

N.C. Department of Administration

Pursuant to N.C.G.S. 150B-19.1 (c) (“Requirements for agencies in the rule-making process”), each agency shall post on its website – when the agency submits the notice of text for publication in the North Carolina Register – the following:

- (1) The text of a proposed rule – SEE TEXT IN FISCAL NOTE BELOW.
- (2) An explanation of the proposed rule and the reason for the proposed rule – SEE EXPLANATION IN FISCAL NOTE BELOW.
- (3) The federal certification required by subsection (g) of that statute – NOT APPLICABLE.
- (4) Instructions on how and where to submit oral or written comments on the proposed rule – SEE BOX IMMEDIATELY BELOW.
- (5) Any fiscal note that has been prepared for the proposed rule – SEE FISCAL NOTE BELOW.

Submit written comments to:

Secretary
N.C. Department of Administration
WRITTEN COMMENT RE: (rule citation)
116 West Jones Street
Raleigh, NC 27611

Comments will be received until 10/15/2012.

Fiscal Note
N.C. Department of Administration
(De Minimis Rules Repeal)

I. Title 01, Chapter 22 (Clean Water Bond Act)

Agency: Department of Administration

Contact: William E. H. Creech, Rule-Making Coordinator, 919-807-2425

Rule Title: Clean Water Bond Act

Rule citation: 01A NCAC 22 .0101-.0102, .0201- .0209, .0301-.0303, .0401 -.0403, .0501-.0506, .0601 -.0606, .0701 -.0704, .0801- .0802, .0901 -.0906, .1001 -.1002, .1101- .1103

Statutory Authority: S.L. 1977, Ch. 677; S.L 1981, Ch. 993, s.8, s.14; G.S. 133-24

State impact: No

Local impact: No

Federal government impact: No

Substantial economic impact: No

Description of rule change: Repeal. Upon consultation with DENR, DOA has learned that the program has concluded and, therefore, that the rules are obsolete. The statutory authority citation in the Administrative Code to S.L. 1981, Ch. 909 should instead be to Ch. 993. Except to provide an important incremental benefit – along with other similar repeals – of ridding the Administrative Code of unnecessary rules, this repeal will not impact any existing entity economically or otherwise. These rules are among those previously recommended by OSBM to the General Assembly for repeal.

Rule Text:

CHAPTER 22 - CLEAN WATER BOND ACT

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 22 .0101 PURPOSE

~~The primary purpose of the North Carolina Clean Water Bond Act of 1977 is to provide grants to local units of government to stimulate the construction and improvement of needed wastewater treatment plants, wastewater collection systems and water supply systems in order to provide the state's citizens a clean and healthy environment and an adequate supply of pure water for domestic consumption. Although the funds derived from the sale of clean water bonds shall be used primarily to encourage and assist local government units to meet their responsibilities to provide adequate public water supply and wastewater facilities, it is not intended nor is it possible for the state to assume those responsibilities. As the funds available are sufficient to meet only a part of the total need, in making grants the state must place great emphasis on:~~

- ~~(1) — the availability of grants and loans from other sources;~~
- ~~(2) — the creation of efficient systems of regional wastewater disposal and regional water supply; and~~

- ~~(3) the willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning and efficient operation and management.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0102 DEFINITIONS

~~The definitions appearing in Section 3 of the Clean Water Bond Act of 1977 shall be applicable to these rules and regulations, and the definitions herein set out shall be supplementary thereto. As used in this Chapter, unless the context otherwise requires:~~

- ~~(1) "Act" shall mean the North Carolina Clean Water Bond Act of 1977, Chapter 677, Session Laws of 1977.~~
- ~~(2) "Clean Water Fund" shall mean a fund created in the Department of Administration into which proceeds received from the sale of bonds authorized by the Clean Water Bond Act of 1977 will be deposited and from which disbursements shall be made.~~
- ~~(3) "Construction cost" shall be defined pursuant to S.L. 1977, Ch. 677. The cost of service connections on private property and the cost of meters and meter installations shall not be eligible costs unless they are eligible costs in a federal grant also being made to the project.~~
- ~~(4) "Contingency account" shall mean an account established in the Clean Water Fund, not to exceed seven million five hundred thousand dollars (\$7,500,000) in aggregate. Upon recommendation of the Environmental Management Commission or the division of health services and the Department of Administration, allocations shall be made from this account to pay all costs and expenses incurred in the sale of bonds and notes and authorized administrative expenses and allocations to provide additional funds for grants when the funds allocated for any fiscal year are insufficient and when the Advisory Budget Commission determines that there are sufficiently compelling reasons for providing funds for grants or any portion thereof, from such account. Grants of funds from the contingency account shall follow the procedures in this Chapter applicable to grants of funds from the pollution control account or the water supply account.~~
- ~~(5) "Contingency costs" shall mean unforeseen costs or situations which are not included in the estimate of project costs and shall not exceed 10 percent of the estimated eligible construction cost to the nearest dollar for which a grant is made under the act. Upon receipt of bids, the contingency costs shall be reduced to not more than five percent of the actual eligible construction costs as bid.~~
- ~~(6) "Division of environmental management" shall mean the division of environmental management of the North Carolina Department of Natural Resources and Community Development, or, should said division be abolished or otherwise divested of its functions, the public body succeeding it in its principal functions, or upon which are delegated the rights, powers and duties delegated to said division.~~

- (7) ~~"Effective date of receipt of application" shall be the first day of the quarter following actual receipt of a complete application. Quarterly review periods shall be from July 1 through September 30, October 1 through December 31, January 1 through March 31, and April 1 through June 30 of each fiscal year. Complete applications received in the principal offices of the division of health services or the division of environmental management in Raleigh, N.C. prior to the first day of a given quarter shall be assigned an effective date of receipt of the first day of that quarter. For the purpose of efficient administration and uniform application of the act, the terms "received," "receipt of application," "date of receipt," "received during," "filed during," "date of filing," or "filed pursuant to the act" shall convey the same meaning as the "effective date of receipt of application."~~
- (8) ~~"Grant commitment" shall mean a binding agreement to pay grant funds in a lump sum or in installments to an eligible applicant at some future time, but in no event shall any commitment be made later than June 30, 1987. For this purpose, commitments but not the total grant funds disbursed may exceed the allocation limitations established in section 7(e), section 7(d) and section 7(e) of the act with respect to the total aggregate amount available to the pollution control account in section 7(e)(1), section 7(e)(2), and the county allocations of the water supply systems account in section 7(d)(1) of the act for each fiscal year. For the purposes of these rules and regulations, the terms "commit," "committed" and "committing" shall convey the same meaning as the term "commitment."~~
- (9) ~~"Inspection" shall mean inspection or inspections of a project for which a grant has been made under the act with respect to determination of percentage completion of projects, compliance with applicable federal, state and local laws and regulations and other pertinent matters.~~
- (10) ~~"Inspection fees" shall mean the cost of making such engineering inspections as are necessary to carry out the provisions of these rules and regulations.~~
- (11) ~~"Pollution control account" shall mean an account established in the Clean Water Fund from which shall be made grants to units of government for the construction, improvement or expansion of wastewater treatment works and wastewater collection systems and, where authorized, for the acquisition of real property or interests in real property necessary for the construction, expansion or improvement of such works or systems.~~
- (12) ~~"Project" shall mean the work or works described in the application for a state grant and which is to be undertaken by the unit of government if a state grant is awarded and other required funds are obtained. It does not include any significant expansion of the project described in the application except as may be permitted under the provisions of Rule .0206(e) of this Chapter.~~
- (13) ~~"Public necessity" shall mean that a need exists to construct a new wastewater treatment works, wastewater collection system or water supply system, or to improve or expand existing facilities in order to:~~
- ~~(a) promote the public health, safety and welfare;~~
 - ~~(b) provide adequate services to a substantial portion of the residents within the service area or projected service area of a unit of government who are presently without such services; or~~
 - ~~(c) alleviate a critical public health hazard or critical water pollution problem.~~

- (14) ~~"Real property" shall mean land and structures affixed to the land having the nature of real property or interests in land including easements or other rights-of-way purchased or acquired for water supply and wastewater facilities and works to be constructed as a part of the project for which a grant is made under the act.~~
- (15) ~~"Regional sewage disposal system" shall mean a public sewage disposal system of a municipality, county, sanitary district, or other political subdivision of the state or combination thereof which provides, is intended to provide, or is capable of providing adequate collection, treatment, purification and disposal of sewage for a substantial portion of the population within a county, or a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties.~~
- (16) ~~"Regional water supply system" shall mean a public water supply system of a municipality, county, sanitary district, or other political subdivision of the state, or combination thereof which provides, is intended to provide, or is capable of providing an adequate and safe supply of water to a substantial portion of the population within a county, or to a substantial water service area in a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties.~~
- (17) ~~"Water supply systems account" shall mean an account established in the Clean Water Fund from which shall be made grants to units of government for the construction, improvement or expansion of water supply systems and, where authorized, for the acquisition of real property or interests in real property necessary for the construction, expansion or improvement of water supply systems.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. August 1, 1988; January 1, 1980.*

SECTION .0200 - GRANTS

01 NCAC 22 .0201 GENERAL

~~Subject to the provisions governing annual allocation of funds set forth in the act, grants may be made from the pollution control account by the Environmental Management Commission and from the water supply systems account by the division of health services to assist units of government in financing the cost of construction of new or the improvement or expansion of existing wastewater treatment works, wastewater collection systems and water supply systems during the period July 1, 1977, through June 30, 1982. If the funds allocated for any of these fiscal years are insufficient, upon recommendation of the Environmental Management Commission or the division of health services and the Department of Administration, additional funds may be made available to the Environmental Management Commission or the division of health services from the contingency account of the Clean Water Fund if the Advisory Budget~~

~~Commission determines that there are sufficiently compelling reasons for providing funds for grants, or any portion thereof, from the contingency account. New grants from any uncommitted funds which exist as of June 30, 1982, may be made through June 30, 1987.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987.*

01 NCAC 22 .0202 POLLUTION CONTROL ACCOUNT

~~(a) Wastewater Treatment Works Projects, Statewide. Subject to the provisions governing annual allocation of funds and other provisions of the act, the sum of seventy-five million dollars (\$75,000,000) of the funds allocated to the pollution control account shall be used exclusively for the purpose of providing the state's share of the funds required for an approved wastewater treatment works project to qualify for federal grants; provided, however, that any funds which cannot be used exclusively for such purpose shall be used exclusively for the purpose of grants to pay a portion of the non-federal share not to exceed the limitations set forth in Rule .0204 of this Section of the eligible construction costs of approved wastewater treatment works projects which qualify for federal grants.~~

~~(b) Wastewater Collection Systems Projects, County Allocations. Subject to the provisions governing annual allocation of funds and other provisions of the act, the sum of thirty-seven million five hundred thousand dollars (\$37,500,000) allocated to the pollution control account shall be allotted among the various counties of the state in the proportion that the population of each county bears to the total population of the state, as such populations were determined by the 1970 Decennial Census of the United States Department of Commerce, exclusively for grants to the counties or units of government therein for approved wastewater collection system projects. The allocations of funds for grants under the provisions of the act shall not be made in an aggregate amount exceeding seven million five hundred thousand dollars (\$7,500,000) in the first fiscal year beginning July 1, 1977, or in an aggregate amount exceeding fifteen million dollars (\$15,000,000) in the first two fiscal years, or in an aggregate amount exceeding twenty-two million five hundred thousand dollars (\$22,500,000) in the first three fiscal years, or in an aggregate amount exceeding thirty million dollars (\$30,000,000) in the first four fiscal years, or in an aggregate amount exceeding thirty-seven million five hundred thousand dollars (\$37,500,000) in the fifth fiscal year. The annual aggregate amount of funds committed may be allocated equally during each priority period. Any funds from county allocations for wastewater collection systems projects which are uncommitted for grants as of June 30, 1982, shall be allocated thereafter for grants for approved wastewater treatment works projects which qualify for federal grants.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. January 1, 1980.*

01 NCAC 22 .0203 WATER SUPPLY SYSTEMS ACCOUNT

~~(a) Water Supply Systems Projects, County Allocations. Subject to the provisions governing annual allocation of funds and other provisions of the act, the sum of seventy-nine million dollars (\$79,000,000) of the funds allocated to the water supply systems account shall be allotted among the various counties of the state in the proportion that the population of each county bears to the total population of the state, as such populations were determined by the 1970 Decennial Census of the United States Department of Commerce, for grants to the counties or units of government therein for approved water supply systems projects. The allocations of funds for grants under the provisions of the act shall not be made in an aggregate amount exceeding fifteen million eight hundred thousand dollars (\$15,800,000) in the first fiscal year beginning July 1, 1977, or in an aggregate amount exceeding thirty-one million six hundred thousand dollars (\$31,600,000) in the first two fiscal years, or in an aggregate amount exceeding forty-seven million four hundred thousand dollars (\$47,400,000) in the first three fiscal years, or in an aggregate amount exceeding sixty-three million two hundred thousand dollars (\$63,200,000) in the first four fiscal years, or in an aggregate amount exceeding seventy-nine million dollars (\$79,000,000) in the fifth fiscal year. The annual aggregate amount of funds committed may be allocated equally during each priority period. Any funds from county allocations for water supply systems projects which are uncommitted for grants as of June 30, 1982, shall be allocated thereafter for grants for approved water supply systems projects generally and not upon a county allotment basis.~~

~~(b) Water Supply Systems Projects, Statewide. Subject to the provisions governing annual allocation of funds and other provisions of the act, the sum of thirty-one million dollars (\$31,000,000) of the funds allocated to the water supply systems account shall be used for the purpose of providing grant funds for approved water supply systems projects generally and not upon a county allotment basis. For efficient administration of the water supply systems account, the division of health services may limit allocation of grant funds to water supply systems projects generally in an aggregate amount not exceeding six million two hundred thousand dollars (\$6,200,000) in the first fiscal year beginning July 1, 1977, or in an aggregate amount not exceeding twelve million four hundred thousand dollars (\$12,400,000) in the first two fiscal years, or in an aggregate amount not exceeding eighteen million six hundred thousand dollars (\$18,600,000) in the first three fiscal years, or in an aggregate amount not exceeding twenty-four million eight hundred thousand dollars (\$24,800,000) in the first four fiscal years, or in an aggregate amount not exceeding thirty-one million dollars (\$31,000,000) in the fifth fiscal year. The annual aggregate amount of funds committed may be allocated equally during each priority period. Funds from the statewide allocation may be requested only in cases where no funds, or insufficient funds remain in the county allocation for the county in which a project is located or proposed to be located, except in certain cases involving regional systems serving more than one county.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. January 1, 1980.*

01 NCAC 22 .0204 GRANT LIMITATIONS

~~(a) Grants shall be made in such amounts as the division of health services or the Environmental Management Commission, as the case may be, shall deem necessary or appropriate under the~~

~~circumstances of the grant application, but in no event shall any grant award exceed 25 percent of the eligible portion of the construction cost of an approved project or 50 percent of the non-federal share, whichever is less, except as provided in Subsection (b) of this Rule. In making its determination, the appropriate agency may consider, but shall not be limited in its consideration to, the total funds allocated under the act to units of government in a specific county, the estimated cost of the project in relationship to the total funds available as provided for in the act, the applicant's share of the total project cost, the amount of state matching funds required by a federal agency for the project to be eligible for the maximum federal grant and the public necessity for the project; provided, that these considerations shall not apply to grant applications made pursuant to subsection 7(e)(1) of the act.~~

~~(b) Grants in excess of 25 percent, but in no event greater than 30 percent of the eligible portions of the construction cost of any approved project, may be made if the division of health services or the Environmental Management Commission, as the case may be, determines that a greater percentage is needed for a project to qualify for a federal grant or loan, to meet an extreme public necessity or to provide funds for the purchase or acquisition of necessary real property or interests therein when federal grant or loan funds may not be used for such purposes. Any increase in grant percentage above 25 percent of the eligible portions of the construction cost of the project shall be subject to approval by the Advisory Budget Commission before the award of a grant.~~

~~(c) In the case of extreme public necessity relating to a water supply system project of a local unit of government or in cases where the construction of a countywide or other regional water system is involved, the division of health services may, in its sole discretion, increase the total grant to not more than 25 percent of the eligible portions of the construction cost of the project by supplementing the county or counties allotment made pursuant to subsection 7(d)(1) of the act from funds available for water supply systems projects generally.~~

~~(d) If the purchase or acquisition of real property or interests therein constitutes a substantial portion of the necessary construction costs of any approved project and if the applicant demonstrates that it is incapable of bearing such costs, grant funds may be authorized for such purposes. The division of health services or the Environmental Management Commission shall have sole discretion to determine if grant funds may be so used and the amount of the grant which is to be spent for such purposes. However, if any portion of the project funds shall be a federal grant or loan which may not be used for the purchase or acquisition of real property or interests therein, then no grant or portion of grant shall be made from state grant funds for such purposes except as provided for in (b) of this Rule. Project grants which include the cost of purchase or acquisition of real property or interests therein shall not exceed the maximum percentage grant allowed under the act. If real property or interests therein purchased with grant funds are not used for the purpose described in the application and for which the grant was made, then the applicant shall be required to refund to the state that portion of the state grant expended for such real property or interests therein.~~

~~(e) Supplemental grants from the pollution control account shall not be made except for those approved projects which are also supported by a federal grant except as provided in Subsection (f) of this Rule.~~

~~(f) Supplemental grants for wastewater treatment works from the contingency account may be approved under the following conditions:~~

- ~~(1) When the funds allocated for any fiscal year are insufficient; and~~

- ~~(2) An approved project which has received a state grant award whose bid price exceeds the estimated cost on which the grant offer was based and the construction contract has not been awarded by the local unit of government; and~~
- ~~(3) The scope of the project may not be enlarged from that on which the grant was based; and~~
- ~~(4) The applicant has provided documentation to the granting agency that it does not have and cannot obtain sufficient local or federal funds necessary to award the construction contracts; when considered necessary, comments on documentation will be requested from the Local Government Commission; and~~
- ~~(5) The applicant must demonstrate that the integrity of the proposed project would be jeopardized by reduction in size, scope and quality; and~~
- ~~(6) Approval by the granting agency, Department of Administration and Advisory Budget Commission will be required.~~

*History Note: Authority S.L. 1977, Ch. 677;
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979.*

01 NCAC 22 .0205 ELIGIBLE APPLICANTS

~~(a) Only units of government as defined in these Rules and Regulations and the act shall be eligible to apply for grants to assist in the financing of the cost of construction of new or the improvement or expansion of existing wastewater treatment works, wastewater collection systems and water supply systems projects.~~

~~(b) No applicant shall be eligible for the award of a grant unless it demonstrates to the satisfaction of the division of environmental management in the case of wastewater treatment works and wastewater collection systems projects and to the satisfaction of the division of health services in the case of water supply systems projects, that:~~

- ~~(1) The applicant is a unit of government as defined in these Rules and Regulations and the act. The unit of government shall be empowered to provide water supply systems, wastewater collection systems or wastewater treatment works as one of its principal functions and not merely as ancillary to its primary governmental function.~~
- ~~(2) The applicant has the financial capacity to provide its share of the project costs. To the extent that the costs are to be provided on a pay-as-you-go basis, the full amount indicated from this source shall be represented by cash on hand and/or may be expected to be included in the applicant's annual budget for the years in which payments under the project contract will be due. To the extent that borrowed funds are anticipated, the applicant shall certify that the additional debt together with the applicant's existing debt is within the debt limitation provisions of the general laws of the state. In making this determination, the division of environmental management or the division of health services may, in their discretion, seek the comments of the Secretary of the Local Government Commission when the applicant proposes the use of borrowed funds.~~
- ~~(3) The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations and ordinances, federal, state and local.~~

- ~~(4) The applicant has agreed by official resolution to adopt and place into effect on or before completion of the project a schedule of fees and charges which will provide adequate funds for proper operation, maintenance and administration of the project. For this purpose, if the project described in the application is to be an integral part of an existing system, the revenues to be derived from operation of the entire system of which the project is an integral part shall be utilized in determining the adequacy of the applicant's proposed schedule of fees and charges to provide for proper operation, maintenance and administration of the entire system. If the applicant has adopted and has placed in effect a schedule of fees and charges which will provide adequate funds for proper operation, maintenance and administration of the project, it will satisfy this requirement.~~
- ~~(5) The applicant provides signed assurances that the contractor(s) who will be awarded the contract(s) for the project is not currently suspended from bidding because of conviction or indictment of any of the offenses enumerated in G.S. 133-24. Prior to suspending a person under G.S. 133, Article 3, the Secretaries of Administration, Human Resources and Natural Resources and Community Development or their designee shall give notice and, if requested, conduct an informal hearing in accordance with G.S. 150B-22, Article 3, to receive evidence as to the grounds for suspension. The final decision on suspension shall be signed by all three Secretaries.~~

*History Note: Legislative Objection Lodged Eff. September 20, 1982;
Statutory Authority G.S. 133-24; S.L. 1981, Ch. 909, s.8, s.14;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. October 1, 1982;
Curative Amended Eff. October 28, 1982;
Amended Eff. August 1, 1988.*

01 NCAC 22 .0206 ELIGIBLE PROJECTS AND PROJECT COSTS

~~(a) Eligible Projects. Grants assistance is available for projects to construct new or to expand and improve existing wastewater treatment works, wastewater collection systems and water supply systems as defined in these rules and regulations.~~

~~(b) Eligible Project Costs. Eligible project costs shall include the actual construction cost of facilities and works and the cost of equipment and appurtenances for any project for which a grant is made under the act and the actual costs of necessary engineering, legal, fiscal and administrative services related to the project as included in .0102(3) of this Chapter for which a grant is made. When authorized in accordance with the provisions of .0204(b) and (d) of this Section, eligible costs may include the cost of purchase or acquisition of real property or interests therein.~~

~~(c) Limitations on Eligible Costs. Eligible costs are limited to the actual costs of the work or works described in the project application for a state grant. They do not include the cost of any significant expansion or modification of the project described in the application after the actual cost of the project has been determined and a final commitment for the award of a state grant to the project has been made except in cases where the Environmental Management Commission or the division of health services, as the case may be, determines that a modification or change in~~

~~the project is justified which would increase or decrease the eligible costs. Such change must receive written approval from the appropriate state and federal agencies prior to any change being made in the eligible costs as set forth in the application.~~

~~(d) Exclusion From Eligible Costs. Eligible costs do not include recurring annual expenditures for administration, repairs, operation and maintenance of any wastewater treatment works, wastewater collection system or water supply system projects, and those costs must be excluded from the applicant's share of the total construction costs. Interest cost during construction is also excluded from eligible costs; however, such cost may be considered as a part of the applicant's share of the total project costs. Items not covered or allowed in the definition "construction cost" are also excluded.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0207 APPLICATIONS

~~(a) Applications for project grants for the construction of new or the expansion or improvement of existing wastewater treatment works, wastewater collection systems and water supply systems shall be submitted on the appropriate clean water bond grant form and shall be accompanied by all documentation, assurances and other information called for in the instructions for completing and filing of applications. Each applicant must also submit with its application an environmental assessment relating to the project as required by Rule .0208 of this Section.~~

~~(b) All applications for project grants for wastewater treatment works or wastewater collection systems shall be so identified and shall be forwarded directly to the division of environmental management, Department of Natural Resources and Community Development. All applications for project grants for water supply systems shall be so identified and shall be forwarded directly to the sanitary engineering section of the division of health services, Department of Human Resources. Applications and all supporting documents shall be submitted in such form and in such number as specified in the instructions for completing applications.~~

~~(c) Applications for grants from the Pollution Control Account for step I grants to assist in the preparation of facility plans, step II to assist in the preparation of construction drawings and specifications, and step III to assist in the construction and erection of wastewater treatment works may be approved for projects which qualify for the same step federal grant.~~

~~(d) All applications for grants from county allotment funds must so state and shall identify the county or counties from which allocation(s) the grant is requested.~~

~~(e) Applications must be received by the division of environmental management or the division of health services, as the case may be, prior to the initiation of construction of the project. The initiation of construction after the filing of an application and prior to consideration for a state grant award will neither exclude the project from consideration for a state grant award or guarantee the award of a state grant for the project.~~

~~(f) All applicants must file with the Clearinghouse and Information Center of the Department of Administration, prior to submitting an application for a state grant, a notification to the clearinghouse of intent to apply for such grant. The comments of the State Clearinghouse and Information Center and the comments of the regional clearinghouse if the proposed project is located within a state multi-county planning region served by a designated regional clearinghouse must be received by the division of environmental management or the division of~~

~~health services, as the case may be, prior to the assignment of a priority to the application. Clearinghouse comments received on notifications of intent to apply for federal grant or loan assistance may be utilized to satisfy this provision of these rules and regulations.~~

~~(g) Any application for construction grants under the Federal Water Pollution Control Act may be considered as an application for grants under section 7(c)(1) of the act for determining the effective date of receipt. An approved request to revise an application under the Federal Water Pollution Control Act may be considered as an application for this purpose.~~

~~(h) Any application which does not contain information sufficient to permit the division of environmental management or the division of health services, as the case may be, to determine either the eligibility of the applicant or the assignment of a priority shall not be deemed as received until such information is furnished by the applicant to the division of environmental management or the division of health services.~~

~~(i) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the division of environmental management or the division of health services.~~

~~(j) An applicant may amend a pending application to include additional data or information in support of its original application at any time prior to the date on which the final priority to be assigned the application is determined.~~

~~(k) An application may be withdrawn from consideration upon request of the applicant but if resubmitted shall be considered as a new application.~~

~~(l) Any application which does not include the assurances against bid-rigging which are required under Rule .0205(b)(5) of this Section shall be returned to the applicant as incomplete.~~

*History Note: Legislative Objection Lodged Eff. September 20, 1982;
Statutory Authority S.L. 1981, Ch. 909, s.8, s.14;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. October 1, 1982;
Curative Amended Eff. October 28, 1982.*

01 NCAC 22 .0208 ENVIRONMENTAL ASSESSMENT

~~(a) Each applicant shall submit with its application an assessment setting forth any significant impact that the project for which grant funds are sought will have on the environment of the area within which the project is proposed to be located. The assessment shall set forth the adverse and beneficial impact of the project upon water resources, other natural resources, land use patterns and other factors such as public health and fish and wildlife values.~~

~~(b) Environmental assessments shall be submitted in such form and in such number as specified in the instructions for completing applications. However, if the applicant is required to submit to a federal agency an environmental assessment for the project for which a state grant is sought, then such assessment may be accepted in lieu of the assessment required by Subsection (a) of this Rule if it provides the information required by the North Carolina Environmental Policy Act of 1971 and these rules and regulations. Any environmental assessment required as part of an~~

application for construction grants under the Federal Water Pollution Control Act may satisfy the requirements of this provision.

~~(c) If, after reviewing the environmental assessment, the division of health services or the Environmental Management Commission concludes that an environmental impact statement is required, then the application will receive no further consideration until a final environmental impact statement has been completed and approved. An environmental impact statement prepared by a federal agency or another state agency may satisfy the requirements of this provision.~~

~~(d) Any application received which is not accompanied by an environmental assessment shall not be deemed as having been received for the purpose of consideration for a grant award until such environmental assessment has been received, except that the environmental assessment requirement for step I applications for grants from the Pollution Control Account shall be deferred until submission of the step II grant application.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0209 DETERMINATION OF ELIGIBILITY

~~(a) Each application and supporting documents shall be reviewed by the division of environmental management or the division of health services, as the case may be, to determine if it contains all required information and meets the eligibility requirements of the act and these rules and regulations.~~

~~(b) Each applicant will be notified by the division of environmental management or by the division of health services, as the case may be, of its eligibility for consideration for a project grant award.~~

~~(c) Applications from ineligible applicants will be returned to the applicant.~~

~~(d) Eligible applications will be processed for priority determination and qualification for a project grant award in accordance with the procedures set forth in these rules and regulations.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

SECTION .0300 - PUBLIC NOTICES AND HEARINGS

01 NCAC 22 .0301 PUBLIC NOTICES

~~The division of environmental management with relation to applications for grant funds for wastewater collection system projects and the division of health services with relation to applications for grant funds from county allotments for water supply system projects shall, within 60 days after the effective date of receipt of any application, give notice of each eligible application sufficient to describe the nature, location and the extent of the project for which grant~~

~~funds are sought by first class mail to the governing body or chief executive officer of every local government unit within the county or counties in which the project is located or proposed to be located and shall publish such notice once in a newspaper published or having general circulation within such county or counties.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0302 HEARINGS

~~(a) A public hearing on a proposed project shall be held by the Environmental Management Commission with relation to grant applications for grants from county allotment funds for wastewater collection systems or by the division of health services with relation to applications for grants from county allotment funds for water supply systems, if, within 15 days after mailing of the public notices, a written request for such hearing is received from the governing body or chief executive officer of any local unit of government in the county or counties in which the project is located or proposed to be located.~~

~~(b) A public hearing on a proposed project may be held by the Environmental Management Commission with relation to applications for grants from county allotment funds for wastewater collection systems or by the division of health services with relation to applications for grants from county allotment funds for water supply systems if a written request for such hearing is received within 15 days after the date of publication in the newspaper(s) of the public notice from any citizen or taxpayer who is a resident of the county or counties in which the project is located or is proposed to be located if it appears or is determined by the Environmental Management Commission or the division of health services, as the case may be, that the public interest will be served by such hearing:~~

- ~~(1) Request for hearing shall be in written form and shall set forth each objection to the proposed project or other reasons for requesting a hearing on the application and shall contain the name and address of the person(s) submitting the request.~~
- ~~(2) The Environmental Management Commission or the division of health services, as the case may be, shall consider all written objections to the proposed project and other statements along with the application including any significant adverse effects that the proposed project may have on the environment and shall determine if the public interest will be served by a hearing. Such determination shall be conclusive, but all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application whether or not the hearing is granted.~~

~~(c) A public hearing on a proposed project may be held by the Environmental Management Commission with relation to applications for grants from statewide allotment funds for wastewater treatment works or by the division of health services with relation to applications for grants from funds allotted generally on a statewide basis for water supply systems if the Environmental Management Commission or the division of health services, as the case may be, determines that the public interest will be served by such hearing.~~

~~(d) Hearings requested by the governing body or the chief executive officer of any local unit of government and those determined necessary to serve the public interest shall be held not less than 30 days nor more than 60 days after receipt of written request. Such hearings shall be~~

~~conducted by a permanent staff member of the Department of Human Resources or the Department of Natural Resources and Community Development, as the case may be.~~

~~(e) Each hearing shall be held in Wake County unless the Environmental Management Commission or the division of health services, as the case may be, determines that the public interest will best be served by holding the hearing in the county in which the project for which grant funds are sought is located or proposed to be located. If the project is located or proposed to be located in two or more counties, the hearing shall be held in the county designated by the Environmental Management Commission or the division of health services. It shall be the responsibility of the applicant or applicants to assist with arranging for space at which the hearing may be held.~~

~~(f) Notice of hearings shall be given in the same manner to the same persons, agencies or groups and published in the same newspaper(s) as was the notice concerning the application. Notice of hearings shall be completed at least one week prior to the date of the hearing and shall specify the time, place and subject matter of the hearing. Notices shall also be given by first class mail to the person or persons who requested the hearing if such person(s) was not included in the list of those persons receiving notice of the publication.~~

~~(g) Written or oral statements may be presented at any hearing by any interested person, group or agency. Persons desiring to make an oral presentation at the hearing shall so advise the hearing officer prior to the time of the hearing. Persons making oral presentations who desire that their entire remarks become a permanent part of the record of the hearing must submit to the hearing officer a written copy of such remarks not later than 10 days after the date of the hearing. Hearings will be conducted in accordance with established hearing procedures, and the hearing officer at the beginning of the hearing may impose reasonable time limitation on oral presentations.~~

~~(h) The hearing officer shall keep minutes of the public hearing and shall deliver them, together with his report and with recommendations, if any, and written statements received within 45 days after the date of the hearing to the division of health services with relation to applications for grants for water supply systems and to the Environmental Management Commission with relation to applications for grants for wastewater treatment works or wastewater collection systems.~~

~~(i) The hearing officer may record the minutes of the public hearing by the use of mechanical recording devices. A copy of the minutes of the hearing may be obtained by any interested party upon written request and payment of a fee established by the agency which held the hearing.~~

~~(j) Any person named in Subsection (g) of this Rule may file a written statement or comments relative to the subject matter of the hearing with the Environmental Management Commission or the division of health services, as the case may be, at any time within 10 days after the date of the hearing. Such written statement or comment shall be made a part of the minutes of said hearings.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0303 CONSIDERATION OF INFORMATION PRESENTED AT HEARING

~~(a) Upon receipt of the minutes of the public hearing and the hearing officer's report and recommendations, the Environmental Management Commission with relation to applications for grants for wastewater treatment works or wastewater collection systems and the division of health services with relation to applications for grants for water supply systems shall give due and careful consideration to any testimony and all facts presented at such hearing which are directly related to the grant application.~~

~~(b) Relevant testimony and information presented at the public hearing may be used in determining the priority to be awarded the application for grant funds in accordance with the procedures set forth in these rules and regulations; or, as a result of such testimony or information, the applicant may be requested to supply supplemental information concerning the application.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

01 NCAC 22 .0401 GENERAL CRITERIA

~~(a) During the review periods set forth in Section .0800 of this Chapter all eligible applications shall be assigned a priority for grant funds. Priorities shall be assigned by the Environmental Management Commission for applications for project grants for wastewater treatment works and wastewater collection systems and by the division of health services for applications for project grants for water supply systems.~~

~~(b) In determining the priority to be assigned each eligible application, the Environmental Management Commission and the division of health services will give consideration to the following priority factors:~~

~~(1) Primary consideration shall be given to the public necessity of the project in promoting the public health, safety, and welfare and in providing or having the potential of providing the greatest benefit to the greatest number of persons.~~

~~(2) Consideration shall also be given to the eligibility of the proposed project for federal grants; the compatibility of the proposed project with the state's general program of water supply and water pollution control, and any applicable regional planning program; the population to be served; the fiscal responsibility of the applicant; and the need of the applicant for funding assistance.~~

~~(3) Additional consideration shall be given to eligible units of government which demonstrate practices for the conservation of water.~~

~~(c) Any priority system established for construction grants under the Federal Water Pollution Control Act shall satisfy the requirements of section 11 of the act.~~

~~(d) The categorical elements and items to be considered in assigning priorities to each application for which grant funds are sought, and the points to be awarded to each categorical element and item are set forth in Sections .0500, .0600 and .0700 of this Chapter. Unless otherwise specifically indicated, if an item for an element of a particular category applies~~

specifically to the application under consideration, the application will be awarded the number of points assigned to that item for the categorical element; and if no item applies, no points will be awarded the application for that particular element.

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0402 CRITERIA FOR WATER CONSERVATION

~~Applicant may receive a maximum of 15 bonus points for meeting the following criteria as applicable:~~

- ~~(1) Applicant demonstrates it has a continuing I/I program in its wastewater sewer maintenance program. (Wastewater Projects Only) 5 points~~
- ~~(2) Applicant demonstrates it has a continuing water loss program in its water supply system program. (Water Supply Projects Only) 5 points~~
- ~~(3) Applicant has a continuing program of water conservation education and information. 5 points~~
- ~~(4) Applicant has adopted and is effectively enforcing the state plumbing code within the applicant's jurisdiction. 5 points~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0403 CRITERIA FOR GRANT INCREASES

~~After award of a state grant from the Pollution Control Account, increases may be made for approved projects provided:~~

- ~~(1) A new application containing adequate information including revised cost data is submitted.~~
- ~~(2) That, based on its effective date of receipt, the new application is rated for priority along with all other eligible applications during the same priority period.~~
- ~~(3) The new application's priority rating is adequate to support the award of the additional funding.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

SECTION .0500 - PRIORITY CRITERIA FOR WASTEWATER TREATMENT WORK PROJECTS

01 NCAC 22 .0501 WATER POLLUTION CONTROL NEEDS

~~Maximum Value—55 Points:~~

~~The value of this Rule will be the sum of the points assigned under Items (a), (b), (c) and (d) of 1 NCAC 22 .0502.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0502 APPLICABLE CONDITIONS

~~(a) Proposed project will comply with established water quality standards and priority points will be assigned on the basis of the classification assigned to the receiving waters as follows:~~

- ~~(1) Class "SA" (Shellfish Waters) 30 points~~
- ~~(2) Class "A-II" (Water Supply Source) 28 points~~
- ~~(3) Class "B" or "SB" (Bathing Waters) 26 points~~
- ~~(4) Class "C" or "SC" (Fishing) 24 points~~
- ~~(5) Class "D" or "D(i)" (Agricultural) 22 points~~

~~(b) Construction of proposed project has been initiated or must be initiated within 12 months to comply with an order issued or with a compliance schedule approved by the board. 10 points~~

~~(c) Proposed project will upgrade or replace an existing primary wastewater treatment facility. 10 points~~

~~(d) Proposed project will provide wastewater treatment processes for the removal of nutrients or other materials not normally removed by conventional treatment processes. 5 points~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0503 SERVICE AREA NEED

~~Select One; Maximum Value—10 Points:~~

- ~~(1) Project will serve an area wide, county wide or regional sewerage system as defined in regulations or is designed as a basic part of such system. 10 points~~
- ~~(2) Project will replace, expand or improve existing wastewater treatment works to provide capacity to serve areas beyond the applicant's established boundaries but does not conform to Item (1) of this Rule. 8 points~~
- ~~(3) Project will replace, expand or improve existing wastewater treatment works but is not intended to provide capacity to serve areas beyond the applicant's established boundaries or the project will serve a community which is presently unsewered. 6 points~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0504 FINANCIAL NEED OF APPLICANT

Maximum Value—15 Points:

The financial need of the applicant will be determined by the following formula:

$$f \times 100 \frac{\text{Total Bonded Indebtedness plus Total Points} - \text{Estimated Project Cost}}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

"f" shall be a factor of 1.5 for project applications from units of government located in counties or areas designated by the Economic Development Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25.

"f x 100" is used in the formula to provide point values for this categorical element.

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0505 FISCAL RESPONSIBILITY OF THE APPLICANT

Maximum Value—10 points:

The value of this Rule will be the sum of the points assigned to either Item (1) or (2) of this Rule plus the value assigned to Items (3) and (4) of this Rule:

- (1) — Applicant has adopted an acceptable sewer use ordinance which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project. ———

————— 6 points

- (2) — Applicant is in the process of adopting an acceptable sewer use ordinance which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the

~~adequate operation, maintenance and administration and for reasonable expansion of the project.~~

~~2 points~~

~~(3) Applicant has established by resolution of its governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in Rule .0205(b)(4) of this Chapter. (Copy of the resolution must be submitted with application.)~~

~~2 points~~

~~(4) The applicant has followed proper accounting and fiscal reporting procedures as evidenced by the applicant's most recent report of audit and the applicant is in substantial compliance with provisions of the general fiscal control laws of the state.~~

~~2 points~~

The Environmental Management Commission may seek the comments of the Secretary of the Local Government Commission in determining the values to be assigned to Items (3) and (4) of this Rule.

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0506 STATUS OF PROJECT

~~Maximum Value 10 points:~~

The value of this Rule will be the sum of the values assigned to Items (1) to (5) of this Rule.

~~(1) financing of the applicant's share of the project arranged by having held and passed a bond referendum, arranged for the sale of revenue bonds or cash available;~~

~~5 points~~

~~(2) final detailed construction plans and specifications submitted;~~

~~2 points~~

~~(3) the proposed plant site approved in writing by the division of environmental management;~~

~~1 point~~

~~(4) plant site secured or option taken; An opinion of title counsel should be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the entire site (excluding easements and rights of way), free and clear of any pre-existing deeds of trust, liens or other encumbrances which would affect the value or usefulness of the site for the purpose intended;~~

~~1 point~~

~~(5) all necessary rights of way and/or easements acquired; An opinion by title counsel similar to that concerning the site should be submitted in substantiation of the acquisition.~~

~~1 point~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

SECTION .0600 - PRIORITY CRITERIA FOR WASTEWATER COLLECTION SYSTEM PROJECTS

01 NCAC 22 .0601 PUBLIC NEED

Select One; Maximum Value—30 points:

- (1) ~~Project is intended to improve or expand an existing system for which adequate wastewater treatment facilities are:~~
 - (a) ~~presently provided, 25 points~~
 - (b) ~~under construction, 20 points~~
 - (c) ~~proposed, 15 points~~
- (2) ~~Project is intended to provide a basic system for a unit of government which is not presently served by an approved system and adequate wastewater treatment will be provided by:~~
 - (a) ~~regional or areawide systems, 25 points~~
 - (b) ~~other public system, 20 points~~
 - (c) ~~applicant, 15 points~~
- (3) ~~Project is or is intended to be a regional sewage disposal system as defined in these rules and regulations or in a basic phase of the construction of such regional system. 30 points~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0602 PUBLIC HEALTH NEED

Select One; Maximum Value—20 points:

- (1) ~~Project will eliminate a critical public health hazard. 20 points~~
- (2) ~~Project will eliminate an emerging public health hazard. 15 points~~
- (3) ~~Project will eliminate a demonstrated or potential water pollution problem. 10 points~~

~~A public health hazard will be considered "critical" when it affects a significant number of persons within a substantial area.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0603 FINANCIAL NEED OF THE APPLICANT

~~Maximum Value—15 points:~~

~~The financial need of the applicant will be determined by the following formula:~~

~~$f \times 100$ (Total Bonded Indebtedness plus Total Points = Estimated Project Cost)~~

~~Total Appraised Property Valuation~~

~~"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.~~

~~"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.~~

~~"f" shall be a factor of 1.5 for project applications from units of government located in counties or areas designated by the Economic Development Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25.~~

~~"f x 100" is used in the formula to provide point values for this categorical element.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0604 FISCAL RESPONSIBILITY OF THE APPLICANT

~~Maximum Value—10 points:~~

~~The value of this Rule will be the sum of the points assigned to either Item (1) or (2) plus the value assigned to Items (3) and (4) of this Rule:~~

- ~~(1) Applicant has adopted an acceptable sewer use ordinance which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges, providing that each category of users shall pay substantially its proportional part of the total cost of the operation, and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project. — 6 points~~
- ~~(2) Applicant is in the process of adopting an acceptable sewer use ordinance which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges, providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the~~

~~adequate operation, maintenance and administration and for reasonable expansion of the project. 2 points~~

- ~~(3) — Applicant has established by resolution of the governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in Rule .0205(b)(4) of this Chapter. (Copy of the resolutions must be submitted with application.) — 2 points~~
- ~~(4) — The applicant has followed proper accounting and fiscal reporting procedures, as evidenced by the applicant's most recent report of audit, and the applicant is in substantial compliance with provisions of the general fiscal control laws of the state. — 2 points~~

The division of environmental management may seek the comments of the Secretary of the Local Government Commission in determining the values to be assigned to Items (3) and (4) of this Rule.

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0605 FINANCING OF THE PROJECT

Select One; Maximum Value ~~10 points:~~

- ~~(1) — Applicant has received a commitment for a grant from a federal agency. — 5 points~~
- ~~(2) — Applicant has funds available or bonds have been authorized to provide the applicant's share of project costs, but a commitment for a grant has not been received from a federal agency. — 5 points~~
- ~~(3) — Applicant has received a commitment for a grant from a federal agency and has funds available or bonds have been authorized to provide the applicant's share of project costs. — 10 points~~
- ~~(4) — Applicant has funds available or bonds have been authorized to cover project costs over and above the state grant funds requested. — 10 points~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

01 NCAC 22 .0606 STATUS OF PROJECT

Maximum Value ~~15 points:~~

The value of this Rule will be the sum of the value assigned to Items (1), (2) and (3) of this Rule:

- ~~(1) — preliminary engineering report approved in writing by the division of environmental management; 3 points~~
- ~~(2) — final detailed construction plans and specifications submitted; — 8 points~~
- ~~(3) — all necessary sites, rights-of-way and/or easements acquired; An opinion by title counsel should be submitted stating that all necessary sites, rights-of-way and/or easements have been acquired by the applicant. — 4 points~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

SECTION .0700 - PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS

01 NCAC 22 .0701 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE

~~Maximum Value 55 points:~~

- ~~(1) System and Service Area Needs: (Maximum Points 20)~~
 - ~~(a) The project is intended solely to increase the source of raw water to meet existing service area needs or to alleviate water shortage problems. 12 points~~
 - ~~(b) The project is intended to improve an existing system with no increase in the area to be served. 12 points~~
 - ~~(c) The project is intended to increase the existing area to be served without improvement of the existing system. 14 points~~
 - ~~(d) The project is intended to increase the existing area to be served and includes needed improvements to the existing system. 16 points~~
 - ~~(e) The project is intended to significantly increase the existing area to be served, includes needed improvements to the existing system and is so designed as to permit interconnection at an appropriate time with an expanding metropolitan, area wide or regional system. 20 points~~
 - ~~(f) The project is intended to provide for construction of a basic system for a unit of government which is not presently served by an approved public water supply system. 20 points~~
- ~~(2) Public Health Need (Maximum Points 15). If one item of this categorical element applies, the value of 10 points will be awarded. If both items apply, a maximum of 15 points will be awarded:~~
 - ~~(a) The project is intended to alleviate an urgent or immediately anticipated water shortage problem which has significant public health implications. 10 points~~
 - ~~(b) The project is necessary to eliminate a potential public health hazard. 10 points~~

Notwithstanding other provisions relating to the assignment of priority point values for various categorical elements and items, the division of health services may award a higher priority value to an eligible application if the proposed project is required to eliminate a demonstrated or critical hazard to the public health.

- ~~(3) Capacity for Future Growth (Select One) (Maximum Points 20):~~
 - ~~(a) The project is intended to provide for the immediate needs. 6 points~~
 - ~~(b) The project is intended to provide for the reasonable foreseeable growth needs of the area during the next 5-10 years. 10 points~~

- ~~(c) — The project is intended to provide for the reasonable foreseeable growth needs of the area during the next 11-15 years. — 12 points~~
- ~~(d) — The project is intended to provide for the reasonable foreseeable growth needs of the area during the next 16-20 years. — 14 points~~
- ~~(e) — The project is a proposed regional system or a major component of a regional system which is intended to provide for the reasonable foreseeable growth needs of the area to be served during the next 20 or more years. — 20 points~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0702 COMPATIBILITY WITH STATE, REGIONAL AND LOCAL PLANNING

~~Maximum Value—10 points:~~

~~The value of this categorical element is the sum of the points awarded to either Item (1), (2), or (3) plus the points assigned to Item (4) of this Rule:~~

- ~~(1) — In the absence of applicable local, area-wide or regional planning, the project has been endorsed officially by the appropriate planning agencies or by the appropriate elected officials of the county or counties in which the project is located or proposed to be located. — 5 points~~
- ~~(2) — The project is compatible with applicable local, area-wide or regional planning in the county or counties in which the project is located or proposed to be located. — 6 points~~
- ~~(3) — The project is compatible with applicable local, area-wide or regional planning in the county or counties in which the project is located or proposed to be located and has been officially endorsed by the appropriate planning agencies. — 8 points~~
- ~~(4) — The project is compatible with the state's general program of water supply planning for the county or counties in which the project is located or proposed to be located or is in compliance with a regional water supply system plan approved by the division of health services. — 2 points~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0703 FINANCIAL CONSIDERATIONS

~~Maximum Value—35 Points:~~

- ~~(1) — Financing of the Project (Select One) (Maximum Points—10):~~
 - ~~(a) — Applicant has received a commitment for a grant from a federal agency. — 5 points~~

- ~~(b) Applicant has funds available or bonds have been authorized to provide the applicant's share of the project costs but a commitment for a grant has not been received from a federal agency. _____
_____ 5 points~~
- ~~(e) Applicant has received a commitment for a grant from a federal agency and has funds available or bonds have been authorized to provide the applicant's share of project costs. _____
_____ 10 points~~
- ~~(d) Applicant has funds available or bonds have been authorized to cover project costs over and above the state grant funds requested. _____
_____ 10 points~~
- ~~(2) Fiscal Responsibility of the Applicant (Maximum Points 10). The value of this categorical element shall be the sum of the points awarded Items (a) to (e) of this Paragraph:~~
 - ~~(a) The applicant has followed proper accounting and fiscal reporting procedures as reflected in the applicant's most recent report of audit, and the applicant is in substantial compliance with the provisions of the general fiscal control laws of the state. _____
_____ 2 points~~
 - ~~(b) The applicant has an effective tax collection program. _____
_____ 2 points~~
 - ~~(c) The additional debt service requirements resulting from the project will not increase the existing tax rate excessively. _____
_____ 2 points~~
 - ~~(d) Estimated revenues will provide funds for proper future operation, maintenance and administration, reasonable expansion of the project and estimated annual principal and interest requirements for the project debt plus annual principal and interest requirements on the outstanding debt incurred for existing facilities. _____
_____ 2 points~~
 - ~~(e) The applicant has established or has submitted a resolution of its governing body directing the establishment of a capital reserve fund into which all surplus revenues from charges and fees will be placed for the purposes specified in Rule .0205(b)(4) of this Chapter. (Copy of the resolution must be submitted with the application.) _____
_____ 2 points~~

~~In determining the points to be awarded this categorical element, the division of health services may seek the comments of the Secretary of the Local Government Commission. Applicants not authorized to levy taxes shall be eligible to receive two points for Item (b) and two points for Item (e) of this Paragraph.~~

- ~~(3) Financial Need of the Applicant (Maximum Points 15). The financial need of the applicant will be determined by the following formula:
f x 100 (Total Bonded Indebtedness plus Total Points = Estimated Project Cost)~~

Total Appraised Property Valuation

~~"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.~~

~~"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.~~

~~"f" shall be a factor of 1.5 for project applications from units of government located in counties or areas designated by the Economic Development Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25.~~

~~"f x 100" is used in the formula to provide point values for this categorical element.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

01 NCAC 22 .0704 ENVIRONMENTAL ASSESSMENT

~~No points will be awarded to this categorical element. However, both the beneficial and adverse effects of the project on the environment will be considered in the award of points on related applicable elements and items in Rules .0701 and .0702 of this Section.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

SECTION .0800 - REVIEW OF APPLICATIONS AND ASSIGNMENT OF PRIORITIES

01 NCAC 22 .0801 REVIEW PERIODS

~~Eligible applications for grants for wastewater treatment works projects, wastewater collection systems projects and water supply systems projects shall be reviewed and considered for the assignment of priorities on a quarterly basis during each fiscal year.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. January 1, 1980.*

01 NCAC 22 .0802 ASSIGNMENT OF PRIORITIES

~~(a) Eligible applications for grants for wastewater treatment works projects and wastewater collection systems projects shall be assigned priorities for grant awards by the Environmental Management Commission. Eligible applications for grants for water supply systems projects shall be assigned priorities for grant awards by the division of health services.~~

~~(b) Every eligible application for a grant from the statewide funds allocated for wastewater treatment works projects or water supply systems projects generally whose effective date of receipt of application entitles the application to consideration in a given priority period shall be reviewed and considered with every other application entitled to consideration during the same priority period and shall be assigned a priority for grant funds. If a hearing is required on an application, the assignment of a priority and consideration for a grant award may be deferred, but such deferment shall not be deemed as disqualifying the application from consideration for a grant award together with other applications received during the priority period in which the application was entitled to such consideration. The assignment of priorities to other eligible applications being considered during the priority period shall not be delayed pending such hearing.~~

~~(c) Every eligible application for a grant from the county allotment funds for a wastewater collection system project or a water supply system project whose effective date of receipt of application entitles the application to consideration in a given priority period shall be reviewed and considered with every other application from the same county entitled to consideration during the same priority period and shall be assigned a priority for grant funds. If a hearing is required on an application, the assignment of a priority and consideration for a grant award may be deferred; but such deferment shall not be deemed as disqualifying the application from consideration for a grant award together with other applications received from the same county during the priority period in which the application was entitled to such consideration. The assignment of priorities to other eligible applications from the same county being considered during the priority period shall not be delayed pending such hearing.~~

~~(d) The division of health services or the Environmental Management Commission may exercise its discretionary authority in the matter of establishing a priority for any project application in cases where:~~

- ~~(1) two or more applications receive the same number of priority points,~~
- ~~(2) where extreme public necessity exists, or~~
- ~~(3) in other unusual circumstances.~~

~~(e) A written statement relative to each priority assigned shall be prepared by the agency assigning the priority and shall be attached to the application. The priority assigned shall be conclusive.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

SECTION .0900 - GRANT AWARDS

01 NCAC 22 .0901 DETERMINATION OF GRANT AWARDS

~~(a) Based on the priority assigned the application and the aggregate total amount of funds available for grants in a given fiscal year, grants from statewide funds shall be awarded wastewater treatment works projects and water supply systems projects generally in the descending order of priority values assigned all such applications which are eligible for consideration during a given priority period.~~

~~(b) Based on the priority assigned the application and the aggregate total amount of funds available for grants in a given fiscal year, grants from county allotment funds shall be awarded wastewater collection systems projects and water supply systems projects in the descending order of priority values assigned all such applications from units of government within a county which are eligible for consideration during a given priority period.~~

~~(c) Projects which qualify for a grant commitment during a given priority period and which have a construction time extending two or more years and whose grant award would drastically reduce the state's allotted funds for a given fiscal year may be recommended for a grant to be paid from available funds during two or more fiscal years.~~

~~(d) Upon determination that the applicant qualifies for a grant, the division of environmental management or the division of health services shall notify the applicant of the recommended award.~~

~~(e) Failure of an application within one year of the date of acceptance of a grant award to:~~

~~(1) arrange for necessary financing of the proposed project, or~~

~~(2) award a contract for construction of the proposed project shall constitute sufficient cause for withdrawal of the grant commitment.~~

~~Prior to withdrawal of a grant commitment, the Environmental Management Commission or the division of health services shall give due consideration to any extenuating circumstances presented by the applicant as reasons for its failure to arrange necessary financing or to award a contract; and the grant commitment may be extended for an additional period of time if in the judgment of the appropriate agency such an extension is justified.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. January 1, 1980.*

01 NCAC 22 .0902 CERTIFICATE OF ELIGIBILITY FOR GRANT AWARDS

~~(a) The division of environmental management with respect to grant awards for wastewater treatment works projects and wastewater collection systems projects and the division of health services with respect to grant awards for water supply systems projects shall forward to the Department of Administration a certificate of eligibility for each application for which a grant award is authorized.~~

~~(b) The certificate of eligibility shall indicate that the applicant meets all eligibility criteria, that public notice and hearing requirements of the act have been met, the amount and the fiscal year of the grant commitment, and whether payments shall be made in a lump sum or in installments as progress payments.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;*

Readopted Eff. February 27, 1979.

01 NCAC 22 .0903 FAILURE TO QUALIFY FOR GRANT AWARDS

~~(a) Upon determination that the applicant does not qualify for a grant, the division of environmental management or the division of health services shall inform the applicant.~~

~~(b) If an application for a grant for a wastewater treatment works project, wastewater collection system project or water supply system project fails to qualify for a grant as of the priority period in which the application was eligible for consideration by reason of the priority assigned, the application shall be considered for a grant award during the next succeeding priority period upon request of the applicant. If such application should again fail to qualify for a grant during four consecutive priority periods by reason of the priority assigned, the application shall receive no further consideration.~~

~~(c) Subject to the provisions set forth in these rules and regulations, the applicant may submit a new application for a grant at any time. The applicant may also amend and resubmit any application which has been returned to include data or information which would tend to qualify the application for a higher priority during a subsequent review period.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. January 1, 1980.*

01 NCAC 22 .0904 RESTRICTIONS: GRANTS RELATING TO FEDERAL GRANTS AND LOANS

~~(a) If any applicant for grant funds for a project otherwise eligible for a federal grant or loan fails to qualify for such grant or loan by reason of the failure or refusal of the applicant to meet federal requirements, the Environmental Management Commission or the division of health services in its sole discretion and determination may refuse to award the grant applied for under the act.~~

~~(b) Every grant made pursuant to the act and these rules and regulations for any project for which federal funds are available and have been requested by the applicant shall be conditional upon approval of the applicant's request for federal funds.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0905 PAYMENT OF GRANTS

~~(a) The Department of Administration shall be responsible for the payments of all grants made from the Clean Water Fund.~~

~~(b) The Department of Administration shall not disburse funds for any grant or any portion thereof until it has received from the division of environmental management, with respect to grant awards for wastewater treatment works projects and wastewater collection systems projects, or the division of health services, with respect to grant awards for water supply systems~~

~~projects, a certificate of eligibility for the grant award and a request(s) for payment to the grant recipient along with information as may be required by the Department of Administration.~~

~~(c) The appropriate agency will notify the Department of Administration as to whether the grant payment shall be made in a lump sum or as progress payments the first of which may be an advance payment upon initiation of project construction.~~

~~(d) The appropriate agency will notify the Department of Administration whether to withhold a portion of the grant payment not to exceed five percent from the lump sum payment or each installment payment pending approval by the appropriate agency of the final inspection report or audit.~~

~~(e) A check in the amount of the grant payment requested by the appropriate agency will be forwarded to the grant recipient by the Department of Administration. The appropriate agency will be notified as payments are made to grant recipients.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 22 .0906 APPLICATION OF FEDERAL, STATE AND LOCAL LAWS

~~(a) Every applicant for grant funds under the act must substantially comply or must indicate that it will substantially comply with all applicable federal, state and local laws, rules, regulations and ordinances.~~

~~(b) Any application for grant funds under the act which is not accompanied by an adopted resolution stating that the unit of government has complied or will substantially comply with all applicable federal, state and local laws, rules, regulations and ordinances shall not be deemed as having been received and no further action will be taken thereon until the resolution is submitted to the appropriate agency. Such resolution must be certified or attested to as a true and correct copy as adopted.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

SECTION .1000 - INSPECTION AND AUDIT OF PROJECTS

01 NCAC 22 .1001 GENERAL PROVISIONS

~~(a) Inspection of a project for which a grant has been made under the act and the provisions of these rules and regulations may be made for the purposes of determining the percentage of completion of the project for progress and other payments, compliance with applicable laws, rules and regulations, and other pertinent matters.~~

~~(b) Fees for state inspection and inspection services may be paid from the grant funds awarded the project if the Environmental Management Commission or the division of health services determines that such method of payment is necessary. Fees for such state inspections may be chargeable to the construction costs of the project. Such fees shall not exceed one half of one~~

~~percent of the eligible construction costs of the project or one thousand dollars (\$1,000) whichever is less.~~

~~(c) Inspection(s) shall be made by qualified personnel of the division of health services or the division of environmental management or by qualified professional engineers registered in North Carolina who meet the conditions specified in the act and are approved by the division of health services or the division of environmental management to make such inspection(s). If the federal agency making a grant to a project for which a state grant is made is required to make an inspection or inspections of the project, such inspections may, at the sole discretion of the division of health services or the division of environmental management, be accepted in lieu of inspections by qualified state personnel.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

01 NCAC 22 .1002 AUDIT OF PROJECTS

~~(a) An audit shall be required for each project for which a state grant has been made.~~

~~(b) If the federal agency making a grant to a project for which a state grant is made is required to make an audit or audits of the project, such audits may, at the discretion of the division of environmental management or the division of health services and the Department of Administration, be accepted in lieu of audits by qualified state personnel or qualified independent auditors as approved by the Local Government Commission.~~

~~(c) If no federal funds are used in the construction of the project or if the federal audit is not acceptable to the state agency concerned, the audit may be made by qualified state personnel, or the applicant shall have the required audit prepared by qualified independent auditors as approved by the Local Government Commission prior to receiving final payment of any funds withheld from the state grant. The cost of such audit may, unless otherwise prohibited by federal regulations, be included in the eligible project costs.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

SECTION .1100 - REPORTS AND SEVERABILITY

01 NCAC 22 .1101 ANNUAL REPORTS TO THE ADVISORY BUDGET COMMISSION

~~(a) The Department of Administration, the State Treasurer, the division of environmental management and the division of health services shall prepare and file with the Advisory Budget Commission on or before July 31 of each year a consolidated report for the preceding fiscal year concerning the sale and allocation of the proceeds of sale of the bonds authorized by the act.~~

~~(b) The annual report shall be prepared in accordance with the format prescribed in the act and shall provide the information required from each agency by the act.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

01 NCAC 22 .1102 INFORMATION AND APPLICATION FORMS

~~Upon request, copies of these rules and regulations, application forms and other information may be obtained by units of local government from the principal offices of the Department of Administration, the division of environmental management, or the division of health services in Raleigh, North Carolina. Any other person shall be entitled to receive a copy upon payment of a reasonable charge for printing or duplication if the division of health services, Environmental Management Commission or Department of Administration shall so require.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

01 NCAC 22 .1103 SEVERABILITY

~~If any provision of these rules and regulations or its application to any unit of government, person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these rules and regulations which can be given effect without the invalid provision or application, and to this end the provisions of these rules and regulations are declared to be severable.~~

*History Note: Authority S.L. 1977, Ch. 677;
Eff. February 27, 1979.*

II. Title 01, Chapter 23 (Regional Water Supply Planning Act of 1971)

Rule Citation:

Agency: Department of Administration

Contact: William E. H. Creech, Rule-Making Coordinator, 919-807-2425

Rule Title: Regional Water Supply Planning Act of 1971

Rule citation: 01 NCAC 23 .0101-.0108

Statutory Authority: G.S. 162A-20 to 162A-25

State impact: No

Local impact: No

Federal government impact: No

Substantial economic impact: No

Description of rule change: Repeal. Upon consultation with DENR, DOA has learned that the program has concluded and, therefore, that the rules are obsolete. Except to provide an important incremental benefit – along with other similar repeals – of ridding the Administrative Code of unnecessary rules, this repeal will not impact any existing entity economically or otherwise. These rules are among those previously recommended by OSBM to the General Assembly for repeal.

Rule text:

CHAPTER 23 - REGIONAL WATER SUPPLY PLANNING ACT OF 1971

01 NCAC 23 .0101 DEFINITIONS

~~For the purpose of these procedures, the following words and phrases shall have the meanings ascribed to them:~~

- ~~(1) Water Supply Act shall mean the Regional Water Supply Planning Act of 1971.~~
- ~~(2) DOA shall mean the North Carolina Department of Administration.~~
- ~~(3) DHR shall mean the North Carolina Department of Human Resources.~~
- ~~(4) NRCD shall mean the North Carolina Department of Natural Resources and Community Development.~~
- ~~(5) State clearinghouse shall mean that agency designated by the Governor to coordinate federal and federally assisted programs and projects with state, regional and local plans and programs pursuant to the Office of Management and Budget Circular A-95, as revised.~~
- ~~(6) Areawide clearinghouse shall mean that agency designated by the Governor to serve each respective multi-county planning region by coordinating federal and federally assisted programs and projects with regional and local plans and programs pursuant to the Office of Management and Budget Circular A-95, as revised.~~
- ~~(7) Applicant shall mean any county, municipality, sanitary district, or counties and municipalities acting collectively or jointly as a regional water authority.~~

- ~~(8) Application form shall mean Application for Planning Advances, for Planning Advances for Regional Water Supply Planning and/or Regional Sewage Disposal Planning under General Statutes Chapter 162A, Form RWSD #1.~~
- ~~(9) Application shall include the application form and those supporting documents submitted by the applicant as part of a formal request for a planning advance under the Water Supply Act.~~
- ~~(10) Priority shall mean the position of an application relative to all others evaluated during a specific time period, such relative position to be established by the Department of Human Resources, for regional water supply system planning in accordance with the policies and procedures of the Department of Human Resources for establishing regionalization priorities.~~
- ~~(11) Time period shall mean either of two six month periods (one beginning with December 1 and ending with May 31 of the following year, and the other beginning with June 1 and ending with November 30) during which properly completed applications will be received for evaluation with respect to all others received during the same six month period.~~
- ~~(12) Planning Advance Agreement shall mean agreement between applicant and Administration to the terms and provisions of the Water Supply Act with respect to the advancement and repayment of planning advances under these acts and agreement with the provisions and procedures of Administration with respect to advancement and repayment.~~

*History Note: Authority G.S. 162A-24;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. August 1, 1988.*

01 NCAC 23 .0102 SUBMISSION OF APPLICATION FORMS

The following procedures will apply to the submission of application forms requesting funds under the Water Supply Act:

- ~~(1) The applicant will be required to complete and submit to the State Clearinghouse, 116 West Jones Street, Raleigh, North Carolina 27603, a Notification of Intent to Apply for Assistance, OIR Form #1 for review and comment by the areawide clearinghouse serving the project area.~~
- ~~(2) The state clearinghouse will forward this form to the respective areawide clearinghouse serving the project area for review and comment. The areawide clearinghouse will have 30 days in which to complete this review.~~
- ~~(3) Upon completion of this review the areawide clearinghouse will forward one copy of its comments to the applicant and one copy to the state clearinghouse.~~
- ~~(4) The applicant is requested to attach the areawide clearinghouse comments to the final application prior to the submission of the application to the Department of Administration.~~
- ~~(5) Each applicant shall submit to the Department of Administration, on application forms provided, all necessary and requested information about the proposed regional water supply system planning.~~

- ~~(6) Application forms shall be submitted to the Controller's Office, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27603, in triplicate.~~
- ~~(7) The Department of Administration shall, upon receipt of application forms, forward one copy to the Department of Human Resources and one copy to the Department of Natural Resources and Community Development.~~

*History Note: Authority G.S. 162A-20 to 162A-25;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 23 .0103 PROCESSING APPLICATIONS

~~The following procedures shall apply to the processing of all applications requesting funds under the Water Supply Act:~~

- ~~(1) Each properly completed application received after November 30 of each year but prior to June 1 of the following year will be evaluated with respect to all others submitted or resubmitted during that period. On or about July 1 of each year, the Department of Administration will advise the applicant of the approval or disapproval of such applications and of the availability of funds based on the priority assigned to the application.~~
- ~~(2) Each properly completed application received after May 31 but prior to December 1 of that year will be evaluated with respect to all others submitted or resubmitted during that period. On or about January 1 of each year, the DOA will advise the applicant of the approval or disapproval of such applications and of the availability of funds based on the priority assigned to the application.~~
- ~~(3) Any eligible applicant may submit addenda to an application previously submitted. If both application and addenda are received by the DOA within the same period, they shall be considered together as a single application within that period. If the addenda to an application are received in a period following the period in which the application was received, the application and the addenda shall be considered together as a single resubmitted application in the period in which the addenda were received by the DOA.~~
- ~~(4) Each approved application failing to receive a sufficiently high priority to qualify for a planning advance in any time period will be considered in the subsequent time period upon written request from the applicant.~~
- ~~(5) Each applicant submitting addenda or revised applications shall submit such addenda or revised applications to the DOA in triplicate.~~

*History Note: Authority G.S. 162A-20 to 162A-25;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 23 .0104 EXECUTION OF PLANNING ADVANCES

~~The following procedures shall apply to the execution of planning advances under the Water Supply Act:~~

- ~~(1) The DOA shall make a planning advance offer to each applicant whose application has been approved and whose priority is such (as determined under these procedures) that it qualifies for a planning advance.~~
- ~~(2) Upon receipt of properly executed planning advance agreement in duplicate from the applicant, the DOA shall advance funds in accordance with the agreement.~~
- ~~(3) The DOA may advance to the applicant up to 50 percent of the planning advance amount during the course of the planning.~~
- ~~(4) The DOA shall pay the applicant any unpaid balance of the total planning advance amount upon approval of the engineering report by the Department of Human Resources.~~

*History Note: Authority G.S. 162A-20 to 162A-25;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 23 .0105 SUBMISSION OF THE ENGINEERING REPORT

The following procedure shall apply to the submission of engineering reports prepared pursuant to the Water Supply Act:

- ~~(1) Upon the completion of the regional water supply system planning, the applicant shall submit to the DOA five copies of the engineering report.~~
- ~~(2) The DOA shall, upon receipt of five copies of the engineering report, forward two copies of the report to NRC and three copies of the report to DHR.~~
- ~~(3) Within 60 days of receipt of the engineering report by the DOA, the Department of Human Resources shall notify Administration concerning approval or disapproval of the report and shall advise the DOA as to the feasibility of the proposed project as such feasibility relates to repayment of the planning advance.~~

*History Note: Authority G.S. 162A-20 to 162A-25;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 23 .0106 ADMINISTRATION OF OUTSTANDING PLANNING ADVANCE ACCOUNTS

The following procedures shall apply to the administration of outstanding planning advance accounts under the Water Supply Act:

- ~~(1) Upon receipt of notification from the Department of Human Resources that the regional water supply system plan has been approved and determined to be feasible, the DOA will negotiate repayment arrangements with the applicant according to the terms of the planning advance agreement.~~
- ~~(2) Upon receipt of notification from the Department of Human Resources that the regional water supply system plan has been approved but determined to be not feasible, the DOA will notify applicant that repayment of the planning advance will not be required.~~
- ~~(3) Final payment of the planning advance amount shall not be disbursed to the applicant until such time as the engineering report has been approved by the~~

~~Department of Human Resources. In the event that an engineering report is not approvable as submitted, the Department of Human Resources shall advise the applicant in writing of the revisions required in order to secure approval.~~

*History Note: Authority G.S. 162A-20 to 162A-25;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 23 .0107 RESPONSIBILITIES OF STATE AGENCIES

~~The following responsibilities are assigned to the DOA, the Department of Human Resources and NRCD:~~

- ~~(1) The Department of Administration shall be responsible for receiving all applications and addenda, preparing responses to applications and disbursing funds in accordance with priorities established by the Department of Human Resources:
 - ~~(a) The DOA shall establish policies and procedures for receiving, distributing, reviewing, and evaluating applications and for administering the revolving funds.~~
 - ~~(b) The DOA shall receive and evaluate each application for a planning advance according to procedures and policies adopted by that agency.~~
 - ~~(c) On or before June 1 and December 1 of each year, the DOA shall notify the Department of Human Resources of the amounts available for planning advance from the regional water supply planning revolving fund.~~~~
- ~~(2) The Department of Human Resources shall have primary responsibility for processing those aspects of applications relating to water supplies:
 - ~~(a) The Department of Human Resources shall establish policies and procedures for reviewing and evaluating applications according to the requirements established by the Water Supply Act and shall determine eligibility of applicants and priority of each application.~~
 - ~~(b) The Department of Human Resources shall review and evaluate, according to procedures and policies adopted by that agency, each properly completed application for a planning advance under the Water Supply Act.~~
 - ~~(c) For each application under the Sewage Disposal Act, the Department of Human Resources shall furnish to the Department of Natural Resources and Community Development comments and recommendations regarding treatment of wastes proposed to be discharged into waters used as sources of raw water for public water supplies and other matters for which the Department of Human Resources has responsibility by law.~~
 - ~~(d) For applications under the Water Supply Act, the Department of Human Resources shall be guided by the recommendations of NRCD on matters for which the Department of Natural Resources and Community Development has responsibility by law.~~
 - ~~(e) The Department of Human Resources shall give due consideration to comments from the DOA regarding the merits of each application relative to sound state and multi-county regional planning.~~~~

- ~~(f) — The Department of Human Resources shall, during the months of June and December of each year, advise DOA of the approval of applications under the Water Supply Act, the priority of each and the order in which the applications should be funded. Each such approval shall be accompanied by a determination as to whether there is a reasonable prospect of federal (or state) aid in the financing of the projected work if the undertaking is one that will be dependent upon federal (or state) aid.~~
- ~~(g) — The Department of Human Resources shall be responsible for reviewing and approving engineering reports prepared under the Water Supply Act.~~
- ~~(3) — The Department of Natural Resources and Community Development shall be responsible for the following:
 - ~~(a) — NRCD shall review and evaluate, according to procedures and policies adopted by that agency, each properly completed application for a planning advance under the Water Supply Act.~~
 - ~~(b) — For each application under the Water Supply Act, the Department of Natural Resources and Community Development shall furnish to the Department of Human Resources comments and recommendations regarding raw water sources, inter-basin transfer, and other matters for which the Department of Natural and Economic Resources has responsibility by law.~~~~

*History Note: Authority G.S. 162A-20 to 162A-25;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 23 .0108 SEVERABILITY

~~If any provision of these rules and regulations or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the rules and regulations which can be given effect without the invalid provision or applications, and to this end the provisions of these rules and regulations are declared to be severable.~~

*History Note: Authority G.S. 162A-20 to 162A-25;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

III. Title 01, Chapter 24 (Regional Sewage Disposal Planning Act of 1971)

Agency: Department of Administration

Contact: William E. H. Creech, Rule-Making Coordinator, 919-807-2425

Rule Title: Regional Sewage Disposal Planning Act of 1971

Rule citation: 01A NCAC 24 .0101-.0107

Statutory Authority: G.S. 162A-26 to 162A-30

State impact: No

Local impact: No

Federal government impact: No

Substantial economic impact: No

Description of rule change: Repeal. Upon consultation with DENR, DOA has learned that the program has concluded and, therefore, that the rules are obsolete. Except to provide an important incremental benefit – along with other similar repeals – of ridding the Administrative Code of unnecessary rules, this repeal will not impact any existing entity economically or otherwise. These rules are among those previously recommended by OSBM to the General Assembly for repeal.

Rule Text:

CHAPTER 24 - REGIONAL SEWAGE DISPOSAL PLANNING ACT OF 1971

01 NCAC 24 .0101 DEFINITIONS

~~For the purpose of this Chapter, the following words and phrases shall have the meanings ascribed to them:~~

- ~~(1) Sewage Disposal Act shall mean the Regional Sewage Disposal Planning Act of 1971, as amended.~~
- ~~(2) The DOA shall mean the North Carolina Department of Administration.~~
- ~~(3) DHR shall mean the Department of Human Resources.~~
- ~~(4) NRCD shall mean the Department of Natural Resources and Community Development.~~
- ~~(5) Applicant shall mean any county, municipality, sanitary districts or counties and municipalities acting collectively or jointly as a regional sewer authority.~~
- ~~(6) Application form shall mean Application for Planning Advances for Regional Sewage Disposal Planning under General Statutes Chapter 162A, Form RWSD #1.~~
- ~~(7) Application shall include the application form and those supporting documents submitted by an applicant as part of a formal request for a planning advance under the Sewage Disposal Act.~~
- ~~(8) Planning advance agreement shall mean agreement between applicant and administration to the terms and provisions of the Sewage Disposal Act with respect to the advancement and repayment of planning advances under the act and agreement with the provisions and procedures of administration with respect to advancement and repayment, Form RWSD #2.~~

*History Note: Authority G.S. 162A-26 to 162A-30;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. August 1, 1988.*

01 NCAC 24 .0102 SUBMISSION AND PROCESSING OF APPLICATION: ELIGIBILITY

~~The following procedures will apply to the submission of application and eligibility determination under the Sewage Disposal Act:~~

- ~~(1) The applicant will be required to complete and submit to the State Clearinghouse, 116 West Jones Street, Raleigh, North Carolina 27603, a notification of intent to apply for assistance, OIR #1, for review and comment by the areawide clearinghouse serving the project area.~~
- ~~(2) The state clearinghouse will forward this form to the respective areawide clearinghouse serving the project area for review and comment. The areawide clearinghouse will have 30 days in which to complete this review.~~
- ~~(3) Upon completion of this review the areawide clearinghouse will forward one copy of its comments to the applicant and the state clearinghouse.~~
- ~~(4) The applicant is requested to attach the areawide clearinghouse comments to the final application prior to the submission of the application to the Department of Administration.~~
- ~~(5) Each applicant shall submit to the Controller's Office, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27603, a fully completed application form in triplicate.~~
- ~~(6) Each application form shall be accompanied by the comments of the regional clearinghouses.~~
- ~~(7) DOA shall, upon receipt of application form, forward one copy to NRCD and one copy to DHR.~~
- ~~(8) NRCD will review each application received and advise administration whether the applicant is eligible and if the application and related documents are complete and in order. NRCD will include reasons for finding an applicant not eligible or what is needed to complete the application.~~
- ~~(9) Each applicant will be notified by the DOA within 21 days of receipt of application of its eligibility for a planning advance and the availability of funds or the additional information needed to complete the application.~~
- ~~(10) If funds are not available, the Department of Administration will notify the applicant that the application will be considered an active application for one year from date of application or until funds become available, whichever comes first, unless the application is withdrawn by the applicant.~~

*History Note: Authority G.S. 162A-26 to 162A-30;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 24 .0103 EXECUTION OF PLANNING ADVANCES

The following procedure shall apply to the execution of planning advances under the Sewage Disposal Act:

- (1) ~~If funds are available, the Department of Administration shall make a planning advance offer to an eligible applicant whose application has been approved by NRCD.~~
- (2) ~~Upon receipt of a planning advance agreement executed in duplicate by the applicant, the Department of Administration shall advance funds in accordance with the terms of that agreement.~~
- (3) ~~The DOA may advance to the applicant during the course of the planning up to 50 percent of the total planning advance amount.~~
- (4) ~~The DOA shall pay the applicant any unpaid balance of the total planning advance amount upon approval of the regional sewage disposal plan.~~

*History Note: Authority G.S. 162A-26 to 162A-30;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 24 .0104 SUBMISSION OF REGIONAL SEWAGE DISPOSAL PLAN

The following procedures shall apply to the submission of the Regional Sewage Disposal Plan under the Sewage Disposal Act:

- (1) ~~Upon completion of the regional sewage disposal, the applicant shall submit five copies to the DOA.~~
- (2) ~~DOA shall forward three copies to NRCD and two copies to DHR.~~
- (3) ~~Within 60 days of receipt of the plan, the NRCD shall notify administration concerning approval or disapproval of it and shall advise the Department of Administration as to the feasibility of the proposed project.~~

*History Note: Authority G.S. 162A-26 to 162A-30;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 24 .0105 ADMINISTRATION OF OUTSTANDING PLANNING ADVANCE ACCOUNTS

The following procedures shall apply to the administration of outstanding planning advance accounts under the Sewage Disposal Act:

- (1) ~~Upon receipt of notification from NRCD that a regional sewage disposal plan has been approved and determined to be feasible, the DOA will negotiate repayment arrangements with the applicant according to the terms of the planning advance agreement.~~
- (2) ~~Upon receipt of notification from NRCD that the regional sewage disposal plan has been approved but has been determined not feasible, the DOA will notify the applicant that repayment of the planning advance is not required.~~
- (3) ~~Final payment of the planning advance amount shall not be disbursed to the applicant until such time as the plan has been approved by NRCD. In the event~~

~~that the plan is not approved as submitted, the DHR shall advise the applicant in writing of the revisions required in order to secure approval.~~

*History Note: Authority G.S. 162A-26 to 162A-30;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 24 .0106 RESPONSIBILITIES OF STATE AGENCIES

The following responsibilities are assigned to the DOA, the DHR and the NRCD respectively:

- ~~(1) The Department of Administration shall:
 - ~~(a) be responsible for receiving all applications, preparing responses to applications and disbursing funds in accordance with recommendations of NRCD;~~
 - ~~(b) provide NRCD with the areawide clearinghouse comments;~~
 - ~~(c) establish policies and procedures for receiving, distributing, reviewing and evaluating applications for administering the revolving funds;~~
 - ~~(d) receive and evaluate each application for a planning advance according to procedures and policies adopted by that agency;~~
 - ~~(e) notify NRCD of the amount available for planning advances from the regional sewage disposal planning revolving fund on or before July 1 and January 1 of each year.~~~~
- ~~(2) DHR shall furnish to NRCD for each application under the Sewage Disposal Act, comments and recommendations regarding treatment of wastes proposed to be discharged into waters used as sources of raw water for public water supplies and other matters for which DHR has responsibility by law.~~
- ~~(3) The Department of Natural Resources and Community Development shall:
 - ~~(a) have primary responsibility for processing applications;~~
 - ~~(b) establish policies and procedures for reviewing and evaluating applications according to the requirements established by the Sewage Disposal Act and shall determine the eligibility of applicants;~~
 - ~~(c) review and evaluate, according to procedures and policies adopted by that agency, each properly completed application for a planning advance under the Sewage Disposal Act;~~
 - ~~(d) give due consideration to comments from administration regarding the merits of each application relative to state and regional clearinghouse requirements;~~
 - ~~(e) give due consideration for each application under the Sewage Disposal Act to comments from the Department of Human Resources on matters for which the Department of Human Resources has responsibility by law;~~
 - ~~(f) advise administration of the approval of applications under the Sewage Disposal Act; Each such approval shall be accompanied by a determination as to whether there is a reasonable prospect of federal (or state) aid in financing of the projected work if the undertaking is one that will be dependent upon federal (or state) aid;~~~~

~~(g) be responsible for reviewing and approving plans prepared under the Sewage Disposal Act.~~

*History Note: Authority G.S. 162A-26 to 162A-30;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

01 NCAC 24 .0107 SEVERABILITY

~~If any provision of these rules and regulations or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the rules and regulations which can be given effect without the invalid provisions or application and to this end the provisions of these rules and regulations are declared to be severable.~~

*History Note: Authority G.S. 162A-26 to 162A-30;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979.*

IV. Title 01, Chapter 37 (Low-Level Radioactive Waste Management Authority)

Agency: Department of Administration

Contact: William E. H. Creech, Rule-Making Coordinator, 919-807-2425

Rule Title: Low-Level Radioactive Waste Management Authority

Rule citation: 01A NCAC 37 .0101-.0103; .0201-.0208; .0301- .0307

Statutory Authority: G.S. 104G-4; 104G-6; 104G-6(a); 104G-6(a)(2); 104G-6(a)(20); 104G-7; 104G-9; 104G-11(b); 104G-19; 104G-23(a); 143-318.11; 143-318.12; 150B-11; 105B-21.2; 150B-21.6

State impact: No

Local impact: No

Federal government impact: No

Substantial economic impact: No

Description of rule change: Repeal. Upon consultation with DENR, DOA has learned that these rules were never implemented due to NC's withdrawal from an interstate compact and subsequent litigation that has since been resolved and, therefore, the rules are obsolete. Except to provide an important incremental benefit – along with other similar repeals – of ridding the Administrative Code of unnecessary rules, this repeal will not impact any existing entity economically or otherwise. These rules are among those previously recommended by OSBM to the General Assembly for repeal.

Rule Text:

CHAPTER 37 - N.C. LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY

SECTION .0100 - GENERAL INFORMATION

01 NCAC 37 .0101 PURPOSE

~~The purpose of the Low-Level Radioactive Waste Management Authority is to site, design, finance, build, lease or operate, oversee, monitor, and close a facility or facilities for the permanent disposal of low-level radioactive waste in accordance with G.S. 104G and 42 USC 2021 et seq.~~

*History Note: Authority G.S. 104G-6; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0102 DEFINITIONS

~~(a) The definitions contained in G.S. 104G-2 and 15A NCAC 11 .1202 apply to rules contained in this Chapter.~~

~~(b) As used in this Chapter "facility" means a low-level radioactive waste disposal facility as defined in G.S. 104G-2(7).~~

~~(e) As used in Section .0200 the term "proximity" means distance from a location or activity that could involve an impact, either positive or negative, or beneficial or detrimental.~~

~~(d) As used in this Chapter "community" means, primarily, a county of the State of North Carolina. However, the term may include, as well, any local unit of government associated with an identifiable locality and a permanent population, such as a city or a town.~~

~~(e) Within this Chapter, "preferred site" means the license area and any contiguous or proximate land identified, at the time of preferred site selection, as the intended location of administrative outbuildings or other appurtenances associated with the facility, whether or not such areas are identified in terms of precise legal description.~~

~~(f) Within this Chapter, "license area" means land within the preferred site that is designated for the location of such disposal cells and buffer zone as are to be described in an application for a license to dispose of such low-level radioactive waste as North Carolina may reasonably be expected to accept for disposal in the course of fulfilling its legal obligations to the Southeast Interstate Low-Level Radioactive Waste Management Compact, as such obligations are expressed in G.S. 104F-1, Article V(e).~~

~~(g) Within this Chapter, "participate in the Authority's selection of its preferred site" means:~~

~~(1) to take part in the Authority's formal pre-voting discussion and deliberations at a meeting announced and conducted pursuant to Rule .0306(h) and (i) of this Chapter; or~~

~~(2) to cast a vote pertaining to site selection at the preferred site selection meeting announced and conducted pursuant to Rule .0306 of this Chapter; or~~

~~(3) to cast a vote for the precise boundaries of any preferred site chosen at a meeting announced and conducted pursuant to Rule .0306 of this Chapter; or~~

~~(4) to attempt to persuade or influence any other member to cast his votes in these matters in a particular way at any time after the announcement of the preferred site selection meeting pursuant to Rule .0306(g) of this Chapter.~~

~~(h) Within this Chapter, "pecuniary interest in any potentially suitable site under active consideration" means any of the following:~~

~~(1) personal ownership of any interest in real estate comprising all or any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site; or~~

~~(2) ownership of a legal or equitable interest in any business entity owning an interest in real estate comprising all or any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site; within this Chapter, no person shall be considered to have an interest in any business entity whose interest in such a business entity does not exceed one-half of one per cent of the capital stock of such business entity; or~~

~~(3) full-time employment by any commercial business entity known to the individual to own any interest in real estate comprising all or any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site; or~~

~~(4) receiving, either individually or as an owner, partner, or employee of a commercial business or professional entity, compensation in the amount of two thousand dollars (\$2,000) or more during the preceding calendar year from any person or business entity owning an interest in real estate comprising all or any~~

~~part of any site under consideration by the Authority for selection as the preferred site.~~

~~(i) Within Rule .0306 of this Chapter, "significant pecuniary benefit" means the accrual of income in the amount of two thousand dollars (\$2,000) or more to an individual that would not have accrued to that individual but for the selection of a particular characterized site as the preferred site.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-6(a)(20); 104G-9; 104G-23(a);
Eff. August 1, 1988;
Amended Eff. August 2, 1993.*

01 NCAC 37 .0103 MAILING LIST

~~The Authority maintains mailing lists for its rulemaking and public meeting activities. Individuals wishing to be notified of these activities shall send a letter to:~~

~~Low Level Radioactive Waste Management Authority~~

~~Mailing List~~

~~116 West Jones Street~~

~~Raleigh, NC 27603-8003~~

~~stating the particular activity or activities for which notice is requested and the name, address and phone number of requester.~~

*History Note: Authority G.S. 104G-6; 104G-9; 150B-21.2;
Eff. August 1, 1988;
Amended Eff. August 2, 1993.*

SECTION .0200 - SITE SELECTION CRITERIA

01 NCAC 37 .0201 INTRODUCTION

~~The rules contained in this Section set forth the criteria which the Authority will consider in selecting a site for the location of a low level radioactive waste disposal facility. In selecting this site the Authority must comply with the applicable procedures, criteria, and terms and conditions set forth in 15A NCAC 11 .1200 (Land Disposal of Radioactive Waste) and G.S. 104G, which are incorporated in this Chapter by reference. All subsequent amendments and editions of the referenced material are included in this incorporation. The rules contained in this Section set forth additional criteria to be considered by the Authority in evaluating and selecting a site for the facility in accordance with G.S. 104G. The written justification for the criteria contained in these Rules is available from the Authority at the mailing address set out in 1 NCAC 37 .0103.~~

History Note: Authority G.S. 104G-6; 104G-7; 104G-9; 104G-23(a); 150B-21.6;

Eff. August 1, 1988;
Amended Eff. August 2, 1993.

01 NCAC 37 .0202 HYDROLOGICAL AND GEOLOGICAL FACTORS

~~In evaluating and selecting a site for the low-level radioactive waste disposal facility, the Authority shall consider hydrological and geological factors including:~~

- ~~(1) — those factors set out in G.S. 104G-9(b)(1);~~
- ~~(2) — drainage in and around the site;~~
- ~~(3) — potential for soil erosion;~~
- ~~(4) — stream density;~~
- ~~(5) — topography; and~~
- ~~(6) — rainfall patterns.~~

History Note: Authority G.S. 104G-6(a); 104G-9; 150B-11;
Eff. August 1, 1988.

01 NCAC 37 .0203 ENVIRONMENTAL AND PUBLIC HEALTH FACTORS

~~In selecting a site for a low-level radioactive waste disposal facility the Authority shall consider environmental and public health factors including:~~

- ~~(1) — those factors set out in G.S. 104G-9(b)(2);~~
- ~~(2) — potential for future growth and development in close proximity to the site;~~
- ~~(3) — detriment to drinking water wells;~~
- ~~(4) — detriment to springs;~~
- ~~(5) — detriment to sole source aquifers; and~~
- ~~(6) — detriment to public drinking water supplies.~~

History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.

01 NCAC 37 .0204 NATURAL AND CULTURAL RESOURCES

~~In selecting a site for a low-level radioactive waste disposal facility, the Authority shall consider natural and cultural resources including:~~

- ~~(1) — those factors set forth in G.S. 104G-9(b)(3);~~
- ~~(2) — proximity to natural resources such as water, oil, coal, or other resources;~~
- ~~(3) — proximity to breeding grounds, nurturing areas or special habitats for rare, threatened, or endangered species of animals or plants;~~
- ~~(4) — proximity to scenic areas;~~
- ~~(5) — proximity to national, state, local, or commercial parks, designated national or state forests (as distinguished from forest service land), national wildlife refuges, areas around federal or state fish hatcheries, national natural landmarks or recreational facilities; and~~
- ~~(6) — proximity to areas that are meaningful to people because of historic, cultural, religious, ethnic, or racial heritage such as national, state, or local monuments;~~

~~Indian burial grounds, national, state, or local historic sites, churches, and cemeteries.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0205 LOCAL LAND USES

~~In selecting a site for a low-level radioactive waste disposal facility, the Authority shall consider local land uses including:~~

- ~~(1) proximity of activities which involve pumping large amounts of water, quarry blasting, or use of conflicting sources of radioactivity;~~
- ~~(2) use of state or federally owned sites; and~~
- ~~(3) use of large land holdings by utilities or other industries, including land adjacent to nuclear power plants.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0206 TRANSPORTATION

~~In selecting a site for a low-level radioactive waste disposal facility, the Authority shall consider transportation factors including:~~

- ~~(1) those factors set forth in G.S. 104G-9(b)(5); and~~
- ~~(2) proximity to major highways.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0207 AESTHETIC FACTORS

~~In selecting a site for a low-level radioactive waste disposal facility, the Authority shall consider aesthetic factors including those factors set forth in G.S. 104G-9(b)(6).~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0208 ADDITIONAL CRITERIA APPLICABLE ONLY TO SELECTION OF A PREFERRED SITE

~~In addition to the other criteria in this Section, the Authority will consider the following criteria only in its selection of a preferred site from among alternative characterized sites:~~

- ~~(1) the advantages of minimizing the displacement of permanent residents and improvements to real property, including but not limited to ongoing businesses and commercial enterprises or utility easements and infrastructure, if any; and~~
- ~~(2) the relative costs of facility development on alternative sites, including but not limited to:~~

- ~~(a) — costs of acquisition of land or rights of way;~~
- ~~(b) — costs of construction and appurtenant improvements; and~~
- ~~(c) — relocation costs, including those for permanent residents or improvements to real property including, but not limited to, ongoing businesses, commercial enterprises, or utility easements and infrastructure, if any.~~

*History Note: Authority G.S. 104G-6; 104G-9; 104G-23(a);
Eff. August 2, 1993.*

SECTION .0300 - SITE SELECTION PROCEDURE

01 NCAC 37 .0301 GENERAL

~~The site selection procedure is outlined in G.S. 104G-9. Additional procedures relating to the site selection process are contained in the Rules in this Section.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0302 IDENTIFICATION OF POTENTIALLY SUITABLE AREAS

- ~~(a) The Authority shall identify areas that may be suitable in accordance with G.S. 104G-9(e) and the procedures contained in this Rule.~~
- ~~(b) The identification shall be made based upon technical siting criteria including geological formation, water flow patterns, land use, and location of population centers and shall use readily available data.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0303 PUBLIC MEETINGS IN POTENTIALLY SUITABLE AREAS

- ~~(a) The Authority shall conduct public information meetings in the areas identified as potentially suitable in the manner specified below.~~
- ~~(b) The Authority shall conduct at least one public meeting in each area which has been identified as potentially suitable.~~
- ~~(c) Notice of the meeting shall be published in a newspaper of general circulation in the area; and shall be sent to the chairman of the county commissioners, the county manager and county public health director of any county located within the area; the chairman of the council, the mayor and the manager of any municipality located within the area; and anyone requesting a copy of the notice in accordance with the procedure set out in 1 NCAC 37 .0103. Notice of the public meeting shall be published at least 15 days in advance of the meeting. The notice shall include: the date, time and place of the meeting; topics to be addressed at the meeting; and the~~

manner in which public comment will be accepted, and the name of the individual to contact for further information.

~~(d) The purpose of the meeting is to explain the reasons for the identification of the area as potentially suitable, to explain the next step in the site selection process and to receive and consider public comment concerning the suitability of the area for selection as a site for the facility in accordance with the criteria set forth in 1 NCAC 37 .0200.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0304 SELECTION OF POTENTIALLY SUITABLE SITES

~~(a) The Authority shall select 2 or 3 potentially suitable sites in accordance with G.S. 104G-9(e) and the procedures contained in this Rule.~~

~~(b) In making these selections, the Authority shall evaluate the areas identified in 1 NCAC 37 .0302 using the criteria set out in 1 NCAC 37 .0200, with special attention to social, economic, and environmental factors.~~

~~(c) Information considered during the selection process shall include public comment, review of federal, state, and local records, and studies conducted by the Authority or others.~~

~~(d) Public comment shall include information received at public meetings, information provided by community advisory groups, information provided by local government representatives, or information provided by other individuals or groups.~~

~~(e) In making these selections, the Authority shall actively seek suitable communities interest in hosting the facility and shall provide information to the communities concerning:~~

- ~~(1) the opportunities for involvement in the site selection process through the site designation review committees, the preferred site local advisory committees, and through the local government advisory process;~~
- ~~(2) the means available to minimize risk to health, safety, and the environment; and~~
- ~~(3) the economic incentives available to the host including reimbursement for lost land values, income available from the trust fund, and authorized taxes or fees.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0305 SITE DESIGNATION REVIEW COMMITTEE

~~(a) After the Authority has selected potentially suitable sites in accordance with 1 NCAC 37 .0304, notice of this selection shall be provided to the county manager, chairman of the county commissioners and public health director of any county in which a potentially suitable site has been selected; the city manager and the chairman of the municipal council of any municipality in which a potentially suitable site has been identified; and any person who has requested notice in accordance with 1 NCAC 37 .0103.~~

~~(b) The Authority shall request that the county commissioners appoint a site designation review committee in accordance with G.S. 104G-19.~~

~~(c) The Authority shall present to the site designation review committee all data relating to the selection of the site in their county, shall provide the committee with data concerning the economic incentives related to the location of a facility within the county, and shall receive and~~

~~consider comments from the committee as may be transmitted by the county board of commissioners concerning the suitability of the site for the location of a facility in accordance with the criteria set forth in 1 NCAC 37 .0200.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*

01 NCAC 37 .0306 PREFERRED SITE

~~(a) The Authority shall select a preferred site in accordance with G.S. 104G-9 and the procedures contained in this Rule.~~

~~(b) The site shall be selected in accordance with the criteria set out in 1 NCAC 37 .0200.~~

~~(c) Prior to the selection of a preferred site, the Authority shall conduct at least one public meeting in each area where a potentially suitable site has been selected.~~

~~(1) The meeting shall be noticed pursuant to G.S. 143-318.12, except that in addition to any applicable requirements in G.S. 143-318.12, notice of the meeting shall be published at least 30 days in advance in a newspaper of general circulation in the area and shall be sent to the Chairman of the county commissioners, the county manager and the county health director of any county in which a site has been identified; the mayor, the manager and the Chairman of the council of any municipality in which a potentially suitable site has been identified; and any person who has requested a copy of the notice in accordance with the procedure set out in 1 NCAC 37 .0103. The notice shall include the date, time and place of the meeting; topics to be addressed at the meeting; the manner in which public comment will be accepted; and the name of the individual to contact for further information.~~

~~(2) Should the conduct of any public meeting scheduled pursuant to this Rule be deemed by the Authority to be impracticable for any reason, the Authority may provide for the receipt of written public comment as an alternative to such a public meeting. A decision by the Authority to accept written public comment in lieu of conducting a public meeting pursuant to this Rule will be published as a notice in a newspaper of general circulation in the area in which a meeting was scheduled; or, should such local publication be impracticable for any reason, notice will be published in a newspaper of general circulation in a community with a population in excess of 50,000 persons within 100 miles of the place at which the meeting was originally scheduled and will be mailed to the chairman of the county board of commissioners, the county manager, and the county health director of any county in which such a meeting was scheduled.~~

~~(d) Information considered during the selection process shall include such information provided by the site designation review committees as may be transmitted to the Authority by the county boards of commissioners pursuant to G.S. 104G-19(f) and information obtained at public meetings, and may include additional information which the Authority deems appropriate.~~

~~(e) In making this selection, the Authority shall actively seek a suitable community interested in hosting the facility, from among the sites selected, and shall provide information concerning:~~

~~(1) the opportunities for involvement in the decision-making process regarding the construction and operation of the facility;~~

~~(2) information regarding the facility operator and the proposed technology; and~~

~~(3) economic incentives available to the host including reimbursement for lost land values, lost revenues, and authorized taxes or fees.~~

~~(f) Prior to voting on any motion to select a preferred site, each member of the Authority will be afforded an opportunity to review the following relevant and material data and evidence:~~

~~(1) G.S. 104E, 104F, and 104G;~~

~~(2) 1 NCAC 37 and 15A NCAC 11 .0400 and .1200;~~

~~(3) 10 CFR Part 61;~~

~~(4) PHASE 1 SCREENING STUDY, IDENTIFICATION OF POTENTIALLY SUITABLE AREAS, prepared by Ebaseo Services, Inc., and submitted to the Authority November 30, 1988;~~

~~(5) NCLLRW DISPOSAL SITE SCREENING PROCESS, PHASE 2 TASK 1 IDENTIFICATION OF CANDIDATE AREAS, prepared by Ebaseo Services, Inc., and submitted to the Authority March 20, 1989;~~

~~(6) SUMMARY OF QUESTION AND ANSWER SESSIONS, COMMUNITY FORUMS HELD BY THE NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, FEBRUARY 15 TO APRIL 25, 1989, prepared by Ebaseo Services, Inc.;~~

~~(7) 1:24,000 scale United States Department of the Interior Geological Survey topographic maps of each of the 116 potentially suitable site areas provided to the potential operator by Ebaseo Services, Inc.;~~

~~(8) PRECHARACTERIZATION REPORT, RICHMOND COUNTY FAVORABLE SITE AREA, NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, presented by Chem-Nuclear Systems, Inc., February 21, 1990;~~

~~(9) PRECHARACTERIZATION REPORT, WAKE COUNTY/CHATHAM COUNTY FAVORABLE SITE AREA, NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, presented by Chem-Nuclear Systems, Inc., February 21, 1990;~~

~~(10) EXECUTIVE SUMMARY, REPORTS OF PRECHARACTERIZATION FINDINGS FROM FAVORABLE SITE AREAS FOR NORTH CAROLINA'S LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY, prepared by Chem-Nuclear Systems, Inc., February 21, 1990;~~

~~(11) REVIEW OF CHEM NUCLEAR SYSTEMS, INC. PRECHARACTERIZATION DATA, REPORTS AND RECOMMENDATIONS TO CHARACTERIZE FAVORABLE SITE AREAS, prepared by Ebaseo Services, Inc.;~~

~~(12) RESPONSES TO PUBLIC COMMENTS RELATED TO PRECHARACTERIZATION ASSESSMENTS OF RICHMOND COUNTY, WAKE/CHATHAM COUNTY, ROWAN COUNTY AND UNION COUNTY FAVORABLE SITE AREAS, prepared for the North Carolina Low-Level Radioactive Waste Management Authority by the Authority Staff, Chem-Nuclear Systems, Inc., and Ebaseo Services, Inc., April 1990;~~

~~(13) Information not otherwise listed in this Rule that is provided to the Executive Director by the Board of Commissioners of any county in which land has undergone characterization, so long as such information is provided to the~~

~~Executive Director not less than 30 days before the Authority's scheduled preferred site selection meeting;~~

- ~~(14) An environmental impact report, prepared by the potential site operator in compliance with G.S. 104G-11(b), related to each potentially suitable characterized site;~~
- ~~(15) Written reports of the potential site operator on each potentially suitable characterized site, to include a Safety Analysis Report;~~
- ~~(16) Information obtained at public meetings conducted pursuant to Paragraph (c) of this Rule, or in written comments associated with such meetings, submitted by members of the public and received by the Executive Director not less than 30 days before the Authority's scheduled preferred site selection meeting; and~~
- ~~(17) Other relevant and material evidence received by the Executive Director not less than 30 days before the Authority's scheduled preferred site selection meeting and recorded in the minutes of the preferred site selection meeting as evidence to be considered by the Authority.~~

~~(g) In order to provide for the timely submission and consideration of additional information pursuant to Paragraph (f) of this Rule, the Authority shall publicly announce the earliest possible date for the preferred site selection meeting not less than 60 days in advance of that date. Any additional materials to be added to the data and evidence compiled pursuant to Paragraph (f) of this Rule must be received by the Executive Director not less than 30 days before the earliest possible date of the preferred site selection meeting as previously announced, except that the Authority, upon majority vote in open session, may adopt a motion specifically to request or consider additional data and evidence. The preferred site selection meeting shall be noticed pursuant to G.S. 143-318.12(b), and may be subsequent to the earliest possible date as previously announced.~~

~~(h) Discussion of alternatives for preferred site selection:~~

- ~~(1) The Authority will arrive at a majority selection from among the voting alternatives at its preferred site selection meeting, and will continue deliberations at its preferred site selection meeting with only such temporary recesses as may be essential until such a majority decision is achieved. Recesses may be of any duration that the Authority, upon motion and majority vote, deems appropriate for the stated purpose. Recesses may be for any purpose, including the collection of additional information pertaining to a characterized site by the staff or any contractor when the Authority requests such additional information pursuant to Paragraph (g) of this Rule.~~
- ~~(2) No less than 60 days before the preferred site selection meeting, the Authority staff will file with the Authority a written description of each characterized site. Each such described characterized site will be considered as a separate alternative at the preferred site selection meeting.~~
- ~~(3) Free discussion by the Authority members of the relative merits of the alternatives may take place at the Authority's preferred site selection meeting at any time, except when a vote is in progress. Those alternatives shall include:
 - ~~(A) a separate alternative for each of the characterized sites described pursuant to Subparagraph (h)(2) of this Rule;~~
 - ~~(B) none of the characterized sites; and~~
 - ~~(C) undecided.~~~~

- ~~(4) Discussion of all alternatives will conclude upon the Chairman's call for a vote on the alternatives, unless any member moves for continued discussion. Should such a motion be seconded, it may be adopted by vote of a majority of Authority members who cast votes on the question, and discussion of the alternatives will then continue until such time as the Chairman again calls for a vote on the alternatives and no such motion for continued discussion is adopted. Alternatively, any member may move to discontinue further discussion and to vote on the alternatives, and such a motion, if seconded, may be adopted by vote of a majority of Authority members who cast votes on the question.~~
- ~~(i) Voting procedures:~~
- ~~(1) Voting will be conducted on all alternatives at one time in roll-call format. Each member's name will be called, at which time that member must vote for one of the alternatives. No member may vote for more than one of the alternatives. In counting votes among the alternatives, abstentions, if any, shall count as "undecided."~~
- ~~(2) Should no alternative other than "undecided" achieve a majority of votes cast, discussion of the relative merits of the alternatives will resume and further voting be conducted until an alternative other than "undecided" is selected by majority vote of those present and voting. Any alternative other than "undecided" receiving a majority of the votes cast at the preferred site selection meeting shall constitute the Authority's action.~~
- ~~(3) No site will be selected as the preferred site unless it receives the votes of a majority of those Authority members casting votes in open session. The Authority chairman shall vote in the same manner as any other member.~~
- ~~(j) After the Authority's selection of a preferred site, it may delegate to its contractors or staff the task of recommending the preferred site's precise boundaries in terms of a legal description. Precise boundaries may be drawn by reference to any of the criteria set out in 1 NCAC 37.0200 and, in addition, to previously existing property boundaries. Recommendations for precise preferred site boundaries shall be submitted to the Authority for formal approval.~~
- ~~(k) At no time after the Authority's announcement of the date of the meeting at which it will deliberate and vote on the selection of its preferred site will any member knowingly participate in the Authority's selection of its preferred site, as such participation is defined in Rule .0102(g) of this Chapter, if that member, or any person in the member's immediate family:~~
- ~~(1) has a pecuniary interest in any potentially suitable site under active consideration for such selection;~~
- ~~(2) would receive a reasonably foreseeable significant pecuniary benefit from one of the alternative outcomes that would not accrue generally to persons similarly situated, such as employees of comparable employers or persons of the same or similar profession or occupation; or~~
- ~~(3) is an employee of a business entity that would receive a reasonably foreseeable significant business advantage from one of the alternative outcomes that would not accrue generally to commercial entities in the same or similar business as the member's employer.~~
- ~~(l) Any member of the Authority who desires to excuse himself or herself from participating in the selection of a preferred site on grounds of a conflict of interest will declare the existence and general nature of the conflict in writing. Any such written declarations shall be submitted to the~~

~~Executive Director no less than 60 days prior to the beginning of the meeting convened for the purpose of formal site selection pursuant to Paragraphs (g) and (h) of this Rule and will be attached to the minutes of the Authority's preferred site selection meeting. Any member who excuses himself or herself from participating on the grounds of a conflict of interest shall be counted as present for purposes of constituting a quorum within the meaning of G.S. 104G-5(f).~~

*History Note: Authority G.S. 104G-4; 104G-6; 104G-9; 104G-11(b); 104G-19; 104G-23(a);
143-318.11; 143-318.12;
Eff. August 1, 1988;
Amended Eff. August 30, 1993.*

01 NCAC 37 .0307 PREFERRED SITE LOCAL ADVISORY COMMITTEE

~~(a) Upon selection of a preferred site, the Authority shall notify the county commissioners in the county in which the site is located and request the establishment of a preferred site local advisory committee in accordance with G.S. 104G-20.~~

~~(b) The Authority shall provide the preferred site local advisory committee with all information requested concerning the facility including license and permit applications, compensation available to the local government, and environmental and socioeconomic impact of the proposed facility.~~

~~(c) The Authority shall consider all information provided by the preferred site local advisory committee in its negotiations with any local government in accordance with G.S. 104G-21.~~

*History Note: Authority G.S. 104G-6(a)(2); 104G-9; 150B-11;
Eff. August 1, 1988.*