



State of Utah

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Department of
Environmental Quality

Alan Matheson Jr.
Executive Director

DIVISION OF WATER QUALITY
Walter L. Baker, P.E.
Director

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MEMORANDUM

TO: Water Quality Board
THROUGH: Walter L. Baker, P.E.
FROM: Johnathan P. Cook, P.E.
DATE: June 18, 2015

SUBJECT: Request for Authorization to Initiate Rulemaking on Rule R317-101, Utah
Wastewater Project Assistance Program

On June 10, 2014 President Obama signed into law the Water Resources Reform and Development Act of 2014 (WRRDA). Among its provisions are amendments to Titles I, II, V, and VI of the Federal Water Pollution Control Act (FWPCA). Several of the provisions of WRRDA affect the Clean Water State Revolving Fund (CWSRF) program. In response to the provisions of WRRDA, the Division is requesting that the Board authorize initiation of rulemaking to amend Rule R317-101 to ensure our State Revolving Fund (SRF) program is in compliance. In addition to WRRDA compliance, the proposed rulemaking makes several corrections to the rule for format and reference citation consistency with Division of Administrative Rules guidelines.

Staff recommended that the Board approve initiation of rulemaking for the proposed amendment of R317-101.

Attachments: Summary of the Proposed Amendment of R317-101
Text of the amendment of R317-101 "Utah Wastewater Project Assistance Program"

File:Administrative Rule \ SRF
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SUMMARY OF THE PROPOSED AMENDMENT OF R317-101

The following changes are made:

- R317-101-2: Alphabetizing the definitions section to be consistent with Division of Administrative Rules guidelines.
- R317-101-2: Defining a “Cost Effective Analysis”. Subsection D is added to address WRRDA requirements.
- R317-101-3.I: Revising “Water Conservation and Management Plan” to “Water Conservation Plan” to be consistent with Utah Code and Division of Water Resources administrative rules.
- R317-101-3.N: Issuing Construction Permits is now a duty of the Director.
- R317-101-3.P: Resolutions to amend sewer ordinance and user fee rate structures are also acceptable forms of these documents.
- R317-101-3.Q: Plans of operations relate to hiring qualified staff and asset management needed to properly operate treatment works and sewerage systems. It is necessary that new facilities have a plan of operation. Existing facilities that are merely expanding, repairing, or replacing systems, already have such management systems in place.
- R317-101-3.R: In practice, it is not necessary for the applicant to develop an entirely new O&M Manual if the new facilities are merely expanding, repairing, or replacing existing systems. Amendments to existing O&M manuals may be an acceptable alternative.
- R317-101-4.B.1: The WRRDA specifically requires the consideration of income, unemployment data, and population trends in determining the affordability of a project for a community.
- R317-101-5.A.7: Requiring applicants for financial assistance for OWS to obtain bids is a best practice.
- R317-101-9.A: Making the sentence more readable.
- R317-101-10.A: Making the sentence more readable.
- R317-101-14: The definition of a “Cost Effective Analysis” has been moved to R317-101-2.

The following general changes have also been made at various locations throughout the document:

- Correcting references to sections and subsections of State rules.
- Correcting references to the United States Code.
- Correcting references to the Utah Annotated Code
- Correcting references to definitions, programs, acronyms, and entities.
- General improvement of readability.

R317. Environmental Quality, Water Quality.

R317-101. Utah Wastewater Project Assistance Program.

R317-101-1. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Utah Water Quality Board to issue loans to political subdivisions to finance all or part of wastewater project costs and to enter into [u]credit enhancement agreements[u], [u]interest buy-down agreements[u], and Hardship Grants is provided in Sections 11-8-2 and 73-10c-4 [~~Title 73, Chapter 10b and Title 73, 10c~~].

R317-101-2. Definitions [~~and Eligibility~~].

"Cost Effective Analysis" means an analysis of feasible project alternatives capable of meeting state and federal water quality and public health requirements. The cost effective analysis shall be certified by the subdivision and it shall include:

A. monetary costs including the present worth or equivalent annual value of all capital costs;

B. operation, maintenance, and replacement costs;

C. fiscal sustainability, e.g., the cost of replacement of the project; and

D. maximizes the potential for efficient use, reuse, recapture, and conservation of water and for energy conservation to the maximum extent practicable.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of wastewater project obligations.

"Eligible Project Costs" means project costs that meet the financial assistance requirements established by the Board.

"Executive Secretary" means the Executive Secretary of the Water Quality Board.

"Financial Assistance" means a project loan, bond purchase, credit enhancement agreement, interest buy-down agreement or hardship grant.

"Hardship Grant" means a grant of monies to a political subdivision, individual, corporation, association, state or federal agency or other private entity that meets the wastewater project loan considerations or nonpoint source eligibility criteria whose project is determined by the Board to not be economically feasible unless grant assistance is provided. A hardship grant may be authorized in the following forms:

A. A Planning Advance is required to be repaid at a later date, unless deemed otherwise by the Board, to help meet project costs incident to planning to determine the economic, engineering and financial feasibility of a proposed project.

B. A Design Advance is required to be repaid at a later date, to help meet project costs incident to design including, but not limited to, surveys, preparation of plans, working drawings, specifications, investigations and studies.

C. A Project Grant is not required to be repaid.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of reducing the cost of financing incurred by a

political subdivision on bonds issued by the subdivision for project costs.

"Nonpoint Source Project" means a facility, system, practice, study, activity or mechanism that abates, prevents or reduces the pollution of water of this state by a nonpoint source (NPS).

"Principal Forgiveness" means a loan wherein a portion of the loan amount is forgiven (not required to be repaid) upon closing the loan.

"Project Costs" means the cost of acquiring and constructing any project and include: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

"Political Subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under the Interlocal Co-operation Act or any other entity constituting a political subdivision under the laws of Utah.

"Wastewater Project" means a sewer, storm or sanitary sewage system, sewage treatment facility, lagoon, sewage collection facility and system and related pipelines and all similar systems, works and facilities necessary or desirable to collect, hold, cleanse or purify any sewage or other polluted waters of this State; and a study, pollution prevention activity, or pollution education activity that will protect waters of this state.

"Wastewater Project Obligation" means, as appropriate, any bond, loan, note or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a wastewater project.

[— A. Board means Utah Water Quality Board.

— B. Political Subdivision means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under the Interlocal Co-operation Act or any other entity constituting a political subdivision under the laws of Utah.

— C. Wastewater Project means a sewer, storm or sanitary sewage system, sewage treatment facility, lagoon, sewage collection facility and system and related pipelines and all similar systems, works and facilities necessary or desirable to collect, hold, cleanse or purify any sewage or other polluted waters of this State; and a study, pollution prevention activity, or pollution education activity that

will protect waters of this state.

~~— D. Project Costs include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.~~

~~— E. Wastewater Project Obligation means, as appropriate, any bond, note or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a wastewater project.~~

~~— F. Credit Enhancement Agreement means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of wastewater project obligations.~~

~~— G. Interest Buy-Down Agreement means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of reducing the cost of financing incurred by a political subdivision on bonds issued by the subdivision for project costs.~~

~~— H. Financial Assistance means a project loan, credit enhancement agreement, interest buy-down agreement or hardship grant.~~

~~— I. Hardship Grant means a grant of monies to a political subdivision, individual, corporation, association, state or federal agency or other private entity that meets the wastewater project loan considerations or NPS eligibility criteria whose project is determined by the Board to not be economically feasible unless grant assistance is provided. A hardship grant may be authorized in the following forms:~~

~~— 1. A Planning Advance which will be required to be repaid at a later date, unless deemed otherwise by the Board, to help meet project costs incident to planning to determine the economic, engineering and financial feasibility of a proposed project.~~

~~— 2. A Design Advance which will be required to be repaid at a later date, to help meet project costs incident to design including, but not limited to, surveys, preparation of plans, working drawings, specifications, investigations and studies.~~

~~— 3. A Project Grant which will not be required to be repaid.~~

~~— J. Nonpoint Source Project means a facility, system, practice, study, activity or mechanism that abates, prevents or reduces the pollution of water of this state by a nonpoint source.~~

~~— K. Principal Forgiveness means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan.]~~

R317-101-3. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

A. It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare an effective and appropriate financial assistance agreement, including cost effectiveness evaluations of financing methods and alternatives, for consideration by the Board.

B. A completed application form, project engineering report as appropriate, and financial capability assessment are submitted to the Board. Any comments from the local health department or association of governments should accompany the application.

C. The staff prepares an engineering and financial feasibility report on the project for presentation to the Board.

D. The Board [A]authorizes[] financial assistance for the project on the basis of the feasibility report prepared by the staff, designates whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approves the project schedule [4] see Section R317-101-14 [4]. The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant. If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Title 73, Chapter 10c, which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this paragraph and for purposes of Subsection 73-10c-4(2), the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in Section R317-101-12 hereof or in connection with any other interest buy-down arrangement.

E. Planning Advance Only - The applicant requesting a Planning Advance must attend a preapplication meeting, complete an application for a Planning Advance, prepare a plan of study, and submit a draft contract for planning services.

F. Design Advance Only - The applicant requesting a design advance must have completed an engineering plan which meets program requirements and submitted a draft contract for design services.

G. The project applicant must demonstrate public support for the project.

H. Political subdivisions which receive assistance for a wastewater project under these rules must agree to participate annually in the Municipal Wastewater Planning Program (MWPP).

I. Political subdivisions which receive assistance under these rules and which own a culinary water system must complete and submit a Water Conservation[and Management] Plan, per Section 73-10-32.

J. The project applicant's engineer prepares a preliminary design report, as appropriate, outlining detailed design criteria for submission to the Board.

K. Upon approval of the preliminary design report by the Board,

the applicant's engineer completes the plans, specifications, and contract documents for review by the Board.

L. For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the wastewater project obligation is a valid and binding obligation of the political subdivision, must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to Section 11-14-201[21]. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the wastewater project obligation is a valid and binding obligation of the political subdivision.

M. Hardship Grant - The Board executes a grant agreement setting forth the terms and conditions of the grant.

N. The Director[Board] issues a Construction Permit/Plan Approval for plans and specifications and concurs in bid advertisement.

O. If a project is designated to be financed by a loan or an interest buy-down agreement as described in Sections R317-101-12 and 13, from the Board, to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement agreement as described in Section R317-101-11 all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

P. A copy of the applicant's Sewer Use Ordinance or Resolution and User Charge System [rate structure] must be submitted to the Division[Board] for review and approval to insure adequate provisions for debt retirement, [and/or] operation and maintenance, or both.

Q. A plan of operation must be submitted by the applicant to the Division for new treatment works, sewerage systems, and projects involving upgrades that add additional treatment, e.g., advanced treatment. The Plan must address: [including] adequate staffing, with an operator certified at the appropriate level in accordance with Rule R317-10, training, and start up procedures to assure efficient operation and maintenance of the facilities. The plan must be [is] submitted by the applicant in draft at initiation of construction and approved in final form prior to 50% of construction completion.

R. An O[operation and M[m]aintenance [(O and M)]M[m]anual (Manual) which provides long-term guidance for efficient facility operations and maintenance [O and M] is submitted by the applicant and approved in draft and final form prior to, respectively, 50% and 90% of project construction completion. Existing Manuals can be submitted or amended if the existing Manual is relevant to the funded project.

S. The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and

inspection, to successfully complete the project.

T. The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

U. Credit Enhancement Agreement and Interest Buy-Down Agreement Only - The Board issues the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds as described in ~~[-see]~~ Sections R317-101-11 and 12 [✓].

V. Credit Enhancement Agreement and Interest Buy-Down Agreement Only - The applicant sells the bonds on the open market and notifies the Board of the terms of sale. If a credit enhancement agreement is being utilized, the bonds sold on the open market shall contain the legend required by Subsection 73-10c-6(2)(a). If an interest buy-down agreement is being utilized, the bonds sold on the open market shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

W. The applicant opens bids for the project.

X. Loan Only - The Board gives final approval to purchase the bonds and execute the loan contract ~~[-see]~~ as described in Section R317-101-13.

Y. Loan Only - The final closing of the loan is conducted.

Z. The Board gives approval to award the contract to the low responsive and responsible bidder.

AA. A preconstruction conference is held.

BB. The applicant issues a written notice to proceed to the contractor.

R317-101-4. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.

A. Water Quality Board Priority Determination

In determining the priority for financial assistance the Board shall consider:

1. t[T]he ability of the political subdivision to obtain funds for the wastewater project from other sources or to finance such project from its own resources;

2. t[T]he ability of the political subdivision to repay the loan or other project obligations;

3. w[W]hether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and

4. w[W]hether the wastewater project:

a. m[M]eets a critical local or state need;

b. i[I]s cost effective;

c. w[W]ill protect against present or potential health hazards;

d. i[I]s needed to comply with minimum standards of the Federal Water Pollution Control Act Amendments of 1972, U.S.C. 1251 et. Seq. [~~Chapter 26, Title 33, United States Code~~], or any similar or successor

statute;

e. i[I]s needed to comply with the minimum standards of Title 19, Chapter 5 [~~the~~] Utah Water Quality [~~Pollution Control~~] Act, [Chapter 5, Title 19,] or any similar or successor statute;

f. i[I]s designed to reduce or prevent the pollution of the waters of this state; or

g. f[F]urthers the concept of regionalized sewer service;

5. t[T]he priority point total for the project as determined by the Board from application of the current Utah State Project Priority System (Rule R317-100);

6. t[T]he overall financial impact of the proposed project on the citizens of the community including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the project, and anticipated operation and maintenance costs versus the median adjusted gross household income of the community;

7. t[T]he readiness of the project to proceed;

8. Consistency with other funding source commitments that may have been obtained for the project; and

9. o[O]ther criteria that the Board may deem appropriate.

B. Water Quality Board Financial Assistance Determination. The amount and type of assistance offered will be based on the following considerations:

1. f[F]or loan consideration the estimated annual cost of sewer service to the average residential user should not exceed 1.4% of the median adjusted gross household income from the most recent available State Tax Commission records. Consideration will also be given to the applicant's unemployment data, population trends, and the applicant's level of contribution to the project. For hardship grant consideration, exclusive of advances for planning and design, the estimated annual cost of sewer service for the average residential user should exceed 1.4% of the median adjusted gross household income from the most recent available State Tax Commission records. The Board will also consider the applicant's level of contribution to the project-;

2. t[T]he estimated, average residential cost (as a percent of median adjusted gross household income) for the proposed project should be compared to the average user charge (as a percent of median adjusted gross household income) for recently constructed projects in the State of Utah-;

3. maximizing [~~Optimizing~~] return on the security account while still allowing the project to proceed-;

4. l[L]ocal political and economic conditions-;

5. c[C]ost effectiveness evaluation of financing alternatives-;

6. a[A]vailability of funds in the security account-;

7. e[E]nvironmental need-; and

8. o[O]ther data and criteria the Board may deem appropriate.

C. The Executive Secretary may not execute financial assistance for NPS [~~Non-point Source~~] projects totaling more than \$1,000,000 per fiscal year unless directed by the Board.

R317-101-5. Financial Assistance For Onsite [~~On-site~~] Wastewater Systems.

A. Replacement or repair of Onsite [~~On-site~~] Wastewater Systems (OWS), as defined in Section R317-4-2 [~~1.45~~], are eligible for funding if they have malfunctioned or are in non-compliance with state administrative rules or local regulations governing the same.

1. Funding will only be made for the repair or replacement of existing malfunctioning OWS when the malfunction is not attributable to inadequate system operation and maintenance.

2. The Executive Secretary, [~~and/~~] or another whom the Board may designate, will authorize and execute OWS grant agreements and loan agreements with the applicant for a wastewater project as defined by Subsection R317-101-2.C [~~(C)~~].

3. OWS funding recipients must have a total household income no greater than 150% of the state median adjusted gross household income, as determined from the Utah Tax Commission's most recently published data or other means testing as approved by the Executive Secretary.

4. Eligible activities under the OWS Financial Assistance program include:

- a. s [~~S~~]eptic tank;
- b. a [~~A~~]bsorption system;
- c. b [~~B~~]uilding sewer;
- d. a [~~A~~]ppurtenant facilities
- e. c [~~C~~]onventional or alternative OWS;
- f. c [~~C~~]onnection of the residence to an existing centralized sewer system, including connection or hook-up fees, if this is determined to be the best means of resolving the failure of an OWS [-] ; and

g. c [~~C~~]osts for construction, permits, legal work, engineering, and administration.

5. Ineligible project components include:

- a. land;
- b. interior plumbing components [~~include~~];
- c. impact fees, if connecting to a centralized sewer system is determined to be the best means of resolving the failure of an OWS;
- d. OWS for new homes or developments; and
- e. OWS operation and maintenance.

6. The local health department will certify the completion of the project to the Division [~~of Water Quality~~].

7. To be reimbursed for project expenditures the borrower must solicit bids for the work, maintain and submit invoices, financial records, or receipts that [~~which~~] document the expenditures or costs.

B. The following procedures apply to OWS loans:

1. OWS loan applications will be received by the local health department which will evaluate the need, priority, eligibility and technical feasibility of each project. The local health department will issue a certificate of qualification (COQ) for projects which qualify for a OWS [~~OSW~~] loan. The COQ and completed loan application will be forwarded to the Division [~~of Water Quality~~] for its review [-];

2. t [~~T~~]he maximum term of the OWS [~~OSW~~] loan will be 10 years [-];

3. t [~~T~~]he interest rate of OWS [~~OSW~~] loans may be between 0% [~~zero percent or up to~~] and 60% [~~percent~~] of the interest rate on a 30-year U.S. Treasury bill [-];

4. s [~~S~~]ecurity conditions for OWS [~~OSW-L~~] loans:

a. ~~t~~ [T]he borrower must adequately secure the loan with real property or other appropriate security[-]; and

b. ~~t~~ [T]he ratio of the loan amount to the value of the pledged security must not be greater than 70% [~~percent~~];

5. OWS loan recipients will be billed for monthly payments of principal and interest beginning 60 days after execution of the loan agreement[-];

6. ~~t~~ [T]he OWS loan must be paid in full at the time the property served by the project is sold or transferred[-]; and

7. ~~t~~ [T]he [~~Utah~~] Division [~~of Water Quality~~], or its designee, will evaluate the financial aspects of the project and the credit worthiness of the applicant.

C. The following procedures apply to OWS grants:

OWS grants may be made to recipients that are unable to secure a loan but are otherwise eligible for funding as identified in Subsection R317-101-5.A.4 [~~5(4)~~].

R317-101-6. Financial Assistance for Large Underground Wastewater Disposal Systems.

A. Large Underground Wastewater Disposal Systems (LUWDS) projects, as defined in Subsection[UAC] 73-10c-2(9), may be eligible for funding from the state revolving loan funds[SRF] and from the Hardship Grant Program. Application and project initiation procedures including loans, credit enhancement, interest buy-down and hardship grant consideration policies for LUWDS are defined in Sections R317-101-3 and R317-101-4 except as otherwise stated.

B. The following procedures apply to LUWDS project loans:

1. Projects will be prioritized according to criteria established in Section R317-100-4, Utah State Project Priority System for the Utah Wastewater Project Assistance Program.

2. The maximum term of LUWDS project loans will be twenty years but not beyond a term exceeding the depreciable life of the project.

3. The interest rate on LUWDS project loans will be determined by the Board.

C. The following procedures apply to LUWDS project grants. Hardship Grants may be considered for LUWDS projects that meet criteria established in Section R317-101-4 and that:

1. address[es] a critical water quality need or health hazard;

2. would otherwise not be economically feasible; and

3. implement[s] provisions of TMDLs.

R317-101-7. Financial Assistance for NPS [~~Non-point Source~~] Projects.

A. [~~Non-point Source Pollution~~] (NPS) Projects, as defined in Section[UAC] 73-10c-2(9), are eligible for funding from the state revolving loan funds[SRF] and from the Hardship Grant Program.

1. Funding to [~~the~~] individuals in amounts in excess of \$150,000 will be presented to and authorized funding by the Board. Funding of less than \$150,000 will be considered and authorized funding by the Executive Secretary.

2. The Executive Secretary, and/or another whom the Board may designate, will authorize and execute NPS project loan agreements and /or grant agreements with the applicant.

3. Eligible projects under the NPS project funding programs

include projects that:

- a. abate or reduce raw sewage discharges;
- b. repair or replace failing individual on-site wastewater disposal systems;
- c. reduce untreated or uncontrolled runoff;
- d. improve critical aquatic habitat resources;
- e. conserve soil, water, or other natural resources;
- f. protect and improve ground water quality;
- g. preserve and protect the beneficial uses of water of the state;
- h. reduce the number of water bodies not achieving water quality standards;
- i. improve watershed management;
- j. prepare and implement total maximum daily load (TMDL) assessments;
- k. are a study, activity, or mechanism that abates, prevents or reduces water pollution; or
- l. supports educational activities that promotes water quality improvement.

B. The following procedures apply to NPS project loans:

1. Projects will be prioritized according to criteria established in Section R317-100-4, Utah State Project Priority System for the Utah Wastewater Project Assistance Program.

2. The maximum term of NPS program loans will be twenty years but not beyond a term exceeding the depreciable life of the project.

3. The interest rate on NPS project loans will be determined by the Board.

4. NPS project loans are exempt from environmental reviews under the National Environmental Policy Act (NEPA) as long as the funding of these projects is identified in Utah's NPS [Non-point Source] Pollution Management Plan.

5. Security of NPS project loans.

- a. NPS project loans to individuals in amounts greater than \$15,000 will be secured by the borrower with water stock or real estate. Loans less than \$15,000 may be secured with other assets.

- b. For NPS project loans to individuals the ratio of the loan amount to the value of the pledged security must not be greater than 70% [~~percent~~].

- c. NPS loans to political subdivisions of the state will be secured by a revenue bond, general obligation bond or some other acceptable instrument of debt.

6. The Division [~~of Water Quality~~] will determine project eligibility and priority. Periodic payments will be made to the borrower, contractors or consultants for work relating to the planning, design and construction of the project. The borrower must maintain and submit the financial records that document expenditures or costs.

7. The Division [~~of Water Quality~~], or its designee, will perform periodic project inspections. Final payment on the NPS loan project will not occur until a final inspection has occurred and an acceptance letter issued for the completed project.

8. NPS project loan recipients will be billed periodically for payments of principal and interest as agreed to in the executed loan agreements or bond documents.

9. The [~~Utah~~] Division [~~of Water Quality~~], or its designee, will evaluate the financial aspects of the NPS project and the credit worthiness of the applicant.

C. The following procedures apply to NPS project grants. Hardship Grants may be considered for a NPS project that:

1. addresses a critical water quality need or health hazard;
2. remediates water quality degradation resulting from natural sources damage including fires, floods, or other disasters;
3. would otherwise not be economically feasible;
4. provides financial assistance for a study, pollution prevention activity, or educational activity; or
5. implements provisions of TMDLs.

R317-101-8. Loans For Storm Water Projects.

Storm water projects are eligible for funding through the Utah Wastewater Project Assistance Program, as identified in Subsection [UCA] 73-10c-2(12). In addition to other rules identified in Rule R317-101 which may apply, the following particular rules apply to storm water project loans:

A. Loans will only be made to political subdivisions of the state.

B. The interest rate charged on storm water project loans will be equal to 60% of the interest rate on a 30-year U.S. Treasury bill.

C. Storm water project loans will be made twice per year. Projects will be prioritized so that the limited funds which are available are allocated first to the highest priority projects in accordance with R317-100-3 and 4, Utah State Project Priority System for the Utah Wastewater Project Assistance Program.

D. Storm water projects are eligible for funding provided a significant portion of the project is for the purpose of improving water quality.

R317-101-9. Planning Advance.

A. A Planning Advance can only be made to a political subdivision which demonstrates a financial hardship [~~which prevents the completion of project planning~~].

B. A Planning Advance is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. Once the long-term project financing has been secured, the Planning Advance must be expeditiously repaid to the Board.

C. The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Advance will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and Board is executed.

D. Failure on the part of the recipient of a Planning Advance to implement the construction project may authorize the Board to seek repayment of the Advance on such terms and conditions as it may determine.

E. The recipient of a Planning Advance must first receive written approval for any cost increases or changes to the scope of work.

R317-101-10. Design Advance.

A. A Design Advance can only be made to a political subdivision which demonstrates a financial hardship [~~which prevents the completion of project design~~].

B. A Design Advance is made to a political subdivision with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. Once the long-term project financing has been secured, the Project Design Advance must be expeditiously repaid to the Board.

C. The applicant must demonstrate that all funds necessary to complete the project design will be available prior to commencing the design effort. The Design Advance will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and Board is executed.

D. Failure on the part of the recipient of a Design Advance to implement the construction project may result in [~~authorize~~] the Board to seeking repayment of the Advance on such terms and conditions as it so [~~may~~] determines.

E. The recipient of a Design Advance must first receive written approval for any cost increases or changes to the scope of work.

R317-101-11. Credit Enhancement Agreements.

The Board will determine whether a project may receive all or part of a loan, hardship grant, credit enhancement agreement or interest buy-down agreement subject to the criteria in Section R317-101-4. To provide security for project obligations the Board may agree to purchase project obligations of political subdivisions or make loans to the political subdivisions to prevent defaults in payments on project obligations. The Board may also consider making loans to the political subdivisions to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to political subdivisions to properly enhance the marketability of project obligations or enhance the security for project obligations.

R317-101-12. Interest Buy-Down Agreement.

Interest buy-down agreements may consist of:

A[1]. A financing agreement between the Board and political subdivision whereby a specified sum is loaned or granted to the political subdivision to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

B[2]. A financing agreement between the Board and the political subdivision whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

C[3]. Any other legal method of financing which reduces the annual payment amount on locally issued bonds. After credit enhancement agreements have been evaluated by the Board and it is

determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered.

Once the level of financial assistance required to make the project financially feasible is determined, a cost effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

R317-101-13. Loans.

The Board may make loans to finance all or part of a wastewater project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The financing alternative chosen should be the one most economically advantageous for the state and its political subdivision.

R317-101-14. Project Authorization.

A project may be [A]authorized[] for a loan, credit enhancement agreement, interest buy-down agreement or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment and Staff feasibility report. The engineering report must include the preparation of a cost effective analysis according to Section R317-101-2. ~~[of feasible project alternatives capable of meeting State and Federal water quality and public health requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal effluent and water quality or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.]~~ If it is anticipated that a project will be a candidate for financial assistance from the Board, the Staff should be contacted, and the plan of study for the engineering report (if required) should be approved before the planning is initiated.

Once the application form, plan of study, engineering report, and financial capability assessment are reviewed, the staff will prepare a project feasibility report for the Board's consideration in [A]authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, interest buy-down agreement or hardship grant).

Project [A]authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing, or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project [A]authorization so that projects that ~~[which]~~ are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R317-101-15. Financial Evaluations.

A. The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

B. Hardship Grants will be evidenced by a grant agreement.

C. Loans will be evidenced by the sale of any legal instrument which meets the legal requirements of the Title 11, Chapter 14, Local Government Bonding Act, [~~Utah Municipal Bond Act (Chapter 14, Title 11)~~ to the Board.

D. The Board will consider the financial feasibility and cost effectiveness evaluation of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board will generally use these reports to determine whether a project will be [A]authorized to receive a loan, credit enhancement agreement, interest buy-down agreement or hardship g[G]rant, as described in Sections [~~Reference~~] R317-101-5 through R317-101-9 [)].

If a project is [A]authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

E. In order to support costs associated with the administration of the loan program, the Board may charge a loan origination fee. A recipient may use loan proceeds to pay the loan origination fee. The loan origination fee shall be due at the recipient's scheduled loan closing.

F. The Board shall determine the date on which annual repayment will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system user one year of actual use of the project facilities before the first repayment is required.

G. The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

H. Loans and Interest Buy-Down Agreements Only - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

I. The Board will not forgive the applicant of any payment after the payment is due.

R317-101-16. Committal of Funds and Approval of Agreements.

After the Board has approved the plans and specifications by the issuance of a Construction Permit/Plan Approval and has received the appropriate legal documents and other items listed in the authorization letter, the project will be considered by the Board for final approval. The Board will determine whether the project

loan, interest buy-down agreement or grant agreement is in proper order on the basis of the Board's authorization. The Executive Secretary may then close the loan, credit enhancement or grant agreement if representations to the Board or other aspects of the project have not changed significantly since the Board's funding authorization, provided all conditions imposed by the Board have been met. If significant changes have occurred, the Board will then review the project and, if satisfied, will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract agreement to the Division of Finance.

R317-101-17. Construction.

The Division[~~of Water Quality~~] staff may conduct inspections and will report to the applicant. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of \$10,000 must receive prior written approval by the Division[~~of Water Quality~~] staff before execution. Upon successful completion of the project and recommendation of the applicant's engineer, the applicant will request the Division[~~of Water Quality~~] to conduct a final inspection. When the project is complete to the satisfaction of the applicant's engineer, the Division [~~of Water Quality~~]staff and the applicant, written approval will be issued by the Director[~~Executive Secretary~~] to commence using the project facilities.

KEY: wastewater, water quality, loans, sewage treatment

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