the following formula:  $FP = AR (0.0710)/(12)(C)$ , Where:

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant requested for the project.

(II) AR = Amount of grant requested.

(III) (0.0710) = Annual rate factor for a 25 year loan at 5%

- (IV) (12) = Number of months per year.  
(V) (C) = Number of customers
- (iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.
- (iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:
- (I) If the FP is \$10.00 or greater, the applicant shall be given 12 points.
  - (II) If the FP is \$8.00 to \$9.99, the applicant shall be given 11 points.
  - (III) If the FP is \$6.00 to \$7.99, the applicant shall be given 10 points.
  - (IV) If the FP is \$5.00 to \$5.99, the applicant shall be given 9 points.
  - (V) If the FP is \$4.00 to \$4.99, the applicant shall be given 8 points.
  - (VI) If the FP is \$3.00 to \$3.99, the applicant shall be given 7 points.
  - (VII) If the FP is \$2.00 to \$2.99, the applicant shall be given 6 points.
  - (VIII) If the FP is \$1.75 to \$1.99, the applicant shall be given 5 points.
  - (IX) If the FP is \$1.50 to \$1.74, the applicant shall be given 4 points.
  - (X) If the FP is \$1.25 to \$1.49, the applicant shall be given 3 points.
  - (XI) If the FP is \$1.00 to \$1.24, the applicant shall be given 2 points.
  - (XII) If the FP is \$0.75 to \$0.99, the applicant shall be given 1 point.
  - (XIII) If the FP is less than \$0.75, the applicant shall be given 0 points.
- (F) **Need (N).** An applicant who is subject to an enforcement order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the violation out of which the order arose if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.
- (G) **Amount of grant requested (AR).** Points under this category for amount of grant requested are determined as follows:
- (i) If the AR is \$140,001 to \$150,000, the applicant shall be given -5 points.
  - (ii) If the AR is \$130,001 to \$140,000, the applicant shall be given -4 points.
  - (iii) If the AR is \$120,001 to \$130,000, the applicant shall be given -3 points.
  - (iv) If the AR is \$110,001 to \$120,000, the applicant shall be given -2 points.
  - (v) If the AR is \$100,001 to \$110,000, the applicant shall be given -1 point.
  - (vi) If the AR is \$100,000, the applicant shall be given 0 points.
  - (vii) If the AR is \$80,000 to \$99,999, the applicant shall be given 1 point.
  - (ix) If the AR is \$60,000 to \$79,999, the applicant shall be given 2 points.
  - (x) If the AR is \$40,000 to \$59,999, the applicant shall be given 3 points.
  - (xi) If the AR is \$20,000 to \$39,999, the applicant shall be given 5 points.
  - (xii) Any portion of an AR that is more than \$150,000 shall be denied.
- (H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.
- (I) **Previous grant assistance (PG).** No qualified entity shall receive more than \$150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a

qualified entity has been approved for or received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply, provided points shall not be deducted from any such REAP grant which was funded 10 or more years prior to the date of Board action on the pending application, and has been subject to Board audit:

- (i) If the qualified entity has been approved for or received one (1) REAP grant in the preceding twelve (12) month period, the application will be given –8 points.
- (ii) If the qualified entity has been approved for or received more than one (1) REAP grant in the preceding twelve (12) month period, the application will be given –10 points for each REAP grant so received.
- (iii) If the qualified entity has been approved for or received one (1) REAP grant more than twelve (12) months in the past, the application will be given –5 points.
- (iv) If the qualified entity has been approved for or received two (2) REAP grants more than twelve (12) months in the past, the application will be given –8 points.
- (v) If the qualified entity has been approved for or received three (3) REAP grants more than twelve (12) months in the past, the application will be given –10 points.
- (vi) If the qualified entity has been approved for or received four (4) REAP grants more than twelve (12) months in the past, application will be given –12 points.
- (vii) If the qualified entity has been approved for or received five (5) or more REAP grants more than twelve (12) months in the past, the application will be given –14 points.

(c) **Priority formula for school districts and counties.**

(1) School districts created under Article V of the School Code, 70 O.S. 1991, §5-101 et seq., and counties are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's REAP grant program.

(2) In evaluating and prioritizing grant applications from school districts and counties, similar criteria to those applied to municipalities and rural water districts will be utilized.

(3) In developing a priority formula for school district and county applicants, the primary criteria are average daily membership (for schools only), fiscal capacity, need, amount requested, and previous grant assistance.

(4) The following formula has been devised to rank REAP grant applications by counties and school districts:  $T = ADM + LT + BI + MHI + FP + N + AR + PG$ , Where:

- (A) T = Total of priority points
- (B) ADM = Average daily membership
- (C) Lt = Local tax levies
- (D) BI = Bonded indebtedness
- (E) MHI = Median household income of population within the school district or area of county to be served
- (F) FP = Applicant's ability to finance project
- (G) N = Need
- (H) AR = Amount of grant requested
- (I) PG = Previous grant assistance

(5) The criteria MHI, FP, N, AR and PG are the same as that set forth in (b) of this Section. The criteria ADM, LT and BI are explained as follows:

(A) **Average daily membership (ADM).** School districts with an average daily membership of less than 525 students shall be given 55 priority points.

(B) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

- (i) If the mills are 95 to 100; the applicant shall be given 13 points.
- (ii) If the mills are 90 to 94.99, the applicant shall be given 11 points.

- (iii) If the mills are 85 to 89.99, the applicant shall be given 10 points.
  - (iv) If the mills are 80 to 84.99, the applicant shall be given 8 points.
  - (v) If the mills are 70 to 79.99, the applicant shall be given 6 points.
  - (vi) If the mills are 60 to \$69.99, the applicant shall be given 4 points.
  - (vii) If the mills are 55 to 59.99, the applicant shall be given 2 points.
  - (viii) If the mills are 50 to 54.99, the applicant shall be given 1 point.
  - (ix) If the mills are 45 to 49.99, the applicant shall be given 0 points.
  - (x) If the mills are 40 to 44.99, the applicant shall be given -1 point.
  - (xi) If the mills are less than 40, the applicant shall be given -2 points.
- (C) **Bonded indebtedness (BI).**
- (i) Priority points for Bonded Indebtedness are as follows:
    - (I) If the percentage is 95% to 100%, the applicant shall be given 10 points.
    - (II) If the percentage is 90% to 94.99%, the applicant shall be given 8 points.
    - (III) If the percentage is 80% to 89.99%, the applicant shall be given 7 points.
    - (IV) If the percentage is 75% to 79.99%, the applicant shall be given 6 points.
    - (V) If the percentage is 70% to 74.99%, the applicant shall be given 5 points.
    - (VI) If the percentage is 65% to 69.99%, the applicant shall be given 4 points.
    - (VII) If the percentage is 60% to 64.99%, the applicant shall be given 3 points.
    - (VIII) If the percentage is 55% to 59.99%, the applicant shall be given 2 points.
    - (IX) If the percentage is 50% to 54.99%, the applicant shall be given 1 point.
    - (X) If the percentage is 45% to 49.99%, the applicant shall be given 0 points.
    - (XI) If the percentage is 40% to 44.99%, the application shall be given -1 point.
    - (XII) If the percentage is 30% to 39.99%, the applicant shall be given -2 points.
    - (XIII) If the percentage is less than 30%, the applicant shall be given -3 points.
  - (ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

[Source: Added at 13 Ok Reg 3733, eff 7-18-1996 (emergency); Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 15 Ok Reg 2881, eff 7-1-1998; Amended at 16 Ok Reg 2703-2708, eff 7-1-1999; Amended at 17 Ok Reg 2782-2878, eff 7-1-2000; Amended at 18 Ok Reg 2255-2259, eff 7-1-2001; Amended at 20 Ok Reg 2617, eff 7-11-2003; Amended at 23 Ok Reg 3086, eff 7-17-2006; Amended at 30 Ok Reg 976, eff 6-13-13]

#### **785:50-8-6. Disbursement of funds.**

- (a) **Action following Board approval and prior to disbursement of funding.**
  - (1) **Notification of approval.** Upon approval of a REAP grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.
  - (2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time,

if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released provided however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merits.

**(3) Additional conditions prior to disbursement of grant funds.**

(A) Applicant shall establish, in such manner as is acceptable to the Board or its staff, a special and separate federally insured account in and through which the grant proceeds shall be administered and accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

(i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project, and

(ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

**(4) Board action on request for increase in approved amount.** If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the REAP grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) decline funding and withdraw its application for the current fiscal year and request that the Board reconsider the application with an increased REAP grant amount during the following fiscal year. The request for an increased REAP grant amount shall be treated as a new application on its own merits; provided, the original application shall not be counted for purposes of the previous grant assistance portion of the priority point determination.

**(5) Board action on request for change in scope of approved project.** If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonable and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. Provided, however, the Board shall not approve a

change in scope of project if the change, if considered as part of the original application, would have resulted in a lower priority point determination on the application.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of REAP grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the REAP grant amount disbursed by the Board, then any request for additional REAP grant money shall follow the rules in this Subchapter governing, and shall be treated as, a new application on its own merits.

(4) **Post-disbursement requests for changes in scope of approved project.** If after disbursement of the grant monies to the applicant it develops that the applicant wishes to change the scope of the project from that approved by the board, then the applicant may file a written request for approval of such a change. If the applicant successfully demonstrates reasonably unforeseeable or extraordinary circumstances that in the Board's judgment and sound discretion represent a better utilization of REAP grant funds by the applicant to serve the public interest and welfare, then the Board shall approve the change in project scope. If the applicant does not make such a demonstration, then the Board shall deny the request and the applicant shall either proceed with the project as approved or abandon the project and return the grant monies to the Board within thirty days after the date of the Board's action.

(5) **Post-disbursement action regarding unexpended funding.** If following completion of the project it develops that the applicant needed less money for the project than disbursed by the Board, the applicant shall return the unexpended amount to the Board.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of REAP grant funds, all as may be deemed appropriate by the Board.

[Source: Added at 13 Ok Reg 3733, eff 7-18-1996 (emergency); Amended at 14 Ok Reg 2788, eff 7-1-1997; Amended at 16 Ok Reg 2708-2710, eff 7-1-1999; Amended at 19 Ok Reg 2532, eff 7-1-2002].

## SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

### PART 1. GENERAL PROVISIONS

#### Section

- 785:50-9-1. General program description and procedures [REVOKED]
- 785:50-9-2. General approval standards and criteria [REVOKED]
- 785:50-9-3. Terms and conditions [REVOKED]
- 785:50-9-4. Disbursement of funds and conditions for disbursement [REVOKED]
- 785:50-9-5. Purpose
- 785:50-9-6. Introduction [REVOKED]
- 785:50-9-7. Applicability to projects

- 785:50-9-8. Authority
- 785:50-9-9. Definitions

### **PART 3. GENERAL PROGRAM REQUIREMENTS**

#### Section

- 785:50-9-20. Program requirements
- 785:50-9-21. Eligible project
- 785:50-9-22. Revenue program
- 785:50-9-23. SRF project priority system
- 785:50-9-24. Intended use plan
- 785:50-9-25. Legislative report [REVOKED]
- 785:50-9-26. EPA annual report [REVOKED]
- 785:50-9-27. Types of assistance
- 785:50-9-28. Pre-application for funding
- 785:50-9-29. Pre-planning conference
- 785:50-9-30. Planning documents
- 785:50-9-31. Pre-application conference
- 785:50-9-32. Plans and specification
- 785:50-9-33. Application for financial assistance
- 785:50-9-34. Binding commitment
- 785:50-9-35. Loan closing
- 785:50-9-36. Construction phase
- 785:50-9-37. Minimum assistance agreement conditions
- 785:50-9-38. Construction phase
- 785:50-9-39. Project changes
- 785:50-9-40. Building phase submittal
- 785:50-9-41. Progress payments
- 785:50-9-42. Retainage
- 785:50-9-43. Post building phase responsibilities of the recipient
- 785:50-9-44. Accounting
- 785:50-9-45. Compliance with federal authorities

### **PART 5. MANDATORY FEDERAL REQUIREMENTS [REVOKED]**

#### Section

- 785:50-9-50. Applicability [REVOKED]
- 785:50-9-51. Planning documents [REVOKED]
- 785:50-9-52. Design [REVOKED]
- 785:50-9-53. User charge [REVOKED]
- 785:50-9-54. Construction [REVOKED]
- 785:50-9-55. Allowable land and right-of-way costs [REVOKED]
- 785:50-9-56. Compliance with federal laws and orders [REVOKED]

### **PART 7. SRF ENVIRONMENTAL REVIEW PROCESS**

#### Section

- 785:50-9-60. Requirement of environment review
- 785:50-9-61. Environmental information required by the Board
- 785:50-9-62. Environmental review by the Board

**785:50-9-1. General program description and procedures [REVOKED]**

[Source: Revoked at 10 Ok Reg 3333, eff 7-1-1993]

**785:50-9-2. General approval standards and criteria [REVOKED]**

[Source: Revoked at 10 Ok Reg 3333, eff 7-1-1993]

**785:50-9-3. Terms and conditions [REVOKED]**

[Source: Revoked at 10 Ok Reg 3333, eff 7-1-1993]

**785:50-9-4. Disbursement of funds and conditions for disbursement [REVOKED]**

[Source: Revoked at 10 Ok Reg 3333, eff 7-1-1993]

**785:50-9-5. Purpose**

The purpose of this subchapter is to facilitate the administrative and technical managements of the Oklahoma Clean Water State Revolving Fund Loan Account as required by 82 O.S., Section 1085.51 et seq.

[Source: Added at 10 Ok Reg 3333, eff 7-1-1993; Amended at 20 Ok Reg 2622, eff 7-11-2003]

**785:50-9-6. Introduction [REVOKED]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-1993; Amended at 12 Ok Reg 2715, eff 7-1-1995; Revoked at 15 Ok Reg 2881, eff 7-1-1998]

**785:50-9-7. Applicability to projects**

This subchapter shall apply to all public projects for which application is made for financial assistance from the Clean Water State Revolving Fund Loan Account for the purposes authorized by law.

[Source: Added at 10 Ok Reg 3333, eff 7-1-1993; Amended at 12 Ok Reg 2715, eff 7-1-1995; Amended at 15 Ok Reg 2881, eff 7-1-1998; Amended at 17 Ok Reg 2787, eff 7-1-2000; Amended at 20 Ok Reg 2622, eff 7-11-2003]

**785:50-9-8. Authority**

In order to implement the Clean Water State Revolving Fund program in Oklahoma, the Legislature created the Clean Water State Revolving Fund Loan Account to be administered by the Board. The rules in this Subchapter are authorized by 82 O.S., Sections 1085.51 et seq. These regulations are necessary for determining the eligibility and priority of entities to receive financial assistance pursuant to the Federal Clean Water Act as amended and from the Clean Water State Revolving Fund Loan Account.

[Source: Added at 10 Ok Reg 3333, eff 7-1-1993; Amended at 12 Ok Reg 2715, eff 7-1-1995; Amended at 15 Ok Reg 2881, eff 7-1-1998]

**785:50-9-9. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**303(d) List**" means the list of impaired waters of the State, or most recent approved revision thereof, developed pursuant to Section 303(d) of the Clean Water Act as amended and maintained on file at the Board.



**"Applicant"** means any municipality, as defined, that submits a preapplication/application for financial assistance in accordance with this subchapter.

**"Architectural or engineering services"** means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

**"As a result of"** means funds in the Clean Water SRF including the capitalization grant, repayments of first round loans, bond proceeds, and the State match.

**"Binding commitment"** means binding commitments are legal obligations by the State to the local recipient that define the terms and the timing for assistance under Clean Water SRF.

**"Board"** means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

**"Brownfield"** means an abandoned, idled or underused industrial or commercial facility or other redevelopment of the real property is complicated by environmental contamination caused by regulated substances [27A:2-15-103(2)].

**"Brownfield activities"** means those activities which are conducted under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or Oklahoma Pollutant Discharge Elimination System Act, which are designed to improve water quality, and which are exempt from funds administered under the Nonpoint Source Management Program of the federal Clean Water Act.

**"Brownfield assessment"** means any phase I, phase II, phase III or other study required by the Department which is used to assess a brownfield.

**"Building"** means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

**"Capitalization grant"** means an agreement between EPA and State whereby federal dollars are made available to partially fund a Clean Water SRF.

**"Collector sewer"** means the common lateral sewers, within a publicly owned treatment system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(A) Crossover sewers connected more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(B) Pumping units and small diameter lines serving individual structures or groups of structures.

**"Combined sewer"** means a sewer that is designed as a sanitary sewer and a storm sewer.

**"Conservation Commission"** means the Oklahoma Conservation Commission.

**"Construction"** means any one or more of the following: brownfield assessment; preliminary planning to determine feasibility, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other actions or undertakings necessary to a project; erection, building, acquisition, alteration, remodeling, improvement, or extension of a project; or the inspection or supervision of any of the foregoing items.

**"Consultant"** means a person duly licensed, registered or certified to practice a profession as required by Oklahoma law who is providing services or advice in that professional capacity. Examples include, but are not limited to, accountants, architects, attorneys, engineers, and financial advisors.

**"Contingency section"** means that portion of the planning portion of the priority list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

**"Cross-cutting laws and orders"** means Federal laws and authorities that apply to all activities supported with funds "directly made available by" capitalization grants.

**"DBE"** means Disadvantaged Business Enterprises.

**"DBE participation"** means the federal requirement for negotiation of a "fair share" objective for minority, disadvantaged and women owned businesses applies to assistance in an amount equal to the capitalization grant.

**"Department"** means the Oklahoma Department of Environmental Quality.

**"Enforceable requirements of the Clean Water Act"** means those conditions or limitations of NPDES or other discharge permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action. If a permit has not been issued, the term shall include any requirement which would be included in the permit when issued. Where no permit applies, the term shall include any requirement which is necessary to meet applicable criteria for best practicable wastewater treatment technology (BPWTT).

**"Equivalency projects"** means project cited by the Board as meeting the requirement of the capitalization grant.

**"Excessive infiltration/inflow"** means the quantities of infiltration/inflow above 120 gallons per capita per day (GPCD), which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

**"Fundable portion"** means that portion of the Project Priority List which includes projects scheduled for financial assistance during the funding year.

**"Funding year"** means the first year of the planning period represented by a project priority list.

**"Infiltration"** means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow.

**"Inflow"** means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

**"In perpetuity"** means maintaining the principal amounts of the federal capitalization grants and state matching funds within the CWSRF.

**"Intended Use Plan"** means a document prepared each year by the State, which identifies the intended uses of the funds in the CWSRF and describes how those uses support the goals of the CWSRF.

**"Interceptor sewer"** means a sewer which is designed for one or more of the following purposes:

(A) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(B) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(C) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(D) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

**"Loan"** means an agreement between the State and the local recipient through which the Clean Water SRF provides funds for eligible assistance on terms consistent with the federal Water Quality Act of 1987 or otherwise approved by the Environmental Protection Agency.

**"MGD"** means millions of gallons per day.

**"Municipality"** means a city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency consistent with the State Water Quality Management Plan.

**"NEPA"** means the National Environmental Policy Act.

**"Nonexcessive infiltration"** means the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

**"Nonexcessive inflow"** means the rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows.

**"Nonpoint source"** means a source of pollution which is diffuse and does not have a single point of origin or is introduced into a receiving stream from a specific outlet.

**"Nonpoint source activities"** means capital works, capital improvements, capital equipment, environmental cleanups, land acquisition, or implementation of management practices for the purpose of protecting or improving surface or underground water quality through watershed management or reduction of nonpoint source pollution as authorized by the Clean Water Act.

**"NPDES"** means National Pollutant Discharge Elimination System.

**"Operable treatment works"** means a treatment works that, upon completion, will meet the enforceable requirements of the Clean Water Act.

**"Operation and maintenance"** means activities required to assure the dependable and economical function of treatment works.

(A) **"Maintenance"** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(B) **"Operation"** means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

**"OWQS"** means the Oklahoma Water Quality Standards promulgated by the Board at Oklahoma Administrative Code Title 785, Chapter 45, as amended.

**"Planning"** means the process of evaluating alternative solutions to water pollution problems, and through a systematic screening procedure, selecting the most cost effective environmentally sound alternative.

**"Planning portion"** means that part of the Project Priority List containing all projects outside the fundable portion of the list that may, under anticipated allotment levels, receive funding during the five-year planning period represented by the list.

**"Project"** means the water quality project for which Clean Water SRF assistance is provided. Water quality projects include:

- (A) construction and design, or construction of an operable treatment works or segment thereof the principal purpose of which is for the treatment of domestic users' discharges within the jurisdiction, community, sewer service area, region or district concerned; or
- (B) storm water and Brownfield activities;
- (C) nonpoint source activities; or
- (D) other water quality projects as defined by 82 O.S. §1085.52, as amended.

**"Project completion"** means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

**"Project Priority List"** means a contiguous list of projects in order of priority for which Clean Water SRF assistance is expected during a five-year planning period.

**"Project priority points"** means the total number of points assigned to a project by using the priority ranking formula.

**"Reallotment"** means allotment of previously allotted unused funds.

**"Recipient"** means a municipality or other entity which receives assistance under the Clean Water SRF program.

**"Repayment"** means principal and interest payments on loans which must be credited directly to the Clean Water SRF.

**"Replacement"** means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

**"Responsible bidder"** means a prospective contractor that currently meets the minimum standards of financial and technical ability to perform the tasks identified in the project specifications.

**"Revenue programs"** means a formally documented determination of sewer use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

**"Sewer System Evaluation Survey (SSES)"** means a study which shall identify the location, estimated flow rate, method of rehabilitation, and cost of rehabilitation versus the cost of transportation and treatment for each defined source of infiltration/inflow.

**"State match"** means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the Clean Water SRF.

**"State Revolving Fund" or "SRF"** means funds for loans or providing other assistance for pollution control projects established through capitalization grants from EPA and State matching funds.

**"Storm sewer"** means a sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

**"Treatment works"** means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances. In addition **"treatment works"** means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water

runoff, including on-site systems and waste in combined storm water and sanitary sewer systems.

**"User charge"** means a charge levied on users of a treatment works for the user's share of the cost of operation and maintenance (including replacement) of such works.

**"Water Reuse"** means wastewater that is treated to be used for other purposes, may also be called recycled water or reclaimed water.

[**Source:** Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2787-2790, eff 7-1-2000; Amended at 20 Ok Reg 2622, eff 7-11-2003; Amended at 23 Ok Reg 3086, eff 7-27-2006; Amended at 30 Ok Reg 976, eff 6-13-13]

### **PART 3. GENERAL PROGRAM REQUIREMENTS**

#### **785:50-9-20. Program requirements**

Projects which are funded in whole or in part with assistance from the SRF will be required to comply with the requirements of this Subchapter.

[**Source:** Added at 10 Ok Reg 3333, eff 7-1-93]

#### **785:50-9-21. Eligible project**

(a) The categories of wastewater projects eligible for assistance are as follows:

- (1) Category I – Secondary Treatment. The treatment facility necessary to discharge an effluent meeting the secondary treatment definition. This category may include outfall lines and lines which take existing treatment plants out of operation by transporting the effluent to a different plant;
- (2) Category II – Advanced Treatment. The additional treatment necessary to meet more stringent than secondary effluent requirements as established in water quality management plans;
- (3) Category IIIA -- Infiltration/Inflow Correction. The correction of infiltration/inflow conditions including all costs necessary for removing excessive I/I from the sewer system, such as replacement or relining sewer sections, flow routing systems, etc.;
- (4) Category IIIB -- Sewer System Rehabilitation. Replacement or major rehabilitation of sewers, where it has been determined that such replacement or rehabilitation is necessary to the total integrity and performance of the wastewater treatment works;
- (5) Category IVA -- New Collector Sewer Systems. Sewage collection system is the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. Pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the applicant are included in this category;
- (6) Category IVB – New Interceptor Sewer Systems and Appurtenances. A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility;
- (7) Category V -- Combined Sewer Overflow Correction. Correction of combined sewer overflows including cost of new collectors, interceptors, storm sewers, retention basin, etc., necessary to alleviate the overflow problem;
- (8) Category VI – Storm Sewers. Storm water and Brownfield activities;
- (9) Category VII – Nonpoint source activities;
- (10) Category VIII – Water Reuse; and

- (11) Other water quality projects as defined under 82 O.S. §1085.51, as amended.
- (b) The Board will determine annually the amount of funding necessary and the project categories that will be placed on the fundable portion of the Priority List.
- (c) Costs associated with the planning or assessing, design and building of the eligible categories of projects are considered allowable by the Board. Eligible construction costs will be based on the lowest responsible bidder.
- (d) Eligibility for equivalency projects is subject to the applicable Federal requirements including those identified in 785:50-9-38(e) and 785:50-9-45(2) through (4).
- (e) Additionally, the Board shall consider the following issues in determining project eligibility:
- (1) **Capacity funding limitations.** The eligible capacity shall be determined using average dry weather flow and peak flows in accordance with population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints.
    - (A) Eligible capacity for treatment plants will be up to a period of the design life of the project from the estimated date of construction completion.
    - (B) Eligible capacity for interceptors and outfalls will be up to 40 years from the estimated date of construction completion.
    - (C) Eligible capacity shall be calculated by multiplying the Board approved local population projection by an appropriate local per capita flow figure. The flow thus calculated will be deemed to include all the eligible project flows (residential, commercial, federal facilities, industrial, and infiltration/inflow). Eligible capacity will be determined during the development of the planning documents.
    - (D) The applicant will be responsible for documenting, in the planning document, the peaking factors used for the project.
    - (E) Eligible capacity will be determined when planning documents are approved by the Board.
  - (2) **Collection systems.** The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections.
  - (3) **Population and flow projections.** Section 208 Areawide Water Quality Management Plan population and flow projections will be used to determine the eligible project capacity. A discussion of the local projections should be included in the planning document.
  - (4) **Land costs.** Allowable costs for land and rights-of-way include the cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment, including but not limited to:
    - (A) The cost of a reasonable amount of land, considering irregularities in application patterns and the need for buffer areas, berms, and dikes;
    - (B) The cost of land acquired for a soil absorption system for a group of two or more homes;
    - (C) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment; and
    - (D) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for

storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of storage volume to the total volume of the pond.

(5) **On-site systems.** Treatment and collection systems constructed at or near the wastewater source where the system serving individual structures or groups of structures are cost-effective and are owned and operated by the loan recipient.

(6) **Brownfield remediation.** The types of storm water and Brownfield activities that may be qualified for Clean Water SRF funding include, but are not limited to: excavation and disposal of underground storage tanks; constructing wetlands or other filtering mechanisms; capping wells; excavation, removal and disposal of contaminated soil or sediments; tunnel demolition; well abandonment; and all phases or brownfield assessments or planning required by the Department.

[**Source:** Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2790-2791, eff 7-1-2000; Amended at 19 Ok Reg 2533 eff 7-1-2002; Amended at 20 Ok Reg 2622, eff 7-11-2003; Amended at 30 Ok Reg 976, eff 6-13-13]

#### **785:50-9-22. Revenue program**

(a) The applicant must demonstrate that it has legal, institutional, managerial and financial capability to construct, operate and maintain the treatment works. The applicant will be required to establish a user charge system which will generate sufficient revenues for the operation, maintenance (including reasonable replacement cost) and to establish an acceptable dedicated source or sources of revenue to repay the loan.

(b) As indicated, the applicant will be required to demonstrate, at the time of the actual application, that a "dedicated" source of revenue is available to repay the loan. Revenue will be considered dedicated when the recipient passes an ordinance or a resolution committing a source or sources of funds for repayment. The resolution or ordinance dedicating a source of funding for repayment of the loan must be adopted before finalization of the loan agreement.

[**Source:** Added at 10 Ok Reg 3333, eff 7-1-93]

#### **785:50-9-23. Clean Water SRF Project Priority System**

(a) **Preparation.** The Board shall prepare and maintain a current Clean Water SRF Project Priority Listing of potential eligible projects in the order of priority.

(b) **Projects included.**

(1) **Fundable portion.** The fundable portion includes projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds.

(2) **Planning portion.** The planning portion includes that portion of the priority list containing all of those projects outside the fundable portion of the list, and which are anticipated to receive financial assistance in future fiscal years. The planning portion may also include contingency projects which are scheduled for assistance during the current fiscal year, but for which adequate funds are not available to provide financial assistance. Contingency projects may receive assistance due to bypass provisions or due to additional funds becoming available.

(c) **Public participation.** Before the beginning of each fiscal year, the Board shall ensure that adequate public participation has taken place. A public meeting will be held to discuss the Clean Water SRF Project Priority List and any revisions that were made to the Clean Water SRF Project Priority System. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At this time, the Board shall circulate information about the Project Priority List including a description of each proposed project.

Attendees of the public meeting will be allowed to express their views concerning the list and system.

(d) **Clean Water SRF Project Priority List.** A Clean Water SRF Project Priority List shall become effective and supersede all previous lists upon the beginning of the fiscal year for which it is designated. A Clean Water SRF Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(e) **CWSRF Integrated Priority Rating System.** The Board will utilize an integrated priority ranking system to evaluate and rank proposed projects, including treatment works, Brownfield activities, and storm water activities, based on the relative impact of the project in achieving the water quality objectives of the Clean Water Act. This system consists of criteria integrating public health protection and Oklahoma's Water Quality Standards beneficial use maintenance and protection goals and Anti-degradation policy, including project type, water quality restoration, water quality protection, programmatic priorities, and readiness to proceed.

(1) **Project Type Factor.** The Project Type Factor provides a maximum of seventy (70) points for proposed water quality projects based on the following:

(A) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation within a watershed of a waterbody being utilized as a public water supply shall receive seventy (70) points.

(B) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation shall receive sixty (60) points.

(C) Treatment works or water quality projects designed to sustain compliance with or provide a degree of treatment beyond permit limits; increase capacity, reliability, or efficiency; reclaim/reuse wastewater; reduce a documented water quality threat, or otherwise maintain beneficial uses shall receive thirty (30) points.

(D) All other eligible treatment works or pollution control projects shall receive twenty (20) points.

(2) **Water Quality Restoration Factor.** The Water Quality Restoration Factor provides a maximum of twenty (20) points for proposed projects located on waterbodies which are not meeting the beneficial uses assigned to them in Oklahoma's Water Quality Standards and which are listed on Oklahoma's 303(d) list as threatened or impaired. The water quality restoration factor will be subject to change whenever the 303(d) List is revised. Water quality projects meeting the following criteria shall receive additional priority points:

(A) A project located in a watershed listed as a "NPS Priority Watershed" in Oklahoma's Nonpoint Source Management Program shall receive an additional ten (10) points.

(B) A project listed on Oklahoma's 303(d) list of threatened or impaired stream segments shall receive an additional five (5) points.

(C) A project that implements the recommendations of a conservation plan, site-specific water quality remediation plan, TMDL, storm water management program, water audit or modified 208 water quality management plan, which has been approved by an agency of competent jurisdiction, in a sub-watershed where discharge or runoff from nonpoint sources are identified as causing, or significantly contributing to water quality degradation shall receive an additional five (5) points.

(3) **Water Quality Protection Factor.** The Water Quality Protection Factor provides a maximum of ten (10) priority points to proposed water quality projects that provide



maintenance of beneficial uses and protection for water bodies afforded special protection under OWQS. Projects shall receive ten (10) points for satisfying the following criteria:

(A) A water quality project located within the watershed of a stream segment or in a groundwater basin underlying a watershed of a stream segment (known as "Special Source" groundwater):

(i) listed in OWQS Appendix A. as an Outstanding Resources Water, High Quality Water, Sensitive Water Supply, Scenic River or Culturally Significant Water or Nutrient Limited Watershed;

(ii) listed in OWQS Appendix B.--"Areas with Waters of Recreational and/or Ecological Significance"; or

(iii) located in a delineated "source water protection area"; or

(B) A water quality project located in an area overlying a groundwater classified in OWQS with a vulnerability level of Very High, High, Moderate, or Nutrient Vulnerable.

(4) **Programmatic Priority Factor.** The Programmatic Priority Factor provides a maximum of one hundred (100) priority bonus points to projects that address specific programmatic priorities set forth by the Environmental Protection Agency or Board and detailed in the Annual Intended Use Plan.

(5) **Readiness to Proceed Factor.** The Readiness to Proceed Factor provides a maximum of four hundred (400) points depending on the relative "readiness to proceed" with a loan commitment among proposed projects.

(A) A project requesting to be considered for funding within the five-year planning period shall receive one hundred (100) points.

(B) In addition to a request for funding, a project for which preliminary planning documents have been submitted shall receive two hundred (200) points. Preliminary planning documents include a preliminary engineering report and a preliminary environmental information document, and must be submitted to the Board and to the Department or the Conservation Commission as appropriate.

(C) In addition to a request for funding and preliminary planning documents, a project for which a completed loan application has been submitted shall receive three hundred (300) points.

(D) In addition to a request for funding, preliminary planning documents, and a completed loan application, a project for which the appropriate technical plans and specifications necessary to implement the project have been approved by the Department or the Conservation Commission, as appropriate, shall receive four hundred (400) points.

(f) **Management of the Project Priority List.**

(1) **Tie breaking procedure.** A tie breaking procedure shall be utilized when two or more projects have equal points under the Project Priority System and are in competition for funds. Projects will be ranked according to existing population. According to the most recent 208 Water Quality Management Plan, i.e., the project with the greatest existing population will receive the higher ranking.

(2) **Project bypass.** A project on the fundable portion of the list may be bypassed if it is determined that the project will not be ready to proceed during the funding year. This determination will be made on projects that are unable to meet the schedule established on the priority list. The applicant whose project is affected shall be given written notices that the project is to be bypassed. Projects that have been bypassed may be reinstated on the funded portion of the list if sufficient funds are available, and the project completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be treated in the same manner as additional allotments.

(3) **Project Priority List update.** The priority list is continually reviewed and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) may occur as necessary.

(4) **Additional allotments.** After defining the fundable portion of the Clean Water SRF Project Priority List, the Board may determine that it is necessary or desirable to obligate additional funds that are available and the list may be extended to include the next highest ranked project or projects on the planning portion of the list. Any sum made available to a state by reallocation or deobligation shall be treated in the same manner as the most recent allotment.

(5) **Project removal.** The Board may remove a project from the Clean Water SRF Project Priority List when the project has been funded, the project is found to be ineligible, it is indicated that the applicant does not intend to continue in the Clean Water State Revolving Loan Program, or the Board has determined that the applicant does not have financial, legal, or managerial capability to construct the project.

(6) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose. During each funding year, loans totaling twenty-five (25) percent of the funds available from the capitalization grant and state match for that year shall be provided to those eligible small municipalities with a population of 10,000 or less. However, if the state has not met the federal requirement of making binding commitments in an amount equal to one hundred and twenty (120) percent of each quarterly grant payment within one year of receipt of each quarterly payment, other eligible applicants may apply for a loan or an increase to an existing loan to utilize the small community set aside, if such actions will permit the state to comply with the federal binding commitment requirement.

(7) **Addition of new projects to the Clean Water SRF Project Priority List.**

(A) **General.** Prior to the placement of any new projects on the Clean Water SRF Project Priority List, the applicant must submit a request for such placement to the Board. The request must specify that the applicant intends to apply for financial assistance from the Clean Water SRF. The Board will evaluate the Programmatic Application. If it is indicated that a viable project could result which would be in conformance with Clean Water SRF requirements, the potential project will be added to the Clean Water SRF Priority List.

(B) **Brownfield Activities.** Requests received for Brownfield activity projects must satisfy the following requirements before they will be placed on the Clean Water SRF fundable portion of the project priority list:

- (i) Submit a certification from the Department that the project is a Brownfield project;
- (ii) Submit a certification from the Department that urban runoff from the project site potentially impacts water quality; and
- (iii) Submit project documents which determine the water quality benefits of the proposed project.

(C) **Nonpoint source and Watershed Management activities.** Requests received for nonpoint source and watershed management projects must satisfy the requirements of 82 O.S. §1085.58(G), as amended, before they will be placed on the Clean Water SRF fundable portion of the project priority list.

(8) **Categories of need.** All projects receiving financial assistance must fit into at least one of the categories of need listed in 785:50-9-21(a).

(A) A project may include all eligible categories of need.

(B) If a point source project consists of more than one category including a nonpoint source project, its project ranking calculation will be based on that category which will result in the greatest priority points.

(9) **Change of scope.** A change of scope, such as the addition of new construction items, will not be eligible after loan closing unless:

(A) The change of scope is necessary to result in an operable treatment works due to an oversight and not to replace faulty construction or equipment already funded, or (B)

The change of scope is necessary due to changes in Federal or State requirements [**Source:** Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2791-2794, eff. 7-1-2000; Amended at 19 Ok Reg 2534, eff 7-1-2002; Amended at 20 Ok Reg \_\_\_\_\_, eff 7-11-2003]

### **785:50-9-24. Intended use plan**

(a) Each fiscal year the Board shall prepare an Intended Use Plan (IUP) which shall be subjected to a public participation. The IUP will identify projects anticipated to receive financial assistance from that year's available funds. The IUP will comply with Federal Clean Water Act SRF guidance and shall include the following items:

(1) A description of both the short and long term goals and objectives of the fund.

(2) A list of projects for construction of sewage facilities and stormwater and Brownfield activities which are included on the priority list and a list of activities eligible for assistance under Section 319 of the Clean Water Act. The list of projects will include the following items:

- (A) Name of the recipient,
- (B) Facility description,
- (C) Project treatment/use categories,
- (D) Treatment requirements,
- (E) Terms of financial assistance,
- (F) Type of Assistance,
- (G) NPDES or other Discharge Permit Number,
- (H) Projects that require an EIS,
- (I) Projected assistance amount, and
- (J) Clean Water SRF policies on types of assistance.

(3) Assurances for meeting the requirements of Section 602(b) of the Clean Water Act:

(A) The Board will enter into binding commitments equal to 120% of the capitalization grant payments within one year after the receipt of the grant payment,

(B) All funds will be expended in an expeditious manner,

(C) All capitalization grant funds will first be used toward compliance with the enforceable requirements of the Clean Water Act, including the municipal compliance deadline of July

1, 1988.

(4) A payment and disbursement schedule.

(b) Included in the IUP are the criteria and method that are established for distribution of funds.

(1) The Board shall prepare a preliminary IUP prior to the beginning of each fiscal year. The applicants considered for funding will be those legal entities that have indicated to the Board that they desire to receive assistance within the next fiscal year. The preliminary IUP will be subjected to public comments and review before being submitted to EPA.

(2) Each project to be included in the IUP shall be ranked according to priority points and shall be rated under the priority rating process set out in Section 785:50-9-23 of this chapter.

(3) Projects will be ranked as follows:

- (A) Each project shall be ranked according to the priority ranking system.
- (B) Projects which are to be refinanced shall be rated on facility conditions which existed prior to start of construction on their treatment works.
- (4) The apportionment of funds shall be as follows:
  - (A) Projects within the range of available funds shall be eligible to receive financial assistance. Other projects shall be eligible for financial assistance at such time funds become available.
  - (B) Applicants designated to receive financial assistance must submit an approvable application.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2794-2795, eff 7-1-2000]

#### **785:50-9-25. Legislative Report [Revoked]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 17 Ok Reg 2795, eff 7-1-2000]

#### **785:50-9-26. EPA annual report [Revoked]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 17 Ok Reg 2795, eff 7-1-2000]

#### **785:50-9-27. Types of assistance**

The Fund may be used for the following purposes:

- (1) To make loans on the condition that:
  - (A) Such loans are made at or below market interest rates, including interest free loans at terms consistent with the Clean Water Act.
  - (B) Principal and interest payments will commence not later than one year after project completion and all loans will be fully amortized consistent with the Clean Water Act.
  - (C) The recipient of a loan will establish a dedicated source of revenue for repayment of loans.
- (2) To buy or refinance the debt obligation of eligible applicants within the State at or below market rates, when such debt obligations were incurred and construction started after March 7, 1985, for the sole purpose of funding projects that meet the following requirements:
  - (A) The applicant is the approved designated management agency.
  - (B) The project is consistent with the water quality management plan.
  - (C) The project must be listed on the State priority list.
  - (D) The project has complied with requirements of these regulations and has been approved by the Board.
  - (E) The project must have approved plans and specifications and construction permit issued by the Department.
- (3) For the reasonable costs of administering the fund and conducting activities under Title VI of the Clean Water Act, not to exceed 4% of the federal capitalization grant awards. [Source: Added at 10 Ok Reg 3333, eff 7-1-93]

#### **785:50-9-28. Pre-application for funding**

(a) The applicant will complete an L1, Pre-application for funding, and submit it to the Board. The applicant must demonstrate that it has the legal, managerial, and financial capability to

assure adequate construction, operation, and maintenance of the treatment works throughout the applicants jurisdiction.

(b) Receipt of pre-applications that are acceptable to the Board will be sufficient for remaining on the State's priority list.

(c) The Board shall make an initial determination of whether *an entity meets the criteria to receive funding* [82:1085.58(B)] and the Board shall advise the applicants whether or not to proceed with planning documents for financial assistance based on the information provided in the preapplication form.

(d) The Board staff shall make a preliminary recommendation for approval or rejection of the loan application.

(1) If the preliminary recommendation is for rejection, the Board shall provide a written recommendation including the reasons for rejection. The entity may then be allowed to modify or supplement any documents in order to comply with Board requirements and resubmit the same to the Board.

(2) If the preliminary recommendation is for approval, the Board shall notify the applicant.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93]

#### **785:50-9-29. Pre-planning conference**

Potential applicants may confer with the Board staff as early in its planning process as practical. During the conference the Board will provide information, advice, instruction, and guidance on the scope of work and level of effort needed to define eligible projects in order to ensure that the applicant expeditiously complies with the environmental and planning requirements dictated by State and Federal Law. Guidance on the scope of the required environmental information and planning requirements will also be given at the conference.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93]

#### **785:50-9-30. Planning documents**

The purpose of the planning document is to present the findings of the engineer or other qualified professional as approved by the Board in a precise fashion with enough attention given to detail so as to allow adequate review of the project by the owner and applicable regulatory agencies. The plan will allow the review of the alternatives from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness and environmental compatibility. A planning document must be submitted to the Board. The document shall contain but not be limited to the following information:

(1) Identification of the planning area boundaries and characteristics, the existing problems and needs related to wastewater management, and the projected needs and problems through the design life of the project.

(2) Cost-effective analysis of feasible wastewater treatment or conveyance alternatives capable of meeting State and federal water quality and public health requirements. The cost effective analysis shall detail all monetary costs including but not limited to the present worth or equivalent annual value of all capital costs and operation.

(3) All basic information necessary for the design of the sewage system and/or treatment works.

(4) Adequate evaluation of the environmental impacts of alternatives in accordance with Part 7 of this subchapter (relating to Environmental Review and Determination) to support the cost effectiveness analysis together with a resolution passed by the applicant which accepts the planning documents and provides a commitment to build the proposed project.

(5) A demonstration that the project is consistent with the State's approved Water Quality Management Plan established by Section 208 of the Clean Water Act.

(6) The applicant shall submit a statement of the project engineer's most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees of engineers, brownfield assessment fees, all legal fees, fees of registered financial advisors and/or consultants, contingencies and interest during construction.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2795, eff 7-1-2011]

#### **785:50-9-31. Pre-application conference**

An applicant seeking financial assistance from the SRF should make an appointment with the Board for a pre-application conference. As a minimum, the preapplication conference should be attended by a member of the governing body of the political subdivision, the entity's engineer, and fiscal representative. If possible the applicant should bring information documenting the existence of a dedicated source of revenue for repaying the loan. The primary purpose of the meeting is to acquaint the applicant with program requirements and to assist the applicant in preparing an application.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93]

#### **785:50-9-32. Plans and specifications**

(a) **Submittal.** The applicant shall prepare plans and specifications based on the final engineering report on all significant elements of the project. These documents shall conform to the Water Pollution Control Facility Standards, and brownfield cleanup standards which may apply, and a permit to construct or a concurrence must be issued by the Department.

(b) **Additional requirements.** The plans and specifications shall contain the following:

(1) Provisions assuring compliance with the Board rules and regulations and the Oklahoma Bidding Laws.

(2) Forms by which the bid bond, statutory, performance and maintenance bonds will be provided. Bonding requirements outlined in 61 O.S., Section 113(B), are as amended.

(3) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage.

(4) Provisions giving authorized representatives of the Board access to all such construction activities, books, records, documents, and other evidence of the contractor for the purpose of inspection, audit and copying during normal business hours.

(5) Those conditions, specifications, and other provisions provided by or requested by the Board to comply with State law and Part 5 of this Subchapter.

(6) Bid proposal that separates eligible construction from ineligible construction.

(c) **Approval of plans and specifications.**

(1) The Board will approve the plans and specifications if they:

(A) Conform to the requirements listed in (a) of this Section (relating to the permit to construct or concurrence issued by the Department).

(B) Are consistent with all relevant statutes.

(C) Pass a biddability, operability, and constructability review by the Board.

(D) Are consistent with Board approved planning documents and environmental determinations required by Part 9 of this Subchapter (relating to Required Environmental Review and Determinations) and 785:50-9-3 (relating to planning document).

(2) Approval of the plans and specifications does not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

(3) The applicant shall obtain authorization from the Board before advertising for bids on the project.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2795-2796, eff 7-1-2000]

### **785:50-9-33. Application for financial assistance**

(a) **Application filing.** An application shall be filed with the Board. The information required on all applications for financial assistance must meet the requirements of the Board presented to the applicant at the preapplication conference and must be on the State priority list and included on the current year Intended Use Plan. A copy of the adopted generating program necessary to meet local debt service requirement will be submitted with the application.

(b) **Action on application.**

(1) After a preliminary recommendation for approval of a pre-application is made as provided in 785:50-9-28 and an application is filed as provided in (a) of this Section, the Board shall conduct an in-depth review and evaluation of the application and wastewater project to determine whether it complies with applicable state and federal laws. Board staff may request additional information from the applicant and have further conferences as deemed necessary and beneficial to complete the application review.

(2) In the review and consideration for financial assistance under the Clean Water SRF Program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(A) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(B) **Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought.

(C) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project as a whole including proposed revenues from the project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.

(D) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(E) **Design Documents.** The applicant shall submit final plans and specifications and the permit to construct.

(3) The Board may deny an application for a loan from the Clean Water SRF program for any of the following reasons:

(A) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.

(B) The applicant does not have a demonstrated history of sound management.

(C) The applicant's financial condition is not sound enough to assure the Board that the loan would be satisfactorily repaid (including but not limited to circumstances such as inability to meet debt service, inability to meet any applicable rate covenant or additional indebtedness requirements, a substantial increase in operation and maintenance costs due to the proposed project, substantial revenue collection problems, substantial

negative financial trends, a default or record of late payment(s) on previous indebtedness, etc.)

(D) The economic conditions pertinent for the applicant show negative trends (including but not limited to conditions such as substantial declines in sales tax revenues, population, per capita income, building permits, or water and/or sewer connections; a substantial increase in unemployment; or detrimental changes in the bases of ten largest customers or ten largest taxpayers).

(E) Any other reason based upon applicable law or the Board's judgment and discretion.

(4) Once the Board staff deems its review complete, the matter will be placed on the Board's agenda for consideration. The Board may approve the application, reject the application, or request additional information. The Board shall notify the applicant as to any such action taken.

(c) **Continuing review after approval of application.** If the application and loan receives final approval, the Board and applicant will coordinate the setting of the date, time and place for the closing of the loan. In the period between the date the application and loan were approved and the date of loan closing, the Board shall continue to review loan documents and shall consult with the applicant's representatives as deemed necessary.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 14 Ok Reg 2788, eff 7-1-97; Amended at 17 Ok Reg 2796, eff 7-1-2000]

#### **785:50-9-34. Binding commitment**

Upon approval of the application by the Board, the Board will issue a letter of binding commitment. This will be a commitment of financial assistance and shall contain those conditions deemed necessary by the Board.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93]

#### **785:50-9-35. Loan closing**

(a) **Documentation to be submitted prior to loan closing.** Prior to loan closing the applicant will submit to the Board, the following bid and contract documents:

(1) Bidding documents, including all addenda, approved in accordance with 785:50-9-32.

(2) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders.

(3) Other or additional engineering data and information, if deemed necessary by the Board staff.

(4) A certification that all required acquisitions, leases, easements, rights-of-way, relocations, (both voluntary and involuntary) have been obtained for the project to be built.

(5) Evidence that the applicant has obtained all required permits and financing to build the project.

(6) Information requested by the Board regarding loan closing documents.

(7) A detailed project budget which limits the contingency to the maximum allowable change order amount set forth in Section 121 of the Public Competitive Bidding Act of 1974 as amended.

(8) Copies of all legal, financial, engineering and inspection contracts that will be paid in whole or in part from the loan proceeds.

(9) If an applicant wishes to close a loan prior to receiving bids, it may do so subject to approval from the OWRB. In order to receive approval, documentation must be provided to the OWRB showing the applicant has the financial ability to pay any costs that



---

exceed the estimated loan amount. This documentation shall include but not be limited to financial statements from the applicant.

(b) **General conditions for all loans.**

(1) Under the federal Water Quality Act of 1987 and 82 O.S., §1085.54, the Board is authorized to make available financial assistance from the Clean Water State Revolving Fund Loan Account under the following conditions:

(A) The financial assistance application, project and planning documents have been approved by the Board pursuant to Section 1085.58 of Title 82 or the Oklahoma Conservation Commission pursuant to Section 1085.65 of Title 82 of the Oklahoma Statutes.

(B) The loan is made at or below market interest rates, including interest-free loans, at terms consistent with the Clean Water Act.

(C) Principal and interest payments will begin not later than one year after completion

of any project, which completion date shall be determined by the Board, and all loans will be fully amortized consistent with the Clean Water Act.

(D) The applicant demonstrates to the satisfaction of the Board the financial capability to assure sufficient revenues to pay debt service.

(E) The recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan.

(F) The recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the wastewater project and to submit the audit report to the Board on a scheduled annual basis, and

(G) The project is identified in the Board's current Intended Use Plan.

(H) DBE participation requirements apply to projects constructed with funds directly made available by the federal capitalization grant (equivalency projects).

(i) EPA and the State will negotiate a "Fair Share Objective" (which shall represent a percentage of DBE participation).

(ii) When soliciting for a subcontractor (A/E or construction contractor), the loan recipient shall take the following six good faith efforts:

(I) Include qualified Small, DBE businesses on solicitation lists.

(II) Assure that Small, DBE businesses are solicited whenever they are potential sources.

(III) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum Small, DBE business participation.

(IV) Where the requirements of the work permits, establish delivery schedules which will encourage participation by Small, DBE businesses.

(V) Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the United States Department of Commerce, as appropriate.

(VI) If any subcontracts are to be let, require the prime

contractor or A/E to take the good faith efforts in (A) through (E) of this paragraph (2).

- I) The applicant complies with the procurement process for all architectural and engineering contracts as identified in the Clean Water Act and in accordance with Oklahoma state statutes, 61 O.S. §§60-65.
- J) The recipient complies with the American Iron and Steel provision requirements of the Clean Water Act.
- K) The recipient will create a fiscal sustainability plan that is in accordance with the Clean Water Act and the IUP.

(2) Financial assistance shall not be made from the Clean Water State Revolving Loan Account until the conditions in (1) of this subsection are met.

(c) **Evidence of indebtedness.** The financial assistance loans contemplated within this subchapter shall be provided by the Board for approved projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.

(d) **Criteria for determining interest rates.**

(1) The interest rates on loans to be made from the Clean Water State Revolving Fund Loan Account shall be at or below market rates for similar indebtedness by eligible entities.

(A) Interest rates for interim construction loans may be reviewed and determined by the Board every six (6) months.

(B) The percentage of the market interest rate to be utilized for long-term loans is set by the Board based on recommendations made by Board staff.

(2) Factors which may be used to calculate the interest rate for a particular entity or class of entities include without limitation the following:

(A) Guidelines utilized by the United States Environmental Protection Agency and federal Farmers Home Administration or successor agency for similar type financial assistance for facilities that could qualify as Clean Water SRF projects.

(B) Maintenance of the Clean Water State Revolving Fund Loan Account in perpetuity.

(C) Statewide needs for Clean Water SRF project financial assistance.

(D) Five-year demand projections of the Board of Clean Water SRF project financial assistance.

(E) Prevailing market interest rates which shall be the interest rates on long-term bonds maintaining a rating of AA.

(F) Debt service requirements of investment certificates issued by the Board to provide funds for the Clean Water State Revolving Fund Loan Account.

(G) Financial resources of the entity.

(H) The ability of the entity to repay the loan.

(I) Whether the entity discharges municipal wastewater into scenic river areas as defined in Section 1452 of Title 82 of the Oklahoma Statutes.

(e) **Security for loan.**

(1) As security for the assistance loan provided by the Board to an approved applicant, applicant must provide if required by the Board a mortgage on any or all facilities of the project for which application is made.

(2) The Board shall require a pledge and lien on revenues to be derived from the operation of the project.

(3) For purposes of this subsection, the pledge of lien on project revenues shall be a pledge of and lien on such project revenue, as is necessary to secure repayment of the loan obligation of applicant.

(4) Also, for purposes of this subsection, if the specific project for which application is made and approved is not of itself a revenue producing unit, then such pledge of and lien on revenues shall be on the revenues of the revenue producing system of which the specific project is a part and on such other additional revenue sources or systems which may be pledged by the applicant to satisfy the loan security requirements necessary to obtain assistance from the Board.

(5) The Board may require additional security which the Board deems necessary, which such additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems of and as may be tendered by the applicant.

(f) **Conditions for disbursement of funds.** At or following the loan closing, the following conditions and requirements must be met prior to the release and disbursement of any financial assistance funds:

(1) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(2) Recipient sends disbursement requests based on costs incurred to the Board, who shall review the requests and approve them as appropriate.

(3) Executed contract and agreements to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, and other documents required by this chapter.

[**Source:** Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2796-2798, eff 7-1-2000; Amended at 20 Ok Reg \_\_\_\_, eff 7-11-2003; Amended at 23 Ok Reg \_\_\_\_, eff 7-17-2006]

**785:50-9-36. Refinancing construction loans**

If the project includes the refinancing of a loan, the applicant shall submit all of the items specified in 785:50-9-33 and any records, assurances, or appraisals concerning the construction of the project. Additionally, the project must pass Board inspection verifying that the facility was constructed in accordance with the approved plans and specifications.

[**Source:** Added at 10 Ok Reg 3333, eff 7-1-93]

**785:50-9-37. Minimum assistance agreement conditions**

The Board will develop a list of conditions to be included in the loan agreement. The list will include as a minimum:

- (1) Any condition identified in the letter of commitment that applies to the loan.
- (2) Federal requirements.
- (3) A project schedule that has been coordinated with State and federal enforcement authorities.
- (4) Any Federal, State or local requirement previously identified that has a significant impact on the project.
- (5) Conditions and mitigative measures identified during the environmental review or assessment.

[**Source:** Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 2798-2799, eff 7-1-2000]

**785:50-9-38. Construction phase**

(a) **Awarding construction contracts.** The recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. The text of the construction contract shall not vary from the text of the Board approved draft contract documents in the approved plans and specifications or addenda to the plans and specifications.

(b) **Inspection during construction.** During the building phase of the project, the recipient shall provide independent engineering or other professional services necessary to assure completion of the project in accordance with the loan agreement and the approved plans and specifications.

(c) **Resident inspection.** After the construction contract is awarded, the recipient shall provide for adequate full-time independent resident inspector of the project and require assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and in accordance with sound engineering principles and building practices. The Board is authorized to inspect the building of any project at any time in order to assure that plans and specifications are being followed and that the works are being built in accordance with sound engineering principles and building practices, but such inspection shall never subject the State of Oklahoma to any action for damages. The Board shall bring to the attention of the recipient and the project engineer any variances from the approved plans and specifications. The recipient and the project engineer shall immediately initiate necessary action rectifying construction deficiencies.

(d) **Inspection of materials.**

(1) The Board is also authorized to inspect all materials furnished, including inspection of the preparation or manufacture of the materials to be used. The state inspector is to report the manner and progress of the building or to report conditions relating to the materials furnished and the compliance by the contractor with approved plans and specifications for the project. Such inspection will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents or the project engineer from determining compliance with the requirements of the contract documents.

(2) In the event building procedures or materials are determined by the Board to be substandard or otherwise unsatisfactory and/or not in conformity with approved plans and specifications, the Board may order the recipient to take such action in the manner provided for in the construction contract to correct any such deficiency.

- (3) In those instances of dispute between the recipient project engineer and the Board's representative as to whether material furnished or work performed conforms with the terms of the construction contract, the Board may order the recipient to direct the project engineer to reject questionable materials and/or initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.
- (4) The contractor and recipient shall furnish the Board's representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.
- (5) In addition to normal testing procedures required of the recipient, the Board may require reasonable additional tests of building materials or processes which the Board determines to be necessary during the building of projects financed in whole or in part by Clean Water SRF funds. All tests, whether for the Board or the project engineer, will conform to current American Water Works Association, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and the Oklahoma Department of Transportation published procedures, or similar criteria. The Board shall specify which tests are applicable. Samples for testing shall be furnished free of cost to the Board upon request on the construction site.
- (e) DBE participation requirements apply to projects constructed with funds directly made available by the federal capitalization grant (equivalency projects).
- (1) EPA and the State will negotiate a "Fair Share Objective" (which shall represent a percentage of DBE participation).
  - (2) When soliciting for a subcontractor (A/E or construction contractor), the loan recipient shall take the following six good faith efforts:
    - (A) Include qualified Small, DBE businesses on solicitation lists.
    - (B) Assure that Small, DBE businesses are solicited whenever they are potential sources.
    - (C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum Small, DBE business participation.
    - (D) Where the requirements of the work permits, establish delivery schedules which will encourage participation by Small, DBE businesses.
    - (E) Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the United States Department of Commerce, as appropriate.
    - (F) If any subcontracts are to be let, require the prime contractor or A/E to take the good faith efforts in (A) through (E) of this paragraph (2).

**[Source:** Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98]

### **785:50-9-39. Project changes**

- (a) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the assistance agreement do not require the approval of the Board before the applicant's implementation of the change. However, the amount of the funding provided by the assistance agreement may be increased only by a formal amendment which will require Board approval.
- (b) The recipient must receive approval from the Department and Board before implementing changes which:
- (1) Alter the project design standards.
  - (2) Significantly delay or accelerate the project schedule.

- (3) Substantially alter the design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 15 Ok Reg 2881, eff 7-1-98]

#### **785:50-9-40. Building phase submittal**

The following submittal and accompanying actions by the recipient will be required during the building phase of the project.

- (1) Upon completion of all construction, verification will be submitted to the Board that a complete set of as-built drawings has been submitted to the Department.
- (2) Notice of completion of construction will be submitted to the Board upon completion of project construction.
- (3) Any other building phase submittal required as part of the financial assistance documents will be submitted for the Board's approval.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 23 Ok Reg \_\_\_\_, eff 7-17-2006]

#### **785:50-9-41. Progress payments**

Disbursements from the construction fund established by the recipient will require approval by the Board. Verified requests for payment and documentation should be submitted to the Board monthly. Upon approval, the Board will authorize the progress payments to be made from the fund.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 23 Ok Reg \_\_\_\_, eff 7-17-2006]

#### **785:50-9-42. Retainage**

(a) **Retainage withheld.** Up to five percent (5%) of all partial payments made may be withheld as retainage.

(b) **Final release.** After completion of construction, acceptance by the applicant, and receipt of satisfactory test results that all work has been performed according to specifications (if such tests are required), the final release of retainage may be made with approval of the project by the Board.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 23 Ok Reg \_\_\_\_, eff 7-17-2006]

#### **785:50-9-43. Post building phase responsibilities of the recipient**

(a) After the satisfactory completion of the project, the recipient shall be held accountable by the Board for the continued validity of all representations and assurances made to the Board. Continuing cooperation with the Board is required. To facilitate such cooperation and to enable the Board to protect the State's investment and public interest, the following provisions shall be observed:

- (1) The Board is authorized to inspect the project and the records of operation and maintenance of the project at any time. If it is found that the project is being improperly or inadequately operated and maintained to the extent that the project purposes are not being properly fulfilled or that integrity of the State's investment is being endangered, the Board shall require the recipients to take appropriate action.
- (2) The Board may request certified copies of all minutes, operating budgets, monthly operating statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the project in addition to the requirements of



the covenants of applicable bond indenture and/or the loan agreement. The financial assistance provided by the Board is based on the project's economic feasibility, and the Board shares the recipient's desire to maintain this feasibility in the project's operation and maintenance at all times. The Board may periodically inspect, analyze, and monitor the project's revenues, operation, and any other information the Board requires in order to perform its duties and to protect the public interest.

(3) The recipient shall maintain debt service fund accounts and all other fund accounts related to the Clean Water SRF debt in accordance with standards set forth by the Governmental Accounting Standards and the Board.

(4) Recipients which were required to implement mitigative measures as a result of the environmental review or project assessment process shall continue to comply with those measures.

(b) Payment of principal and interest on loans shall be made to the Board as provided in the loan documents.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 17 Ok Reg 2799, eff 7-1-2000]

#### **785:50-9-44. Accounting**

(a) The recipient shall agree that project accounts shall be maintained in accordance with standards set forth by the Governmental Accounting Standards and the Board. All funds in the project account shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate. All proceeds acquired by the recipient to plan, design and construct the project shall be placed in the project account. All proceeds in the project account shall be used for the sole purpose of planning, design and building the project as approved by the Board.

(b) Upon completion of the project a final accounting will be made to the Board. The final accounting shall provide:

(1) The total cost of the project. If the project is finally completed at a total cost less than the amount of available funds for building the project, or if the Board disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the recipient shall immediately, with filing the final accounting,

(A) Return to the Clean Water SRF the sum of such amounts described above; or

(B) Use the sum of such amounts described above for other eligible CWSRF purposes.

(2) If the recipient elects to spend loan proceeds pursuant to subsection (B), OWRB staff approval must be obtained in advance. Interest earned on funds in the recipient's construction account made available as a result of a loan from the SRF must be utilized to reduce the SRF principal amount or spent for other CWSRF eligible purposes with prior OWRB staff approval.

(3) That an annual audit of the recipient, prepared by a certified public accountant or licensed public accountant be provided to the Board.

(4) That the recipient shall maintain adequate insurance coverage on the project in an amount adequate to protect the State's interest.

(5) That the recipient will comply with any special conditions specified by the Board's environmental determination until all financial obligations to the State have been discharged.

(6) That the recipient covenants to continually abide by the terms of the financial assistance agreement, the Board's rules and regulations, and relevant State statutes for operation and maintenance of the facility.

**[Source:** Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 15 Ok Reg 2881, eff 7-1-98; Amended at 23 Ok Reg \_\_\_\_, eff 7-17-2006]

### **785:50-9-45.Compliance with federal authorities**

The recipients who construct equivalency projects must comply with all applicable federal laws, executive orders, and other sources of authority. These include but are not limited to the following:

#### **(1) Environmental.**

- (A) Archeological and Historic Preservation Act of 1974, PL 93-291
- (B) Clean Air Act, 42 U.S.C. 7506(c)
- (C) Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.
- (D) Coastal Zone Management Act of 1972, as amended.
- (E) Endangered Species Act 16 U.S.C. 1531, et seq.
- (F) Executive Order 12898, Environmental Justice
- (G) Executive Order 11988, Floodplain Management
- (H) Executive Order 11990, Protection of Wetlands
- (I) Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.
- (J) Fish and Wildlife Coordination Act, PL 85-624, as amended
- (K) Migratory Bird Act
- (L) National Historic Preservation Act of 1966, PL 89-665, as amended
- (M) Protection and Enhancement of the Cultural Environment
- (N) Safe Drinking Water Act, section 1424(e), PL 92-523, as amended
- (O) Wild and Scenic Rivers Act, PL 90-542, as amended
- (P) Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265

#### **(2) Economic.**

- (A) Demonstration Cities and Metropolitan Development Act of 1966, PL 89- 754, as amended
- (B) Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- (C) Drug-Free Workplace Act, Pub. L. 100-690
- (D) New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- (E) Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and related guidance and regulations

#### **(3) Social Legislation.**

- (A) Age Discrimination Act, PL 94-135
- (B) Civil Rights Act of 1964, PL 88-352
- (C) Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act
- (D) Executive Order 11246, Equal Employment Opportunity
- (E) Executive Order 11625 and 12138, Women's and Minority Business Enterprise
- (F) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)
- (G) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- (H) Executive Order 13208, Preservation of Open Competition and Government Neutrality Toward Government Contractors' Labor Relations on Federal Construction Contracts
- (I) Byrd Anti-Lobbying Amendment, Title 40 CFR 34
- (J) Trafficking Victim Protection Act of 2000, Section 106

#### **(4) Miscellaneous authority.**

(A) Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646

(B) Executive Order 12549, Debarment and Suspension

[Source: Added at 15 Ok Reg 2881, eff 7-1-98]

## **PART 5. MANDATORY FEDERAL REQUIREMENTS [REVOKED]**

### **785:50-9-50. Applicability [REVOKED]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 13 Ok Reg 1385, eff 5-13-96; Revoked at 15 Ok Reg 2881, eff 7-1-98]

### **785:50-9-51. Planning documents [REVOKED]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 13 Ok Reg 1385, eff 5-13-96; Revoked at 15 Ok Reg 2881, eff 7-1-98]

### **785:50-9-52. Design [REVOKED]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 15 Ok Reg 2881, eff 7-1-98]

### **785:50-9-53. User charge [REVOKED]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 15 Ok Reg 2881, eff 7-1-98]

### **785:50-9-54. Construction [REVOKED]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95; Revoked at 15 Ok Reg 2881, eff 7-1-98]

### **785:50-9-55. Allowable land and right-of-way costs [REVOKED]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 15 Ok Reg 2881, eff 7-1-98]

### **785:50-9-56. Compliance with federal laws and orders [REVOKED]**

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Revoked at 15 Ok Reg 2881, eff 7-1-98]

## **PART 7. SRF ENVIRONMENTAL REVIEW PROCESS**

### **785:50-9-60. Requirement of environmental review**

As required by the provisions of Section 602(b) (6) of the Clean Water Act, the Board shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the Clean Water State Revolving Fund Loan Account. This review will insure that the project will comply with the applicable local, state and federal laws and Board regulations relating to the protection and enhancement of the environment. Based upon the staff's review, the Board will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in this Part shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the Board. Potential applicants to the Clean Water State Revolving Fund Loan Account should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the Board and the environmental information which the applicant will be required to submit in support of the proposed project.

(1) **Basic environmental determination.** There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the Clean Water State Revolving Fund Loan Account. These are: a determination to categorically exclude a project from a formal environmental review; a finding of no significant impact (FONSI) based upon a formal environmental review supported by an environmental information assessment (EA); and a determination to provide or not to provide financial assistance based upon a Record of Decision (ROD) following the preparation of an environmental impact statement (EIS). The appropriate determination will be based on the following criteria.

(A) The categorical exclusion determination applies to categories of projects that have shown over time not to entail significant impacts on the quality of the human environment.

(i) Projects which meet any of the following criteria may be categorically excluded from formal environmental review requirements.

(I) The project is directed solely toward rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works (i.e. infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures adjacent to or on existing sites).

(II) The project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(III) The project is in an unsewered community involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate existing discharge.

(IV) The project involves re-issuance of a NPDES permit for a new source providing the conclusions of the NEPA document are still valid (including the appropriate mitigation), there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.

(V) The project is for an award of grants authorized by Congress under EPA's annual Appropriations Act that are solely for the reimbursement of the costs of a project that was completed prior to the date the appropriation was enacted.

(VI) The project relates to existing infrastructure systems (such as sewer systems; and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include actions that: involve new or relocated discharges to surface or ground water; will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water; will provide capacity to serve a population 30% greater than the existing population; are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

- (ii) The Board must review actions eligible for categorical exclusion to determine whether any extraordinary circumstances are involved. Extraordinary circumstances are when:
- (I) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.
  - (II) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
  - (III) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
  - (IV) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places.
  - (V) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.
  - (VI) The proposed action is known or expected to cause significant adverse air quality effects.
  - (VII) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.
  - (VIII) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
  - (IX) The proposed action is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts
  - (X) The proposed action is known or expected to conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

(iii) Categorical exclusions will be granted for the following projects without additional required documentation:

(I) Procedural, ministerial, administrative, financial, personnel, and management actions necessary to support the normal conduct of EPA business.

(II) Acquisition actions (compliant with applicable procedures for sustainable procurement) and contracting actions necessary to support the normal conduct of EPA business.

(III) Actions involving information collection, dissemination, or exchange; planning; monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs; educational and training programs; literature searches and studies; computer studies and activities; research and analytical activities; development of compliance assistance tools; and architectural and engineering studies. These actions include those conducted directly by EPA and EPA actions relating to contracts or assistance agreements involving such actions.

(IV) Actions relating to or conducted completely within a permanent, existing contained facility, such as a laboratory, or other enclosed building, provided that reliable and scientifically-sound methods are used to appropriately dispose of wastes and safeguards exist to prevent hazardous, toxic, and radioactive materials in excess of allowable limits from entering the environment. Where such activities are conducted at laboratories, the Lab Director or other appropriate official must certify in writing that the laboratory follows good laboratory practices and adheres to all applicable federal, state, local, and federally-recognized Indian tribal laws and regulations. This category does not include activities related to construction and/or demolition within the facility.

(V) Actions involving emergency preparedness planning and training activities.

(VI) Actions involving the acquisition, transfer, lease, disposition, or closure of existing permanent structures, land, equipment, materials, or personal property provided that the property: has been used solely for office functions; has never been used for laboratory purposes by any party; does not require site remediation; and will be used in essentially the same manner such that the type and magnitude of the impacts will not change substantially. This category does not include activities related to construction and/or demolition of structures on the property.

(VII) Actions involving providing technical advice to federal agencies, state or local governments, federally-recognized Indian tribes, foreign governments, or public or private entities.

(VIII) Actions involving approval of EPA participation in international "umbrella" agreements for cooperation in environmental-related activities that would not commit the United States to any specific projects or actions.

(IX) Actions involving containment or removal and disposal of asbestos-containing material or lead-based paint from EPA owned or operated facilities when undertaken in accordance with applicable regulations.

(X) Actions involving new source NPDES permit modifications that make only technical corrections to the NPDES permit (such as correcting typographical errors) that do not result in a change in environmental impacts or conditions.

(iv) The Board may exclude, by amendment to these regulations, other categories of projects for which there is sufficient documentation demonstrating that they are not likely to have significant effects on the quality of the human environment.

(B) The FONSI will be based upon an environmental review by the staff supported by an EID prepared by the applicant in conformance with 785:50-9-61(2)(A). Based upon its review, the staff issue either either a FONSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for a categorical exclusion will be required to prepare an EID. The Board's issuance of a FONSI will be based upon an EA documenting that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) The ROD may only be based upon an EIS in conformance with the format and guidelines described in 785:50-9-61(3). An EIS will be required when the Board determines any of the following:

(i) the project will significantly affect the pattern and type of land use or growth and distribution of the population;

(ii) the effects of the project's construction or operation will conflict with local or state laws or policies;

(iii) the project may have significant adverse impacts

upon: (I) wetlands,

(II) floodplains,

(III) threatened and endangered species or their habitats,

(IV) cultural resources including parklands, reserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(iv) the project will displace population or significantly alter the characteristics of existing residential areas;

(v) the project may directly or indirectly (i.e., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quality or quantity, fish, shellfish, wildlife or their natural habitats;

(vi) the project may generate significant public controversy;

(vii) the treated effluent will be discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.

**(2) Other determinations that are required of the Board.**

(A) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the Board will provide that, prior to approval, the plans and specifications, assistance application, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the Board may revoke a categorical exclusion and require the preparation of an EID or an EIS, consistent with the criteria of this subsection, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the Board will:

(i) reaffirm the original determination through the issuance of a public notice or statement of finding;

(ii) issue a FONSI for a project for which a categorical exclusion has been revoked, or issue a public notice that the preparation of an EIS will be required;

- (iii) issue an amendment to a FONSI, or revoke a FONSI and issue a public notice that the preparation of an EIS will be required, or
    - (iv) issue a supplement to a record of decision, or revoke a record of decision and issue a public notice that financial assistance will not be provided.
  - (B) When the environmental determination is five years old or older, and for which the subject action has not yet been implemented, the Board staff must re-evaluate the proposed action, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the action and complete an appropriate decision document in accordance with 785:50-9-60(2)(A) or reaffirm original determination.
- (3) **Other determinations that are available to the Board.**
- (A) An applicant may request advance authority to construct part of the proposed wastewater treatment project prior to completion of the necessary environmental review when the part of the project will:
    - (i) immediately remedy a severe public health, water quality or environmental problem;
    - (ii) not preclude any reasonable alternatives identified for the complete system;
    - (iii) not cause significant or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and
    - (iv) not be highly controversial.
  - (B) Based upon the review of the information required by Section 785:50-9-61, the Board will issue a FONSI so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.
  - (C) The Board may choose to accept determinations made by a federal agency in a previously issued environmental decision in lieu of conducting a formal environmental review when the proposed project will not cause adverse impacts to the environment and is not highly controversial.
- (4) **Projects exempt from environmental review.** The Board is not required to perform an environmental review of the following projects:
- (A) Nonpoint source projects that
    - (i) cannot be defined as Section 212 projects; and
    - (ii) are not funded with funds directly made from a capitalization grant
  - (B) Projects that consist of design and planning fees only.
- [Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 19 Ok Reg 2537, eff 7-1-2002; Amended at 20 Ok Reg 2622, eff 7-11-2003; Amended at 23 Ok Reg 3086, eff 7-27-2006; Amended at 30 Ok Reg 976, eff 6-13-13]

#### **785:50-9-61. Environmental information required by the Board**

Documentation required in this subsection will be submitted to the Board.

- (1) Except as otherwise provided in OAC 785:50-9-60(1)(A)(iii), applicants seeking a categorical exclusion will provide the Board with sufficient documentation to demonstrate compliance with the criteria of Section 785:50-9-60(1)(i) of this Chapter and shall satisfy the provisions of 40 C.F.R. Section 6.204. At a minimum, this will consist of:
- (A) a brief, complete description of the proposed project and its costs;
  - (B) statement identifying the categorical exclusion that applies to the action;
  - (C) a statement explaining why no extraordinary circumstances apply to the proposed action; and



- (D) a plan map or maps of the proposed project showing:
- (i) the location of all construction areas,
  - (ii) the planning area boundaries, and
  - (iii) any known environmentally sensitive areas.
- (2) An EID must be submitted by those applicants whose proposed projects do not meet the criteria for a categorical exclusion and for which the Board has made a preliminary determination that an EIS will not be required. The Board will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of planning.
- (A) At a minimum, the contents of an EID will include:
- (i) The description and need for the proposed action;
  - (ii) the alternatives, including the no action alternative (which must be assessed even when the proposed action is specifically required by consent order);
  - (iii) the effected environment, including baseline conditions that may be impacted by the proposed action and alternatives;
  - (iv) the environmental impacts of the proposed action and alternatives, including any unresolved conflicts concerning alternative uses of available resources;
  - (v) the environmental impacts of the proposed action and alternatives on the other applicable environmental laws and executive orders;
  - (vi) a listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders; and
  - (vii) identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the action will not have significant impacts.
- (B) Prior to the applicant's adoption of the planning document, the applicant will hold a public hearing on the proposed project and the EID, and provide the Board with a transcript of the hearing. The Board will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will generally be advertised at least thirty (30) days in advance in a local newspaper of general circulation. Concurrent with the advertisement, a notice of the public hearing and availability of the documents will be sent to all local, state, and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of attenders, and written testimony, and the applicant's responses to the issues raised. The transcript of hearing can be audio recorded but must be provided to the Board in the form of either a cd, a dvd or a digital file in mp3 or mp4 format.
- (C) The applicant will make copies of the EID available to all federal, state, and local agencies and others with an interest in the project. The Board will provide guidance to the applicant regarding coordination requirements.
- (3) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the selected alternative, and their environmental, economic and social impacts. The following format must be followed by the applicant unless the Board determines there are compelling reasons to do otherwise.
- (A) A cover sheet identifying the applicant, the project(s), the program through which financial assistance is requested, and the date of publication.

- (B) An executive summary of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:
- (i) a description of the existing problem;
  - (ii) a description of each alternative;
  - (iii) a listing of each alternative's potential environmental impacts, mitigative measures and any areas of controversy; and
  - (iv) any major conclusions.
- (C) The body of the EIS, which will contain the following information.
- (i) A complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives.
  - (ii) A balanced description of each alternative considered by the applicant. The description will include the size and location of the facilities and pipelines, land requirements, and construction schedules. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that are eliminated from examinations will be presented with the reasons for their elimination.
  - (iii) A description of the alternatives available to the Board including:
    - (I) providing financial assistance to the proposed project;
    - (II) requiring that the proposed project be modified prior to providing financial assistance to reduce adverse impacts, or providing assistance with conditions requiring the implementation of mitigative measures; and
    - (III) not providing financial assistance.
  - (iv) A description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide financial assistance or otherwise affect or have an interest in any of the alternatives.
  - (v) A description of the affected environment and environmental consequences of each alternative. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomic, land use, and cultural resources of the facilities planning area. The Board will provide guidance, as necessary, to the applicant regarding the evaluation of the affected environment. The discussion will present the total impacts of each alternative in manner that will facilitate comparison. The effects of the no action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts.
- (D) The draft EIS will be provided to all local, state and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process, along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. All commentors will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The Board will always endeavor to resolve any conflicts that may have arisen,

particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than 45 days.

(E) Material incorporated into an EIS by reference will be organized to the extent possible into a Supplemental Information Document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in 785:50-9-61(3)(D) and 785:50-9-61(3)(G)(ii) and (iii).

(F) When an EIS is prepared by contractors, either in the service of the applicant or the Board, the Board will independently evaluate the EIS prior to issuance of the Record of Decision (ROD) and take responsibility for its scope and contents. The Board staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS.

(G) The public participation required for an EIS is extensive; but should, depending upon the nature and scope of the proposed project, be supplemented by the applicant. The following requirements represent the minimum allowable to the applicant and the Board.

(i) Upon making the determination that an EIS will be required of a proposed project, the Board will publish in the Oklahoma Register and distribute a notice of intent to prepare an EIS.

(ii) As soon as possible after the notice of intent has been issued, the Board will convene a meeting of the affected federal, state and local agencies, the applicant, and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the Notice of Intent or prepared as in (2)(B) of this subsection except that in no case will the notification period be less than forty-five (45) days. As part of the scoping meeting the Board will, at a minimum:

(I) determine the significance of issues for and the scope of those significant issues to be analyzed in depth in the EIS;

(II) identify the preliminary range of alternatives to be considered;

(III) identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(IV) discuss the method for EIS preparation and the public participation strategy;

(V) identify consultation requirement of other laws and regulations;

(VI) determine the relationship between the preparation of the EIS and the completion of the facilities plan and any necessary arrangements for coordination of the preparation of both documents.

(iii) Following the scoping process the Board will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this including a list of the significant issues identified will be provided to the applicant and other interested parties. Preparation of the EIS will be done, at the discretion of the Board: directly, by its own staff; by consultants to the Board; or by a consultant, contracted by the applicant subject to approval by the Board. In the latter two cases, the consultant will be required to execute a disclosure statement prepared by the Board signifying they have no financial or other conflicting interest in the outcome of the project. Both the draft EIS and final EIS will be distributed and

made available for public review in a fashion consistent with the requirements of (2)(B) of this section except that the advertisement and comment period for the public participation will be no less than forty-five (45) days. The Board will publish, in The Oklahoman and a newspaper(s) of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least forty-five (45) days prior to making any environmental determination.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94]

#### **785:50-9-62. Environmental review by the Board**

(a) When the Board has determined that an applicant's proposed project may be excluded from a formal environmental review or has determined that a categorical exclusion is to be rescinded, the Board will prepare a public notice of the determination to categorically exclude the project and stating the availability of supporting documentation for public inspection. The Board, concurrent with the publication, will distribute the notice to all interested parties.

(b) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the Board to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the Board may require the applicant to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the Board will prepare an environmental assessment, describing:

- (1) the purpose and need for the proposed project;
- (2) the proposed project, including its costs;
- (3) the alternatives considered and the reasons for their rejection or acceptance;
- (4) the existing environment;
- (5) any potential adverse impacts and mitigative measures;
- (6) any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions; and
- (7) other environmental laws and executive orders as applicable.

(c) Based upon this environmental assessment, the Board will issue a FNSI or a notice of intent to prepare an EIS. The FNSI will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the FNSI may be submitted for consideration by the Board. The environmental assessment will be attached when mitigative measures are specified by conditions of the financial assistance. The FNSI will be distributed to all parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding approval of the facilities plan or the provision of financial assistance will be taken by the Board for at least thirty (30) days after the issuance of a FNSI.

(d) Following the comment period and public hearings on the final EIS and at the time of the decision to approve the facilities plan or to provide or deny financial assistance to the proposed project, the Board will prepare a concise public record of decision. The record of decision will describe those mitigative measures to be taken which will make the selected alternative environmentally acceptable.

(e) In accordance with this Part, the Board will conduct environmental reviews and issue public notices or amended determinations, as appropriate.

[Source: Added at 10 Ok Reg 3333, eff 7-1-93]

## **SUBCHAPTER 10. DRINKING WATER TREATMENT REVOLVING LOAN PROGRAM REGULATIONS**

### Section

785:50-10-1. General program description and procedures

785:50-10-2. General approval standards and criteria

785:50-10-3. Terms and conditions

785:50-10-4. Disbursement of funds and conditions for disbursement

[Source: Codified 7-1-95]

### **785:50-10-1. General program description and procedures**

#### **(a) Drinking Water Treatment Revolving Loan Program description.**

(1) Pursuant to 82 O.S., §§1085.71 through 1085.84A, an additional financial assistance program was created to be administered by the Board and Oklahoma Department of Environmental Quality (Department) to implement provisions of the federal Safe Drinking Water Act.

(2) Under Oklahoma's program, the Department is to generally carry out the role of prioritizing drinking water projects and conducting technical analysis and review of eligible entities and drinking water treatment projects. The Board is to generally carry out the role of conducting financial evaluations and analyses of eligible entities, reviewing documents for loan closings, and managing and administering monies in the Water Resources Fund to make monies available for financial assistance.

(3) The Drinking Water Treatment Revolving Loan Program shall be administered as a separate program from the Board's previously existing Financial Assistance Programs. The rules in this Subchapter are intended to recognize the distinction between the programs where necessary.

**(b) General procedures.** The general procedures to be followed in the drinking water project review and financial assistance application process for financial review under the program authorized in 82 O.S. §1085.71 through 1085.84A shall be as follows:

(1) The applicant shall follow the procedures, rules and regulations administered by the Oklahoma Department of Environmental Quality, which shall include placement on the priority list of a publicly owned water works established by the Department and the filing of an application with the Board for drinking water project review and financial assistance.

(2) The Board shall make an initial determination of whether an entity meets the legal and managerial criteria to receive funding.

(3) The Board shall prepare an initial financial review of the entity based on documents provided to the Board and proposed loan amount and interest rate for which the entity qualifies. Consultations among Board staff, the Department, and the applicant's representatives may be held where deemed appropriate and beneficial.

(4) The Board staff shall consider the initial financial review and application. It shall then forward its preliminary recommendation for approval or rejection of the loan application to the applicant, based on applicable criteria set forth in 785:50-10-2.

(A) If the recommendation is for rejection, the Board shall provide a written recommendation including the reasons for rejection. The entity may then be allowed to modify or supplement any documents in order to comply with the Board requirements and resubmit the same to the Board.

- (B) If the Board recommends approval, it shall notify the applicant and the Department.
- (5) After initial financial review approval by the Board, the Board shall follow its established procedures and rules to conduct an in-depth financial review and evaluation of the drinking water project to determine whether it complies with applicable state and federal laws.
- (6) After a secondary application and necessary documents are submitted to the Board, the matter will be reviewed by staff who may request additional information from the applicant or the Department and have further conferences as deemed necessary and beneficial to complete the financial review. The matter will then be placed on the Board's agenda for consideration. The Board may approve the application, reject the application, or request additional information.
- (7) If the application and loan receives final approval, the Board, Department and applicant will coordinate the setting of the date, time and place for the closing of the loan.
- (8) At the loan closing, the Department shall have authority to grant approval for disbursement of loan proceeds and to present the same.
- (9) The Board shall administer the loans until paid by the recipient and a final accounting is completed.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98]

**785:50-10-2. General approval standards and criteria**

(a) In the review and consideration for financial assistance under the Drinking Water Treatment Revolving Loan Program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

- (1) **Compliance with laws.** The application and proposed drinking water project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary for project commencement and operation.
- (2) **Eligibility.** The applicant and proposed drinking water project must be determined to be eligible for the assistance sought.
- (3) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the drinking water project as a whole including proposed revenues from the drinking water project and the adequacy and reliability of estimated revenues necessary for loan repayment when indicated.
- (4) **Availability of funds.** The Board shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

(b) The Board may deny an application for a loan from the Drinking Water Treatment Revolving Loan Program for any of the following reasons:

- (1) The applicant or the entity which stands to receive the benefit of the financial assistance is not an eligible entity.
- (2) The applicant does not have a demonstrated history of sound management.
- (3) The applicant's financial condition is not sound enough to assure the Board that the loan would be satisfactorily repaid (including but not limited to circumstances such as inability to meet debt service, inability to meet any applicable rate covenant or additional indebtedness requirements, a substantial increase in operation and maintenance costs due to the proposed project, substantial revenue collection problems, substantial negative financial trends, a default or record of late payment(s) on previous indebtedness, etc.)
- (4) The economic conditions pertinent for the applicant show negative trends (including but not limited to conditions such as substantial declines in sales tax revenues, population, per

capita income, building permits, or water and/or sewer connections; a substantial increase in unemployment; or detrimental changes in the bases of ten largest customers or ten largest taxpayers).

(5) Any other reason based upon applicable law or the Board's judgment and discretion.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95; Amended at 14 Ok Reg 2788, eff 7-1-97]

### **785:50-10-3. Terms and conditions**

#### **(a) General limitations and conditions.**

(1) Under the federal Safe Drinking Water Act and 82 O.S. Section 1085.74, the Board is authorized to use the Drinking Water Treatment Revolving Loan Account for the following purposes:

(A) To make a loan to an eligible entity if:

(i) The drinking water project and planning documents have been approved by the Department,

(ii) The loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Safe Drinking Water Act,

(iii) Principal and interest payments will begin not later than one year after completion of any drinking water project, which completion date shall be determined by the Department, and all loans will be fully amortized consistent with the federal Safe Drinking Water Act,

(iv) The Drinking Water Treatment Revolving Loan Account will be credited with all payments of principal and interest on all loans,

(v) The applicant demonstrates to the satisfaction of the Board the financial, legal and managerial capability to assure sufficient revenues to pay debt service,

(vi) The recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan,

(vii) The recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the drinking water project and to submit the audit report to the Board on a scheduled annual basis, and

(viii) The project is identified in the Department's current Intended Use Plan.

(B) To buy or refinance eligible entity obligations at or below market interest rates if the obligation was incurred after July 1, 1993;

(C) To guarantee or purchase insurance for eligible entities if the guarantee or insurance would improve access to market credit or reduced interest rates;

(D) As a source of revenue or security for the payment of principal of and interest on any investment certificate issued by the Board. The proceeds of the sale of such investment certificates shall be deposited in the Drinking Water Treatment Revolving Loan Account in compliance with applicable bond resolutions or indentures authorizing the sale;

(E) To earn interest on accounts established under the Drinking Water Treatment Revolving Loan Account;

(F) To administer the Drinking Water Treatment Revolving Loan Account pursuant to the provisions of 82 O.S. §§1085.71 et seq.; and

(G) For such other purposes or in such other manner, as is determined by the Board to be an appropriate use of the Drinking Water Treatment Revolving Loan Account and which has been specifically approved by the Environmental Protection Agency pursuant to the federal Safe Drinking Water Act.

- (2) Financial assistance shall not be made from the Drinking Water Treatment Revolving Loan Account until the conditions in (1) of this subsection are met.
- (3) The Board shall not use funds in the Drinking Water Treatment Revolving Loan Account established in the Water Resources Fund to make grants.
- (b) **Evidence of indebtedness.** The financial assistance loans contemplated within this subchapter shall be provided by the Board for approved drinking water projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.
- (c) **Criteria for determining interest rates.**
- (1) The interest rates on loans to be made from the Drinking Water Treatment Revolving Loan Account shall be at or below market rates for similar indebtedness by eligible entities and may vary among classes or categories of eligible entities based on a joint agreement entered into by and between the Board and Department.
- (2) Such criteria of the joint agreement may incorporate applicable United States Environmental Protection Agency and Rural Development or successor agency guidelines for financial assistance.
- (d) **Security for drinking water project loan.**
- (1) As security for the assistance loan provided by Board to an approved applicant, applicant must provide if required by the Board a mortgage on any or all facilities of the drinking water project for which application is made.
- (2) The Board shall require a pledge and lien on revenues to be derived from the operation of the drinking water project.
- (3) For purposes of this subsection, the pledge of lien on drinking water project revenues shall be a pledge of and lien on such drinking water project revenue as is necessary to secure repayment of the loan obligation of applicant.
- (4) Also, for purposes of this subsection, if the specific drinking water project for which application is made and approved is not of itself a revenue producing unit, then such pledge of and lien on revenues shall be on the revenues of the revenue producing system of which the specific drinking water project is a part and on such other additional revenue sources or systems which may be pledged by the applicant to satisfy the loan security requirements necessary to obtain assistance from the Board.
- (5) The Board may require additional security which the Board deems necessary, which such additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems of and as may be tendered by the applicant.
- (e) **Loan repayments.** Payment on loans shall be made to the Board as provided in the loan documents.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98]

#### **785:50-10-4. Disbursement of funds and conditions for disbursement**

After an application for financial assistance under the program authorized by Sections 1085.71 through 1084A of Title 82 of the Oklahoma Statutes has been approved by the Board, the following conditions and requirements shall be met prior to the releases and disbursement of any financial assistance funds:

- (1) Final approval of disbursement of financial assistance proceeds is granted or waived by the Department.
- (2) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not



limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(3) Recipient sends disbursement requests to Department, Department approves disbursement requests and forwards same to Board.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95; Amended at 15 Ok Reg 2881, eff 7-1-98]

## **SUBCHAPTER 11. MISCELLANEOUS PROVISIONS**

### Section

785:50-11-1. Inspection of works, books and records

785:50-11-2. Project modifications

785:50-11-2.1 Project sign

785:50-11-3. Records public

785:50-11-4. Application fees

785:50-11-5. Project completion, inspection and audit

785:50-11-6. Return of funds to the Board

785:50-11-7. Approval and notification regarding certain proposed action of an eligible entity

785:50-11-8. Compliance with loan agreement

785:50-11-10. Insurance requirements for loan recipients

### **785:50-11-1. Inspection of works, books and records**

#### **(a) Water and Sewer program and REAP grant program projects.**

(1) From the time of first application for financial assistance for projects through the Water and Sewer program and REAP grant program, throughout all stages of construction, and at any other time while any assistance from the Board to the applicant is outstanding, the Board shall have the right to inspect, review and comment upon any and all projects, and any and all incidental works, areas, facilities and premises otherwise pertaining to the project for which application is made.

(2) The Board shall further have the same said right of inspection to inspect, review and comment upon any and all books, accounts, records, contracts or other instruments, documents or information possessed by applicant or its contractors, agents, employees or representatives which relate in any respect to the receipt, deposit and/or expenditure of financial assistance funds.

(3) By making application for financial assistance to the Board, all applicants shall be deemed to consent and agree to the right of reasonable inspection provided in this rule and all applicants shall allow the Board all necessary and reasonable access and opportunity for such purposes.

#### **(b) Clean Water SRF projects.**

(1) From the time of receipt of a preapplication throughout all stages of construction for wastewater projects, and at any other time while any financial assistance from the Wastewater Facility Construction program recipient is outstanding, the Board shall inspect, review and comment upon the projects, incidental works, areas, facilities and premises otherwise pertaining to the project for which application is made.

(2) The Board shall also have the right of inspection to inspect, review and comment upon any and all books, accounts, records, contracts and other instruments, documents or information possessed by recipient or its contractors, agents, employees or representatives which relate in any respect to the receipt, deposit and/or expenditure of project financial assistance funds.

(3) After completion of construction, the Board may conduct periodic site visits.

(c) **Independent inspection.** All recipients of any funding for construction through any of the Board's financial assistance programs shall retain an independent inspector throughout the construction to assure that the work on the project is performed in a satisfactory manner in accordance with the approved plans and specifications and sound engineering practices and building principles. Unless otherwise determined by the Board, recipients of loans shall provide an inspector on a full-time basis during construction and recipients of emergency grants and REAP grants shall provide an inspector on at least a part-time basis as required by the Board or its staff.

[Source: Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 11 Ok Reg 3007, eff 6-13-94; Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 16 Ok Reg 2710, eff 7-1-99; Amended at 17 Ok Reg 2799-2800, eff 7-1-2000]

### **785:50-11-2. Project modifications**

(a) After an application for financial assistance has been approved by the Board and after the Board has reviewed and approved applicant's plans and specifications for the project, no change, modification, amendments, or departure otherwise to or from the approved plans and specifications which would materially or significantly affect total project cost, estimated revenues, or design shall be made, allowed or authorized without the prior written approval therefor by the Board.

(b) For purposes of this Section, no prior Board approval of project change orders shall be required if applicant's project engineer certifies to the Board that such change, modification, amendment or departure otherwise will not materially or significantly affect total project cost, estimated revenues or design.

[Source: Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95]

#### **785:50-11-2.1. Project sign**

The general contractor shall erect and maintain for the life of the construction contract a suitable sign that meets all of the minimum project sign specifications required by the Board or its staff, including a specification that the sign state that funding for the project has been provided by the Board.

[Source: Added at 12 Ok Reg 2715, eff 7-1-95]

#### **785:50-11-3. Records public**

All records of the Board relating to the financial assistance program contemplated within the rules of this Chapter shall be public records available for public inspection by any interested person at reasonable times and in a reasonable manner.

#### **785:50-11-4. Application fees**

(a) Applicant shall not be required to pay to the Board any fee for the submission of an application for an emergency grant or a REAP grant.

(b) Loan applications for loans through the Water and Sewer bond proceed loan program, the CWSRF program, and the DWSRF program, however, are subject to a filing, review and processing fee to the Board at the time of filing the secondary application request for additional information.

[Source: Amended at 16 Ok Reg 2710, eff 7-1-99]

#### **785:50-11-5. Project completion, inspection and audit**

(a) Upon completion of any project for which financial assistance has been provided, the applicant shall furnish to the Board written notification of completion.

(b) Upon receipt of such notification, or upon project completion should notification not be furnished as required herein, the Board may conduct a final on-site inspection of the project and an audit of any and all financial assistance funds furnished to the applicant.

[Source: Amended at 10 Ok Reg 3333, eff 7-1-93; Amended at 12 Ok Reg 2715, eff 7-1-95]

#### **785:50-11-6. Return of funds to the Board**

(a) Financial assistance funds made available to an applicant by the Board shall be utilized and expended by the applicant solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which assistance was approved.

(b) In the event funds furnished to an applicant by the Board are not utilized and expended by the applicant for the specific project for which such funds were furnished within a reasonable period of time after disbursement to the applicant, or in the event Board determines, at any time, that funds furnished were utilized and expended for any unauthorized or unallowable purpose, the applicant shall return or otherwise pay to the Board any and all such unused funds or any amounts of funds used and expended for unauthorized or unallowable purposes plus interest at the maximum rate allowable by law on the unused or unauthorized amount.

[Source: Amended at 12 Ok Reg 2715, eff 7-1-95; Amended at 18 Ok Reg 2259, eff 7-1-2001]

#### **785:50-11-7. Approval and notification regarding certain proposed action of an eligible entity**

(a) Whenever an eligible entity proposes to take action which may reasonably be expected to have a direct impact on the security for the Board loan, including but not limited to incurring additional debt superior to or on parity with the debt owed the Board, the entity shall obtain Board approval before undertaking the proposed action.

(b) Whenever an eligible entity proposes to take action which may reasonably be expected to have an impact on the security for the Board loan, including but not limited to incurring additional debt which is subordinate to the debt owed the Board, modification of water purchase contracts, or entering a long-term leasehold or other contract, the entity shall give written notice to the Board before undertaking the proposed action.

#### **785:50-11-8. Compliance with financial assistance agreement**

(a) The Board may choose not to approve nor fund any financial assistance to any person who is not in substantial and material compliance with the terms of any financial assistance agreement between that person and the Board.

(b) In the event the Board determines, at any time, that a grant recipient is not in substantial and material compliance with the terms of any financial assistance agreement between that person and the Board, the grant recipient shall refund or otherwise repay to the Board the entire grant award or so much thereof as determined by the Board.

[Source: Added at 15 Ok Reg 2881, eff 7-1-98; Amended at 17 Ok Reg 1800, eff 7-1-2000; Amended at 18 Ok Reg 2259, eff 7-1-2001]

#### **785:50-11-9. Use of CWSRF Administrative Fund**

Monies in the Clean Water Loan Administrative Fund in the State Treasury may be used by the Board for administering the CWSRF, or as otherwise authorized by the Clean Water Act or guidance or regulations promulgated thereunder. Such administration activities may include

water quality planning and water quality analysis and protection studies specifically approved by the Board and, if necessary, by the Environmental Protection Agency.

[Source: Added at 17 Ok Reg 2800, eff 7-1-2000]

#### **785:50-11-10. Insurance requirements for loan recipients**

A financial assistance loan recipient shall at all times carry or cause to be carried liability, workers compensation, fire, casualty and extended coverage, and other insurance covering the recipient's system as shall be required by and acceptable to the Board. Furthermore, the recipient shall at all times for each of its officers, employees, agents, or other representatives who handle funds of the recipient be covered by a fidelity bond or position coverage in a form and amount as shall be required by and acceptable to the Board, and shall furnish to the Board appropriate proof of such fidelity bond or position coverage.

[Source: Added at 18 Ok Reg 2259, eff 7-1-01]

### **SUBCHAPTER 13. OKLAHOMA WATER CONSERVATION GRANT PROGRAM**

#### **785:50-13-1. Purpose**

The purpose of these rules is to implement the provisions of 82 O.S. Section 1088.1, enacted as part of House Bill 3135 approved in May 2008, that creates a new financial assistance grant program specifically for water conservation.

#### **785:50-13-2. Definitions**

In addition to the definitions contained in Section 785:50-1-2 of this chapter 50, the following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Communities"** means *entire cities or towns, combined cities or towns, part of cities or towns, or schools, groups or entities located within a community* [82:1088.1].

**"Groups or entities"** means non-profit corporations who hold charitable non-profit status certifications from the Internal Revenue Service pursuant to the Internal Revenue Code and non-profit rural water districts formed under Title 82, O.S.

**"Water conservation grant"** means a written contract between the Board and a recipient whereby the recipient agrees to provide described goods or services for a public purpose under terms and conditions specified in the agreement.

#### **785:50-13-3. Eligible entities**

- (a) Communities are eligible to become water conservation grant recipients.
- (b) For purposes of qualifying for and obtaining the financial assistance contemplated in this subchapter, communities shall submit appropriate proof of eligibility.

#### **785:50-13-4. Eligible projects**

- (a) The Board shall make grants for the establishment of pilot projects which will implement water conservation projects or plans in communities in the state;
- (b) Pilot projects shall be innovative programs that will serve as models for other communities in the state.
- (c) Pilot projects may include, but are not limited to, community conservation demonstration projects, water use accounting programs, retrofit projects, school education projects, Xeriscape demonstration gardens, and information campaigns on capturing and using harvested rainwater and graywater.

**785:50-13-5. Pilot project criteria**

The Board will consider the following in determining whether to approve a water conservation grant:

- (1) Unless otherwise determined by the Board in a notice of funding availability, the total grant requested may not exceed Seven Thousand Dollars (\$7,000);
- (2) Percentage of water efficiency improvement or water savings that may be realized by implementation of the pilot project;
- (3) Ability of the applicant community to monitor benefits of project proposed;
- (4) Amount of matching funds and/or inkind contributions to be provided;
- (5) Potential to serve as model for other communities in the state; and
- (6) Number of communities, groups or entities collaborating in the proposed project.

**785:50-13-6. Process for consideration of proposals**

(a) The Board will solicit applications by placing a notice of availability of funds for the water conservation grant program on the Oklahoma Water Resources Board website. The notice will contain a cutoff date for submission of applications.

(b) Applications for water conservation grants shall be submitted on forms provided by the Board.

(c) Staff will prioritize applications using the following formula:

(1) Estimated percentage of water efficiency improvement or water savings that may be realized by the implementation of the pilot project:

- (A) one to ten percent = 5 points
- (B) 11 to 20 percent = 10 points
- (C) 21 percent or more = 20 points

(2) Applicant will monitor actual savings/benefits resulting from the proposed project:

- (A) No – 0 points
- (B) Yes – 15 points

(3) Amount of matching funds and/or inkind contributions to be provided:

- (A) 10 to 20% - 5 points
- (B) 21 to 30% - 10 points
- (C) 31 to 40% - 15 points
- (D) 41% or greater – 20 points

(4) Adaptability of proposed project to other communities:

- (A) No - 0 points
- (B) Yes – 15 points

(5) Number of communities, groups or entities collaborating on water conservation project:

- (A) two = 10 points
- (B) three = 20 points
- (C) four or more = 30 points

**785:50-13-7. Requirements for operation of projects**

(a) In addition to other terms and conditions stated therein, the water conservation grant recipient shall monitor and evaluate actual water conservation realized from implementation of the project or provide documentation regarding the potential for improvements to water

use efficiency. Such monitoring may include week-to-week or month-to-month comparisons and changes in consumption based on total meter readings from the targeted area.

(b) Approved projects that require construction of infrastructure such as pipes and meters shall be constructed and operated in accordance with all applicable state laws and maintained in good working order by the grant recipient.

**785.50-13-8. Funding availability**

(a) Contingent upon the availability of funding, the Board may award grants each year in an amount not to exceed Twenty-five Thousand Dollars (\$25,000.00) for each grant, with total amount of grants awarded each year not to exceed Fifty Thousand Dollars (\$50,000.00).

(b) The notice of availability of funding shall specify the funding limitation for each grant and the total funding amount of grants to be awarded based upon the availability of funding.

**785.50-13-9. Funding disbursement and limitations**

(a) Water conservation grant recipients receiving \$1,000.00 or less:

(1) Must complete projects within one (1) year;

(2) Will be funded on a reimbursable basis upon submittal of invoices, receipts or other proof of expenditures as approved by the Board;

(3) Must submit a final report at the end of the project describing how the terms and conditions of the water conservation grant agreement were accomplished.

(b) Water conservation grant recipients receiving more than \$1,000.00:

(1) Must complete projects within two years;

(2) Will be funded on a reimbursable basis upon submittal of invoices, receipts or other proof of expenditures as approved by the Board.

(3) Will provide status reports at intervals prescribed by the Board and a final report at the end of the project describing how the terms and conditions of the water conservation grant agreement were accomplished.

**785.50-13-10. General terms and conditions for grants**

(a) Funds must be used for purposes described in the application and in accordance with the water conservation grant agreement;

(b) Projects must be completed in time frame specified in the grant agreement, but not to exceed two years.

(c) Funds are not to be used for travel, salaries, overhead, current or completed projects or other general operating expenses of grant recipient.