

Title 15. Natural Resources and Economic Development

Chapter I. Arkansas Natural Resources Commission, Department of Agriculture

Subchapter B. Water

Part 26. Rules Governing the Arkansas Clean Water Revolving Loan Fund Program

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 16.101 Authority and scope.

These rules are adopted pursuant to Subchapter 9 of Chapter 5 of Title 15 of the Arkansas Code Annotated (the act creating the "Construction Assistance Revolving Loan Fund") as amended by Act 459 of 2001 and in accordance with the requirements of the Federal Water Pollution Control Act of 1972 as amended by Public Law 100-4; February 4, 1987. As contemplated by the Federal Act, the Arkansas General Assembly at its 1987 session enacted Act 1030, which was superseded at its 1991 session by Act 718, Arkansas Code Annotated, Section 15-5-901 to –906, establishing the Construction Assistance Revolving Loan Fund to be administered by the Arkansas Department of Environmental Quality. The Arkansas General Assembly at its 2001 Regular Session enacted Act 459, which converted the administration of the Program and Fund to the Arkansas Natural Resources Commission effective July 1, 2001."

Subpart 1. General Provisions

15 CAR § 26-101. Policy statement — Interpretation and application of this part.

(a)(1) It is the duty and policy of the Arkansas Natural Resources Commission to fully and expeditiously implement and administer the objectives, purposes, and intent of the Clean Water Revolving Loan Fund program authorized under the provisions of the Act.

(2) This part is accordingly adopted to assist in the effectuation and implementation of this duty and policy.

(b) Due to the very specialized nature and complexity of administration of the fund, the rules, modes of procedure, commission policies, and guidelines herein provided shall, in all instances, be subject to and given a liberal, reasonable, fair, and impartial construction, interpretation, and application to the end that the intent and purposes hereof may be obtained in compliance with the laws of the state and the public purposes sought to be served thereby.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-102. Definitions.

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

(1) "Act" means the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. § 1251 et seq.;

(2)(A) "Administration fee" means a fee charged to the borrower at loan closing.

(B) The administration fee is used to cover the costs of the program for both the Arkansas Development Finance Authority and the Arkansas Natural Resources Commission.

(C) The amount of the fee will be what is in effect at the time the memorandum of agreement is executed by both parties.

(D) The Director of the Arkansas Natural Resources Commission will be responsible for setting the administration fee;

(3) "Administrator of the United States Environmental Protection Agency" means the chief officer of the United States Environmental Protection Agency appointed by the President of the United States;

(4) "Arkansas Clean Water Revolving Loan Fund program (CWRLF)" means the program created pursuant to Arkansas Code § 15-5-901 et seq., in accordance with the

Federal Water Pollution Control Act of 1972, as amended by Public Law 100-4, February 4, 1987;

(5) "Authority" means the Arkansas Development Finance Authority;

(6)(A) "Best practicable waste treatment technologies" means the cost-effective technology that can treat wastewater, combined sewer overflows, and nonexcessive infiltration and inflow in publicly owned or individual wastewater facilities.

(B) These technologies must meet the applicable provisions of federal and state effluent limitations, groundwater protection, or other applicable standards;

(7)(A) "Binding commitment" means a legal obligation, enforceable under state law, specifying the terms and schedules under which assistance is provided.

(B) For the purpose of this program, the bond purchase agreement will normally be used as the binding commitment;

(8) "Bond" means the bond, note, renewal note, refunding bond, interim certificate, certification of indebtedness, debenture, warrant, commercial paper, or other obligation or evidence of indebtedness authorized to be issued by the State of Arkansas;

(9) "Bond purchase agreement" means a legal agreement specifying the terms and schedules under which the Arkansas Natural Resources Commission and Arkansas Development Finance Authority will purchase bonds issued by the borrower for financing the cost of construction;

(10) "Borrower" means a city, town, district, county, or public body created and recognized under state law having jurisdiction over transport, treatment, and/or disposal of:

(A) Sewage;

(B) Industrial waste; or

(C) Other waste;

(11) "Building" means the erection, acquisition, alteration, remodeling, improvement, or extension of wastewater facilities;

(12) "Capitalization grant" means federal grant assistance awarded to the state for the establishment of the Arkansas Clean Water Revolving Loan Fund program;

(13)(A) "Change order" means the documents issued by the borrower upon recommendation of the consulting engineer and with the approval of the Arkansas Natural Resources Commission staff.

(B) The change order authorizes a change, alteration, or variance in previously approved engineering plans and specifications for construction.

(C) This includes, but is not limited to:

(i) Additions or deletions of work to be performed pursuant to the contract;

(ii) A change in the completion time of the contract; or

(iii) A change in costs for work done pursuant to the contract;

(14)(A) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, Pub. L. No. 92-500 as amended in 1977 (Pub. L. No. 95-217), 1981 (Pub. L. No. 97-117), and 1987 (Pub. L. No. 100-4).

(B) The purpose of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's water;

(15) "Collector sewer" means the common lateral sewers within a publicly owned treatment system that are primarily installed to receive wastewater directly from facilities that convey wastewater from individual systems or from private property;

(16) "Commission" means the Arkansas Natural Resources Commission;

(17) "Commission staff" means the staff of the Arkansas Natural Resources Commission Water Resources Development Division responsible for administering the Arkansas Clean Water Revolving Loan Fund program under the supervision of the Director of the Arkansas Natural Resources Commission;

(18) "Construction" means any one (1) or more of the following:

(A) Preliminary planning to decide the feasibility of wastewater facilities;

(B) Engineering, architectural, environmental, legal, title, fiscal, or economic studies;

(C) Surveys, designs, plans, working drawings, or specifications; or

(D) Erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater facilities or the inspection or supervision of any of these items;

(19) "Consulting engineer" means the engineer or engineering firm retained by the borrower to provide professional engineering services during the planning, design, and/or construction of a project;

(20)(A) "Cost-effectiveness analysis" means an analysis done to decide which waste treatment management system or component part will result in the minimum total monetary costs (resources) over time.

(B) This analysis is done with consideration given to overriding nonmonetary costs needed to meet federal, state, and local requirements;

(21) "Default" means one (1) of several possible events:

(A) An event that, if not corrected immediately or within a stated period, becomes an event of default under a loan agreement;

(B) Failure to pay principal, financing fees, and interest promptly when due; or

(C) A breach of certain covenants made in respect to an agreement or debt;

(22) "Designated management agency" or "waste treatment management agency" means a community/municipality of the state that is designated by the governor and approved by the United States Environmental Protection Agency to receive federal assistance pursuant to Section 208 and Section 303(e) of the Act;

(23) "Director" means the Director of the Arkansas Natural Resources Commission;

(24)(A) "Disadvantaged community/system" means a community/system that:

(i) Is below the state's average median household income (MHI) level in accordance with the latest United States Bureau of the Census data; or

(ii)(a) The system's user charge ratio is equal to or greater than 1.0%.

(b) The user charge ratio is the projected system's average yearly residential water user charge rate for four thousand (4,000) gallons of water divided by the system's MHI.

(B) **Note.**

(i) The projected average yearly residential water user charge rate will include all applicable sewer costs after the project is completed.

(ii) Sewer costs include:

(a) All operations, maintenance, and replacement costs;

(b) Debt service;

(c) Debt service reserve;

(d) Required coverage; and

(e) Any other legal obligations/costs.

(C) **Note.** The Director of the Arkansas Natural Resources Commission may adjust the term, conditions, and interest rate for a disadvantaged community/system bond;

(25) "Disbursement" means the transfer of cash from the Clean Water Revolving Loan Fund to the borrower;

(26) "Effluent limitation" means any restriction established by the state or the Administrator of the United States Environmental Protection Agency on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discarded from a point source into waters of the state;

(27) "Eligible costs" means those project costs that the Arkansas Natural Resources Commission staff shall participate in that are:

(A) Reasonable, necessary, and allocable to the project; and

(B) Approved in the loan agreement;

(28)(A) "Enforceable requirements of the Act" means those conditions and limitations of permits issued pursuant to Sections 402 and 404 of the Act that, if violated, could result in issuance of a compliance order or initiation of a civil or criminal action under Section 309 of the Act.

(B) Where a permit has not been issued, but issuance is anticipated, the term means any requirement that will be in the permit when issued.

(C) Where no permit is applicable, the term means any requirement that is necessary to meet applicable criteria for best practicable waste treatment technology;

(29)(A) "Environmental determination" means a finding by the Arkansas Natural Resources Commission regarding the potential environmental impacts of a proposed project.

(B) This determination would also describe what mitigative measures, if any, the borrower will be required to do as a condition of financial assistance;

(30)(A) "Environmental impact statement" means a disclosure document setting forth impacts on the environment of a proposed course of action.

(B) The document will include recommendations to mitigate or minimize any adverse impacts;

(31)(A) "Environmental information document" means a written analysis prepared by the borrower.

(B) The document describes the potential environmental impacts of a proposed project.

(C) The document must be sufficient in scope to enable the Arkansas Natural Resources Commission staff to prepare an environmental assessment to allow an environmental determination to be made by the Arkansas Natural Resources Commission;

(32)(A) "Environmental review" means the process used to decide whether a proposed project may have significant impacts on the environment and therefore require the preparation of an environmental impact statement.

(B) The evaluation is undertaken by the Arkansas Natural Resources Commission, consistent with the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and other federal, state, and local laws and requirements;

(33)(A) "Financing fee" means a fee charged to the borrower used to cover the administrative costs of the program for both the Arkansas Development Finance Authority and the Arkansas Natural Resources Commission.

(B) The fee will be charged as part of each repayment the borrower makes to the Arkansas Development Finance Authority.

(C) The amount of the fee will be what is in effect at the time the memorandum of agreement is executed by both parties.

(D) The Director of the Arkansas Natural Resources Commission will be responsible for setting the financing fee.

(E) The portion of this fee that the Arkansas Natural Resources Commission receives is called the servicing fee;

(34) "Force account" means the provision of labor necessary to design or construct the project by the borrower;

(35)(A) "Fund" means the Construction Assistance Revolving Loan Fund.

(B) The General Assembly at its 1987 session enacted Acts 1987, No. 1030, which was superseded at its 1991 session by Acts 1991, No. 718, Arkansas Code §§ 15-5-901 – 15-5-906, establishing the Construction Assistance Revolving Loan Fund;

(36)(A) "Infiltration" means water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective:

- (i) Pipes;
- (ii) Pipe joints;
- (iii) Connections; or
- (iv) Manholes.

(B) Infiltration does not include, and is distinguished from, inflow;

(37)(A) "Inflow" means water other than wastewater that enters a sewer system including sewer service connections.

(B) Inflow can be from sources such as, but not limited to:

- (i) Roof leaders;
- (ii) Cellar drains;
- (iii) Yard drains;
- (iv) Area drains;
- (v) Drains from springs and swampy areas;
- (vi) Manhole covers;
- (vii) Cross connections between storm sewers and sanitary sewers;
- (viii) Catch basins;
- (ix) Cooling towers;

- (x) Storm waters;
- (xi) Surface runoff;
- (xii) Street wash waters; or
- (xiii) Drainage.

(C) Inflow does not include, and is distinguished from, infiltration;

(38) "Intended use plan" means a plan identifying the intended uses of the funds available for loans in the Arkansas Clean Water Revolving Loan Fund for each fiscal year as described in Section 606(c) of the Act;

(39) "Interceptor sewer" means a sewer that is designed for one (1) or more of the following purposes:

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

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

(C) To transport wastewater from one (1) or more municipal collector sewers to another municipality or to a regional facility for treatment; or

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

(40)(A) "Interest rate" means that annual percentage of interest that is in effect at the time the memorandum of agreement is executed by both parties.

(B) The Director of the Arkansas Natural Resources Commission will be responsible for setting the interest rate;

(41)(A) "Lending rate" means the combination of the interest rate and the financing fee in effect at the time the memorandum of agreement is executed by both parties.

(B) The lending rate is associated with a specific loan repayment period;

(42)(A) "Loan agreement" means a contractual arrangement (bond purchase agreement) by and between a borrower and the state acting by and through the Arkansas Natural Resources Commission and the Arkansas Development Finance Authority.

(B) The loan agreement sets forth the conditions and obligations for loans to the borrower for paying the eligible costs of construction of wastewater facilities;

(43) "Loan closing" means the execution of the loan, the date to be decided by the Arkansas Natural Resources Commission staff;

(44)(A) "Operation and maintenance" means those functions that result in expenditures during the useful life of the wastewater facilities for:

- (i) Materials;
- (ii) Labor;
- (iii) Utilities; and
- (iv) Other items.

(B) The functions must be necessary for managing and maintaining the sewage works to achieve the capacity and performance for which they were designed and constructed;

(45)(A) "Planning" means those necessary reports and studies that directly relate to wastewater facilities needed to comply with enforceable requirements of the Act and state statutes.

(B) Planning consists of a systematic evaluation of alternatives that are feasible considering the unique demographic, topographic, hydrologic, and institutional characteristics of the area.

(C) Planning will show the selected alternative is the most cost effective;

(46) "Plans and specifications" means the engineering description of the proposed construction project including engineering drawings, maps, technical specifications, design reports, and construction contract documents in sufficient detail to allow contractors to bid on the work;

(47)(A) "Point source" means any discernible, confined, and discrete conveyance from which pollutants are or may be discharged.

(B) This would include but not be limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, or other floating craft or concentrated animal feeding operation.

(C) This term does not include agricultural stormwater discharges and return flows from irrigated agriculture;

(48)(A) "Pollution" means the discharge, release, escape, deposit, or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state.

(B) Any discharge in such condition, manner, or quantity that does, will, or is likely to contaminate or substantially contribute to the alteration of the physical, chemical, or biological properties of any such waters.

(C) A discharge will be considered pollution if such contamination or alteration is to such an extent as to make the waters:

(i) Directly or indirectly harmful, detrimental, or injurious to the public:

(a) Health;

(b) Safety; and

(c) Welfare;

(ii) Directly or indirectly detrimental to existing animal, bird, fish, aquatic, or plant life;

(iii) Unsuited for present or future domestic, commercial, industrial, agricultural, recreational, scenic, or other legitimate uses; or

(iv) Lower the quality of the waters of the state below the standards established therefore by the United States or any department, agency, board, or commission of this state authorized to establish such standards;

(49) "Priority list" means a list of projects that is used to allocate the funds in the Arkansas Clean Water Revolving Loan Fund account;

(50) "Priority system" means a system for ranking all entities eligible for funding under the Arkansas Clean Water Revolving Loan Fund program;

(51)(A) "Professional services" means any service provided to the borrower concerning the project.

(B) These services include:

(i) Consulting engineers;

- (ii) Bond counsel;
- (iii) Accounting or bookkeeping;
- (iv) Legal;
- (v) Financial;
- (vi) Testing; or
- (vii) Any other service the borrower decides is needed;

(52) "Project" means the scope of work for which a loan is awarded under the Arkansas Clean Water Revolving Loan Fund;

(53) "Project completion" means the date operations of the wastewater facilities are initiated or can be initiated, as decided by the Arkansas Natural Resources Commission staff;

(54)(A) "Replacement" means expenditures for obtaining and installing:

- (i) Equipment;
- (ii) Accessories; or
- (iii) Appurtenances.

(B) Replacement expenditures are necessary to maintain the capacity and performance of the wastewater facilities during their useful life;

(55) "Revolving loan fund" means the Arkansas Clean Water Revolving Loan Fund, created pursuant to the Federal Water Control Act of 1972, as amended by Public Law 100-4, February 4, 1987;

(56) "State" means the State of Arkansas or any agency or instrumentality thereof;

(57) "Subagreement" means a contractual agreement between a borrower and a contractor;

(58)(A) "Submittal date penalty" means the penalty that may be assessed for not meeting the terms of the memorandum of agreement.

(B) The submittal date penalty is that in effect at the time the memorandum of agreement is executed by both parties.

(C) The Director of the Arkansas Natural Resources Commission will be responsible for setting the submittal date penalty;

(59)(A) "User charge" means a charge levied on users of wastewater facilities for the cost of debt service, operation and maintenance, including replacement.

(B) Adequate revenues must be generated to provide the debt service either through the user charge or another dedicated source.

(C) All revenues needed for operation and maintenance, including replacement, must come from revenues collected from user charges;

(60)(A) "Value engineering" means a specialized cost control technique.

(B) Value engineering uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project.

(C) The goal is to arrive at a cost saving without sacrificing the reliability or efficiency of the project;

(61)(A) "Wastewater" means any water containing sewage, industrial wastes, or other wastes or contaminants derived from the prior use of such water.

(B) "Wastewater" shall also include surface water collected by storm sewers;

(62)(A) "Wastewater facilities" means any devices and systems that are used in the storage, treatment, recycling, and reclamation of waste.

(B) In addition, any facilities that are necessary to recycle or reuse water at the most economical cost over the estimated life of the works.

(C) These facilities would include:

(i) Intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances;

(ii) Extensions, improvements, remodeling, additions, and alterations thereof;

(iii) Elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities;

(iv) Any works, including site acquisition, of the land that:

(a) Will be an integral part of or used with the treatment process, including land used for the storage of treated water in land treatment systems before land application; or

(b) Is used for ultimate disposal of residues resulting from such treatment;

(v) Any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for treating, neutralizing, or stabilizing waste; or

(vi) Facilities to provide for the collection, control, and disposal of waste; and

(63)(A) "Water quality management plan" means a plan prepared and updated annually by the state and approved by the United States Environmental Protection Agency.

(B) The plan determines the nature, extent, and causes of water quality problems in various areas of the state.

(C) It also identifies cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-103. Policy declarations.

(a) General.

(1)(A) The 1987 amendments to the Act created and provided federal funding for state water pollution control revolving loan programs.

(B) These programs are intended to be perpetual funds providing low interest loan assistance for the construction of wastewater facilities.

(C) Through capitalization grants from the United States Environmental Protection Agency and twenty percent (20%) state matching funds, the CWRLF has been established.

(2)(A) Project costs eligible for funding under the CWRLF are determined based on applicable laws and rules and are made on a project-by-project basis.

(B) The Arkansas Natural Resources Commission staff shall make these determinations based on the requirements of 15 CAR § 26-1001 et seq.

(b) Lending rate.

(1) It is the policy of the CWRLF program to provide loans with a subsidized interest rate to public entities in the State of Arkansas.

(2) The intent is to provide loans with a lending rate one percent (1%) to two percent (2%) less than the current open market municipal bond rate for the same loan repayment period as contemplated on the borrower's loan.

(c) Project management. The commission staff reserves the right to divide the financing of any construction project into smaller, fundable parts.

(d) Order of funding.

(1) Projects will be funded according to:

(A) The priority list;

(B) The time frames established in the applicable intended use plan; and

(C) Conditions outlined in this part.

(2) Commitments by the commission staff to a project will follow this pattern:

(A)(i) The interest rate, finance fee, administration fee, and the submittal date penalty will be set by the Director of the Arkansas Natural Resources Commission and fixed when the memorandum of agreement is executed by both parties.

(ii) These items will be those fees and rates in effect then; and

(B) When the bond purchase agreement is executed by all parties, the funds needed for that project will be committed by the commission staff.

(e) Application of other federal authorities.

(1) There are many other federal laws and federal authorities that have applied to traditional construction grants projects but that are not included among the authorities listed in Section 602(b)(6) of the Act.

(2) These other federal laws and authorities apply to activities supported with funds "directly made available by" capitalization grants and the state use of such funds in the administration of the program.

(3) Appendix A of this part contains a list of such federal laws and authorities.

(f) Force account.

(1) It is the policy of the CWRLF program that the majority of projects are constructed through competitive bidding.

(2)(A) The CWRLF program will allow force account work on a limited basis.

(B) This is done to make financially sound, marketable loans to large communities.

(3) Normally, these communities must already use the force account method for the type of work proposed.

(4) These communities would likely not use the CWRLF if competitive bidding were required and would use force account whatever the funding source.

(5) General rules for force account construction:

(A)(i) The borrower must prove that it has successfully done past projects of a similar nature and difficulty of the type proposed for force account work.

(ii) Supervisory and other key personnel must be experienced in the type of work proposed and be full-time employees of the borrower;

(B) The borrower must routinely use the major equipment necessary to do the proposed force account work;

(C) The force account work must be finished in the time a contractor obtained through competitive bidding would need;

(D)(i) A work crew must be dedicated to performing the force account work on a minimum forty (40) hours per week basis.

(ii) The borrower must prove that sufficient staff and equipment are available to do all ongoing utility operations without interrupting force account work; and

(E) The borrower must prove that it has sufficient accounting and record keeping expertise and staff to keep daily detailed records of the time and material expended on force account work.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Subpart 2. Program Requirements

15 CAR § 26-201. Eligible activities of the CWRLF program.

(a) General.

(1)(A) The CWRLF program is funded in part by a capitalization grant from the United States Environmental Protection Agency.

(B) As required by 40 C.F.R. § 35.3100 et seq., State Revolving Fund Program Implementation Regulations, dated March 19, 1990, the Arkansas Natural Resources Commission staff must designate certain projects as equivalency projects.

(C) These projects are subject to the equivalency requirements defined in 40 C.F.R. § 5.3100 et seq., and in the Act.

(D) Equivalency projects are defined as those in Section 212 of the Act, wastewater treatment projects constructed wholly or in part before October 1, 1994, with funds made directly available by the capitalization grant.

(2)(A) Those projects designated as equivalency projects by the commission staff must comply with Section 602(b)(6) of the Act.

(B) Under Section 602 of the Act, costs such as land for the treatment site (except land application sites), the construction of new collector sewers in existing communities, treatment plant office furnishings, and the cost for treating excessive infiltration and inflow into the sewer system will not be eligible for loan funding.

(C) For equivalency projects, eligibility determinations shall be according to 40 C.F.R. § 35.2000 et seq.

(3)(A) All funds within the CWRLF must be used solely to provide loans and other forms of assistance that may be authorized by the Act for the construction of publicly owned wastewater facilities or any other activity associated with water quality.

(B) Loans will be made to eligible entities at or below current market interest rates.

(C) The borrower is required to establish a dedicated source of revenue for repayment of loans.

(4) Funds within the CWRLF will also be used for the reasonable costs of administering the Construction Assistance Revolving Loan Fund and conducting activities under Title VI of the Act.

(b) Allowable categories of work.

(1) The following categories of work will be allowable for participation in the CWRLF program:

Category	I	Secondary Treatment
Category	II A & B	Advanced Treatment
Category	III A	Infiltration/Inflow Correction
Category	III B	Major Rehabilitation
Category	IV A	New Collectors
Category	IV B	New Interceptors

(2) Funding of new collectors and interceptors will be limited to that necessary to serve residential and commercial facilities in existence at the time of loan closing.

(3) Funds will not be provided for service to uninhabited areas.

(c) Additional funds. In the event additional funds become available through deobligations, transfers, additional allotments, etc., the funds will be obligated through the:

- (1) Priority system;
- (2) Project rankings; and
- (3) Applicable intended use plan.

(d) Industrial wastewater.

(1) Facilities with the primary purpose of transporting or treating industrial wastewater will not be eligible for participation in the CWRLF program.

(2) The determination of primary purpose will be made by the commission staff considering such factors as:

- (i) Design capacity population projections;
- (ii) Industrial pretreatment facilities availability of CWRLF funds; and
- (iii) Pretreatment requirements of the borrower.

(e) Pretreatment.

- (1) Certain cities may be required to develop a pretreatment program.
- (2) The requirements are administered through the NPDES permit program.
- (3) Project costs related to pretreatment requirements will not be eligible for CWRLF program funding.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Codification Notes. "NPDES" means National Pollutant Discharge Elimination System.

15 CAR § 26-202. Lending rate.

(a)(1) The lending rate for the CWRLF program will be set by the Director of the Arkansas Natural Resources Commission.

(2) The lending rate is made up of the subsidized interest rate and the financing fee.

(3) Either of these rates may be revised any time using the procedure in 15 CAR § 26-205.

(4) The lending rate will be associated with a specific loan repayment period.

(b)(1) The lending rate may be modified if the borrower fails to meet a submittal date or the certifiable application date listed in the memorandum of agreement.

(2) The penalty will be stated in the executed memorandum of agreement.

(c) **Interest rate.**

(1) The interest rate is the interest rate for the loan.

(2) It is combined with the financing fee to create the lending rate of the bond.

(d) **Financing fee.**

(1) The financing fee is a method the Arkansas Natural Resources Commission staff uses to collect funds to administer the program.

(2) The financing fee is a rate that will be added to the interest rate to create the lending rate for the bond.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-203. Obligation period.

Funds allotted by Title VI shall be available for obligation to the state for one (1) year after the close of the federal fiscal year for which the funds are authorized.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-204. Reserves.

(a) According to Section 604(b), the Director of the Arkansas Natural Resources Commission shall reserve some of the state's allotment from each federal fiscal year for planning under Section 205(j) and Section 303(e) of the Act.

(b) The reserve for nonpoint source pollution planning is applicable only for funds appropriated under Title II of the Act.

(c) Set-asides will be created for all mandatory reserves and state management funds as authorized.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-205. Revisions.

For the purposes of this part, there will be three (3) types of revisions:

(1)(A) Major revisions.

(B) According to the Act, the Arkansas Natural Resources Commission shall hold public hearings to consider adoption and approval of the priority list, this part, and amendments thereto when required;

(2)(A) Minor revisions.

(B) Revisions to the priority list found nonsignificant and/or minor revisions required for administrative purposes shall be made by approval of the Director of the Arkansas Natural Resources Commission without a public hearing; and

(3)(A) Minor revisions to the interest rate, financing fee, administration fee, and submittal date penalty.

(B) Revisions will need the approval of the director.

(C) The commission staff will publish a notice of the change in a paper of statewide circulation.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-206. Audit.

(a) The Administrator of the United States Environmental Protection Agency will conduct or require the state to have an independently conducted financial and compliance audit of the CWRLF program.

(b) The audit shall be conducted according to the auditing standards of the United States Government Accountability Office (Standards for Audit of Governmental Organizations, Programs, Activities, and Functions).

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-207. Capitalization grant application.

The Arkansas Natural Resources Commission staff shall submit the intended use plan with an application for the federal capitalization grant to the United States Environmental Protection Agency.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-208. Project priority list.

(a)(1) The project priority list is an ordered listing, prepared according to the priority system, of projects anticipated to receive loans.

(2) All projects eligible for loan assistance must be included on the state's project priority list.

(3) Loan assistance may be provided whatever the rank on the state's project priority list based on readiness to proceed with construction.

(b)(1) The Arkansas Natural Resources Commission staff may revise the project priority list according to provisions in 15 CAR § 26-205 as necessary to manage the Construction Assistance Revolving Loan Fund efficiently.

(2) The commission staff shall submit the priority list to the United States Environmental Protection Agency for approval.

(c)(1) If a community not in the priority list seeks funding or the factors for a community on the priority list change, the priority list will be amended to reflect these changes.

(2) The result of these changes will not affect communities that have already submitted a preapplication.

(d) Any amendment to the priority list made for these reasons will be considered minor and subject to the rules for that type of revision.

(e)(1) All projects will be ranked, and loans will be awarded from the priority list.

(2) In any joint project, the combined entities must have problems in common, or both entities must be contributing to an existing water quality violation.

(f)(1) The project cost estimates shown in the priority list are updated from information provided by the entities listed.

(2) These estimates will be adjusted based upon final eligibility determinations and changes in project situations at the time of the loan closing.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-209. Intended use plan.

(a)(1) Each fiscal year after the United States Congress appropriates and the state receives its allocation of funds for the CWRLF, the Arkansas Natural Resources Commission staff shall prepare an intended use plan that shall be subjected to public notice.

(2) The intended use plan will identify those projects on the priority list in which loan assistance is to be provided from that year's appropriation.

(3) Only projects that anticipate the planning and design will be completed within the next twelve (12) months will be included in the intended use plan.

(b)(1) The intended use plan shall meet the requirements of the Act.

(2) The intended use plan will meet the United States Environmental Protection Agency requirements concerning the short-term and long-term goals and objectives of the Construction Assistance Revolving Loan Fund.

(3) The intended use plan will show the criteria and method for the distribution of funds.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-210. CWRLF financing.

(a) The CWRLF has been established to help and encourage communities to construct and/or improve wastewater systems required to improve water quality and public health with low-interest financial assistance.

(b) Communities requesting assistance shall meet the following requirements:

(1) The borrower must:

(A) Establish a dedicated source of funds for repayment of the loan; and

(B) Enter legal and binding commitments with the Arkansas Natural Resources Commission and the Arkansas Development Finance Authority to secure financing;

(2) The borrower must comply with:

(A) The requirements of this part;

(B) The requirements of the Water Quality Act of 1987 as amended; and

(C) All applicable state laws, requirements, and rules;

(3)(A) Disbursements may be made monthly based upon actual work done and costs incurred, except project performance services that will be disbursed as approved by the commission staff.

(B) Funds will not be disbursed from the Arkansas Clean Water Revolving Loan Fund without approval by the commission staff;

(4)(A) The borrower shall provide an estimated completion date for construction to be used to develop the loan repayment schedule.

(B) Repayment shall begin on this date no matter the date construction is completed.

(C) The loan repayment period shall not exceed the federal law requirements;

(5)(A) The repayment schedule will be based on semiannual payments for the life of the loan.

(B) The borrower will make monthly payments equal to one-sixth (1/6) of a semiannual payment.

(C) The authority will deposit these payments in an interest-bearing account, and the interest will be credited to the borrower on the next repayment.

(D) This procedure is used to monitor the borrower's ability to repay the loan before a repayment is due;

(6)(A) In case of cost overruns during construction, there will be no increase in the loan amount.

(B) Should additional funding be required, the borrower must apply for a second loan; and

(7)(A) In case of cost underruns, the borrower will only repay the amount actually borrowed.

(B) The repayment schedule will be recalculated on the estimated completion date.

(C) The payments will be adjusted if there is a material difference between the amount actually borrowed and the amount available to the borrower.

(D) A material difference will be determined and mutually agreed upon by the:

(i) Commission staff;

(ii) Authority; and

(iii) Trustee.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-211. Procurement.

(a)(1) In the CWRLF program, each borrower will be expected to obtain the services of:

- (A) A consulting engineer;
- (B) Bond counsel; and
- (C) Construction contractor or contractors.

(2) All procurement transactions shall be conducted in a way that provides maximum open and free competition.

(b) Professional services.

(1) Procurement of engineering, bond counsel, and other professional services shall be accomplished according to state law before entering into a memorandum of agreement with the Arkansas Natural Resources Commission staff.

(2)(A) A public request for qualifications for professional services should be published in professional journals or newspapers of statewide circulation.

(B) The announcement must state the deadline and place for submission of qualification statements.

(C) Adequate time must be allowed between the date when the public notice is first published and the date when qualifications must be submitted.

(3) The borrower will maintain records that include the rationale for the procurement method followed.

(4) Documentation will be required to assure affirmative steps will be taken to ensure the use of minority business enterprise firms and women business enterprise firms when possible.

(5)(A) The borrower shall submit all proposed and/or executed professional service contracts to the commission staff for review and approval.

(B) Contracts will be of the type and form prescribed by the commission staff.

(C) Cost-plus-percentage-of-cost and percentage of construction costs are prohibited for construction phase services.

(6)(A) The commission requires that the borrower obtain a consulting engineer to assure that the borrower's project will be the best solution to its problem.

(B) Therefore, the commission considers it a conflict of interest and will not enter into a memorandum of agreement if the consulting engineer also engages in the sales or representation of equipment or processes for wastewater treatment.

(c) Construction services.

(1)(A) Each construction contract shall be advertised for bidders after commission staff approval.

(B) Adequate time, not less than thirty (30) days, must be allowed between the date when public notice is first published and the date by which bids must be submitted.

(C) Bidding documents shall be available to prospective bidders from the date the notice is first published.

(2)(A) Each contract shall be a fixed price (lump sum, unit price, or a combination of the two (2)) contract.

(B) The commission staff can give advance written approval for the borrower to use another acceptable type of contract.

(C) The cost-plus-percentage-of-cost contract shall not be used in any event.

(3)(A) Awards shall be made only to responsive, responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement.

(B) Contracts shall not be awarded before commission staff approval.

(4) Documentation will be required to assure affirmative steps will be taken to ensure the use of minority business enterprises, women business enterprises, and labor surplus area firms when possible.

(5) Each contract shall incorporate supplemental specifications as prepared by the commission staff that includes but is not limited to standard procurement procedures.

(d) Equipment and material procurement.

(1) The borrower may purchase needed equipment and materials directly to avoid the increased costs associated with including such items in a general construction contract.

(2) Should the borrower elect to use this method, the following procedures shall apply:

(A)(i) Each contract shall only be awarded after formal advertising and concurrence by the commission staff.

(ii) Adequate time as required by state law shall be allowed between the date when public notice is first published and the date by which bids must be submitted.

(iii) Bidding documents shall be available to prospective bidders from the date the notice is first published;

(B)(i) Each contract shall be a fixed price (lump sum, unit price, or a combination of the two (2)) contract.

(ii) The commission staff can give advance written approval for the borrower to use another acceptable type of contract.

(iii) The cost-plus-percentage-of-cost contract shall not be used in any event;

(C) Awards shall be made only to responsive, responsible suppliers possessing the ability to perform successfully under the terms and conditions of the proposed procurement; and

(D) The borrower shall submit all proposed contracts for equipment or material purchase to the commission staff for review, approval, and authorization to advertise for bids.

(e) Small purchases.

(1)(A) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one (1) transaction does not exceed the minimum amount specified by state law for competitive bidding by first-class cities (e.g., Arkansas Code § 14-58-303(b)), irrespective of the type of borrower.

(B) The small purchase limitation applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order.

(C) In arriving at the aggregate amount involved in any one (1) transaction, all items that should properly be grouped together must be included.

(D) Reasonable competition shall be obtained by soliciting at least two (2) quotes for each order.

(2)(A) Contracts for small purchases need not be a bilaterally executed written agreement.

(B) Where appropriate, unilateral purchase orders, sales slips, memoranda, or oral price quotations and the like may be used to minimize paperwork.

(C) Retention in the purchase files of these documents, written quotations received, references to catalogs, or printed price lists used will suffice as the record supporting the price paid.

(f) Noncompetitive procurement.

(1) This method may be used only with written approval of the commission staff.

(2) To use this method, one (1) of the following must apply:

(A) The item is available only from one (1) source;

(B) The need for the item precludes a delay; or

(C) After appropriate solicitation, competition is found inadequate.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Subpart 3. Application for Assistance

15 CAR § 26-301. Preplanning conference.

(a) Potential applicants shall confer with the Arkansas Natural Resources Commission staff as early in the planning process as practical.

(b) During the conference the staff will provide information, advice, instruction, and guidance on the scope of work and level of effort needed to ensure that the applicant expeditiously complies with CWRLF program requirements.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-302. Preapplication documents.

Before entering into a memorandum of agreement as described in 15 CAR § 26-303, the applicant must submit the following documents:

(1)(A) A resolution from the governing body naming the applicant's signatory authority or authorities for the project.

(B) The signatory authority or authorities must have the legal authority to contractually bind the borrower.

(C) The signatory authority or authorities will be signing such documents as:

- (i) The loan application;
- (ii) The bond purchase agreement;
- (iii) Payment requests; and
- (iv) Many other program documents;

(2)(A) Because some of the funds used in the CWRLF program are from tax-free municipal bonds, the borrower will be required to pass a resolution called a resolution of intent.

(B) This resolution is required by the Internal Revenue Service.

(C) The CWRLF program can only reimburse the borrower for costs incurred after this resolution is passed.

(D) A copy of this resolution will have to be submitted to the Arkansas Natural Resources Commission staff;

(3)(A) The borrower will certify that all professional services used on this project have been properly procured.

(B) Examples of the types of services that would have to be procured are a consulting engineer and a bond counsel;

(4) The borrower will provide a copy of the contract for consulting engineering services for planning and design; and

(5)(A) The borrower will provide a copy of the letter from the Water/Wastewater Advisory Committee (WWAC) that recommends funding from the CWRLF program.

(B) Details about the WWAC process can be obtained from the commission staff.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-303. Memorandum of agreement.

(a)(1) The Arkansas Natural Resources Commission staff will regulate the number and timing of projects receiving assistance in a given fiscal year through the execution of a memorandum of agreement.

(2) This will be done to:

(A) Maintain administrative control of the project workload; and

(B) Ensure the integrity of the CWRLF program.

(3) The memorandum of agreement will:

(A) Be negotiated between the applicant and the commission staff; and

(B) Contain submittal dates for various application documents.

(4) Submittal dates will include, but not be limited to, the submittal date for the:

(A) Engineering report and environmental information document;

(B) Construction plans and specifications;

(C) Loan application; and

(D) User charge and sewer use ordinances.

(b)(1) Priority for staff review of application documents will be assigned according to memorandum of agreement submittal dates for all projects.

(2) Provisions will be included in the memorandum of agreement for a revision of interim submittal dates when circumstances warrant such a revision, subject to commission staff approval.

(3) However, such extensions will result in a lower review priority for the project and may result in the loss of funding for a given fiscal year.

(c)(1) The interest rate, finance fee, administration fee, and the submittal date penalty will be fixed when the memorandum of agreement is executed by both parties.

(2) These items will be those fees and rates in effect at that time.

(d)(1) Failure of the applicant to submit documents on the dates specified in the memorandum of agreement, the submittal of substantially incomplete or inadequate documents, or not having a certifiable application on the date specified may result in the imposition of the submittal date penalty.

(2) The commission staff will then revise the submittal schedule as needed.

(3) The submittal date penalty will be stated in the executed memorandum of agreement.

(e)(1) All engineering subagreements for planning and design that are executed by parties to a memorandum of agreement with the commission staff shall contain a clause addressing the nonperformance or negligence of the consulting engineering firm.

(2) This clause shall:

(A) Incorporate the scheduled submittal dates from the memorandum of agreement; and

(B) Provide protection to the city for failure of performance by the consulting engineering firm.

(3) Subagreements shall be submitted to the commission staff for review and approval of this clause as a condition for the commission staff executing the memorandum of agreement.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-304. Engineering report.

(a) The applicant shall submit two (2) copies of the engineering report, including environmental information, for review.

(b)(1) The Arkansas Natural Resources Commission staff will approve the engineering report after confirming that the appropriate requirements have been met.

(2) Part of the confirmation is showing that an environmental determination has been made according to 15 CAR § 26-305 (relating to the environmental review).

(3) The applicant has to agree to incorporate all mitigating measures as directed by the commission staff.

(c) The project engineering report shall contain at a minimum the information described below:

(1) Identification of the:

(A) Planning area boundaries and characteristics;

(B) Existing problems and needs related to wastewater management; and

(C) Projected needs and problems for the next twenty (20) years;

(2)(A) Demonstration that each existing sewer collection system is not or will not be subject to excessive infiltration/inflow, including a sewer system evaluation survey if required.

(B) Memorandum of agreement time extensions can be obtained if extra time is needed for the sewer system evaluation survey;

(3) Systematic identification, screening, study, evaluation, and cost-effectiveness analysis of best practical wastewater treatment technologies;

(4) Adequate evaluation of the environmental impacts of alternatives according to 15 CAR § 26-305, relating to environmental review and determination, to support the cost-effectiveness analysis;

(5) Description of the proposed project in terms of quantities in each category of need, capital costs, and operation and maintenance costs;

(6) If collection lines are included, establishment of whether they are for:

(A) Correction of I/I problems of the wastewater facilities servicing the community; or

(B) A new collection system in an existing community with sufficient existing or planned wastewater treatment capacity;

(7) Documentation on the project's consistency with the approved elements of any applicable water quality management plan approved under Section 208 or Section 303(e) of the Act;

(8)(A) A capital financing plan for the proposed project including:

(i) A projection of future needs for construction and reconstruction;

and

(ii) An explanation of how and when the financing will be obtained.

(B) Other funding sources will be identified if applicable;

(9) An analysis of the impact the proposed project will have on user charges for:

(A) Operation;

(B) Maintenance;

(C) Replacement; and

(D) Debt service costs;

(10) A schedule for implementation of the project including dates for the:

(A) Certification of the application for assistance;

(B) Start and completion of construction; and

(C) Certification of project performance;

(11) Information on the environment of the planning area and the direct and indirect environmental impacts the proposed project will have;

(12) Evidence of adequate public participation in the development of the engineering report and environmental information concerning the proposed project including the solicitation of comments from appropriate state and federal agencies; and

(13) Other information deemed necessary by the commission staff based on the scope, complexity, or special aspects of the proposed project.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Codification Notes. "I/I" means inflow/infiltration.

15 CAR § 26-305. Required environmental review and determination.

(a) As required by the provisions of Section 602(b)(6) of the Act, the Arkansas Natural Resources Commission staff will conduct an environmental review of the project proposed for funding from the CWRLF program.

(b) This review will be consistent with the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and the environmental review process for Arkansas CWRLF projects.

(c) As early as practical the applicant shall obtain a determination from the commission staff as to the required scope of the environmental review and the information that must be furnished for a particular project.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-306. Planning and design costs.

(a)(1) Temporary loans to provide applicants funding for planning and design costs may be provided if funds are available.

(2) The Arkansas Natural Resources Commission staff reserves the right to refuse issuance of a planning and design loan based on the applicant's financial capability and the availability of funds.

(b)(1) These loans, if available, are secured by a revenue bond with repayment within five (5) years of issuance should the applicant not continue in the CWRLF program.

(2) Should the applicant continue through construction in the CWRLF program, this loan will be paid off by the construction loan at loan closing.

(3) A financing fee will be charged according to 15 CAR § 26-503, and the applicant must show adequate financial capability to repay the planning and design loan.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-307. Application process.

An application shall be filed with the Arkansas Natural Resources Commission staff that contains the following information:

(1) **General information.** General information such as the names, titles, addresses, and phone numbers for the signatory authority of each participating political subdivision, the engineering consultant or consultants, the legal counsel/city attorney, the applicant's bond counsel, the applicant's independent auditor, and the wastewater superintendent and his or her license class shall be provided on each application;

(2) **Current financial information.**

(A)(i) Audit reports for the municipality and the sewer system for the last four (4) fiscal years.

(ii) Should audits not be available for each year, unaudited financial statements are required.

(B) Copies of all outstanding bond ordinances including amortization schedules and notes payable that pledge sewer system revenues for repayment.

(C) Information on:

(i) The current sewer customer base;

(ii) Customer income;

(iii) Average customer charges for sewer service; and

(iv) The current sewer rate ordinance.

(D) The previous, current, and projected annual operating budget for the municipality and for the sewer system.

(E) A sewer system delinquent accounts analysis.

(F) The amount of the two (2) preceding years', the current year's, and the projected year's general revenue turnback funds.

(G) Other information deemed necessary by the commission staff to establish the current financial condition of the applicant; and

(3) Projected financial information.

(A) A line item budget estimate for the proposed project that includes:

- (i) The construction cost for all major facilities;
- (ii) Land and easement costs;
- (iii) Fees for engineering and legal costs;
- (iv) Administration and loan issuance costs;
- (v) Interest during construction; and
- (vi) A contingency amount.

(B) The proposed project funding breakdown including the:

- (i) Proposed CWRLF amount;
- (ii) Applicant contribution; and
- (iii) Source of any additional funding required to construct the

project.

(C) The projected sewer customer base and a projected budget showing revenues and expenses for operating the sewer system following project completion.

(D) A proposed project schedule.

(E) Forms and statements concerning compliance with applicable state and federal requirements.

(F) Other information deemed necessary by the commission staff to establish the projected financial condition of the applicant following project completion.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-308. User charge ordinance.

(a) **Using sewer rates.**

(1) Before enactment, the applicant shall submit a proposed user charge ordinance and rate structure documentation establishing the rates that will be charged for each class of sewer customers.

(2) Upon approval of the ordinance, the applicant shall enact the ordinance according to state law.

(3) User charge ordinances must meet the following minimum requirements:

(i) Each user within a class must pay its proportionate share of operation, maintenance, and replacement costs;

(ii) Each user within a class must pay its proportionate contribution to wastewater loading;

(iii) An adequate system must be in place to charge above-average-strength waste dischargers;

(iv) The ordinance must:

(a) Explain the basis for billing;

(b) Specify the penalty for nonpayment; and

(c) Describe the procedures for appealing a bill;

(v)(a) The applicant must perform an annual review of the finances of the sewer department.

(b) If the annual review shows that the rate structure has to be modified, the borrower will submit a copy of the proposed rate structure for the commission staff's approval before enactment of the ordinance; and

(vi) All these requirements must be met until the loan is completely repaid.

(b) **Using ad valorem tax.** If the applicant is proposing to levy ad valorem taxes to pay debt service, the following information must be furnished:

(1) The estimated or actual assessed valuation of taxable property and the ratio of assessed valuation to actual market value in the specified year;

(2) The proposed and maximum tax rate permitted by law per one hundred sixty dollars (\$160) of assessed valuation;

(3) The estimated dollar amount of taxes to be collected for CWRLF debt service; and

(4)(A) If the applicant has bonds outstanding that are payable wholly or in part from ad valorem taxes, a copy of each bond issue with amortization schedule shall be furnished.

(B) The current rate of ad valorem taxes levied for all purposes must be provided and the actual amount of dollars collected.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-309. Intergovernmental agreements.

(a) The applicant shall submit a copy of any actual or proposed intergovernmental contract under which the applicant either will:

- (1) Use another system for treatment; or
- (2) Receive wastewater for treatment.

(b) Before loan closing, each intergovernmental agreement must be approved by the Arkansas Natural Resources Commission staff.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-310. Review of applications.

The Arkansas Natural Resources Commission staff shall review the application for funds and present it to the Director of the Arkansas Natural Resources Commission or his or her designee for certification only after the following requirements have been satisfied:

(1) The applicant has satisfactorily completed the application according to the requirements of 15 CAR § 26-307;

(2) The project is consistent with and included in the priority system and list according to 15 CAR § 26-208 and the categories of proposed work are eligible;

(3)(A) The applicant is a designated waste treatment management agency under Section 208 and Section 303 of the Act.

(B) The project has been found consistent with the area-wide water quality management plan of the state;

(4)(A) The applicant has satisfactorily completed a facility plan according to the requirements of 15 CAR § 26-303.

(B) The project has an environmental review and determination has been made according to 15 CAR § 26-305;

(5) The applicant has enacted an acceptable user charge ordinance according to 15 CAR § 26-308;

(6) The applicant has provided acceptable intergovernmental agreements as required by 15 CAR § 26-309;

(7) The applicant has satisfactorily completed plans and specifications according to 15 CAR § 26-403;

(8)(A) Acceptable, executed engineering service agreements for construction-phase and post-construction-phase services have been provided.

(B) An acceptable project performance phase work plan, if required, has been submitted;

(9) The applicant has enacted an acceptable sewer use ordinance;

(10) The applicant has satisfactorily shown it has the necessary legal, financial, and managerial capability to complete the project and to repay the loan; and

(11) The applicant has provided a certification that it has the necessary legal powers and authority to get all land, easements, and rights-of-way necessary to construct the project.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-311. Bond ordinance.

(a)(1) The borrower shall direct its bond counsel to prepare a bond ordinance according to the term sheet provided by the Arkansas Natural Resources Commission staff.

(2) The bond counsel shall assure that the ordinance is enacted according to state law and program requirements.

(b) Sewer improvement districts shall be required to document the legal formation of the district and the enactment of an acceptable tax levying ordinance besides preparing the bond ordinance.

(c)(1) In bonds supported by a sales tax, the borrower will be required to furnish a certified copy of the sales tax ordinance and the election results besides preparing the bond ordinance.

(2) The commission staff shall approve all sales tax election ordinances.

(3) This approval must be before scheduling a sales tax election.

(4) This is done to assure all program requirements are met.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-312. Bond purchase agreement.

(a)(1) Upon enactment of the bond ordinance, the applicant will enter into a bond purchase agreement with the Arkansas Natural Resources Commission staff.

(2) The bond purchase agreement shall be prepared by the borrower's bond counsel according to the term sheet provided by the commission staff.

(3) It shall set forth the terms and conditions that the borrower must meet to obtain funding.

(b) Funds will not be committed until the bond purchase agreement is executed.

(c) If the applicant has not had a loan closing within six (6) months of executing the bond purchase agreement, the commission staff may terminate the assistance according to the provisions of the bond purchase agreement.

(d) The commission staff will reallocate the funds committed to the project to other projects.

(e) The applicant will be allowed to reapply for CWRLF funds, but will be subject to the rules in effect at the time of reapplication.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-313. Loan closing.

(a)(1) Upon enactment of the bond ordinance and execution of the bond purchase agreement, the borrower's bond counsel shall arrange a loan closing according to Arkansas Natural Resources Commission staff requirements.

(2) Before loan closing, the borrower shall submit for approval an initial disbursement request to the commission staff for payment at loan closing.

(b)(1) Normally, the loan is not closed until the commission staff has certified the application as complete according to the requirements of 15 CAR § 26-301 et seq.

(2) When it is in the best overall interest of the CWRLF program, the commission staff may execute a bond purchase agreement and close the loan before completion of the application process.

(3) Under these circumstances, construction phase funds will not be disbursed until the application has been certified according to the requirements of 15 CAR § 26-301 et seq.

(c)(1) The applicant agrees that the commission is not a partner, joint venturer, or in any other way a party to the project or the operation of the wastewater system of the applicant.

(2) The commission shall not in any way be liable or responsible for the payment of any claims or cost overruns concerning the project.

(d) The applicant shall provide an estimated disbursement schedule and modify it as necessary throughout the construction period.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-314. Audit.

(a)(1) The borrower's annual audits must comply with the provisions of the United States Office of Management and Budget's Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations".

(2) This is only for those fiscal years in which the federal financial assistance received from the CWRLF program is equal to or greater than three hundred thousand dollars (\$300,000).

(3) CWRLF participants or their independent auditors should contact the financial analyst in the Arkansas Natural Resources Commission staff for the information regarding the federal financial assistance received.

(b)(1) The borrower must establish and maintain separate sewer system accounts for the term of the loan agreement.

(2) This must be done according to the generally accepted accounting principles as determined by the Governmental Accounting Standards Board (GASB).

(3) The federal regulations governing the state CWRLF program require this as specified in 40 C.F.R. pt. 35.

(4)(A) The GASB specifies that all enterprise funds must use accrual accounting.

(B) Therefore, governmental fund accounting is not an acceptable type of accounting for the accounting records of a sewer system.

(c)(1) Following project completion, the final loan disbursement and the completion of Circular No. A-133 audit requirements, the borrower shall have independent annual audits done on the sewer system.

(2) These audits must be according to generally accepted accounting principles as determined by GASB for the term of the loan agreement.

(d) All annual audits should be submitted to the financial analyst of the commission staff within one hundred twenty (120) days of the end of the borrower's fiscal year.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Subpart 4. Engineering Design

15 CAR § 26-401. Value engineering.

(a) Borrowers will be required by the Arkansas Natural Resources Commission staff to perform value engineering if the estimated cost of building the wastewater facilities is twenty million dollars (\$20,000,000) or more.

(b) The borrower shall use current United States Environmental Protection Agency guidance on the scope and performance of the value engineering analysis, and the associated value engineering reports shall be submitted to the commission staff for review and approval.

(c)(1) Borrowers may not break up contracts to avoid this provision.

(2) The commission staff may require borrowers to undertake a value engineering review if it believes this has happened.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-402. Plans and specifications.

(a)(1) The borrower shall prepare:

(A) Plans and specifications for constructing the proposed project; and

(B) A final engineering design report on all significant elements of the project.

(2)(A) These documents shall conform to Recommended Standards for Sewage Works.

(B) See 16 State Standards, latest edition as amended by Arkansas Natural Resources Commission minute orders.

(3) The plans and specifications shall incorporate the accepted recommendations of any value engineering done according to 15 CAR § 26-401, relating to value engineering.

(4) Two (2) copies of the documents shall be submitted to the commission staff.

(b) **Initial submittal of plans and specifications.**

(1) Two (2) copies of the initial plans and specifications shall be submitted to the commission staff.

(2) The initial submittal shall be complete enough so that a contractor could develop an estimate of the project cost and will contain at least the following:

(A) Plans:

(i) Cover sheet identifying:

(a) Project;

(b) Commission staff's project number;

(c) Owner; and

(d) Other pertinent information;

(ii) Vicinity map and site plan;

(iii) Sheets showing items of construction, including detailed drawings, plan/profile drawings, etc.; and

(iv) Miscellaneous standard detail drawings; and

(B) Specifications:

(i) Title page and table of contents identifying:

(a) Project;

(b) Commission staff's project number;

(c) Owner; and

(d) Other pertinent information;

(ii) The advertisement for bids and the information for bidders sections;

(iii) Bid proposal listing items of construction, method of bidding, contract time, bid bond requirements, etc.;

(iv)(a) Contract documents including the agreement and separate payment and performance bonds.

(b) Each bond must be for one hundred sixty percent (160%) of the contract amount;

(v) General conditions and CWRLF supplemental conditions; and

(vi) Detailed specifications including construction methods, equipment specifications, method of measurement, payment, etc.

(c) **Final plans and specifications.** Besides the requirements for the initial submittal of plans and specifications, final plans and specifications shall contain the following:

(1) Provisions assuring compliance with the commission rules and policies and all relevant statutes including a contractor's act of assurance form warranting compliance by the contractor with applicable:

(A) Rules;

(B) Policies; and

(C) Statutes;

(2)(A) Provisions requiring the successful contractor and subcontractors to pay all laborers and mechanics employed on the project not less than the prevailing wage rates.

(B) The wage rates are determined by the United States Secretary of Labor, according to the Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147, or according to state prevailing wage requirements, as applicable;

(3) Provisions providing for the borrower to retain a percentage of the progress payments otherwise due to the contractor until the building of the project is substantially complete and for a reduction in the retainage according to 15 CAR § 26-607, relating to retainage;

(4) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;

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

(6) Provisions for equal opportunity employment and utilization of MBE/WBE firms;

(7)(A) Language that shall release and hold harmless the commission and its officers, members, and employees from claims arising concerning the design, construction, and operation of the project.

(B) This includes any matter due solely to the contractor's or borrower's negligence; and

(8) Those conditions, specifications, and other provisions provided by or requested by the commission.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Codification Notes. "MBE/WBE" means minority business enterprise firms and women-owned business enterprise firms.

15 CAR § 26-403. Approval of plans and specifications.

(a) The Arkansas Natural Resources Commission staff approval of the plans and specifications does not relieve the borrower of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

(b) The commission staff will approve the plans and specifications provided the documents:

- (1) Conform to the requirements of 15 CAR §§ 26-401 – 26-402;
- (2) Are consistent with all relevant statutes and program requirements;
- (3) Pass a biddability, operability, and constructability review by the commission staff;
- (4) Are consistent with the planning documents and environmental determinations required by 15 CAR § 26-305; and
- (5) Have been approved by each state and federal agency having jurisdiction over the project.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Subpart 5. Release of Funds

15 CAR § 26-501. Disbursement requests.

(a) General.

(1) The borrower may request the disbursement of loan funds by providing necessary documents as appropriate and consistent with this part.

(2) Disbursements will only be made for costs incurred pursuant to work done on the project as described in the engineering report and plans and specifications approved by the Arkansas Natural Resources Commission staff.

(3) Disbursements shall be for:

- (A) Engineering and other professional services;
- (B) Bond issuance costs;
- (C) Interest and financing fees during construction;
- (D) Costs to administer the project by the borrower;
- (E) Equipment costs;
- (F) Construction costs including material stored on site less retainage; and
- (G) Other project-specific costs.

(4) These costs are subject to an eligibility determination of the commission staff according to 15 CAR § 26-1001 et seq.

(b) **Procedure.** Provided the borrower meets the provisions of the bond purchase agreement, bond ordinance, and this part, disbursements will be made to the borrower under the following conditions:

(1)(A) The disbursement request will be:

- (i) Of the form and type required by the commission staff; and
- (ii) Supplemented with copies of invoices for each cost incurred.

(B) The borrower shall maintain complete documentation of all project costs for audit purposes.

(C) The borrower shall be responsible for maintaining financial control of the project by carefully reviewing all disbursement requests and supplemental documentation before submitting the disbursement request to the commission staff.

(D) The borrower will certify each disbursement request before submittal;

(2)(A) The consulting engineer shall submit the construction contractor's certified progress estimates for each construction contract with the disbursement request.

(B) The estimate shall include a certification by the contractor that it has complied with all labor standards.

(C) Retainage will be according to state law, Arkansas Code § 22-9-604;

(3)(A) Disbursements will not be processed more often than monthly and must be received by the date established by the commission staff.

(B) No disbursements will be made after the estimated completion date specified in the bond purchase agreement unless specifically waived in writing by the commission staff;

(4)(A) Payment for engineering and other professional services during construction shall be based on costs incurred to date up to ninety-five percent (95%) of the approved contract amount, after which no further amounts will be disbursed until the:

(i) Construction is certified complete by the commission staff; and

(ii) Final construction disbursement request has been presented to the commission staff.

(B) Disbursements for engineering project performance fees will be made as approved by the commission staff;

(5) Disbursements will not be made for work done by the borrower's employees unless prior approval is provided by the commission staff subject to the requirements of 15 CAR § 26-103(f), force account;

(6) The borrower shall promptly remit each disbursement to the firm or individual to whom payment is due; and

(7) Periodically during construction, the Arkansas Development Finance Authority may disburse funds from the borrower's loan account to pay the interest and financing fee accrued on the outstanding balance of the loan.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-502. The Arkansas Development Finance Authority's administrative fee.

(a) The Arkansas Development Finance Authority shall be reimbursed for program administration costs by fees collected from each borrower.

(b) The fees will be assessed according to the interagency agreement between the Arkansas Natural Resources Commission and the authority.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-503. The Arkansas Natural Resources Commission's administrative fee.

(a) Each borrower that has gone through loan closing shall be charged an administrative fee that will be used to defray the costs of the Arkansas Natural Resources Commission staff in administering the program.

(b) The fee may be collected in three (3) ways:

(1)(A) The commission staff will charge an administration fee based on a percentage of the principal the borrower borrows.

(B) The percentage will be the fee that is in effect at the time the memorandum of agreement is executed.

(C) The Director of the Arkansas Natural Resources Commission will be responsible for setting the administration fee;

(2)(A) The commission staff and the Arkansas Development Finance Authority will both charge a financing fee as part of the borrower's repayments to defray administrative costs.

(B) The amount withheld will be the fee that is in effect at the time the memorandum of agreement is executed.

(C) The director will be responsible for setting the financing fee; or

(3)(A) Any borrower that withdraws from the CWRLF program may be charged a five thousand-dollar fee used to cover costs incurred by the commission staff for work done on the project.

(B) Payment will be due immediately upon being invoiced by the commission staff.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-504. Fidelity bond requirements.

(a) The borrower shall furnish to the Arkansas Natural Resources Commission staff evidence that the treasurer of the borrower has a fidelity bond.

(b) The amount of the bond must be at least equal to the amount of funds in his or her possession at any time with a minimum amount of twenty-five thousand dollars (\$25,000).

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Subpart 6. Building Phase

15 CAR § 26-601. Awarding construction contracts.

(a)(1) The borrower shall obtain authorization from the Arkansas Natural Resources Commission staff before advertising for bids on the project.

(2) All addenda to correct errors, to clarify information in the bidding documents, or to incorporate the current wage rate determination shall be approved by the commission staff.

(3) The text of the construction contract shall not vary from the text of the contract documents approved by the commission staff.

(b) The borrower shall be responsible for ensuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding construction contracts.

(c) The borrower shall comply with the procurement requirements of 15 CAR § 26-211.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-602. Timely construction progress.

(a) The borrower:

- (1) Shall agree to initiate and complete the construction of the project quickly;
- (2) Shall request a construction schedule from the contractor;
- (3) Will monitor the contractor's performance regarding the schedule; and
- (4) Will act to ensure construction is completed quickly.

(b) Failure to initiate and complete a project by the date specified in the bond purchase agreement may result in the stoppage of loan disbursements.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-603. Inspection during construction.

(a) **Resident inspection.**

(1) The borrower shall provide for full-time inspection of the project by the consulting engineer or the borrower's engineering staff.

(2) This will be done to ensure the work is being performed according to:

- (A) The approved plans and specifications;
- (B) The approved change orders; and
- (C) Sound engineering principles and building practices.

(b) **Arkansas Natural Resources Commission staff inspection.**

(1) The Arkansas Natural Resources Commission staff is authorized to conduct engineering and financial inspections of each project financed in whole or in part with CWRLF funds.

(2) During normal business hours, construction and financial records of the project shall be made available to commission staff representatives to assure that all program and contractual requirements are met.

(3) The contractor and borrower shall furnish the commission staff representatives with every reasonable facility for finding out whether the work as performed is according to the requirements and intent of the contract.

(4)(A) The commission staff shall notify the borrower and the consulting engineer of any observed deficiencies in the completed construction, procedures, or materials used in construction, resident inspection, engineering supervision, financial management, or any violation of loan program requirements.

(B) The commission staff will require the borrower to take such action as may be necessary to correct any such observed deficiency.

(c) Engineering inspection.

(1)(A) An engineering inspection of the project will be periodically conducted by commission staff representatives.

(B) The inspections will be done to ensure that the project is:

- (i) Being managed properly;
- (ii) On schedule; and
- (iii) Being constructed according to approved:
 - (a) Plans;
 - (b) Specifications; and
 - (c) Change orders.

(C) Commission staff representatives will also decide if the engineering consultant's estimate of work complete agrees with actual observed construction.

(D) The staff will decide if materials and equipment delivered to the site are properly stored and meet contract requirements.

(E) The staff will also decide if other program requirements are being met.

(2)(A) Besides normal testing procedures required of the borrower, the commission staff may require additional tests of building materials or processes.

(B) These tests would only become necessary as the result of some problem during the building of the project.

(C) All tests will conform to current published American Society of Testing Standards.

(3)(A) Such inspection will not release the contractor from any obligation to do the work according to the requirements of the contract documents.

(B) The consulting engineer would also still be responsible for determining compliance with the requirements of the contract documents.

(d) Financial inspection.

(1) A financial inspection of the project will be periodically conducted by commission staff representatives.

(2) This inspection will include, but not be limited to, a review of:

(A) All project files;

(B) All documents that substantiate project expenses;

(C) Project accounting records; and

(D) Records on the revenues and expenses of the sewer system.

(3) Inspections shall be of sufficient scope and detail to determine conformance with terms and provisions of the bond purchase agreement and the requirements of this part.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-604. Alterations in approved plans and specifications.

(a)(1) Should it become apparent after contract award that changes in the approved plans and/or specifications are necessary or appropriate, a change order including written justification shall be submitted to the Arkansas Natural Resources Commission staff for approval.

(2) A request for change order review must contain sufficient information to enable the commission staff to review the proposal for reasonableness.

(3) This would include:

- (A) A description of the change;
- (B) Drawings;
- (C) The contractor's proposal; and
- (D) The engineer's cost estimate.

(b)(1) Costs for changes to the approved plans and specifications will not be eligible for loan disbursement unless written approval is provided by the commission staff.

(2) Should there be an immediate danger to life or property or other extenuating circumstances, tentative approval of change orders may be secured from the commission staff via telephone and confirmed by letter.

(c)(1) Despite the eligibility of a change under 15 CAR § 26-1001 et seq., the amount of the loan cannot be increased.

(2) If necessary, the borrower must apply for a second loan to cover cost overruns beyond the initial loan amount.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-605. Contractor insolvency.

In the event of contractor insolvency, any agreements that the borrower may enter into with the bonding company must be submitted for Arkansas Natural Resources Commission staff approval.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-606. Operation and maintenance manual and record drawings.

(a)(1) The borrower shall prepare an operation and maintenance manual for Arkansas Natural Resources Commission staff approval for all projects involving the construction or modification of wastewater treatment facilities.

(2) For projects involving only collection system work, operation and maintenance manuals shall be prepared and submitted for approval as required by the commission staff.

(b)(1) One (1) complete set of record drawings shall be furnished by the consulting engineer to the borrower at the completion of construction.

(2) One (1) copy of the record drawings shall also be furnished to the commission staff, if requested.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-607. Construction completion and final inspection.

(a)(1) The borrower shall provide the Arkansas Natural Resources Commission staff with notification that the project is complete and make a written request to the commission staff for final inspection.

(2) The commission staff will conduct a final on-site inspection of the project and may perform a review of any financial assistance records.

(b) The commission staff will not approve the final project inspection until:

(1) The borrower has obtained commission staff approval of the final operation and maintenance manual; and

(2) Record drawings have been furnished to the borrower and the commission staff as provided in 15 CAR § 26-606.

(c)(1) The project will not be considered physically complete until the work as defined in the engineering report and the plans and specifications approved by the commission staff has been fully done and accepted by the borrower and commission staff.

(2) Following an acceptable final inspection by the commission staff, the commission staff will provide written acceptance to the borrower and the final construction disbursement shall be requested.

(3) Final acceptance of the project by the borrower will not be made without commission staff approval.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Subpart 7. Post-Building Phase

15 CAR § 26-701. Responsibilities of borrower.

(a)(1) After the satisfactory completion of the project, the borrower shall be held accountable by the Arkansas Natural Resources Commission for the continued validity of all representations and assurances made to the commission staff.

(2) Continuing cooperation with the commission staff is required.

(b) To help such cooperation and to enable the commission staff to protect the state's investment and the public interest, the following provisions shall be observed:

(1)(A) The commission staff is authorized to inspect the project and all project records any time during normal business hours.

(B) If it is found that the project is being improperly or inadequately operated and maintained, the commission staff shall require the borrower to take corrective action.

(C) Improperly or inadequately operated and maintained means to the extent that the project purposes are not being fulfilled or that integrity of the state's investment is being endangered;

(2)(A) The commission staff may request certified copies of all minutes, operating budgets, monthly operating statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the project besides the requirements of the bond purchase agreement.

(B) The financial assistance provided by the CWRLF is based on the project's economic feasibility.

(C) The commission shares the borrower's desire to maintain this feasibility in the project's operation and maintenance.

(D) The commission staff may periodically inspect, analyze, and monitor the project's revenues, operation, and any other information the commission staff requires to perform its duties and to protect the public interest;

(3)(A) The borrower agrees to maintain adequate financial records for the project.

(B) The borrower will:

(i) Perform annual audits of the sewer system according to generally accepted accounting principles as set forth by the Governmental Accounting Standards Board and 40 C.F.R. pt. 35; and

(ii) Make these records available to the:

(a) Commission; and

(b) United States Environmental Protection Agency Inspector General or its authorized representative;

(4) The borrower, if required to carry out mitigative measures because of the environmental review process, shall continue to comply with those measures;

(5)(A) The borrower agrees to review and amend its user charge ordinance annually.

(B) This is done to ensure that sufficient revenues are being generated for:

(i) Operation;

(ii) Maintenance;

(iii) Replacement; and

(iv) Debt service.

(C) The borrower will submit a copy of any enacted ordinance amending user charges to the commission staff;

(6) The borrower agrees to enforce the approved sewer use ordinance for the life of the project to ensure the continued integrity of the sewer system; and

(7) The borrower shall provide and maintain a qualified operator of the appropriate license class for the project.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-702. Project performance certification.

(a) The borrower shall retain the engineering firm responsible for providing engineering services during construction as the prime engineer to provide the services required by the project performance work plan during the first year following initiation of operation.

(b)(1) Within sixteen (16) days of the date one (1) year after the initiation of operation of the project, the borrower shall certify to the Arkansas Natural Resources Commission staff whether the project meets the project performance standards.

(2) Project performance standards are defined as the performance and operational requirements of the project.

(3) This includes the attainment of permit requirements, performance requirements of the specifications, the quantity of excessive infiltration and inflow proposed to be eliminated, and other requirements the project was designed to meet.

(c)(1) Should the borrower be unable to certify that the project meets project performance standards, the borrower shall immediately prepare a corrective action plan report for commission staff approval that includes a description of the problem and proposed corrective actions.

(2) The borrower shall:

(A) Undertake corrective actions to assure that project performance can be affirmatively certified quickly; and

(B) Submit an affirmative certification by the date specified in the corrective action plan.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-703. Repayment schedule.

(a) Repayment to the CWRLF by the borrower shall be according to the terms of the loan agreement.

(b)(1) Upon an event of default under the loan, ordinance, or resolution of the borrower authorizing the loan, all available remedies allowed by law will be pursued.

(2) This would include the provisions of Arkansas Code § 8-16-319 that allows for the borrower's revenue turnback to be used in making repayments.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Subpart 8. Hardship Grants

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 16.801 Authority.

These rules are adopted under the authority of the Arkansas General Assembly at its 2001 Regular Session, Act 459, Arkansas Water and Air Pollution Act (A.C.A. § 8-4-161 et seq.) and according to the requirements of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 164-134)."

15 CAR § 26-801. Scope.

This subpart shall govern the Arkansas CWRLF's hardship grant program as authorized by Arkansas Code § 15-5-901 et seq.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-802. Definitions.

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

(1) "Hardship criteria". The "hardship criteria" used to determine if a project is eligible for a hardship grant is made up of three (3) parts:

(A) The community must:

(i) Lack centralized wastewater treatment or collection systems;

(ii) Be extending service to an unsewered part of their area; or
(iii) Need improvements to onsite wastewater treatment systems (i.e., septic tanks, mound system, etc.);

(B) The state must determine that assistance will improve public health or reduce an environmental risk; and

(C) The community must demonstrate that it is economically distressed as defined by the United States Environmental Protection Agency in the final regulations for the hardship grant program; and

(2) "Small rural community" means a public entity of more than one (1) household but no more than three thousand (3,000) inhabitants and that is not a remote area within the corporate boundaries of a larger city.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-803. Policy declarations.

(a)(1) The Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, which became law on April 26, 1996, provided fifty million dollars (\$50,000,000) for grants.

(2) The grants were designed to be used by small rural communities, which are severely economically disadvantaged.

(3) The United States Environmental Protection Agency plans for these funds to be administered in concert with existing programs and procedures to the maximum extent possible.

(b)(1) Because of the limited funds available to this program, the State of Arkansas plans to use all of the available funds to provide assistance in planning, design, and construction of wastewater collection and/or treatment services.

(2) In addition, the State of Arkansas plans to make it a condition of receiving a grant that the community also must receive a loan from the CWRLF program.

(c)(1) Unless herein expressly stated differently, the intention is that the terms and conditions that are followed in the CWRLF will be applied to the hardship grant program.

(2) This would include such items as:

- (A) The application process;
- (B) Procurement regulations;
- (C) Planning;
- (D) Design and construction requirements; and
- (E) Environmental review and payment provisions.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-804. Eligible activities of the hardship grant program.

(a) In order to be eligible to receive a hardship grant, the borrower must meet United States Environmental Protection Agency's hardship criteria.

(b) In general, the hardship grant program is designed to work in conjunction with the CWRLF program.

(c)(1) The types of activities that the grant funds can be used for are the same as those allowed in the CWRLF program.

(2) For more information on the allowable activities refer to 15 CAR § 26-201.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-805. Intended use plan.

(a)(1) As is required by the CWRLF program, the hardship grant program is required to prepare an intended use plan that shall be subject to public notice.

(2) Since the hardship grant program is designed to work in conjunction with the CWRLF program, the intended use plan for each program will be merged into one (1) document.

(3) The intended use plan will identify those projects on the priority list for which grant assistance is to be provided by that year's appropriation.

(4) Only those projects in which it is anticipated that planning and design will be completed within the next twelve (12) months will be included in the intended use plan.

(b)(1) The intended use plan shall meet the requirements of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134.

(2) The intended use plan will meet United States Environmental Protection Agency requirements concerning the short-term and long-term goals and objectives of the hardship grant program.

(3) The intended use plan will show the criteria and method for the distribution of funds.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-806. Determination of grant amount.

(a) It is Arkansas's intent to use these grant funds to provide gap financing for wastewater projects.

(b) That means that a community will be expected to borrow funds from the CWRLF program to the greatest extent possible, based on the economic situation of the community.

(c) The Arkansas Natural Resources Commission staff will look at a wide range of economic indicators, which may include per capita income or unemployment rate, to determine the maximum amount of grant funds the community will be offered.

(d) Of the total amount of project funds provided through the Arkansas CWRLF program, no more than eighty-five percent (85%) shall be grant funds, and at least fifteen percent (15%) must be in the form of a loan.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Subpart 9. Nonpoint Source Projects

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 16.901 Authority.

These rules are adopted under the authority of the Title VI of the Clean Water Act and 40 CFR Part 35, Subpart K."

15 CAR § 26-901. Scope.

This subpart shall govern the Arkansas CWRLF's nonpoint source program as authorized by Arkansas Code § 15-5-901 et seq.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-902. Definitions.

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Nonpoint source management project" means a project to abate either ground or surface water pollution or a project designed to protect the resource from deterioration;

(2) "Nonpoint source pollution plan" means a plan for managing nonpoint source pollution as described in Section 319 of the Act; and

(3) "Person" means individual, corporation, firm, association, partnership, limited liability company, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision staff thereof.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-903. Policy declarations.

(a) In addition to the specific eligible activities identified in 15 CAR § 26-201(a), funds in the CWRLF may be used to finance nonpoint source management projects.

(b) Borrowers for these projects are frequently not local governmental entities, but other types of persons such as:

- (1) Homeowners;
- (2) Small businesses;
- (3) Farmers;
- (4) Growers;
- (5) Dairy farmers;
- (6) Cooperatives; and
- (7) Nonprofit entities.

(c) The program is designed to offer these persons a source of funding for a nonpoint source management project with below-market interest rates and a reasonable repayment period.

(d) To be eligible for RLF nonpoint source funding, a project must be included in an approved nonpoint source management plan.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Codification Notes. "RFL" means revolving loan fund.

15 CAR § 26-904. Eligible activities of the nonpoint source program.

(a) The following list provides some examples of the types of projects that are eligible for assistance from the RLF nonpoint source program.

(b) This list is intended as an illustration and the types of projects funded are not limited to those listed below:

(1) **Landfills.** The construction of leachate collection and treatment systems, the closing and capping of landfills, or the reclamation of old landfills;

(2) **Groundwater remediation from UST.** The remediation of groundwater contamination from leaking petroleum storage tanks or other underground storage tanks;

(3) **Groundwater remediation or protection from well field sites.** The remediation or protection of the groundwater from oil wells or injection wells or other well fields;

(4) **On-site septic tank repair or replacement.** The repair or replacement of on-site septic systems to protect:

(A) Groundwater;

(B) Drinking water supplies; and

(C) Public health;

(5) **Stormwater management facilities.** The purchase of equipment, land, and easements or construction of facilities to collect, store, and treat stormwater runoff;

(6) **Agricultural and animal waste facilities and equipment.** The construction of facilities to collect and treat waste products and the equipment needed to properly run those facilities; and

(7) **Brownfield redevelopment.** The remediation or reclamation of a brownfield site to protect and/or restore groundwater.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Codification Notes. "RFL" means revolving loan fund.

15 CAR § 26-905. Types of assistance.

(a)(1) Initially, the nonpoint source program will provide assistance in the form of a linked deposit.

(2) This form of assistance is based on the idea that local financial institutions will provide low interest loans to eligible borrowers if the program is linked to the RLF program depositing funds in that financial institution.

(b) Loans will be made for the purpose of implementing best management practices for nonpoint source management projects.

(c) RLF program funds will be deposited into a non-interest-bearing demand deposit account or other deposit account at a below market interest rate.

(d) The financial institutions will take full responsibility for the credit evaluation of the borrowers, preparation and execution of loan agreements, disbursement of funds, monitoring and servicing of loans, and take the credit risk of possible repayment problems or actual defaults.

(e) Deposits in excess of Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation insured amounts will be fully collateralized by the financial institutions.

(f) As changes in priorities require additional funding options, the RLF program will add such features as direct loans, providing funds to other state agencies in Arkansas for use in nonpoint source abatement, or other types of assistance authorized by federal law and/or United States Environmental Protection Agency regulation.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Codification Notes. "RFL" means revolving loan fund.

Subpart 10. Determination of Eligible Costs

15 CAR § 26-1001. Purpose.

The information in this subpart represents Arkansas Natural Resources Commission policies and procedures for deciding the eligibility of project costs based on the requirements of this part and the Clean Water Act, as amended.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1002. Introduction.

(a)(1) This cost information applies to loan assistance awarded from the CWRLF program.

(2) Project cost determinations are not limited to the items listed in this subpart.

(3) Additional cost determinations based on applicable law and regulations will be made on a project-by-project basis by the Arkansas Natural Resources Commission staff.

(b) Cost as applied to wastewater treatment is:

(1) The cost of acquisition and construction;

(2) The cost of all land, rights-of-way, property rights, easements, franchise rights, and interests required by the commission staff for such acquisition and construction;

(3) The cost of all:

(A) Machinery;

(B) Furnishings; and

(C) Equipment;

(4) All financing fees and interest before and during construction;

(5) The cost of all engineering services and all expenses of research and development with respect to wastewater treatment facilities;

(6) The cost of all legal services and expenses;

(7) The cost of all:

(A) Plans;

(B) Specifications;

(C) Surveys; and

(D) Estimates of cost and revenues;

(8) All expenses necessary or incident to learning the feasibility or practicability of acquisition or construction of any such project;

(9) All administrative expenses and other expenses as may be necessary or incident to the acquisition or construction; and

(10) The financing or the placing of any such project in operation.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1003. Equivalency projects.

(a) Those projects designated as equivalency projects by the Arkansas Natural Resources Commission staff under 15 CAR § 26-201 must comply with Section 602(b)(6) of the Act.

(b) Under this section of the Act, costs such as land for the treatment site (except land application sites), the construction of new collector sewers in existing communities, treatment plant office furnishings, and the cost for treating excessive infiltration and inflow into the sewer system will not be eligible for loan funding.

(c) For equivalency projects, eligibility determinations shall be according to 40 C.F.R. § 35.2000 et seq.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1004. Allowable categories of work.

(a) Eligible categories of work include the cost for:

(1) Building secondary and advanced wastewater treatment facilities to meet the enforceable requirements of the Act and to meet Rules Establishing Water Quality Standards for Surface Waters of the State of Arkansas, 8 CAR pt. 21;

(2) The correction and elimination of infiltration of groundwater and the inflow of storm water into the sewerage system;

(3) Major rehabilitation of a collection system to correct severe structural or capacity deficiencies or for the correction of excessive infiltration and inflow;

(4) New interceptors to serve existing and planned collection system needs;

(5) Building new collectors in existing unsewered areas of communities where the need for central sewerage system construction has been adequately shown; and

(6) Sewer lines and service pipe from the eligible publicly owned collector or interceptor to the property line of individual sewer service customers.

(b) Ineligible categories of work include the cost for:

- (1) Interceptors and collectors constructed exclusively or almost exclusively to serve future needs;
- (2) Building new interceptors and collectors in uninhabited areas for purposes of development; and
- (3) Sewer service lines from the structure to the property line of the individual sewer service customers except as provided in 15 CAR § 26-1007.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1005. Costs related to contracts.

Eligible costs related to contracts include:

- (1) The costs, including professional and engineering consultant services, for planning and design, including the cost for a sewer system evaluation survey if required, and obtaining loan funding in conformance with this part;
- (2) The costs for construction and the purchase of materials and equipment for building the approved project;
- (3) The costs of complying with the procurement requirements of 15 CAR § 26-211, including the cost of legal and engineering services incurred by the borrower in deciding procurement protests and defending their decisions in protest appeals;
- (4) The costs for complying with minority and women's business utilization requirements;
- (5) The costs of professional and consulting services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications, including such items as resident inspection services and materials testing;
- (6) The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a borrower under a subagreement, provided the claim is not caused by the mismanagement of the borrower or its agents;

(7)(A) Change orders and the costs of meritorious contractor claims for increased costs under construction contracts, provided the costs are within the scope of the project and not caused by the mismanagement of the borrower or its agents.

(B) Examples of eligible change orders and contractor claim costs include:

(i) Building costs resulting from correcting defects found in the plans, design drawings, and specifications or other contract documents after contract award;

(ii) Costs of equitable adjustments due to differing site conditions, as defined by the commission staff's supplemental condition for construction contracts; and

(iii) Settlements, arbitration awards, and court judgments that resolve contractor claims, provided the costs:

(a) Are determined by the commission staff to be reasonable;

and

(b) Do not attempt to pass on the cost of events that were the responsibility of:

(1) The borrower;

(2) The contractor; or

(3) Others;

(8) The costs of the services of the prime engineer required by 15 CAR § 26-701 et seq., during the first year following the completion of construction;

(9) The cost of development of an operation and maintenance manual as may be required by 15 CAR § 26-606;

(10) Start-up services for on-site training of operating personnel in operation and control of:

(A) Specific treatment processes;

(B) Laboratory procedures; and

(C) Maintenance and records management;

(11) The costs of professional administrative and accounting services for the project;

(12) Costs for planning and design according to Appendix A of this part and as supported by invoices for costs incurred according to the contracts for such services; and

(13) Costs of force account work if allowed according to 15 CAR § 26-103.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1006. Mitigation.

Eligible costs related to mitigation include:

(1) Costs necessary to mitigate direct, adverse, physical impacts resulting from building of the wastewater facilities; and

(2) The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under 15 CAR § 26-305.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1007. Publicly owned alternative systems.

(a) **Eligible costs.** Eligible costs for publicly owned alternative collection and treatment systems for residences and small commercial establishments as defined by this part include:

(1) The cost of major rehabilitation, upgrading, enlarging and installing alternative systems, provided the systems will be publicly owned;

(2) Conveyance pipes from property line to an offsite treatment unit that serves a cluster of buildings;

(3) Treatment or pumping units from the incoming flange when located on private property by right of easement and conveyance pipes, if any, to the collector sewer; and

(4) The cost of restoring alternative system building sites located on public and private property to the original condition.

(b) Ineligible costs for publicly owned alternative systems include:

- (1) Modification to physical structure of homes or commercial establishments;
- (2) Conveyance pipes from the house to an on-site treatment or pumping unit or to the property line;
- (3) Wastewater generating fixtures such as:
 - (A) Commodes;
 - (B) Sinks;
 - (C) Tubs; and
 - (D) Drains; and
- (4) The cost for privately owned on-site treatment systems serving:
 - (A) Individual residences;
 - (B) Commercial establishments; and
 - (C) Industry.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1008. Real property.

- (a) Eligible costs for land, easements, and rights-of-way include the:
 - (1) Cost (including associated legal, administrative, and engineering costs) of land acquired in a fee simple manner for the construction of wastewater treatment facilities, including a reasonable amount of land required for future reconstruction or expansion of the facilities;
 - (2)(A) Cost (including associated legal, administrative, and engineering costs) of land acquired in a fee simple manner or by lease for the disposal of treated sewage sludge and other treatment residues.
 - (B) The cost for the temporary storage of treated sludge and agricultural products grown with treated sludge;
 - (3)(A) Cost of complying with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4621 et seq., and § 4651 et seq.

(B) This Act covers the acquisition of eligible land, including the cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services;

(4)(A) Cost associated with the preparation of the wastewater treatment and disposal sites before, during, and, to the extent agreed on in the loan agreement, after building.

(B) These costs include:

(i) The cost of demolition of existing structures on the wastewater facilities site (including rights-of-way) if building cannot be undertaken without such demolition;

(ii) The cost (considering such factors as betterment, cost of contracting, and useful life) of removal, relocation, or replacement of utilities, provided the grantee is legally obligated to pay under state or local law; and

(iii) The cost of restoring streets and rights-of-way to their original condition, provided the need for such restoration resulted directly from the construction;

(5) Cost of associated legal, administrative, and engineering for the acquisition of sewer easements and right-of-way; and

(6)(A) Cost of obtaining right-of-way and use permits from governmental entities and public or private utility companies for the construction of eligible collector and interceptor lines.

(B) This would include the long distance phone and gas pipeline companies and railroads.

(C) Eligible costs shall not include the cost of refundable bonds or deposits.

(b) Ineligible costs for land and rights-of-way include:

(1)(A) Except as provided in subdivisions (a)(5) and (a)(6) of this section, the costs for the acquisition of sewer easements and rights-of-way for the construction of collector and interceptor sewers as defined by this part.

(B) The requirements of subdivision (b)(1) of this section apply without regard to the eligibility of the construction of the collector or interceptor sewer;

(2) The cost of refundable bonds or deposits required concerning the acquisition of right-of-way and use permits as provided in subdivision (a)(6) of this section;

(3) Sanitary landfill sites and sludge disposal areas except as provided in subdivision (a)(2) of this section;

(4) Any amount paid by the borrower for eligible land over just compensation, based on the appraised value, the borrower's record of negotiation or any condemnation proceeding, as determined by the Arkansas Natural Resources Commission staff; and

(5) The cost of acquiring all or part of existing privately owned wastewater facilities.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1009. Equipment, material, and supplies.

(a) Eligible costs of equipment, material, and supplies include:

(1) 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;

(2) The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation;

(3) Cost of shop equipment installed at the wastewater facilities and special tools and equipment necessary to the operation of the works;

(4) The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local, or industry safety requirements;

(5)(A) If approved by the Arkansas Natural Resources Commission staff, the costs of collection system maintenance and repair equipment, including sewer cleaning

machines and equipment for the reduction and elimination of infiltration and inflow into the sewer system.

(B) The borrower must show the need and cost-effectiveness of the purchase, and there shall be no apparent potential for the abuse of CWRLF-funded equipment in non-sewer system uses;

(6)(A) The cost of mobile equipment necessary for the:

- (i) Operation of the wastewater treatment facility;
- (ii) Transmission of wastewater or sludge; or
- (iii) Maintenance of equipment.

(B) These items include, but are not limited to:

- (i) Portable stand-by generators;
- (ii) Large portable emergency pumps to provide "pump-around" capability in case of pump station failure or pipeline breaks; and
- (iii) Sludge or septic tanks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site;

(7) Replacement parts identified and approved in advance by the commission staff as necessary to ensure uninterrupted operation of the facility;

(8) Moderately priced office furnishings for use by plant personnel at the treatment facility where there is a demonstrated need for such furnishings; and

(9) Computer equipment used exclusively by the wastewater utility.

(b) Ineligible costs of equipment, materials, and supplies include:

(1) The costs of equipment or material obtained that violated the procurement requirements of 15 CAR § 26-211;

(2) The cost of vehicles for the transportation of the borrower's employees;

(3) Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc., and the cost of ordinary site and building maintenance equipment; and

(4) Items for routine site maintenance, such as:

(A) Lawn mowers;

- (B) Trimmers;
- (C) Rakes;
- (D) Shovels; and
- (E) Ordinary tools.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1010. Infiltration/inflow.

Eligible costs include the cost of wastewater facilities adequate to transport and treat nonexcessive infiltration/inflow and for sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system study.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

15 CAR § 26-1011. Miscellaneous costs.

(a) Eligible costs include:

(1) Unless otherwise specified in this part, the costs of meeting specific statutory and regulatory procedures for the project;

(2) Costs of royalties for or rights in a patented process or product with the prior approval of the Arkansas Natural Resources Commission staff;

(3) Costs of obtaining the CWRLF loan, including the Arkansas Development Finance Authority's:

- (A) Application fee;
- (B) Issuance costs; and
- (C) Loan closing costs; and

(4) Capitalized interest during construction.

(b) Ineligible costs include:

(1) Ordinary operation expenses of the borrower including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies;

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

(3) Approval, preparation, issuance, and sale of bonds or other forms of indebtedness required to finance ineligible project costs and the interest on them;

(4) Personal injury compensation of damages arising out of the project;

(5) Fines and penalties due to violations of or failure to comply with federal, state, or local laws, regulations, or procedures;

(6) Costs outside the scope of the approved project;

(7) Costs of wastewater facilities for control of pollutant discharges from a separate storm sewer system; and

(8) The costs of preparing a corrective action report required by 15 CAR § 26-702.

Authority. Arkansas Code §§ 15-20-206, 15-5-902.

Appendix A. List of Federal Laws and Authorities

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/59/15CARpt.26AppendixA.pdf>

Appendix B. Priority System and List

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/60/15CARpt.26AppendixB.pdf>