

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

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

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 all projects less than \$50,000.00 shall have a maintenance bond, letter of credit, or the equivalent equal to the project cost for a period of one year after construction has been completed.
 - (~~D~~) The requirement that proper invoices be submitted monthly to the Board as funds are expended;
 - (~~E~~) 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.

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

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.

(c) Completion of Project after receipt of Bid Tabulation.

(1) All projects under \$500,000 must be completed within 180 days of receipt of the bid tabulation or the date of completion on the notice to proceed, whichever is later, unless the delay is caused by circumstances outside the control of the grant recipient shown by written documentation thereof. If these provisions are not met, the funds will be deobligated and the grant will expire.

(2) All projects over \$500,000 must be completed within 365 days of the receipt of the bid tabulation, or the completion date on the notice to proceed, whichever is later, unless the delay is caused by circumstances outside the control of the grant recipient shown by written documentation thereof. If these provisions are not met, the funds will be deobligated and the grant will expire.

(3) In the case where the documented circumstances are beyond the control of the grant recipient, an extension will be allowed based on the circumstances surrounding the project, but never beyond one (1) year of the Notice to Proceed date of completion.

SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

Part 3 – GENERAL PROGRAM REQUIREMENTS

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 stormwater 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, 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. ~~If the applicant is not a previous borrower then an LI also needs to be submitted prior to being placed on the project priority list.~~ The Programmatic Application 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.

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

(a) The applicant will complete the Programmatic Application ~~and LI as necessary~~ and submit applicable documents to the Board, 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.

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 project 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) **Planning Design Documents.** The applicant shall submit planning documents, final plans and specifications and the permit to construct

(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.