



Rules of
Department of Natural Resources
Division 20—Clean Water Commission
Chapter 4—Grants and Loans

Title	Page
10 CSR 20-4.010 Construction Grant and Loan Priority System (Rescinded February 28, 2019)	3
10 CSR 20-4.020 State Match Grant Program (Rescinded September 30, 2018).....	3
10 CSR 20-4.021 State Construction Grant Program (Rescinded September 30, 2018).....	3
10 CSR 20-4.022 Industrial Development Program (Rescinded September 30, 2018)	3
10 CSR 20-4.023 State Forty Percent Construction Grant Program	3
10 CSR 20-4.030 Grants for Sewer Districts and Certain Small Municipal Sewer Systems	8
10 CSR 20-4.040 Clean Water State Revolving Fund General Assistance Regulation	9
10 CSR 20-4.041 Direct Loan Program	17
10 CSR 20-4.042 Leveraged Loan Program (Rescinded February 28, 2019).....	18
10 CSR 20-4.043 Hardship Grant Program (Rescinded September 30, 2018).....	18
10 CSR 20-4.049 State Match to State Revolving Fund Loan Program (Rescinded September 30, 2018)	18
10 CSR 20-4.050 Environmental Review	18
10 CSR 20-4.060 Storm Water Assistance Regulation (Rescinded September 30, 2018).....	21
10 CSR 20-4.061 Storm Water Grant and Loan Program	21
10 CSR 20-4.070 Sales Tax Exemption (Rescinded September 30, 2018)	24



**Title 10—DEPARTMENT OF
NATURAL RESOURCES**

**Division 20—Clean Water Commission
Chapter 4—Grants and Loans**

**10 CSR 20-4.010 Construction Grant and
Loan Priority System**

(Rescinded February 28, 2019)

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10 CSR 20-4.020 State Match Grant Program

(Rescinded September 30, 2018)

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10 CSR 20-4.021 State Construction Grant Program

(Rescinded September 30, 2018)

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10 CSR 20-4.022 Industrial Development Program

(Rescinded September 30, 2018)

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1982, effective April 15, 1983. Amended: Filed March 8, 1985, effective Oct. 1, 1985. Amended: Filed March 11, 1988, effective Oct. 1, 1988. Rescinded: Filed Dec. 29, 2017, effective Sept. 30, 2018.

10 CSR 20-4.023 State Forty Percent Construction Grant Program

PURPOSE: This rule sets forth the requirements and process of application for a state grant for construction of wastewater treatment works and the terms and conditions for receipt of this grant. This rule also clarifies the requirements, the types of facilities eligible for grant funds and the grant amount available for eligible grantees.

(1) Applicability. This rule defines the minimum requirements which apply to all recipients of assistance under the State Forty Percent Grant Program. The recipient must satisfy more stringent requirements, if required to do so by state or local statutes, policies, rules, ordinances or orders.

(2) Grant Amount. With exception of pre-approved grant anticipation financing costs, the grant amount is limited to forty percent (40%) of the eligible project costs or two (2) million dollars, whichever is less.

(3) Eligible Applicants.

(A) Eligible applicants must be a county, public sewer district, public water supply district, municipality or combination of the same.

(B) Eligible applicants are limited to those applicants which do not qualify for a loan for the total eligible project costs under 10 CSR 20-4.042.

(C) Eligible applicants must have submitted a preliminary project proposal to the Missouri Water and Wastewater Review Committee (MWWRC) and received an invitation from the MWWRC to apply for financial assistance.

(4) Definitions. The definitions of terms for this rule are contained in 10 CSR 20-2.010 and 10 CSR 20-4.040(2)(A)–(S).

(5) General Grant Requirements.

(A) A construction permit and an operating permit must be obtained in accordance with 10 CSR 20-6.010–10 CSR 20-6.060.

(B) Acceptance of a grant constitutes agreement that cost overrun shall be borne by the applicant.

(C) Provisions must be made for adequate inspection during construction by the grantee.

(D) No grant will be awarded to an applicant who is in noncompliance with the monitoring or reporting requirements of a valid National Pollutant Discharge Elimination System (NPDES) permit or who is not properly operating or maintaining an existing system.

(E) Project cost eligibility is limited to those listed in section (6) of this rule.

(6) Classification of Costs. The information in this section represents policies and procedures for determining the eligibility of project costs for assistance under programs supported by the Forty Percent Grant Program.

(A) General. It is the policy of the commission that all project costs will be eligible if they meet the following tests:

1. Reasonable and cost effective;

2. Necessary for the construction of an operable wastewater facility including required mitigation and are described in the approved facility plan; and

3. Resolve water pollution problems in existence prior to the date of grant application.

(B) Eligible Costs. Eligible costs include, at a minimum:

1. The reasonable costs of planning and design of a wastewater treatment system project.

2. The reasonable cost of services incurred during the building and initial operation phase of the project to ensure that it is built in conformance with the design drawings and specifications. Eligible construction phase and initial operation phase services are limited to—

A. Office engineering;

B. Construction surveillance;

C. Stakeout surveying;

D. As-built drawings;

E. Special soils/materials testing;

F. Operation and maintenance manual;

G. Follow-up services and the cost of start-up training for operators of mechanical facilities constructed by the project to the extent that these costs are incurred prior to this department's final inspection. Costs shall be limited to on-site operator training tailored to the facilities constructed or on- or off-site training may be provided by the equipment manufacturer if this training is properly procured;

H. User charge and sewer use ordinance; and

I. Plan of operation;

3. The cost of subagreements for constructing the facilities listed if the associated problems are not caused by inadequate operation and maintenance practices:



- A. New interceptors;
 - B. New pump stations;
 - C. New wastewater treatment facilities;
 - D. Rehabilitation or upgrading of treatment plants;
 - E. Rehabilitation or replacement of existing pump stations whichever is most cost effective;
 - F. Replacement of force mains and interceptors as needed to reduce infiltration/inflow;
 - G. Collection sewers; and
 - H. The cost of sewer rehabilitation, other than normal maintenance costs for reduction of infiltration/inflow (I/I) or as needed to eliminate sanitary sewer overflows or bypassing of treatment plants;
4. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:
- A. Within the allowable scope of the project;
 - B. Costs of equitable adjustments due to differing site conditions; and
 - C. Settlements, arbitration awards and court judgments which resolve contractor claims shall be allowable only to the extent that they are not due to the mismanagement of the recipient;
5. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works;
6. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project;
7. Equipment, materials and supplies.
- A. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.
 - B. Cost of shop equipment installed at the treatment works necessary to the operation of the works.
 - C. The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local or industry safety requirements.
 - D. The costs of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge or for the maintenance of equipment. These items include:
 - (I) Portable standby generators;
 - (II) Large portable emergency pumps to provide pump-around capability in the event of pump station failure or pipeline breaks;
 - (III) Trailers and other vehicles

having as their purpose the transportation and/or application of liquid or dewatered sludge or septage; and

(IV) Replacement parts identified and approved in advance;

8. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the department;

9. Land or easements when used as an integral part of the treatment process;

10. Purchase of private wastewater treatment systems, excluding collector and interceptor sewers, provided the project will upgrade the existing facilities;

11. Force account work for construction oversight; and

12. One hundred percent (100%) of the reasonable costs of a grant anticipation loan will be eligible. Departmental approval must be obtained prior to securing the grant anticipation loan. Grant anticipation loan costs will be approved when they are needed for cash flow purposes for the period between grant award and the first grant payment from the department. The approved costs of grant anticipation notes will be in addition to the approved grant amount.

(7) Project Selection Process. Priority will be based upon the priority system established in 10 CSR 20-4.010.

(A) The commission shall hold an annual competition for receipt of state grant assistance.

(B) Applicants must submit an application as described in section (8) of this rule on or before November 15 prior to the fiscal year for which state grant assistance is being sought. Unsuccessful applicants requesting funds during a given fiscal year shall be considered for funding the next fiscal year and need not reapply. This deadline may be extended by the commission if inadequate applications are received.

(C) All qualified applications will be rated and placed on the planning list in accordance with 10 CSR 20-4.010(1)(A).

(D) The commission will select the highest rated projects for state grant assistance from state grant funds anticipated to be available during the upcoming fiscal year.

(E) As funds become depleted, staff will present recommendations to the commission to fund or bypass an applicant's project. Projects failing to progress towards fundable status are subject to funding "bypass." A project with fewer priority points may be placed ahead of a project with a higher priority point ranking that is failing to make sufficient advancement towards funding eligibility. Recommendations to the commission to fund or bypass a project may be made at any com-

mission meeting throughout the fiscal year. Applicants whose projects are recommended for bypass or funding will be notified prior to the commission meeting when their projects appear on the agenda and will be allowed time to present their points of view regarding the proposed change in project status. Projects that have awarded construction contracts and do not require financial assistance under this regulation will be subject to bypass by the commission.

(8) Application Requirements. Applicants must submit the documents listed in the following subsections (8)(A)–(D) to be considered for inclusion on the priority list. Some documents may be waived by the department if justified—

(A) An application form;

(B) A project summary which includes:

1. The need for the project;

2. The project components including maps or drawings showing the project location and layout; and

3. A cost estimate including a cost breakdown;

(C) Draft financial capability analysis prepared in accordance with paragraph (9)(B)4. of this rule; and

(D) Proposed project schedule. The following represents the minimum requirements for the project schedule:

1. Construction start defined as date of issuance of notice to proceed;

2. Construction completion;

3. Initiation of operation; and

4. Project completion.

(9) Requirements Preceding Bidding Authorization. In addition to the requirements of section (8) of this rule, applicants must submit the documents listed in subsection (9)(A)–(J) and obtain departmental approval prior to award of grant funds.

(A) A facility plan prepared in accordance with section (14) of this rule must be submitted within four (4) months of the application being placed on the fundable list.

(B) Resolution Identifying the Authorized Representative. Applicants for assistance under the State Forty Percent Grant Program shall provide a resolution by the governing body designating a representative by name authorized to file the application for assistance.

(C) Plans and specifications.

(D) Financial Capability Analysis. The applicant, along with its application, shall submit written certification that the applicant has analyzed the costs and financial impacts of the proposed facilities and, that the applicant has the capability to finance and manage



the construction and operation of the facilities. The wastewater facilities' financial information sheet shall be submitted with the certification.

(E) Draft engineering contract as described in section (11).

(F) Draft user charge ordinance as described in section (17).

(G) Draft sewer use ordinance as described in section (17).

(H) Updated Project Schedule, if Required. The following represents the minimum requirements for the project schedule:

1. Construction start defined as date of issuance of notice to proceed;
2. Construction completion;
3. Initiation of operation; and
4. Project completion.

(I) Certification of Easements and Real Property Acquisition. Recipients of assistance under the state grant program shall have obtained title or option to the property or easements or condemnation proceedings initiated for the project prior to award of a grant.

(J) Other information or documentation deemed necessary by the applicant or the department to ensure the proper expenditure of state funds.

(10) Accounting and Audits. Applicants are required to have an adequate financial management system and audit procedure for the project which provides efficient and effective accountability and control of all property, funds and assets related to the project. The applicant's financial system is subject to state audits to assure fiscal integrity of public funds.

(11) Architectural or Engineering Contracts. The following represents the minimum requirements for the architectural or engineering contracts:

(A) General requirements for subagreements are, that they—

1. Be necessary for and directly related to the accomplishment of the project work;
2. Be in the form of a bilaterally executed written agreement;
3. Be for monetary consideration;
4. Not be in the nature of a grant or gift;
5. State a time frame for performance;
6. State a cost which cannot be exceeded except by amendment; and
7. State provisions for payment; and

(B) The nature, scope and extent of work to be performed during construction should include, but not be limited to, the following:

1. Preparing an operation and maintenance manual if required by the department and as defined in subsection (20)(B);
2. Assisting the recipient in bid letting;

3. Assisting the recipient subdivision in reviewing and analyzing construction bids and making recommendations for award; and

4. Inspection during construction to ensure conformance with the construction contract documents unless waived by the department.

(12) Procurement of Engineering Services. It is the policy of the commission that contracts for architectural, engineering and land surveying services be negotiated on the basis of demonstrated competence, qualifications for the type of services required and at fair and reasonable prices. The procedures listed in subsections (12)(B) and (C) are contained in sections 8.285–8.291, RSMo.

(A) Use of the Same Architect or Engineer During Construction. If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for the project and wishes to retain that firm or individual during construction of the project, it may do so without further evaluation of qualifications, provided the recipient selected the firm using at a minimum the procedures outlined in subsections (12)(B) and (C) of this rule.

(B) Whenever a project requiring architectural, engineering or land surveying services is proposed, the owner shall evaluate current statements of qualifications and performance data of prequalified firms on file together with those that may be submitted by other firms regarding the proposed project. In evaluating the qualifications of each firm, the owner shall use the following criteria:

1. The specialized experience and technical competence of the firm with respect to the type of services required;
2. The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
3. The past record of performance of the firm with respect to such factors as control of costs, quality of work and ability to meet schedules; and
4. The firm's proximity to and familiarity with the area in which the project is located.

(C) Negotiation of a Contract.

1. The recipient shall list three (3) highly qualified firms. The recipient then shall select the firm considered best qualified and capable of performing the desired work and attempt to negotiate a contract for the project with the firm selected.

2. For a basis for negotiations, the recipient shall prepare a written description of the

scope of the proposed services.

3. If the recipient is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The owner then shall undertake negotiations with another of the qualified firms selected. If there is a failing of accord with the second firm, negotiations with the firm shall be terminated. The recipient then shall undertake negotiations with the third qualified firm.

4. If the recipient is unable to negotiate a contract with any of the selected firms, the recipient shall reevaluate the necessary architectural, engineering or land surveying services, including the scope of services and reasonable fee requirements, again compile a list of qualified firms and proceed in accordance with the provisions of subsections (12)(B) and (C).

(13) Public Participation. The public must be allowed an opportunity to exchange ideas with the applicant during project development. Public participation must be preceded by timely distribution of information and must occur sufficiently in advance of decision making to allow the recipient to assimilate public views into action. At a minimum, the recipient must provide an opportunity for public participation, prior to approval of the facility plan and draft user charge ordinance, at a public meeting at which the proposed alternative and the proposed user charge rates are discussed. The recipient shall prepare a transcript, recording or other complete record of the proceeding and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review.

(14) Facility Planning. Facility plans or engineering reports must be in accordance with 10 CSR 20–8, Wastewater Treatment Design Standards and accepted engineering practice.

(A) Communities that do not propose to employ a full-time operator, forty (40) hours per week, must evaluate passive or easy to operate treatment alternatives before considering a mechanical activated sludge package plant. Passive or easy to operate alternatives may include, but are not limited to, enhanced natural systems, submerged fixed film systems, sand filters, and recirculating pea gravel filters.

(B) Wastewater treatment facilities shall provide for meeting the effluent limitations as determined by the department in an evaluation of the application of 10 CSR 20-7.015 and 10 CSR 20-7.031 to the proposed discharge.

(C) The facility plan for a community that



experiences sanitary sewer overflows (SSO) must address eventual elimination of the overflows. The project under review does not have to achieve the goal of SSO elimination. The facility plan may provide for elimination of the sanitary sewer overflows at some point in the future and be in compliance with any permit or enforcement schedules.

(D) An estimate of the average user charge including documentation of the basis of the estimate.

(E) An evaluation of the impact of the proposed project on the environment is required.

(15) Design. Design of the project will be in conformance with accepted engineering practices and the current Waste Treatment Design Guide, 10 CSR 20-8. A preliminary design submittal, including the design criteria and facilities layout sheet, may be required at approximately the twenty percent (20%) design stage.

(16) Intermunicipal Agreements. If the project serves two (2) or more public entities, the applicant shall submit executed agreements or contracts between the public entities for the financing, construction and operation of the proposed treatment facilities.

(17) User Charge and Sewer Use Ordinance. Recipients are required to adopt and implement, for the useful life of the treatment works, approved user charge and sewer use ordinances.

(A) The user charge system must be designed to produce adequate revenues required for the operation and maintenance, including a reserve for replacement. Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system, debt service and expenditures for operation and maintenance based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration. The system shall provide for an annual review of charges. A system shall be adopted by all political subdivisions receiving service from the recipient.

(B) The sewer use ordinance shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance shall also require that all wastewater introduced into the treatment works not contain toxic or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works cause, violation of effluent or water quality limitations, preclude the selec-

tion of the most cost-effective alternative for wastewater treatment and sludge disposal or inhibit the performance of a pretreatment facility. The ordinance shall require the recipient to notify all potential users of service availability and that all users shall connect to the system within ninety (90) days of notice of service availability.

(C) At ninety percent (90%) construction completion, the final user charge and sewer use ordinances, as approved, shall be implemented.

(18) Specifications. The construction specifications must contain the features listed in subsections (18)(A)–(M).

(A) The project must be advertised for thirty (30) days between the time the notice is published and when bids are opened. The public notice should be published in an area newspaper of general circulation and/or contractors' publications.

(B) In accordance with section 71.140, RSMo, preference shall be given to Missouri products.

(C) Pursuant to section 34.076, RSMo, a preference shall be given to those persons doing business as Missouri firms, corporations or individuals, or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less. In addition, in order for a nondomiciliary bidder to be successful, his/her bid must be that same percentage lower than a domiciliary Missouri bidder's bid as would be required for a Missouri bidder to successfully bid in the nondomiciliary's state. Any bidder domiciled outside the boundaries of Missouri shall submit an audited financial statement as would be required of a Missouri domiciled contractor or bidder on a bid being let in the domiciliary state of that contractor or bidder.

(D) The proposal form must contain a nondiscrimination statement.

(E) Each bidder must furnish a bid guarantee equivalent to five percent (5%) of the bid.

(F) The proposal must fully explain the basis for determining the low bidder and include a statement that the contract will be awarded to the lowest responsive, responsible bidder.

(G) The specifications must state that when manufacturers' names are used they are used to establish a standard and the words or equal, if not stated, are implied.

(H) The specifications must contain a provision for the maximum calendar or work days allowed for completion of the project.

(I) The specifications must allow for repre-

sentatives of the Department of Natural Resources to have access to the work wherever it is in preparation or progress.

(J) The specifications shall require the contractor to furnish a performance and a payment bond each in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of his/her contract and for the payment of all persons performing labor on the project and furnishing materials in connection with the project under this contract as set forth in the standard form of performance/payment bond included in the contract documents. The surety on this bond shall be a duly authorized surety company satisfactory to the owner.

(K) State wage determinations must be included in the specifications.

(L) The specifications must include a sales tax exemption clause consistent with the Missouri State Sales Tax Law, section 144.030(15), RSMo.

(M) The specifications must include the following statement: "The owner shall make payment to the contractor in accordance with section 34.057, RSMo."

(19) Bidding Requirements.

(A) Each contract shall be awarded after formal advertising.

(B) Departmental concurrence with contract award must be obtained prior to actual contract award. Recipients shall notify the department in writing of each proposed construction contract which has an aggregate value over twenty-five thousand dollars (\$25,000). The recipient shall notify the department within ten (10) calendar days after the bid opening for each construction subagreement. The notice shall include:

1. Publisher's affidavit of advertising;
2. Tabulation of bids;
3. Low bid and/or proposal the recipient wishes to accept;
4. Recipient's recommendation of award;
5. Any addenda not submitted previously and bidder acknowledgment of all addenda;
6. Copy of the bid bond;
7. One (1) set of as-bid specifications;
8. Missouri domestic products certification if applicable; and
9. Revised financial capability worksheet and certification if bids exceed prebid estimates by more than fifteen percent (15%).

(20) Operation and Maintenance.

(A) Operation and Maintenance Manual. The recipient must make provision satisfactory to the department for assuring effective operation and maintenance of the constructed



project throughout its design life. If required by the department, recipients of assistance for construction of mechanical facilities must develop an operation and maintenance manual. The operation and maintenance manual must be submitted by eighty percent (80%) construction completion before final payment can be made.

(B) **Start-Up Training.** At fifty percent (50%) construction, a start-up training proposal (if required) and proposed follow-up services contract must be submitted and approved by ninety percent (90%) construction completion.

(C) **Wastewater Operator.** The recipient must make provision satisfactory to the department for assuring that qualified wastewater works operating and maintenance personnel are hired in accordance with an approved schedule. Qualified personnel shall be those meeting the requirements established under 10 CSR 20-9.020.

(21) **Progress Payments to Contractors.**

(A) It is the commission's policy that recipients should make prompt progress payments to prime contractors and prime contractors should make prompt progress payments to subcontractors and suppliers for eligible construction, supplies and equipment costs.

1. For purposes of this section, progress payments are defined as follows:

A. Payments for work in place; and

B. Payments for materials or equipment which have been delivered to the construction site or which are stockpiled in the vicinity of the construction site in accordance with the terms of the contract, when conditional or final acceptance is made by or for the recipient. The recipient shall assure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures.

(B) Appropriate provisions regarding progress payments must be included in each contract and subcontract.

(C) **Retention From Progress Payments.** The recipient may retain a portion of the amount otherwise due the contractor. The amount the recipient retains shall be in accordance with section 34.057, RSMo.

(22) **Approval and Payment of Grants Made and Amended Between March 4, 2007 and August 30, 2007.**

(A) The applicant shall be notified by the department when the grant is awarded.

(B) Full payment under the grant shall be made at the time of the department's receipt of the executed grant award or grant amendment. The following provisions shall apply:

1. The grantee shall establish a separate escrow account with a bank as defined in Chapter 409, section 409-1.102, RSMo;

2. The full grant amount, less any payments processed prior to the date of this rule, will be paid to the grantee for deposit into the grantee's established escrow account;

3. Grant funds in the escrow account may be used to pay up to forty percent (40%) of the costs of section (6) of this rule; and

4. The grantee shall submit the bank statement of the escrow account monthly, within thirty (30) days of the end of the month. If the monthly statement indicates that funds were withdrawn, the grantee shall submit copies of the invoices to document the costs.

(C) Withdrawals at no time shall exceed forty percent (40%) of the eligible project cost incurred at the time the withdrawal is made. Final grant amount will be adjusted to reflect the actual project costs as determined by the invoices submitted by the grantee.

(D) The department will verify project completion after a final inspection by the department has been conducted.

(E) An audit to verify expenditure of grant funds may be made by the department after the completion of the approved project. Any funds found not expended for purposes listed in section (6) of this regulation will be recovered in addition to any applicable penalties.

(23) **Approval and Payment of Grants Made after August 30, 2007.**

(A) The applicant shall be notified by the department when the grant is awarded.

(B) The department may elect to make full payment under the grant at the time of the department's receipt of the executed grant award or grant amendment. Grantees who receive full payment shall comply with the following provisions:

1. The grantee shall establish a separate escrow account with a bank as defined in Chapter 409, section 409-1.102, RSMo;

2. The full grant amount, less any payments processed prior to the date of this rule, will be paid to the grantee for deposit into the grantee's established escrow account;

3. Grant funds in the escrow account may be used to pay up to forty percent (40%) of the costs of section (6) of this rule;

4. The bank account may earn interest; however, all withdrawals from the account must be documented with eligible invoices. If the project costs are inadequate to withdraw all the funds in the account, the balance must be refunded;

5. The grantee shall submit the bank statement of the escrow account monthly, within thirty (30) days of the end of the

month. If the monthly statement indicates that funds were withdrawn, the grantee shall submit copies of the invoices to document the costs; and

6. Withdrawals at no time shall exceed forty percent (40%) of the eligible project cost incurred at the time the withdrawal is made. Final grant amount will be adjusted to reflect the actual project costs as determined by the invoices submitted by the grantee.

(C) If the department elects to make grant payments rather than fund the full grant, payments can be requested no more frequently than monthly. The department will provide a payment form for the grantee to use. The payment request must be supported by invoices that document the costs incurred.

(D) The department will verify project completion after a final inspection by the department has been conducted.

(E) Any funds remaining in the escrow account three (3) years after the date of the initial grant payment will be recovered by the department. On grants that are paid incrementally by the department, no payments will be made after three (3) years from the initial grant award acceptance.

(F) An audit to verify expenditure of grant funds may be made by the department after the completion of the approved project. Any funds found not expended for purposes listed in section (6) of this regulation will be recovered in addition to any applicable penalties.

(24) If at any time during the twenty (20)-year design life of the facility(ies) funded under this rule is sold, either outright or on contract for deed, to other than a political subdivision of the state, the state shall receive reimbursement of the grant funds. The total amount of grant funds to be reimbursed shall be based on a twenty (20)-year straight-line depreciation. Grant funds to be reimbursed shall become due and payable upon transfer of ownership of the facility(ies).

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**Original authority: 644.026, RSMo 1972, amended 1973, 1987, 1993, 1995, 2000.*

**10 CSR 20-4.030 Grants for Sewer Districts and Certain Small Municipal Sewer Systems**

PURPOSE: This rule defines the department's grant eligibility and a means of administering the state funds appropriated for rural community and sewer district sanitary sewer collection systems by defining rural communities and sewer districts pursuant to sections 640.600, 640.605, 640.615, and 640.620, RSMo.

(1) Grant Application Requirements.

(A) The applicant must first apply with the agency or other financial source which is to furnish the primary financial assistance, and after the amount of that assistance has been determined, an application for a grant under this rule may be made to and processed by the department. An application for a grant shall be submitted on forms provided by the department and supported by the necessary documents and forms from other state and federal grant or lending agencies or private lending agencies to enable the department to establish eligibility for grant funds.

(B) The project for which the grant application is submitted shall comply with appropriate state and local laws, rules, and ordinances.

(C) The grant application packet shall contain the information identified below:

1. The preliminary engineering cost study for the proposed project including, but not limited to, the following items: development and administration costs; land, structures, right-of-way costs; legal costs; engineering costs; interest costs; equipment costs, contingencies; other costs; total project costs; and other information as required in rule 10 CSR 20-8.110;

2. Information required to determine the cost per contracted connection of the proposed project;

3. The median household income of the residents in the district or community; as determined by the most recent decennial census or by an income survey overseen by a state or federal agency;

4. Information required to determine the ratio of contracted users to potential users;

5. The number of acres being protected for any source water protection project; and

6. Demonstration of recipient's legal, institutional, managerial, and financial capability to ensure adequate operation and maintenance of the wastewater treatment works throughout recipient's jurisdiction.

(2) Eligibility Requirements.

(A) Grants shall be limited to municipal

sewer systems, certain public water supply districts or public sewer districts of less than ten thousand (10,000) population.

(B) Grants awarded under this regulation can be used to provide collection sewers to unsewered areas.

(C) Grants awarded under this regulation can be used to fund costs incurred to meet more stringent operating permit requirements when those increased permit requirements are attributable to changes in, or the implementation of, the state water quality policies or state water quality standards.

(D) Grants will be the lesser of the per connection amount specified in section 640.620, RSMo, fifty percent (50%) of the eligible costs of the improvements, or five hundred thousand dollars (\$500,000).

(E) Grants shall be used for the following costs:

1. Construction costs for the installation of new sewer collection lines, lift stations, and associated facilities required to serve an unsewered area. House laterals are not eligible;

2. Construction costs for the installation, rehabilitation, or upgrade of a wastewater treatment facility as specified in subsection (2)(C);

3. Engineering services and other services incurred in preparing the design drawings and specifications for the project. Such services must have been procured in accordance with state law to be eligible costs.

(F) The ratio of contracted users to potential users must be at least seventy-five percent (75%).

(3) Grant Priorities.

(A) Priorities for grants awarded under this rule shall be established by the department. Preference will be given to those applicants whose projects are partially funded through other departmental grants or loans and/or to applicants whose projected financial need is based on potential compliance with additional pollution control measures. Additional priority will be given based on readiness to proceed with construction and documented financial need.

(B) The establishment of priorities and determination of relative need will be coordinated with other state and federal grant and lending agencies.

(4) Approval and Payment of Grant Funds.

(A) The grant award shall be made upon receipt and approval of bid documents, executed contract documents, and demonstration by the applicant that funding for the total project costs has been secured. The department may elect to pay out the full grant amount at

the time of grant award or to make payments to the grantee based on the cash flow circumstances of the state funds.

(B) If the department elects to make full payment of the grant amount, payment shall be made at the time of the department's receipt of the executed grant award. The following provisions apply:

1. The grantee shall establish a separate escrow account with a bank as defined in Chapter 409, section 409-1.102, RSMo;

2. The full grant award amount will be paid to the grantee for deposit into the grantee's established escrow account;

3. Grant funds in the escrow account may be used to pay up to fifty percent (50%) of the costs of construction, equipment, and construction phase engineering as the costs are incurred. No funds will be withdrawn for construction costs of house laterals or for costs that have been declared ineligible by the department;

4. The grantee will submit the bank statement of the escrow account monthly, within thirty (30) days of the end of the month. If the monthly statement indicates that funds were withdrawn, the grantee must submit copies of the invoices to document the costs; and

5. The bank account may earn interest, however, all withdrawals from the account must be documented with eligible invoices. If the project costs are inadequate to withdraw all the funds in the account, the balance must be refunded to the department.

(C) The department will provide a payment request form for the grantee to use. The payment request must be supported by invoices that document the costs incurred.

(D) The grant amount will be reduced, if necessary, to reflect actual project costs as determined by the invoices submitted by the grantee.

(E) The department will verify project completion after the final inspection by the department has been conducted.

(F) Any funds remaining in the escrow account two (2) years after the date of the initial grant payment will be recovered by the department. On grants that are paid incrementally by the department, no payments will be made after two (2) years from the initial grant award acceptance, unless an extension is granted by the department.

(G) An audit to verify expenditure of grant funds may be made by the department. Any funds found not expended for the purposes listed in subsection (2)(E) of this regulation will be recovered.

(5) If at any time after initiation of operations of the project, the wastewater treatment



works funded under this rule, or any part thereof, is sold, either outright or on contract for deed, to other than a political subdivision of the state, the state shall receive reimbursement of the grant funds. The total amount of grant funds to be reimbursed shall be based on a straight-line depreciation based on the original costs of the facilities being sold, the original loan repayment period or a twenty-(20)- year straight line depreciation schedule in the event of grant only funds, and adjusted for the percentage of grant funds originally disbursed to fund such facilities. Grant funds to be reimbursed shall become due and payable upon transfer of ownership of the facility(ies).

*AUTHORITY: sections 640.600 and 640.615, RSMo 2016 * Original rule filed Feb. 2, 1983, effective July 1, 1983. Amended: Filed Nov. 27, 1985, effective Feb. 25, 1986. Amended: Filed Aug. 30, 1989, effective Nov. 27, 1989. Amended: Filed Sept. 4, 1991, effective Feb. 6, 1992. Amended: Filed April 14, 1994, effective Nov. 30, 1994. Amended: Filed March 1, 1996, effective Nov. 30, 1996. Amended: Filed June 24, 1999, effective March 30, 2000. Emergency amendment filed Feb. 1, 2007, effective March 4, 2007, expired Aug. 30, 2007. Amended: Filed March 14, 2007, effective Oct. 30, 2007. Amended: Filed June 13, 2018, effective Feb. 28, 2019.*

**Original authority: 640.600, RSMo 1989 and 640.615, RSMo 1989, amended 1999.*

10 CSR 20-4.040 Clean Water State Revolving Fund General Assistance Regulation

PURPOSE: This rule sets forth requirements for the implementation of Title VI of the Federal Water Pollution Control Act, as amended, which authorizes the administrator of the Environmental Protection Agency to make capitalization grants to states for financing the Clean Water State Revolving Fund Program.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule

is printed here.

(1) Applicability. This rule defines the minimum requirements which apply to all recipients of assistance under the Clean Water State Revolving Fund Program. Recipients of assistance are subject to the requirements of this regulation, unless otherwise specified. The recipient must satisfy more stringent requirements, if required to do so by applicable federal laws, regulations, or guidance and state or local statutes, policies, rules, ordinances, orders, or loan documentation. The *Code of Federal Regulations* referenced in the regulation are incorporated as published July 1, 2017. The regulations are incorporated by reference without any later amendments or modifications. To obtain a copy, contact the U.S. Government Printing Office at 732 North Capitol Street, NW, Washington D.C., 20401, toll free at (866) 512-1800 or by visiting <https://bookstore.gpo.gov>. To obtain the decennial median household income visit the U.S. Census Bureau American Fact Finder webpage https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml, contact the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, MD 20746, or toll free at (800) 923-8282.

(2) Definitions. The definitions of terms for 10 CSR 20-4.040-10 CSR 20-4.050 are contained in 10 CSR 20-2.010 and subsections (2)(A)-(N) of this rule.

(A) Assistance—The types of financial assistance allowed pursuant to 33 U.S.C. 1383(d)(1)-(5).

(B) Clean Water State Revolving Fund (CWSRF)—The financial assistance program authorized by Title VI of the Federal Water Pollution Control Act.

(C) Debt service—The costs associated with amortizing loans. These costs include interest charges, penalty charges, and repayment of principal.

(D) EIERA—State Environmental Improvement and Energy Resources Authority.

(E) Infiltration/inflow (I/I)—Groundwater or storm water which enters a sanitary sewer system.

(F) Initiation of operation—The date when the first major constructed component is capable of being used for its intended purpose.

(G) Intended Use Plan—A planning document, prepared by the Department of Natural Resources, that identifies the intended uses of available funds.

(H) Loan—Unless stated otherwise, loan generally refers to the agreement to lend money to an eligible recipient. The type of

agreement could be a loan agreement, bond purchase agreement, or other debt instrument.

(I) Readiness to proceed—The submittal, by the applicant, of a complete engineering report/facility plan and documentation that the applicant has an acceptable debt instrument including any necessary funding commitments from other state and/or federal agencies. A detailed plan may be substituted for a facility plan for requests of planning financial assistance.

(J) Recipient—The recipient of financial assistance from programs supported or secured by the Water and Wastewater Loan Fund (WWLF), the Water and Wastewater Loan Revolving Fund (WWLRF), CWSRF bonds issued by EIERA, or state bond funds.

(K) Staff—Staff of the Missouri Department of Natural Resources.

(L) Treatment works—Refer to the definition in Section 212 of the Federal Water Pollution Control Act.

(M) WWLF—Water and Wastewater Loan Fund. State fund established by the state treasurer pursuant to section 644.122, RSMo.

(N) WWLRF—Water and Wastewater Loan Revolving Fund. State fund under the WWLF into which repayments are held by the state treasurer and from which new loans may be made.

(3) Project Selection Process. This section delineates the process by which the commission selects projects for receipt of CWSRF assistance.

(A) The commission shall hold an annual competition for receipt of CWSRF assistance. This competition will be structured as follows:

1. Applications postmarked or received by the Water Protection Program by the calendar date established in the annual application package will be considered for competitive placement on the annual Intended Use Plan. The deadline will be no sooner than sixty (60) days after the application package is made available. Applications are valid for two (2) annual Intended Use Plan cycles. Applications received after the deadline may be placed on a priority list as determined by the commission based on availability of funds;

2. Applicants that have an outstanding loan balance with the department must be in compliance with the terms and conditions of their assistance agreements to be eligible for additional funding;

3. All qualified applications will be rated and placed on the appropriate list in accordance with 10 CSR 20-4.040(29)(B);



4. The commission will select the projects with the highest priority points, meeting readiness to proceed criteria, for CWSRF assistance from CWSRF funds anticipated to be available during the upcoming fiscal year; and

5. The commission may hold a separate competition for projects seeking funding whenever allowed by federal law and in the event supplemental funds are provided.

(B) The commission may direct projects toward specific financial assistance programs contained in 10 CSR 20-4. The commission's decisions shall be based upon the amount of financial assistance funds available, the amount of financial assistance funds requested, the size of the project, the credit worthiness of the applicant, and the applicant's authority to incur long-term debt.

(4) Target Interest Rate (TIR). The TIR policy shall be established by the Missouri Clean Water Commission in consultation with the department and the EIERA based upon current economic factors, projected fund utilization, deposits in the WWLRF, and actual or anticipated federal capitalization grants, and be published in the annual Intended Use Plan. The department reserves the right to refinance, assign, pledge, or leverage any loans originated under this rule.

(A) A disadvantaged community may receive a reduction in the TIR as determined by the commission. A disadvantaged community is defined, for the purpose of reducing the TIR, as an applicant that—

1. Has a population of three thousand three hundred (3,300) or less based on the most recent decennial census;

2. Has a median household income at or below seventy-five percent (75%) of the state average median household income as determined by the most recent decennial census or by an income survey overseen by a state or federal agency; and

3. Has an average wastewater user charge for five thousand (5,000) gallons that is at least two percent (2%) of the median household income of the applicant, determined by the decennial census or income survey listed in (4)(A)2.

(B) Additional Subsidization. Additional subsidization (such as principal forgiveness, negative interest loans, grants, or the like) may be provided as the Federal Water Pollution Control Act as amended, or any subsequent federal act, requires or allows.

(C) In accordance with section 603(d)(1)(A) of the Federal Water Pollution Control Act, the term of the assistance agreement shall be established per the provisions in 10 CSR 20-4.041(8)(A).

(5) Loan Fees. The department may charge annual loan administrative fees not to exceed one-half percent (0.5%) of the outstanding loan balance of each loan for loan origination, loan servicing and administration of the program. Other loan expenses including, but not limited to, cost of issuance, debt service reserve and expenses charged by the paying agent will be paid by the recipient.

(6) Additional Administrative Fees Allowed. Additional administrative fees may be assessed by the department at the time the administration fee is calculated for failure by a recipient to pay debt service on the loan or submit approved documents to the department (for example, operation and maintenance manuals, enacted user charge and sewer use ordinances, executed contract documents) in accordance with the time frames provided under the program agreement entered into by the recipient. The additional fee will be an additional one-tenth percent (0.1%) per month that the recipient remains delinquent. The additional fee for delinquent documents will be collected only during the year in which the document is not submitted.

(7) General CWSRF Assistance Requirements. The commission will prioritize potential CWSRF projects by assigning priority points in accordance with the CWSRF Priority Point Criteria established per subsection (29)(A) of this rule.

(A) Municipalities, counties, public sewer or water districts, or both, political subdivisions or instrumentalities of the state, and combinations of the same, or any entity eligible pursuant to the Federal Water Pollution Control Act as amended, are eligible for CWSRF assistance. The recipient must demonstrate its legal, institutional, managerial, and financial capability to ensure adequate operation and maintenance of the wastewater treatment works throughout the recipient's jurisdiction.

(B) Financial Disclosure. Applicants shall provide upon request to the department and the EIERA any detailed financial information as may be required by the commission, the department, the EIERA, or its financial or legal consultants to determine the applicant's eligibility for the financial assistance.

(C) For equivalency projects, the recipient and its contractors must comply with all requirements associated with funds provided under 40 CFR 35.3145.

(D) If the department determines that an applicant is in significant noncompliance with a valid National Pollutant Discharge Elimination System (NPDES) permit or Missouri State Operating Permit, the Federal

Water Pollution Control Act as amended, the Missouri Clean Water Law as amended, or implementing regulations, then the department may refuse to provide financial assistance to such applicant, or require the applicant to reach a binding agreement regarding corrective actions the applicant will take to address such noncompliance.

(E) All recipients are encouraged to retain the services of a financial advisor who is registered with the U.S. Securities Exchange Commission.

(F) American Iron and Steel. Recipients will need to keep supporting documentation to show that iron and steel products used comply with the requirements of 33 U.S.C. 1388 and subsection (17)(N) of this rule unless a waiver has been received.

(8) Application Requirements. Applicants must submit a completed application form including the information listed in subsections (8)(A)–(C) to be included on the Intended Use Plan. Potential applicants are strongly encouraged to meet with department staff prior to submitting an application.

(A) A project summary which includes:

1. The need for the project;

2. The project components, including maps or drawings showing the project location and layout; and

3. A cost estimate including a cost breakdown.

(B) The most recent financial statement; and

(C) Proposed project schedule.

(9) Facility Planning. All facility plans must be in accordance with 10 CSR 20-8.110.

(A) Requirements for all projects are as follows:

1. The most reasonable environmentally sound and implementable waste management alternatives must be studied and evaluated. Proposed waste treatment management plans and practices shall provide for the most cost effective technology that can treat wastewater and I/I to meet the current 10 CSR 20-7.015 Effluent Regulations, and 10 CSR 20-7.031 Water Quality Standards;

2. An estimate of the average user charge including documentation for the basis of the estimate; and

3. An assessment of the environmental conditions and impact of the proposed project on the environment is required. The environmental review process and associated public notice requirements are contained in 10 CSR 20-4.050. Additional public participation requirements are outlined in subsections (14)(A) and (B).

(B) Recipients meeting the definition of



municipality or intermunicipal, interstate or state agency shall provide a certification with the facility plan that it complies with cost and effectiveness requirements found in Section 602(b)(13) of the Federal Water Pollution Control Act.

(10) Additional Preclosing Requirements.

(A) Submittal Deadline. All documents necessary to provide assistance must be submitted to the department in sufficient time, as agreed upon in the project schedule, to allow adequate time for review and approval prior to the loan closing date established by the department.

(B) Final Document Submittal. Documents listed in paragraphs (10)(B)1.-9. must be submitted and accepted by the department:

1. Resolution identifying the authorized representative by name. Applicants shall provide a resolution by the governing body designating a representative authorized to file the application for assistance, reimbursement requests, and act in behalf of the applicant in all matters related to the project;

2. Plans and specifications certified by a registered professional engineer licensed in Missouri;

3. If engineering services are to be reimbursed, an engineering contract as described in section (12) and the appropriate procurement documentation as described in section (13);

4. If applicable, the design-build contract per section (26) and the appropriate procurement documentation;

5. Adopted user charge ordinance as described in section (16);

6. Enacted sewer use ordinance as described in section (16);

7. Proposed project schedule. The following represents the minimum requirements for the project schedule:

A. Construction start defined as date of issuance of notice to proceed;

B. Construction completion;

C. Initiation of operation; and

D. Project completion;

8. Certification of easements and real property acquisition. Recipients of assistance under the CWSRF shall have obtained title or option to the property or easements or condemnation proceedings initiated for the project prior to award of financial assistance; and

9. Other information or documentation deemed necessary by the department to ensure the proper expenditure of state funds.

(11) Accounting and Audits. Recipients are required to have a dedicated source for repayment of any loans and an adequate financial management system and audit procedure for

the project which provides efficient and effective accountability and control of all property, funds, and assets related to the project. The recipient's financial system is subject to state or federal audits to assure fiscal integrity of public funds.

(A) Each recipient is expected to have an adequate accounting system for the project which provides efficient and effective accountability and control of all property, funds, and assets.

1. The recipient is responsible for maintaining a financial management system which will adequately provide for an accurate, current, and complete disclosure of the financial results of each loan project. The proprietary fund (business-related fund) accounting will be in accordance with generally accepted government accounting principles and practices, regardless of the source of funds.

2. An acceptable accounting system includes books and records showing all financial transactions related to the construction project. The system must document all receipt and disbursement transactions, and group them by type of account (for example, asset, revenue, expense, etc.) and by individual expense account (for example, personnel salaries and wages, subcontract costs, etc.).

3. The recipient shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the amount, receipt, and disposition by the recipient for all assistance received for the project and the total costs of the project of whatever nature incurred for the performance of the project for which the assistance was awarded.

(B) Annual Audited Financial Statements.

1. The recipient shall cause an audit of the recipient's annual financial report for the preceding fiscal year to be made by a certified public accountant or firm of certified public accountants employed for that purpose.

A. The annual audit will cover in reasonable detail the operation of the proprietary system during the fiscal year.

B. Within one hundred eighty (180) days after the end of the recipient's fiscal year, a copy of the annual financial report will be submitted to the department as long as the recipient is in loan repayment status. A recipient who cannot meet this deadline will notify the department in writing of the delay with the expected date of completion.

2. As required by federal law, a recipient must comply with the provisions of OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as amended, governing the audit of state and local governments. When appli-

cable, a copy of this audit, including all written comments and recommendations of the accountant, will be furnished to the department within the time period as provided in OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(12) Architectural or Engineering Contracts. The following represents the minimum requirements for the architectural or engineering contracts:

(A) General Requirements for Contracts.

1. Be necessary for and directly related to the accomplishment of the project work.

2. Be a lump sum or cost plus fixed fee contract in the form of a bilaterally executed written agreement.

3. Be for monetary consideration.

4. Not be in the nature of a grant or gift.

5. State a time frame for performance.

6. State a cost which cannot be exceeded except by amendment.

7. State provisions for payment; and

(B) The nature, scope, and extent of work to be performed during construction should include, but not be limited to, the following:

1. Preparing an operation and maintenance manual if required by the department and as defined in subsection (22)(A);

2. Assisting the recipient in bid letting;

3. Assisting the recipient in reviewing and analyzing construction bids and making recommendations for award; and

4. Inspecting during construction to ensure conformance with the construction contract documents unless waived by the department.

(C) Executed Engineering Contract Submittal. The final approved executed engineering contract must be submitted prior to the first reimbursement request.

(13) Procurement of Engineering Services. The procurement of engineering services shall be in accordance with sections 8.285 through 8.291, RSMo, unless such engineering services are performed as part of a design-build contract pursuant to section (26).

(14) Public Participation. Public participation must be preceded by timely distribution of information and occur sufficiently in advance of decision making to allow the recipient to assimilate public views into action. Public participation shall include the following:

(A) Prior to approval of the draft user charge ordinance, a public hearing, in accordance with section 250.233, RSMo, shall be conducted to specifically address the proposed user charge rates.



(B) Public notice of the hearing shall be published at least thirty (30) days prior to the meeting date. Public hearing notices shall include the date, time and place of the hearing. The notice may be for multiple hearings and should include a separate starting time for each hearing. The recipient shall prepare a transcript, recording, or other complete record of the proceeding and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review; and

(C) Public participation requirements for environmental review are contained in 10 CSR 20-4.050(4)(B)2.

(15) Intermunicipal Agreements. Prior to closing, if the project serves two (2) or more public entities, the applicant shall submit executed agreements or contracts between the public entities for the financing, construction and operation of the proposed treatment facilities. At a minimum, the agreement or contract will include:

(A) The operation and maintenance responsibilities of each party upon which the costs are allocated;

(B) The formula by which the costs are allocated;

(C) The manner in which the costs are allocated;

(D) The term of the agreement, which shall be, at a minimum, for the term of the loan;

(E) The method for resolution or arbitration of disputes;

(F) The procedure for amending or renegotiating the agreement;

(G) The enforcement authority; and

(H) The effective date of the agreement.

(16) User Charge and Sewer Use Ordinance. Recipients are required to maintain, for the useful life of the treatment works, user charge and sewer use ordinances approved by the department. User charge and sewer use ordinances, at a minimum, shall be adopted prior to financing and implemented by the initiation of operation of the financed wastewater treatment works.

(A) The user charge system must be designed to produce adequate revenues required for the operation and maintenance, including a reserve for equipment replacement. A one hundred ten percent (110%) debt service reserve may be required. The sewer user rate for operation and maintenance, including replacement, shall be proportional and based upon actual use. Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the

system, debt service, and loan fee costs and expenditures for operation and maintenance, including replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy, and administration. The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users be distributed equally among the users. The system shall provide for an annual review of charges. A user charge system shall be adopted by all municipalities (as defined in 40 CFR 35.2005(b)(27)) receiving waste treatment services if required by federal law.

(B) Low Income Residential User Rates.

1. Recipients may establish lower user charge rates for low income residential users after providing for public notice and hearing, in accordance with section 250.233, RSMo. The criteria used to determine a low income residential user must be clearly defined.

2. The costs of any user charge reductions afforded a low income residential class must be proportionately absorbed by all other user classes. The total revenue for operation and maintenance (including equipment replacement) of the facilities, and debt retirement must not be reduced as a result of establishing a low income residential user class.

(C) The sewer use ordinance shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance also shall require that all wastewater introduced into the treatment works not contain toxic or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works; cause violation of effluent or water quality limitations; preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal; or inhibit the performance of a pretreatment facility. The ordinance shall require all users to connect to the system within ninety (90) days of service availability.

(17) Specifications. The construction specifications must contain the features listed in the following:

(A) Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description, in competitive procurements, shall not contain features which unduly restrict competition unless the features are necessary to test or demonstrate a specific thing or to provide for interchangeability of parts and equipment. The description shall

include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use;

(B) The recipient shall avoid the use of detailed product specifications if at all possible;

(C) When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a "brand name or equivalent" description as a means to define the performance or other salient requirements of an item to be procured. The recipient need not establish the existence of any source other than the named brand. Recipients must state clearly in the specification the salient requirements of the named brand to be met by offerors and that other brands may be accepted;

(D) Sole Source Restriction. A specification shall not require the use of structures, materials, equipment, or processes which are known to be available only from a sole source, unless the department determines that the recipient's engineer has adequately justified in writing to the department that the proposed use meets the particular project's minimum needs;

(E) Experience Clause Restriction. The general use of experience clauses is restricted to special cases.

1. The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Where this justification has been made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required shall not exceed the experience period specified.

2. The general use of experience clauses requiring contractors to have a record of satisfactory experience for a specified period of time or the completion of a specified number of similar projects is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Such justification shall not unduly restrict competition or result in excessive bonding requirements. Where this justification has been made, submission of a bond or deposit shall be permitted instead of the specified experience. The period of time for which the bond or deposit is required shall not exceed the experience period specified;

(F) Domestic Products Procurement Law.



In accordance with sections 34.350–34.359, RSMo, the bid documents shall require all manufactured goods or commodities used or supplied in the performance of any contract or subcontract awarded on a loan project to be manufactured, assembled, or produced in the United States, unless obtaining American-made products would increase the cost of the contract by more than ten percent (10%);

(G) Bonding. On construction contracts exceeding fifty thousand dollars (\$50,000), the bid documents shall require each bidder to furnish a bid guarantee equivalent to five percent (5%) of the bid price. In addition, the bid documents must require the successful bidder to furnish performance and payment bonds, each of which shall be in an amount not less than one hundred percent (100%) of the contract price;

(H) State Wage Determination. The bid documents shall contain the current prevailing wage determination issued by the Missouri Department of Labor and Industrial Relations, Division of Labor Standards as established by sections 290.210 to 290.340, RSMo;

(I) Davis-Bacon Wage Requirements. Construction of treatment of works must comply with the Davis-Bacon requirements in accordance with 29 CFR 5.5. The current Davis-Bacon wage rate from the United States Department of Labor must be incorporated in the bid documents;

(J) Small, Minority, Women's, and Labor Surplus Area Businesses. The recipient shall comply with 2 CFR 200.321 and 40 CFR part 33;

(K) Debarment/Suspension. The recipient agrees to follow 2 CFR part 180 subpart C and 2 CFR 200.213. The recipient acknowledges that doing business with any party listed on the List of Debarred, Suspended or Voluntarily Excluded Persons may result in disallowance of project costs under the assistance agreement;

(L) Right of entry to the project site must be provided for representatives of the Missouri Department of Natural Resources, Clean Water Commission, and the EIERA so they may have access to the work wherever it is in preparation or progress. Proper facilities must be provided for access and inspections;

(M) The specifications must include the following statement: "The owner shall make payment to the contractor in accordance with section 34.057, RSMo."; and

(N) American Iron and Steel. Specifications shall adhere to requirements under 33 U.S.C. 1388 for projects involving the construction, alteration, maintenance, or repair of a treatment works.

(18) Construction Equipment and Supplies

Procurement. This section describes the minimum procurement requirements which the recipient must use under the CWSRF program. The recipient must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference.

(A) Small Purchases. A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one (1) transaction does not exceed one hundred fifty thousand dollars (\$150,000). The small purchase limitation of one hundred fifty thousand dollars (\$150,000) applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one (1) transaction, all items which should properly be grouped together must be included. Department concurrence and a minimum of three (3) quotes must be obtained prior to purchase.

(B) Bidding Requirements. This subsection applies to procurement of construction equipment, supplies, and construction services in excess of one hundred fifty thousand dollars (\$150,000) awarded by the recipient for any project. No contract shall be awarded until the department has approved the formal advertising and bidding.

1. Formal advertising.

A. Adequate public notice. The recipient will cause adequate notice to be given of the solicitation by publication in newspapers of general circulation beyond the recipient's locality (preferably statewide), construction trade journals, or plan rooms, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined.

B. Adequate time for preparing bids. A minimum of thirty (30) days shall be allowed between the date when public notice, publication, insertion, or document available in a plan room is first published or provided and the date by which bids must be submitted. Bidding documents shall be available to prospective bidders from the date when the notice is first published or provided. Recipients are encouraged to directly solicit bids from prospective bidders.

2. Bid document requirements and procedure. The recipient shall prepare a reasonable number of bidding documents (invitations for bids) and shall furnish them upon request on a first-come, first-served basis. The recipient shall maintain a complete set of bidding documents and shall make them

available for inspection and copying by any party. The bidding documents shall include, at a minimum:

A. A complete statement of the work to be performed or equipment to be supplied and the required completion schedule;

B. The terms and conditions of the contract to be awarded;

C. A clear explanation of the method of bidding and the method of evaluation of bid prices and the basis and method for award of the contract or rejection of all bids;

D. Responsibility requirements and criteria which will be employed in evaluating bidders;

E. The recipient shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening;

F. If a recipient desires to amend any part of the bidding documents during the period when bids are being prepared, addenda shall be communicated in writing to all firms which have obtained bidding documents in time to be considered before the bid opening time. All addenda must be approved by the department prior to award of the contract;

G. A firm which has submitted a bid shall be allowed to modify or withdraw its bid before the time of bid opening;

H. The recipient shall provide for a public opening of bids at the place, date, and time announced in the bidding documents. Bids received after the announced opening time shall be returned unopened;

I. The recipient may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be to the lowest, responsive, responsible bidder.

(I) After bids are opened, the recipient shall evaluate them in accordance with the methods and criteria set forth in the bidding documents.

(II) The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract. A responsible contractor is one that has financial resources, technical qualifications, experience, organization, and facilities adequate to carry out the contract or a demonstrated ability to obtain these. The recipient shall have established protest provisions in the specifications. These provisions shall not include the department as a participant in the protest procedures.

(III) If the recipient intends to make the award to a firm which did not submit the lowest bid, the recipient shall prepare a written statement before any award, explaining why each lower bidder was deemed non-responsive or nonresponsive and shall retain the statements in its files.

(IV) The recipient shall not reject a



bid as nonresponsive for failure to list or otherwise indicate the selection of subcontractor(s) or equipment unless the recipient has clearly stated in the solicitation documents that the failure to list shall render a bid non-responsive and cause rejection of a bid; and

J. Departmental concurrence with contract award must be obtained prior to actual contract award. Recipients shall notify the department in writing of each proposed construction contract which has an aggregate value over the one hundred fifty thousand dollars (\$150,000). The recipient shall notify the department within ten (10) calendar days after the bid opening for each construction sub agreement. The notice shall include:

(I) Proof of advertising;

(II) Tabulation of bids;

(III) The bid proposal from the bidder that the recipient wishes to accept, including justification if the recommended successful bidder is not also the lowest bidder;

(IV) Recommendation of award;

(V) Any addenda not submitted previously and bidder acknowledgment of all addenda;

(VI) Copy of the bid bond or bid guarantee;

(VII) One (1) set of as-bid specifications;

(VIII) Suspension/Debarment Certification;

(IX) Certification that the recipient has the necessary funds to complete the project if bids exceed available CWSRF funding;

(X) MBE/WBE Worksheet;

(XI) Recipient's statement that proposed contractor(s) positive efforts, MBE/WBE utilization, or both, have been reviewed and meet regulatory requirements;

(XII) Site certification, if not previously submitted; and

(XIII) Certification of Non-segregated Facilities.

(19) Changes in Contract Price or Time. The contract price or time may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by the methods set forth in the following:

(A) Unit Prices.

1. Original bid items. Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed fifteen percent (15%) of the original bid quantity and the total dollar change of that bid item is greater than twenty-five thousand dollars (\$25,000), the recipient shall review the unit price to determine if a new unit price should be negotiated.

2. New items. Unit prices of new items shall be negotiated;

(B) A lump sum to be negotiated; and

(C) Cost Reimbursement. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work plus an amount to cover the cost of general overhead and profit.

(20) Progress Payments to Contractors.

(A) It is the commission's policy that recipients should make prompt progress payments to prime contractors and prime contractors should make prompt progress payments to subcontractors and suppliers for eligible construction, supplies, and equipment costs.

1. For purposes of this section, progress payments are defined as follows:

A. Payments for work in place; and

B. Payments for materials or equipment which have been delivered to the construction site or which are stockpiled in the vicinity of the construction site in accordance with the terms of the contract, when conditional or final acceptance is made by or for the recipient. The recipient shall assure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures.

(B) Appropriate provisions regarding progress payments must be included in each contract and subcontract.

(C) Retention from Progress Payments. The recipient may retain a portion of the amount otherwise due the contractor. The amount the recipient retains shall be in accordance with section 34.057, RSMo.

(21) Classification of Costs. The information in this section represents policies and procedures for determining the eligibility of project costs for assistance under programs supported by this regulation and 40 CFR part 35 subpart I, including Appendix A.

(A) General. All project costs will be eligible if they meet the following tests:

1. Reasonable and cost effective;

2. Necessary for the construction of an operable wastewater facility and other projects, as defined in the Federal Water Pollution Control Act as amended, including required mitigation; and

3. Meet the eligibility limitations of the Federal Water Pollution Control Act as amended.

(B) Eligible Costs. Eligible costs include, at a minimum:

1. Engineering services and other services incurred in planning and in preparing the design drawings and specifications for the project. For invoice reimbursement, the department must have a copy of the executed engineering contract for planning and design

of the project;

2. The cost incurred pursuant to a contract for building those portions of the project which are for treatment of wastewater, correction of I/I, or for new interceptor sewers. These costs include change orders within the allowable scope of the project and the costs of meritorious contractor claims for increased costs under sub agreements;

3. The reasonable cost of engineering services incurred during the building and initial operation phase of the project to ensure that it is built in conformance with the design drawings and specifications. A registered professional engineer licensed in Missouri or a person under the direction and continuing supervision of a registered professional engineer licensed in Missouri must provide inspection of construction for the purpose of assuring and certifying compliance with the approved plans and specifications. Eligible construction phase and initial operation phase service are limited to—

A. Office engineering;

B. Construction surveillance;

C. Stakeout surveying;

D. As-built drawings;

E. Special soils/materials testing;

F. Operation and maintenance manual;

G. Follow-up services and the cost of start-up training for operators of mechanical facilities constructed by the project to the extent that these costs are incurred prior to this department's final inspection. Costs shall be limited to on-site operator training tailored to the facilities constructed or on- or off-site training may be provided by the equipment manufacturer if this training is properly provided;

H. User charge and sewer use ordinance; and

I. Plan of operation;

4. Demolition costs. The reasonable and necessary cost of demolishing publicly owned WWTF's which are no longer utilized for wastewater collection, transportation, or treatment purposes. The reasonable and necessary cost of demolishing privately-owned WWTF's which will be eliminated or replaced by a publicly-owned treatment works if the proposed elimination was addressed in the approved facility plan. Generally, these costs will be limited to the demolition and disposal of the structures, removal and disposal of biosolids, final grading, and seeding of the site;

5. Equipment, materials, and supplies.

A. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

B. Cost of shop equipment installed at



the treatment works necessary to the operation of the works.

C. The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local, or industry safety requirements.

D. The costs of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:

(I) Portable standby generators;

(II) Large portable emergency pumps to provide pump-around capability in the event of pump station failure or pipeline breaks; and

(III) Trailers and other vehicles having as their purpose the transportation, application, or both, of liquid or dewatered sludge or septage;

E. The cost of a reasonable inventory of replacement parts identified and approved in advance for new wastewater treatment facilities;

6. Land or easements required to complete the project. In order to be eligible for reimbursement, land must be purchased in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, P.L. 91- 646, as amended. Certification by the recipient of compliance under this Act is required;

7. The cost of I/I correction, other than normal maintenance costs, and treatment works capacity adequate to transport and treat I/I;

8. Purchase of a private wastewater system, provided the project will eliminate or upgrade the existing facilities. The purchase of a private wastewater system must be purchased in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, P.L. 91- 646, as amended. Certification by the recipient of compliance under this Act is required;

9. The cost of preparing environmental documentation required under 10 CSR 20-4.050;

10. Nonpoint source projects as identified in the most current Missouri Nonpoint Source Management Plan;

11. Construction permit application fees, costs of issuance, capitalized interest, and contracted project administration costs;

12. Debt service reserve deposits;

13. Collector sewers provided that they meet the requirements of either—

A. For major rehabilitation or replacement of collection sewers that are needed to assure the total integrity of the system; or

B. New collector sewers for existing communities where sufficient treatment capacity exists or adequate treatment will be

available when collectors are completed;

14. Correction of combined sewer overflows;

15. House laterals if they lie within the public easement and will be maintained by the recipient;

16. Storm water transport and treatment systems, and nonpoint source best management practices;

17. Third party costs, incurred under a contract, associated with preparing a fiscal sustainability plan;

18. Energy conservation projects that reduce energy consumption including energy efficient equipment and certain renewable energy facilities;

19. Water conservation projects that reduce demand for publicly owned water treatment works including water meters, water efficient appliances, education programs, and incentive programs; and

20. Planning and assessment activities including asset management plans, capital improvement plans, integrated planning, long-term control plans, water or energy audits, treatment works security and safety plans, or environmental management systems.

(C) Non-eligible costs include, but are not limited to:

1. Costs for the purposes in paragraphs (21)(B)6. and (21)(B)8. that are in excess of just compensation based on the appraised value or amount determined in condemnation;

2. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials, preparation of routine financial reports and studies, EIARA application fees, and the state operating permit fees or other such permit fees necessary for the normal operation of the constructed facility;

3. Preparation of applications and permits required by federal, state, or local regulations or procedures;

4. Administrative, engineering, and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts, or other units of government;

5. Personal injury compensation or damages arising out of the project;

6. Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws, regulations, or procedures;

7. Costs outside the scope of the approved project;

8. Costs for which grant or loan payments have been or will be received from another state or federal agency; and

9. Force account work.

(22) Operation and Maintenance.

(A) Operation and Maintenance Manual. The recipient must make provision satisfactory to the department for assuring effective operation and maintenance of the constructed project throughout its design life. If required by the department, recipients of assistance for construction of mechanical facilities must develop an operation and maintenance manual. The operation and maintenance manual, if required, must be submitted by eighty percent (80%) construction completion.

(B) Start-Up Training. At fifty percent (50%) construction completion, a start-up training proposal (if required) and proposed follow-up services contract must be submitted. This contract must be approved by ninety percent (90%) construction completion.

(C) Wastewater Operator. The recipient must make provision satisfactory to the department for assuring that qualified wastewater operator and maintenance personnel are hired in accordance with an approved schedule. Qualified personnel shall be those meeting the requirements established under 10 CSR 20-9.020.

(23) Retention of Records. The recipient must retain all records according to the retention schedules established by Chapter 109, RSMo. A longer retention period may be required under the loan documentation.

(24) Conflict of Interest. No employee, officer, or agent of the recipient shall participate in the selection, award, or administration of a sub agreement supported by state or federal funds if a conflict of interest, real or apparent, would be involved.

(A) This conflict would arise when—

1. Any employee, officer, or agent of the recipient, any member of their immediate families or their partners have a financial or other interest in the firm selected for a contract; or

2. An organization which may receive or has been awarded a sub agreement employs, or is about to employ, any person under paragraph (24)(A)1.

(B) The recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of substantial monetary value from contractors, potential contractors, or other parties to sub agreements.

(25) Disposition of Treatment Works. The recipient must receive the written consent of the department prior to the disposal of the wastewater treatment works or any material part thereof financed or refinanced with the proceeds of a loan.

(A) If at any time during the term of the loan a recipient desires to sell, lease, mortgage, or otherwise dispose of the wastewater treatment works or any part thereof, the



recipient shall abide by the provisions for disposition as contained in the recipient's loan documentation between the recipient and the department. Disposition of treatment works to entities not listed in subsection (7)(A) of this rule will require immediate repayment of assistance.

(B) During the loan repayment term, ownership of facilities, equipment, and real property purchased under the program with a current value in excess of five thousand dollars (\$5,000) may be transferred only with written permission of the department.

(C) If at any time after initiation of operations of the project, the wastewater treatment works funded with a CWSRF grant, or any part thereof, is sold, either outright or on contract for deed, to other than a political subdivision of the state, the state shall receive reimbursement of the grant funds. The total amount of grant funds to be reimbursed shall be based on a straight-line depreciation based on the original costs of the facilities being sold, the original loan repayment period or a 20-year straight-line depreciation schedule in the event of grant only funds, and adjusted for the percentage of grant funds originally disbursed to fund such facilities. Grant funds to be reimbursed shall become due and payable upon transfer of ownership.

(26) Procurement of Design-Build Services. The procurement of design-build services shall be in accordance with section 67.5060, RSMo. Recipients that are exempt from section 67.5060, RSMo may also utilize design-build services if local ordinances or policies allow design-build and the procurement of the design-build team considers both the qualifications of the team and the project selected meets the cost effectiveness requirements of subsection (10)(B). Recipients seeking funds for a project utilizing design-build services must notify the department with the recipient's CWSRF application. Recipients that utilize design-build services shall coordinate procurement activities with the department to ensure compliance with CWSRF requirements. The department may restrict the amount of funding available for projects using design-build services, if needed to comply with federal law and regulations.

(27) Plan of Study. Facility planning loans, not to exceed a five (5) year repayment term, or grants may be provided by the commission to applicants with an existing publicly owned wastewater system. Applicants that desire to receive a loan for facility planning must submit a plan of study. The plan of study should include the following information (generally in fifteen (15) pages or less):

(A) Maps of the planning area showing boundaries, political jurisdictions, river

basins and surface water bodies, and service areas of existing wastewater treatment facilities; NPDES permits; the existing population; a brief description of existing wastewater facilities; and the communities and major industries served;

(B) The agencies and jurisdictions involved in the planning. Include any joint resolutions or agreements among jurisdictions that designate a lead agency or official to serve as applicant;

(C) The nature and scope of planning, including a description of the need for the project, and facilities planning tasks and schedule; and

(D) An itemized description of costs to complete tasks and an estimate of total cost for the facility plan.

(28) Fiscal Sustainability Plan. A fiscal sustainability plan as established in section 603(d)(1)(E) of the Federal Water Pollution Control Act, shall be prepared by the recipient receiving a loan for a treatment works repair, replacement, or expansion. For purposes of this paragraph "loan" does not include an agreement where the department is purchasing an obligation (e.g. municipal bonds) from the recipient.

(29) Intended Use Plan.

(A) The priority point criteria will be published in draft form annually and be adopted by the commission after a public comment period has been conducted. The adopted priority point criteria will be published on the department's website.

(B) Priority Lists. Each year, following a public hearing, the commission shall establish priority lists for using future anticipated state and federal funding allocations. These lists shall contain at a minimum several parts, as described in paragraphs (29)(B)1. through (29)(B)4. of this rule. These lists shall become effective annually with the adoption of the Intended Use Plan. However, the commission may bypass projects on these lists for failure to proceed to grant award or loan closing in an expeditious manner.

1. Fundable List. The commission may establish one (1) or more fundable priority lists which identify those projects which meet the readiness to proceed criteria. The commission may specify fund allocations across multiple fundable priority lists in order to distribute available funds statewide and meet CWSRF program goals. Projects will be listed in priority point order within each fundable list.

2. Fundable Contingency Priority List. The fundable contingency priority list identifies those projects meeting the readiness to proceed criteria, however, there are insufficient available funds. Projects will be listed in

priority point order regardless of the date which the readiness to proceed criteria are met.

3. Contingency Priority List. The contingency priority list identifies those projects which may be considered for funding during a given fiscal year if the applicant secures an acceptable debt instrument. Projects will not be considered for the contingency priority list unless a complete facility plan has been submitted for review.

4. Planning List. The planning list identifies all potentially eligible grant or loan projects not contained on a fundable or contingency priority list. Planning list projects may advance to the contingency or fundable lists, with commission approval, upon meeting the readiness to proceed criteria.

(C) Modifications. After the commission adopts the Intended Use Plan, it may modify the priority lists or redistribute the available funds in accordance with paragraphs (29)(C)1. through (29)(C)4. of this rule. The commission may only take this action after providing notice to those projects directly affected.

1. Inadequate Allocations. If the actual funding is less than the allocations anticipated by the commission in the development of the Intended Use Plan, or if previous allocations are reduced, the commission may find it necessary to reduce their commitments to projects on the fundable lists. The commission may take formal action to reduce the number of commitments in accordance with subparagraphs (29)(C)1.A. through (29)(C)1.C. of this rule.

A. The commission may reduce the amount of funds allocated to each purpose as shown in the Intended Use Plan.

B. The commission may remove the lowest priority projects from the fundable priority lists, placing these projects on the appropriate contingency priority list in a position dictated by their priority relative to others on that contingency priority list.

C. The commission may bypass projects on the fundable priority lists in accordance with paragraph (29)(C)3. of this rule.

2. Unanticipated and Uncommitted Funds. If unanticipated or uncommitted funds become available, the commission may take formal action to distribute them in accordance with subparagraphs (29)(C)2.A. through (29)(C)2.C. of this rule.

A. The commission may use the unanticipated or uncommitted funds to move the highest priority project(s) from contingency priority list to the proper fundable priority list.

B. The commission may use the unanticipated or uncommitted funds to increase the amount of funds allocated to the various purposes as shown in the Intended Use Plan.

C. The commission may use the



unanticipated or uncommitted funds to increase the amount of funds allocated to projects on the fundable priority list or to provide increased assistance to projects which have already received assistance.

3. Project Bypass. The commission may bypass any project on the fundable priority list which is not, in the commission's opinion, making satisfactory progress in satisfying requirements for assistance. Bypassed projects will be removed from the fundable priority list and placed on the proper contingency priority or planning list in a position dictated by the commission. In determining whether a project is making satisfactory progress in satisfying the requirements for assistance, the commission shall use the criteria contained in subparagraphs (29)(C)3.A. through (29)(C)3.C. of this rule. The commission may reinstate any bypassed projects on the fundable priority lists after first giving notice to applicants for those projects on the contingency lists of the commission's intent to reinstate bypassed projects. Funds released through project bypass will be considered uncommitted and available for distribution in accordance with paragraph (29)(C)2. of this rule.

A. Any project on the fundable lists may be bypassed if the applicant fails to submit all documents required for assistance at least sixty (60) days prior to the quarter for which assistance is anticipated.

B. The commission may use individual project schedules developed by the department to determine whether a project on the current fundable list is making satisfactory progress at those times during the fiscal year.

C. Carryover projects may be automatically bypassed if they do not have all documents required for assistance submitted three (3) months before the end of the federal fiscal year in which their application expires.

4. Project Removal. The department will remove projects from the contingency, fundable, or planning lists if they meet any one (1) of the criteria stated in subparagraphs (29)(C)4.A. through (29)(C)4.E. of this rule.

A. The department will remove a project if it has received one (1) or more funding commitments necessary to cover the estimated project cost or has been fully funded by other funding sources.

B. The department will remove a project if it is determined to be ineligible for funding.

C. The department will remove projects from these lists if directed by commission action under paragraphs (29)(C)1. or (29)(C)3. of this rule.

D. The department will remove projects from these lists if directed to do so by the Environmental Protection Agency in accordance with federal law.

E. The department will remove a project from these lists at the request of the applicant.

AUTHORITY: sections 644.026, 644.101, and 644.121, RSMo 2016. Original rule filed Sept. 13, 1988, effective Feb. 14, 1989. Amended: Filed April 2, 1990, effective Sept. 28, 1990. Emergency amendment filed July 17, 1990, effective July 30, 1990, expired Nov. 26, 1990. Amended: Filed Sept. 4, 1991, effective Feb. 6, 1992. Amended: Filed March 4, 1993, effective Sept. 9, 1993. Amended: Filed April 14, 1994, effective Nov. 30, 1994. Amended: Filed March 1, 1996, effective Nov. 30, 1996. Amended: Filed May 28, 2009, effective Feb. 28, 2010. Amended: Filed June 13, 2018, effective Feb. 28, 2019.*

**Original authority: 644.026, RSMo 1972, amended 1973, 1987, 1993, 1995, 2000, 2012, 2014; 644.101, RSMo 1972, amended 1973, 1982, 1987, 1991, 1993, 1998, 2000, 2009; and 644.121, RSMo 1972, 1973, 1987, 1991.*

10 CSR 20-4.041 Direct Loan Program

PURPOSE: This rule sets forth the requirements for implementation of direct loan programs to be financed through the Clean Water State Revolving Fund program contained in 10 CSR 20-4.040 or the State Direct Loan Program.

(1) General. The department may make direct loans by purchasing the general obligation bonds, revenue bonds, short-term notes, or other acceptable obligation of any qualified applicant for the planning, design and/or construction of an eligible project. These loans shall not exceed the total eligible project costs as described in 10 CSR 20-4.040(21) less any amounts financed by other means.

(2) Clean Water State Revolving Fund (CWSRF) Direct Loans. Funding for these loans is from CWSRF loan repayments, federal capitalization grants, or other funds. The provisions and requirements of the Clean Water State Revolving Fund General Assistance Regulation, 10 CSR 20-4.040, apply to loans awarded under this regulation.

(3) State Direct Loan Program. Funding for these loans is from state bond funds and loan repayments. The provisions and requirements of the Clean Water State Revolving Fund General Assistance Regulation, 10 CSR 20-4.040, apply to loans awarded under this regulation unless specifically provided for herein. The following provisions of 10 CSR 20-4.040 do not apply:

- (A) 10 CSR 20-4.040(3) except for (3)(A)2.;
- (B) 10 CSR 20-4.040(7);
- (C) 10 CSR 20-4.040(9)(A)3.;

- (D) 10 CSR 20-4.040(9)(B);
- (E) 10 CSR 20-4.040(11)(B)2.;
- (F) 10 CSR 20-4.040(14);
- (G) 10 CSR 20-4.040(17)(I);
- (H) 10 CSR 20-4.040(17)(J);
- (I) 10 CSR 20-4.040(17)(N);
- (J) 10 CSR 20-4.040(18)(B)2.K.(XIII);
- (K) 10 CSR 20-4.040(28); and
- (L) 10 CSR 20-4.040(29).

(4) Funding Allocation.

(A) CWSRF Direct Loans. The department will follow 10 CSR 20-4.040.

(B) State Direct Loans. After receiving applications and the department determines that the application is complete and eligible, the department will take the application before the Clean Water Commission for allocation of funding.

(5) Interest Rates. The department shall use the target interest rate (TIR) policy as established by the commission under section (4) of 10 CSR 20-4.040.

(6) Reimbursement Terms.

(A) The maximum reimbursement shall be no more than the sum of all eligible costs incurred to date. Each payment request shall include the information listed in the following paragraphs (6)(A)1.–3. and other information deemed necessary by the department to insure proper project management and expenditure of public funds:

1. Completed reimbursement request form;
2. Construction pay estimates signed by the construction contractor, the recipient, and the consulting engineer, if applicable; and
3. Invoices for other eligible services, equipment, and supplies for the project.

(B) If the department is satisfied that the payment request accurately reflects the eligible cost incurred to date on the project, the department will request that state payment be issued to the recipient.

(7) Trustee or Paying Agent. The department may require the recipient to contract with a trustee or paying agent to provide the services listed in subsections (7)(A)–(D) of this rule, along with other such services as detailed in the participant's escrow agreement.

(A) Maintain separate trust funds and accounts for recipients;

(B) Disburse funds to recipients;

(C) Collect principal and interest quarterly payments from recipients; and

(D) Provide monthly financial reports to recipients.

(8) Amortization Schedules. The guidelines contained in the following subsections (8)(A)–(D) are to be used to establish amortization



schedules under this rule:

(A) For recipients of a state direct loan, the bonds, notes, or other obligations shall be fully amortized for a period not longer than thirty (30) years after initiation of operation. For CWSRF direct loan recipients, the bonds, notes, or other obligations shall be fully amortized for a period not longer than the earlier of:

1. Thirty (30) years after initiation of operation;
2. The economic useful life of the project; or
3. Such other period of time that the department determines is appropriate and in the best interest of the CWSRF program.

(B) The principal payment frequency shall be no less than annual and at least semi-annual for interest payments;

(C) The amortization schedule may either be straight-line or declining schedules for the term of the obligation. The department may approve an alternative amortization method if deemed appropriate;

(D) Repayment of principal shall begin not later than one (1) year after initiation of operation.

(9) Loan Fees. The department may charge annual loan fees not to exceed one-half percent (.5%) of the outstanding loan balance for state direct loans. CWSRF direct loan recipients will be charged a fee on the loan in accordance with 10 CSR 20-4.040(5).

(10) Additional Administrative Fees Allowed. Additional administrative fees may be assessed by the department at the time the administration fee is calculated in accordance with 10 CSR 20-4.040(6).

(11) Variations of Structure Permitted. This rule sets out the general format for the direct loan programs. The commission, EIARA, and the department shall have the authority to make specific refinements, variations, or additional requirements as may be necessary or desirable in connection with the efficient operation of the direct loan program.

AUTHORITY: sections 644.026 and 644.122, RSMo 2016. Original rule filed Sept. 13, 1988, effective Feb. 14, 1989. Amended: Filed April 2, 1990, effective Sept. 28, 1990. Emergency amendment filed July 17, 1990, effective July 30, 1990, expired Nov. 26, 1990. Amended: Filed March 4, 1993, effective Sept. 9, 1993. Amended: Filed April 14, 1994, effective Nov. 30, 1994. Amended: Filed March 1, 1996, effective Nov. 30, 1996. Amended: Filed June 24, 1999, effective March 30, 2000. Amended: Filed June 13, 2018, effective Feb. 28, 2019.*

**Original authority: 644.026, RSMo 1972, amended 1973, 1987, 1993, 1995, 2000, 2012, 2014 and 644.122, RSMo 1987, amended 1991, 1993, 1998, 2000.*

10 CSR 20-4.042 Leveraged Loan Program (Rescinded February 28, 2019)

AUTHORITY: section 644.026, RSMo Supp. 1993. Original rule filed Sept. 13, 1988, effective Feb. 14, 1989. Amended: Filed April 2, 1990, effective Sept. 28, 1990. Emergency amendment filed July 17, 1990, effective July 30, 1990, expired Nov. 26, 1990. Amended: Filed March 4, 1993, effective Sept. 9, 1993. Amended: Filed April 14, 1994, effective Nov. 30, 1994. Rescinded: Filed June 13, 2018, effective Feb. 28, 2019.

10 CSR 20-4.043 Hardship Grant Program (Rescinded September 30, 2018)

AUTHORITY: sections 644.026 and 644.101, RSMo Supp. 1998. Original rule filed Nov. 3, 1997, effective July 30, 1998. Amended: Filed June 24, 1999, effective March 30, 2000. Rescinded: Filed Dec. 29, 2017, effective Sept. 30, 2018.

10 CSR 20-4.049 State Match to State Revolving Fund Loan Program (Rescinded September 30, 2018)

AUTHORITY: section 644.026, RSMo Supp. 1993. Emergency rule filed Jan. 17, 1990, effective Jan. 29, 1990, expired May 28, 1990. Original rule filed July 2, 1990, effective Nov. 30, 1990. Amended: Filed Sept. 4, 1991, effective Feb. 6, 1992. Rescinded: Filed Dec. 29, 2017, effective Sept. 30, 2018.

10 CSR 20-4.050 Environmental Review

PURPOSE: This rule establishes procedures and requirements for environmental reviews for assistance from the Clean Water State Revolving Fund program.

(1) General. The purpose of the environmental review is to ensure that the project will comply with applicable local, state, and federal laws and rules relating to the protection and enhancement of the environment. Based upon the staff's review, the director 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 the provision of financial assistance for construction. No financial assistance will be provided until a final environ-

mental determination has been made. Nothing in this rule shall prohibit any public, private, or governmental party from seeking administrative or legal relief from the determinations of the director.

(2) Basic Environmental Determinations. There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the fund.

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

1. Projects which meet any of the following criteria may be categorically excluded from formal environmental review requirements:

A. The project is directed solely toward minor 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. Examples include infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures on existing sites;

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

C. New underground sewer lines or conveyance structures located entirely in existing rights-of-way that have been previously disturbed and supported by appropriate documentation to verify rights-of-way location(s) and type(s) of previous disturbance.

2. CEs will not be granted for projects that entail—

A. The construction of new collection lines located outside existing rights-of-way;

B. A new discharge or relocation of an existing discharge;

C. An increase of more than thirty percent (30%) in the volume or loading of pollutants;

D. Provision of a capacity for a population thirty percent (30%) or greater than the existing population;

E. Known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; and

F. The construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.

(B) Finding of No Significant Impact/Environmental Assessment (FNSI/EA). The FNSI/EA will be based upon an environmental



review by the staff supported by an environmental information document (EID) prepared by the recipient in conformance with guidance developed by the department. If a FNSI/EA is not appropriate, a public notice noting the preparation of an environmental impact statement (EIS) will be required. The director's issuance of a FNSI/EA will be based upon documentation that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) Record of Decision The Record of Decision (ROD) may only be based upon an EIS in conformance with the format and guidelines described in subsection (4)(C). An EIS will be required when the director of staff determines any of the following:

1. The project will significantly affect the pattern and type of land use or growth and distribution of the population;
2. The effects resulting from any structure or facility constructed or operated under the proposed action may conflict with local or state land use plans or policies;
3. The project may have significant adverse impacts upon—
 - A. Wetlands;
 - B. Floodplains;
 - C. Threatened and endangered species or their habitats;
 - D. Cultural resources including park lands, preserves, other public lands, or recognized scenic, recreational, archeological, or historic value; and
 - E. Prime farmland;
4. The project will displace populations or significantly alter the characteristics of existing residential areas; and
5. The project directly or indirectly (for example, through induced development) may have significant adverse effect upon local ambient air quality, local noise levels, surface and groundwater quantity or quality, fish, shellfish, wildlife, or their natural habitats.

(3) Construction Prior to Environmental Review.

(A) A recipient may request advance authority to construct part of the proposed project prior to completion of the necessary environmental review when the part of the project will—

1. Remedy a severe public health, water quality or environmental problem immediately;
2. Not preclude any reasonable alternatives identified for the complete system;
3. Not cause significant direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and
4. Not be highly controversial.

(B) Based upon the review of the informa-

tion required by section (4) of this rule, the director will issue a FNSI/EA 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.

(4) Environmental Information Required for Environmental Review.

(A) Recipients seeking a CE will provide the director with sufficient documentation to demonstrate compliance with the criteria of subsection (2)(A). At a minimum, this will consist of a—

1. Brief, complete description of the proposed project and its costs;
2. Statement indicating that the project is cost-effective and that the recipient is financially capable of constructing, operating, and maintaining the facilities; and
3. Plan map(s) of the proposed project showing—
 - A. The location of all construction areas;
 - B. The planning area boundaries; and
 - C. Any known environmentally sensitive areas.

(B) An EID must be submitted by those recipients whose proposed projects do not meet the criteria for a CE and for which the director has made a preliminary determination that an EIS will not be required. The director will provide guidance on both the format and contents of the EID to potential recipients prior to initiation of facilities planning.

1. At a minimum, the contents of an EID will include:
 - A. The purpose and need for the project;
 - B. Information describing the current environmental setting of the project and the future environmental setting without the project;
 - C. The alternatives to the project as proposed;
 - D. A description of the proposed project;
 - E. The potential environmental impacts of the project as proposed including those which cannot be avoided;
 - F. The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity;
 - G. Any irreversible and irretrievable commitments of resources to the proposed project;
 - H. Proposed mitigation measures to minimize the environmental impacts of the project;
 - I. A description of public participation activities conducted, issues raised, and changes to the project which may be made as

a result of the public participation process; and

J. Documentation of coordination with appropriate governmental agencies.

2. Prior to the recipient's adoption of the facilities plan, the recipient must hold a public meeting or hearing on the proposed project and the EID, and provide the director with a complete record of the meeting or hearing, including all EID reference documents. The meeting or hearing must be advertised at least thirty (30) days in advance in a local newspaper of general circulation. Included with the meeting record must be a list of all attendees with addresses, any written testimony and the recipient's responses to the issues raised.

(C) The format of an EIS will encourage sound analyses 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 recipient unless the director determines there are compelling reasons to do otherwise:

1. A cover sheet identifying the recipient, the project(s), the program through which financial assistance is requested and the date of publication;
2. An executive summary consisting of a five to fifteen (5–15) page 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:
 - A. A description of the existing problem;
 - B. A description of each alternative;
 - C. A listing of each alternative's potential environmental impacts, mitigative measures, and any areas of controversy; and
 - D. Any major conclusions;
3. The body of the EIS which will contain the following information:
 - A. A complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives;
 - B. A balanced description of each alternative considered by the recipient. The descriptions will include the size and location of the facilities and pipelines, land requirements, operation and maintenance requirements, and construction schedules. The alternative of no action will be discussed and the recipient's preferred alternative(s) will be identified. Alternatives that were eliminated from detailed examination will be presented with the reasons for their elimination;
 - C. A description of the alternatives available to the department 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 environmental impacts or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) Not providing financial assistance;

D. 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;

E. A description of the affected environment and environmental consequences of each alternative including secondary and cumulative impacts. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomics, land use, and cultural resources of the facilities planning area. The department will provide guidance, as necessary, to the recipient regarding the evaluation of the affected environment. The discussion will present the total impacts of each alternative in a 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;

4. 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 comments pertinent to the project or the EIS. All commenters will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The department 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 forty-five (45) days;

5. Material incorporated into an EIS by reference will be organized 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 paragraph (4)(C)4. and subparagraph (4)(C)7.C.;

6. When an EIS is prepared by contractors, either in the service of the recipient or the department, the department will independently evaluate the EIS prior to issuance of the ROD and take responsibility for its scope and contents. The 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; and

7. The public participation required for an EIS is extensive but, depending upon the nature and scope of the proposed project, should be supplemented by the recipient. The following requirements represent the minimum allowable:

A. Upon making the determination that an EIS will be required of a proposed project, the department will distribute a notice of intent to prepare an EIS;

B. As soon as possible after the notice of intent has been issued, the director will convene a meeting of the affected federal, state, and local agencies, the recipient 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 paragraph (4)(B)2. of this rule except that in no case will the notification period be less than forty-five (45) days. As part of the scoping meeting, the director at a minimum will—

(I) Determine the significance of issues and analyze in depth the scope of those significant issues 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; and

(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; and

C. Following the scoping process, the director 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 recipient and other interested parties. Preparation of the EIS will be done at the discretion of the department: directly, by the staff; by consultants to the department; or by a consultant contracted by the recipient subject to approval by the department. In the latter two (2) cases, the consultant will be required to execute a disclosure statement prepared by the department 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 paragraph (4)(B)2. of this rule except that the advertisement and comment period for the public participation will be no less than forty-five (45) days. The department will publish in a newspaper 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.

(5) Environmental Determination.

(A) When the director has determined that a recipient's proposed project may be excluded from a formal environmental review, the director will prepare a determination to categorically exclude the project.

(B) An environmental review of the proposed project, supported by the recipient's EID, will be conducted by the director 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 director may require the recipient to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the director will prepare a FNSI/EA 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; and

6. Any proposed conditions to the provision of financial assistance and any means



provided for the monitoring of compliance with the conditions.

(C) When the director has determined that a FNSI/EA will be issued, the director will prepare FNSI/EA determination. The FNSI/EA will be distributed to interested federal agencies, state and local governments, and entities that have expressed an interest in the proposed project, and a copy will be available to the public upon request. No action regarding approval of the facilities plan or the provision of financial assistance will be taken by the director for at least thirty (30) days after the issuance of the FNSI/EA.

(D) Public participation requirements for an EIS are detailed in paragraph (4)(B)2. except the ROD and final EIS shall have a forty-five- (45-) day period of notice.

(6) Environmental Determination Modification.

(A) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the director will provide that, prior to approval, the plans and specifications, loan application and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the director may revoke a CE and require the preparation of a FNSI/EA or an EIS, or require the preparation of amendments to a FNSI/EA or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the director will—

1. Reaffirm the original environmental determination through the issuance of a public notice or statement of finding;

2. Issue a FNSI for a project for which a CE has been revoked or issue a public notice that the preparation of an EIS will be required;

3. Issue an amendment to a FNSI/EA or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or

4. Issue a supplement to a ROD or revoke a ROD and issue a public notice that financial assistance will not be provided.

(B) When five (5) or more years have elapsed between the last environmental determination and the submittal of an application to the fund, the director will reevaluate the project, environmental conditions and public views and, prior to approval of the application, proceed with the environmental determination in accordance with section (5).

(7) The director may, on a case by case basis, accept the environmental reviews, consistent with the National Environmental Policy Act completed by other state and federal agencies. Environmental reviews completed by other state and federal agencies must be less

than five (5) years old unless reaffirmed.

*AUTHORITY: section 644.026, RSMo 2016. * Original rule filed Sept. 13, 1988, effective Feb. 14, 1989. Amended: Filed June 13, 2018, effective Feb. 28, 2019.*

**Original authority: 644.026, RSMo 1972, amended 1973, 1987, 1993, 1995, 2000, 2012, 2014.*

10 CSR 20-4.060 Storm Water Assistance Regulation

(Rescinded September 30, 2018)

AUTHORITY: sections 644.026 and 644.031, RSMo 1994. Original rule filed Sept. 1, 1989, effective Jan. 12, 1990. Amended: Filed April 2, 1990, effective Sept. 28, 1990. Amended: Filed Sept. 4, 1991, effective Feb. 6, 1992. Amended: Filed Nov. 14, 1995, effective July 30, 1996. Rescinded: Filed Dec. 29, 2017, effective Sept. 30, 2018.

10 CSR 20-4.061 Storm Water Grant and Loan Program

PURPOSE: This rule sets forth the requirements and process of application for storm water loans and grants for construction of storm water control facilities and the terms and conditions for receipt of the loan and/or grant as revised. This rule also clarifies the requirements, the types of facilities eligible for funds and the calculation used to determine the amount of loan and grant available for eligible grantees.

(1) Applicability. This rule defines the minimum requirements which apply to all recipients of assistance under the state storm water grant and loan program. The recipient must satisfy more stringent requirements if required to do so by the state constitution, state or local statutes, policies, rules, ordinances, or orders.

(2) Definitions.

(A) Commission. The Missouri Clean Water Commission.

(B) Delegated entity. An eligible applicant that has been designated by the department as having sufficient staff and expertise to administer funds to subrecipients within its jurisdiction.

(C) Department. The Missouri Department of Natural Resources.

(D) Eligible Applicant.

1. Any first class county not served by Metropolitan St. Louis Sewer District (MSD); or

2. The MSD; or

3. Any entitlement city.

(E) Eligible Recipient. Any municipality, county, public sewer district, or public water district within the boundaries of the eligible applicant can receive funding if selected by the eligible applicant's Storm Water Coordinating Committee.

(F) Entitlement City. A municipality located in whole or in part in a first class county with a population of at least twenty-five thousand (25,000) based on the most recent decennial census unless that city is within a sewer district established pursuant to Article VI, Section 30(a) of the *Missouri Constitution*.

(G) Force Account. Project planning, design, construction or engineering inspection work performed by the recipient's regular employees and rented or leased equipment.

(H) Letter of Commitment. Initial offer from the department to the eligible storm water funding recipients which details the amount allocated to the recipient and specifies the dates applicable to the receipt of the funds.

(I) Storm Water Coordinating Committee (SCC). A local committee or group established by eligible applicants involved in project screening and project selection. In cities over twenty-five thousand (25,000) population, the SCC shall consist of a committee or organizational unit designated by the city. In St. Louis City and County, the SCC shall consist of a committee or organizational unit designated by the executive director of the Metropolitan St. Louis Sewer District. In all eligible counties, except St. Louis County, an SCC must be established which is representative of the county government and incorporated municipalities within the county.

(J) Storm Water Loan Revolving Fund. Fund containing repayments and interest from storm water loans originated from storm water control bonds.

(3) General Requirements.

(A) Jurisdictional Requirements. Storm water funds may be used for storm water projects in any first class county, or city not within a county, or as specified in Article III, Section 37(h) of the *Missouri Constitution*.

(B) Allocation of Bond Fund Proceeds. The department will determine the amount of funds to be allocated to the eligible recipients after Stormwater Control Bonds are issued and are deposited into the Stormwater Control Fund. The funds will be allocated to each first class county and to each sewer district established pursuant to Article VI, Section 30(a) of the *Missouri Constitution* by a percentage based on the population of the qualifying



county or sewer district in relation to the total population of all eligible counties and sewer districts. The most recent federal decennial census will be used for all population statistics.

1. The funds will be further allocated to each entitlement city by a percentage based on the population of the entitlement city in relation to the total population of the first class county(ies) in which the entitlement city is located.

2. The department will send a letter of commitment to each eligible applicant. The notification will include the county, city, or sewer district's proportionate share of the balance in the Stormwater Control Fund and instructions for applying for the funds.

(C) Reallocation of Unused Bond Fund Proceeds. Within sixty (60) days of the date specified in the letter of commitment as the final day for receipt of applications, the department will determine if there are any remaining unused bond fund proceeds. When calculating this amount, the department will include interest that has accrued to the Stormwater Control Fund that was not included in the original calculation and any funds that have not been applied for through the original letter of commitment. The total of these funds will be allocated as described in subsection (3)(B) of this rule except that the calculation will exclude any eligible applicant that has not responded to the initial letter of commitment by the application date.

(D) Planning Requirements.

1. All storm water projects must be consistent with a comprehensive storm water management plan. A storm water management plan should contain at a minimum the following components:

A. An introduction that defines terms and discusses the purpose, scope, hydrology, and alternatives considered;

B. A discussion of the data and methodology used in plan development;

C. A description of the existing system (if applicable);

D. A list of proposed storm water projects;

E. A description of the methodology used to evaluate and establish project priority ranking;

F. Estimates of cost for full implementation of the plan;

G. A description of the maintenance plan for existing and new systems;

H. A geomorphological assessment of the plan area;

I. A description of the rainfall/runoff modeling data for the plan area;

J. Modeling data, structure data and photographs, public survey response forms;

and

K. Watershed map, public response map, flood plain map, maps showing project areas.

2. The project specific drainage basin plan must be submitted in conjunction with the applicant's storm water application to the department. The geographical extent of the planning area may be determined by the department or the delegated entity. Projects which are solely for bank stabilization or erosion control, or other projects as determined by the department or the delegated entity, need only provide the items listed in subparagraphs (3)(D)2.B., D., and E. The drainage basin plan should include, but is not limited to:

A. A detailed map of the project drainage area showing computed drainage acreage;

B. A narrative, a plan layout, and estimated construction costs for the proposed project;

C. Tabulated storm water conceptual design parameters for the drainage area, that is, upstream acres, runoff coefficients, time of concentration, return frequencies, and so forth. Computer modeling information may be submitted;

D. A determination of the flood elevation changes resulting from the project, unless the Corps of Engineers has committed to remap the area; and

E. An evaluation of limited structural approaches to storm water control. The plan must analyze the use of applied geomorphology and bioengineering techniques to manage storm water. Combinations of measures can be employed to manage storm water and retain important stream functions. "Bioengineering" combines mechanical, biological, and ecological concepts to prevent slope failures and erosion. Bioengineering techniques may use bare root stock, stems, branches, or trunks of living plants on eroded slopes. Plantings may be incorporated into such configurations as a live stakings, live fascines, or living cribwall. Vegetative plantings and cuttings may be combined with structural elements such as gabion baskets or rock surface armoring. However, the intent should be to minimize hard structural solutions and allow the rooted plantings to do much of the work to hold the soil in place and retain the natural function of streams to convey storm water. Other storm water management options include environmental easements and land acquisition. Projects that are only rehabilitation or replacement of existing structures will require an evaluation that addresses reasonable geomorphological alternatives and, if this approach is not taken, a brief discussion

why not. For more complex projects, the evaluation should address the root causes of flooding, bed and bank erosion, and sediment deposition. The plan should not exacerbate these problems by:

(I) Modifications to stream systems that increase bed and bank erosion in modified stream sections;

(II) Cause these impacts in sections that are upstream or downstream of the storm management project;

(III) Remove or degrade aquatic habitat;

(IV) Remove the pollutant removal benefits of vegetated stream corridors; or

(V) Lead to increased flooding upstream or downstream of the storm water management project.

(4) Required Documents. Prior to grant award and/or loan closing, the applicant must submit a completed storm water grant/loan application to the department. The following documents must be submitted and approved by the department or delegated entity prior to construction advertising. Some documents may be waived by the department or delegated entity on a case-by-case basis if it is determined they are not needed for that project:

(A) The following documents are required for a project which includes design and construction:

1. Construction plans, specifications, and design criteria;

2. Certification by the recipient that—

A. The facilities, when completed, will be owned, operated, and maintained by a political subdivision eligible under subsection (3)(A) of this rule; or

B. Evidence of a permanent easement and legal authority to ensure operation and maintenance of the facility;

3. Certification by the recipient that contract documents and construction bidding will conform to relevant local and state laws;

4. Certification by the recipient that all necessary easements and land have been or will be obtained prior to construction start; and

5. Certification by the recipient that the recipient will construct the project or cause it to be constructed to final completion in accordance with the certified plans and specifications; and

(B) The following documents must be submitted for all storm water grant/loan projects including grants/loans for planning:

1. Certification by the recipient that all state storm water funds will be expended solely for carrying out the approved project;

2. Certification by the recipient that a registered professional engineer has been



selected and will perform the services required in section (9) of this rule;

3. Certification by the recipient that the local match is available; and

4. Certification by the recipient that any required section 404 dredge and fill permits from the United States Army Corps of Engineers or land disturbance permits from the department will be obtained prior to construction.

(5) Eligible Project Costs. The information in this section represents policies and procedures for determining the eligibility of project costs for assistance under the Storm Water Grant and Loan Program.

(A) General. It is the policy of the commission that all project costs will be eligible if they meet the following tests:

1. Reasonable and cost effective;

2. Necessary for the construction of an operable storm water facility or for the completion of a comprehensive storm water master plan; and

3. Included in the scope of the project as described in the application and engineering submittals.

(B) Eligible Costs. Eligible costs include at a minimum:

1. Costs for development of a comprehensive storm water control plan meeting the requirements of subsection (3)(D);

2. Engineering services for planning and design based on invoiced amounts for a contracted engineering consultant. A copy of the approved engineering agreement must be submitted to the department or delegated entity when engineering services are to be reimbursed with grant or loan funds. The contract should be a lump sum or cost plus fixed fee contract in the form of a bilaterally executed written agreement.

3. Costs for construction-related engineering when invoiced per an acceptable two (2)-party engineering agreement;

4. Construction costs including construction permits as issued by the department;

5. Land purchase or permanent easement costs required for storm water holding basins, grass-lined channels, or for other limited structural storm water control projects, or buy-outs if the land purchased is restricted such that no permanent structure except for structures allowed under the Missouri Statewide Comprehensive Outdoor Recreation Plan (SCORP) may be constructed within the easement or purchase area. Construction costs related to holding basins on private land are eligible if the eligible recipient retains a permanent easement, is legally responsible for operation and maintenance of

the facility, and the basin constructed is clearly for storm water control and not recreational use;

6. Costs of force account work for planning, design, construction, construction engineering, and costs of rented or leased equipment. It does not include the costs of recipient-owned equipment or the costs of administration for grants and loans. Engineering performed by force account must meet the requirements of 10 CSR 20-4.061(9) which state that storm water plan preparation, design, and inspection must be provided by a registered professional engineer or by a person under the direct and continuing supervision of a registered professional engineer. To be considered for force account, the following information must be submitted for review and approval by the department prior to beginning on the project:

A. Which project(s) they intend to do with city employees;

B. The names of the employees who will be working on the project;

C. A specific time code must be assigned to each project. The letter should state the time code number;

D. For engineering work, the letter must contain an assurance that the employee is a registered professional engineer or the name of the professional engineer who directly supervises this person;

E. The hourly wage for each individual must be given. If the person is salaried, this is the total annual salary divided by two thousand and eighty (2,080) hours. The hourly wage cannot include fringe or indirect costs; and

F. A copy of the time card that will be used. The time card must list the employee name, project time code, hours worked, and the signature of the employee and the supervisor. Should there be a change in employees, salary, or engineering supervisor during the course of the project, the recipient must amend/update the information in the original letter before that salary and/or employee cost can be reimbursed;

7. Demolition costs of structures located within storm water control areas provided future development of permanent structures in the storm water control area is restricted;

8. Local cost of issuance and capitalized interest incurred on loans administered under this rule;

9. Up to five (5) sequential years of grant and/or loan funding may be used for the same project if it meets the following criteria:

A. The contract is awarded within the time frame necessary to receive the first grant and/or loan of the sequence;

B. The recipient certifies that there

are adequate funds committed from other sources to complete the construction;

C. The recipient commits to the original funding combination for the entire sequence of grants and/or loans; and

D. The recipient certifies that the project will be completed with or without the subsequent years' grant/loan funds.

10. Costs associated with minimizing storm water damage to sink holes; and

11. The reasonable costs of administrative fees incurred by a delegated entity in connection with each grant.

(6) Ineligible Project Costs. Ineligible costs include, but are not limited to, the following:

(A) Projects which divert storm water to sinkholes or which modify sinkholes to increase storm water capacity;

(B) Local government administration or legal costs, including appraisals;

(C) Land purchase or easement costs other than those listed in paragraph (5)(B)5.;

(D) Permits required for the ongoing operation of the constructed facility(ies);

(E) Construction costs incurred prior to the letter of commitment; and

(F) Ordinary upkeep and maintenance of existing facilities.

(7) Grant Amount. The maximum grant is limited to fifty percent (50%) of the total eligible project costs or available funds, whichever is less. The recipient must provide the remaining amount needed to complete the project through a storm water loan administered by the department or other acceptable source of funds. Grants may be matched with other state or federal grants up to one hundred percent (100%) of the eligible project costs.

(8) Loan Amount. Loans will be available in an amount up to one hundred percent (100%) of eligible project costs. Loans may be matched with state or federal grants. However, in no case will the total government assistance exceed one hundred percent (100%) of eligible project costs.

(9) Engineering Requirements.

(A) A registered professional engineer must prepare the project specific drainage basin plan and design all construction plans and specifications for competitive bidding and compliance with generally accepted storm water design criteria. The documents must have the professional engineer's seal when they are submitted to the department or delegated entity.

(B) A registered professional engineer or a person under the direction and continuing



supervision of a registered professional engineer must provide inspection of construction for the purpose of assuring compliance with the approved plans and specifications.

(10) Bidding Requirements.

(A) This subsection applies to procurement of construction equipment, supplies, and construction services in excess of one hundred thousand dollars (\$100,000) awarded by the recipient for any storm water project.

1. Each contract shall be awarded after formal advertising. The project advertisement must be published in a newspaper at least one (1) time thirty (30) days prior to the bid opening or five (5) consecutive days two (2) weeks prior to bid opening or in accordance with the local government’s procurement ordinances.

2. Contract award shall be to the lowest responsive and responsible bidder.

3. Departmental concurrence or concurrence from the delegated entity with contract award must be obtained prior to the actual contract award if fewer than three (3) bidders submit bids or if the recipient wishes to award the contract to other than the low bidder. The recipient shall forward the tabulation of bids and a recommendation of contract award to the department or delegated entity for review.

4. Executed contract documents must be submitted prior to the first grant payment if payments are made monthly. If the grant is paid into an escrow account, the executed contract documents must be submitted with the first statement that indicates construction costs were paid with grant funds.

(B) Small Purchase Contract. A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one (1) transaction does not exceed one hundred thousand dollars (\$100,000). The small purchase limitation of one hundred thousand dollars (\$100,000) applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one (1) transaction, all items which should properly be grouped together must be included. A minimum of three (3) quotes must be obtained and approved by the department or delegated entity.

(11) Grant Payments.

(A) Prior to the grant award, the department will notify the grantee how funds will be disbursed under the grant.

1. No funds may be drawn from the grant until the following conditions have been

met:

A. For construction projects, the grantee must submit to the department:

(I) Construction plans and specifications prepared in accordance with subsection (9)(A) of this rule; and

(II) Executed contract documents.

B. For planning projects, the grantee must have the department’s concurrence for all major consulting contracts, and a copy of the consulting contracts must be on file with the department; and

C. The grantee has documented it has secured matching funds for the grant.

2. Projects administered through a delegated entity will be paid in accordance with the delegated entity’s procedure on file with the department.

(B) An audit to verify eligible project costs and inspection of the project may be made by the department. Any funds found not expended for purposes listed in section (5) of this rule will be recovered in addition to any applicable penalties.

(12) Loan Requirements.

(A) Loans shall be administered in accordance with the provisions in 10 CSR 20-4.041 except that the loan shall not be subject to requirements unique to wastewater treatment projects. When the storm water loan is funded through storm water control bonds, the loan shall not be subject to requirements specific to federal funding.

(B) Loans must be secured with an acceptable debt instrument including revenue or general obligation bonds. Other financing securities will be reviewed on a case-by-case basis. Repayment must begin within one (1) year of project completion.

(C) The commission may direct that existing and/or future loans be leveraged through the Environmental Improvement and Energy Resources Authority.

(D) If at any time during the loan period the facility(ies) financed under this rule is sold, either outright or on contract for deed, to other than a political subdivision of the state, the loan becomes due and payable upon transfer.

(13) Repayment of Grant. A portion of the grant will be required to be repaid if the facilities constructed with grant funds are sold or transferred to private ownership. The grantee shall notify the department at least ninety (90) days prior to any such transfer. The amount of grant funds to be repaid will be based on a straight-line depreciation schedule based on the useful life of the project, but in no event exceeding a thirty (30)-year depreciation schedule.

(14) Storm Water Loan Revolving Fund. Storm water grants and loans may be awarded from the storm water loan revolving fund as funds are available. Eligible applicants must be a municipality, county, public sewer district, public water district, or a combination of the same. Except for subsections (3)(A)–(C), all provisions of this regulation apply to grants and loans made from the storm water loan revolving fund.

AUTHORITY: sections 644.026 and 644.570, RSMo 2016. Original rule filed June 9, 1999, effective March 30, 2000. Emergency amendment filed Feb. 1, 2007, effective March 4, 2007, expired Aug. 30, 2007. Amended: Filed March 14, 2007, effective Oct. 30, 2007. Amended: Filed March 16, 2009, effective Dec. 30, 2009. Amended: Filed June 13, 2018, effective Feb. 28, 2019.*

**Original authority: 644.026, RSMo 1972, amended 1973, 1987, 1993, 1995, 2000, 2012, 2014 and 644.570, RSMo 1999, amended 2008.*

10 CSR 20-4.070 Sales Tax Exemption
(Rescinded September 30, 2018)

AUTHORITY: sections 144.030 and 644.026, RSMo Supp. 1997 and 144.062, RSMo 1994. Original rule filed Nov. 3, 1997, effective July 30, 1998. Rescinded: Filed Dec. 29, 2017, effective Sept. 30, 2018.