

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE REVOLVING LOAN FUND

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(By authority conferred on the director of the department of environmental quality by section 5316 of Act No. 451 of the Public Acts of 1994, being §324.5301 of the Michigan Compiled Laws)

R 323.951 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 451 of the Public Acts of 1994, §324.5301 et seq. of the Michigan Compiled Laws.

(b) "Director" means the director of the department of environmental quality or his or her designated representative.

(c) "Excessive infiltration/inflow" (I/I) means the quantities of clear water that can be economically eliminated from a sewer system by rehabilitation, as determined by a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions with the total costs for transportation and treatment of the infiltration and inflow.

(d) "Segmented project" means a project that is a portion of a larger project proposed in the final project plan.

R 323.952 Project planning requirements for tier 1.

Rule 2. (1) Pursuant to section 5303(3) of the act, a completed project plan for a tier I project shall include all of the following as project background:

(a) Identification of planning area boundaries and characteristics.

(b) A description of the existing sewage transport/treatment systems.

(c) A discussion of the existing sewage transport/treatment problems and needs, including the severity and extent of water quality problems or public health problems, and an evaluation of opportunities to maximize operation and maintenance to improve effluent quality. For a municipality that is required to have an approved industrial pretreatment program, the discussion shall also include an evaluation of the status of compliance with the pretreatment program requirements. If a municipality is in significant noncompliance with the pretreatment program requirements, the steps the municipality will take to achieve and maintain compliance shall also be discussed.

(d) An examination of projected needs for the next 20 years, and a description of the future environment without the proposed project.

(e) The source and basis for population projections. Projections should correlate with those prepared by the state, or the appropriate regional planning agency, using a nationally recognized model, such as the one produced by the federal census bureau. The projections should be compatible with population projections used in state implementation plans developed under the provisions of the federal clean air act of 1963, 42 U.S.C. §1857 et seq.

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(f) A synopsis of the environmental setting of the project.

(2) The project plan shall also include an analysis of alternatives, which shall consist of a systematic identification, screening, study, evaluation, and cost-effectiveness comparison of feasible technologies, processes, and techniques. The alternatives shall be capable of meeting the applicable effluent, water quality, and public health requirements over the design life of the facility, while recognizing environmental and other nonmonetary considerations. The analysis shall include all of the following:

(a) A planning period for the cost-effectiveness analysis of 20 years or other such planning period as is justified by the unique characteristics of the project.

(b) Monetary costs that consider the present worth or equivalent annual value of all capital costs and operation and maintenance costs.

(c) A demonstration of the existence or nonexistence of excessive infiltration/inflow in the sewer system and a description of the proposed methods to remove any excessive infiltration/inflow.

(d) Provisions for the ultimate disposal of residuals and sludge.

(e) An analysis of the potential direct, indirect, and cumulative environmental impacts of the various alternatives, as well as the identification of any significant environmental benefits precluded by rejection of an alternative.

(f) A description of the best practicable wastewater treatment technology.

(g) Consideration of feasible innovative and alternative technologies, as well as opportunities to make more efficient use of energy and resources.

(h) An analysis of the potential open space and recreational opportunities associated with the project.

(i) A description of the relationship between the treatment works capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works becomes operational.

(j) Other analyses to evaluate the cost-effectiveness and acceptability of alternatives.

(3) The project plan shall also include a description of the selected alternative, including all of the following:

(a) Relevant design parameters.

(b) Estimated capital construction costs, operation and maintenance costs, and a description of the manner in which project costs will be financed.

(c) If collection sewers are included in the project, documentation of both of the following:

(i) That there is sufficient existing or planned sewage transport/treatment capacity for new flows being generated.

(ii) That such new sewers will not result in development which would cause environmental impacts contrary to state law.

(d) A demonstration that the selected alternative is implementable considering the legal, institutional, financial, and managerial resources of the applicant.

(e) Documentation of the project's consistency with the approved elements of any applicable water quality management plan prepared pursuant to section 208 or section 303(e) of the federal water pollution control act of 1972, 33 U.S.C. §1288 or §1313(e).

(f) Cost impacts on wastewater system users.

(4) The project plan shall also include a discussion of the full range of potential direct, indirect, and cumulative environmental impacts of the proposed project, including those which cannot be avoided.

(5) The project plan shall evaluate cumulative environmental impacts within the context of the entire treatment system, as well as other public works projects and projected community growth.

(6) The project plan shall include a description of potential environmental impacts, including consideration of all of the following:

(a) The relationship between the short term uses of the environment and the maintenance and enhancement of long term productivity.

(b) A discussion of the irreversible and irretrievable commitment of resources to the proposed project.

(c) Other analyses necessary to assess potential impacts of the proposed project.

(7) The project plan shall consider structural and nonstructural measures which could be taken to mitigate or eliminate adverse effects on the environment.

(8) The project plan shall describe the public participation activities conducted during planning and shall include all of the following:

(a) Significant issues raised by the public and any changes to the project which were made as a result of the public participation process.

(b) A demonstration that there were adequate opportunities for public consultation, participation, and input in the decision-making process during alternative selection.

(c) A demonstration that before the adoption of the project plan, the applicant held a public hearing on the proposed project not less than 30 days after advertising in a local newspaper of general circulation and at a time and place conducive to maximizing public input.

(d) A demonstration that, concurrent with advertisement of the hearing, a notice of public hearing was sent to all local, state, and federal agencies and to any public or private parties that have expressed an interest in the proposed project.

(e) A transcript of the hearing, a list of all attendees, any written testimony received, and the applicant's responses to the issues raised.

(9) The final project plan shall include resolutions adopted by the participating municipality or municipalities to implement the selected alternative.

R 323.953 Project planning requirements for tier II.

Rule 3. (1) A project plan shall be sufficient to ensure that the provisions of section 5303(4) of the act are met. A project plan shall contain sufficient detail on all of the following to ensure that the project will be successfully completed in an environmentally sound manner:

(a) The background.

(b) The analysis of alternatives.

(c) The basis of design.

(d) The environmental impacts.

(e) The public participation.

(2) The information and level of detail contained in the project plan shall be commensurate with the complexity of the proposed project and, as appropriate, include all of the following:

(a) Identification of planning area boundaries and characteristics.

(b) A description of the existing sewage transport/treatment systems.

(c) A discussion of the existing sewage transport/treatment problems and needs, including the severity and extent of water quality problems or public health problems. For a municipality that is required to have an approved industrial pretreatment program, the discussion shall also include an evaluation of the status of compliance with the pretreatment program requirements. If a municipality is in significant noncompliance with the pretreatment program requirements, the steps the municipality will take to achieve and maintain compliance shall also be discussed.

(d) An examination of projected needs for the next 20 years, and a description of the future environment without the proposed project.

(e) The source and basis for population projections. Projections should correlate with those prepared by the state, or an appropriate regional planning agency.

(f) A synopsis of the environmental setting of the project.

(3) The project plan shall also include an analysis of alternatives, which shall consist of a systematic identification, screening, study, evaluation, and cost justification comparison of available technologies, processes, and techniques. The alternatives shall be capable of meeting the applicable effluent, water quality, and public health requirements over the design life of the facility, while recognizing environmental and other nonmonetary considerations. The analysis shall include all of the following:

(a) A planning period for the project of 20 years or other planning period as justified by unique characteristics of the project and as approved by the director.

(b) Monetary costs that consider the present worth or equivalent annual value of all capital costs and operation and maintenance costs.

(c) A demonstration of the existence or nonexistence of excessive infiltration/inflow in the sewer system and a description of the proposed methods to remove any excessive infiltration/inflow.

(d) Provisions for the ultimate disposal of residuals and sludge.

(e) An analysis of the potential direct, indirect, and cumulative environmental impacts of the various alternatives and identification of any significant environmental benefits precluded by rejection of an alternative.

(f) Consideration of feasible innovative and alternative technologies, as well as opportunities to make more efficient use of energy and resources.

(4) For the selected alternative, the project plan shall include all of the following:

(a) Relevant design parameters.

(b) Estimated capital construction costs, operation and maintenance costs, and a description of the manner in which project costs will be financed.

(c) If collection sewers are included in the project, documentation of both of the following:

(i) That there is sufficient existing or planned sewage transport/treatment capacity for new flows being generated.

(ii) That such new sewers will not result in development which would cause environmental impacts contrary to state law.

(d) A demonstration that the selected alternative is implementable considering the legal, institutional, financial, and managerial resources of the applicant.

(5) The project plan shall include an analysis of potential direct, indirect, and cumulative impacts resulting from the project and demonstrate consistency with all applicable state environmental laws. A demonstration of consistency shall include the following items:

(a) A reference to all permits, licenses, or clearances to be obtained by the applicant as necessary to undertake the project and a provision for furnishing of these permits, licenses or clearances when they have been issued.

(b) A demonstration of intent to adhere to all provisions, conditions, and mitigative measures specified by any agency, permit, clearance or license or, as appropriate, depending on the status of construction activity, a demonstration of actual adherence to all provisions, conditions, and mitigative measures.

(c) All permits, clearances, and licenses shall be subject to review by the director. All construction contracts, specifications, construction logs, and other documents shall also be subject to review by the director to determine compliance with state law. (6) The project plan shall describe efforts to provide an opportunity for public consultation, participation, and input in the decision making process during the selection of alternatives. If a public hearing is held, the description shall include all of the following:

(a) Significant issues raised by the public and any changes to the project which were made as a result of the public participation process.

(b) A demonstration that before the adoption of the project plan, the applicant held a public hearing on the proposed project not less than 30 days after advertising in a local newspaper of general

circulation and at a time and place conducive to maximizing public input.

(c) A demonstration that, concurrent with advertisement of the hearing, a notice of public hearing was sent to all local, state, and federal agencies, and to any public or private parties that may have an interest in the proposed project.

(d) A transcript or summary of the hearing, a list of all attendees, any written testimony received, and the applicant's responses to the issues raised.

(7) If a public hearing is not held, the applicant shall submit documentation of adequate opportunities for public input or participation during the development of the project, which may include informational meetings, official meetings of the governing body and informational mailings.

R 323.954 Tier I environmental review requirements.

Rule 4 (1) The director may either issue a finding of no significant impact (FNSI), which is based upon a formal environmental review supported by the project plan, or make a determination that an environmental impact statement (EIS) is necessary.

(2) An environmental review of a project plan will be conducted to determine whether any significant impacts are anticipated and whether any changes can be made in the proposed project to eliminate significant adverse impacts. As part of this review, the director may require the submittal of additional information or additional public participation and coordination to justify the environmental determination. Based on the environmental review, the director may prepare an environmental assessment describing the following:

(a) The purpose and need for the proposed project.

(b) The proposed project, including its costs.

(c) The alternatives considered and the reasons for their acceptance or rejection.

(d) The existing environment.

(e) Any potential adverse impacts and mitigative measures.

(f) How mitigative measures will be incorporated into the project, as well as any proposed conditions of financial assistance and the means for monitoring compliance with the conditions.

(3) The director may issue a FNSI, based upon an environmental assessment which documents that potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(4) A FNSI shall provide a brief description of the project, its costs, and its mitigative measures.

(5) An EIS may be required when the director determines any of the following:

(a) The project will have a significant impact on the pattern and type of land use or the growth and distribution of the population.

(b) The effects of the project's construction or operation will conflict with local or state laws or policies.

(c) The project will have significant adverse impacts on any of the following:

(i) Wetlands.

(ii) Flood plains.

(iii) Threatened or endangered species or habitats.

(iv) Cultural resources, including any of the following:

(A) Park lands.

(B) Preserves.

(C) Other public lands.

(D) Areas of recognized scenic, recreational, agricultural, archeological, or historical value.

(d) The project will cause significant displacement of population.

(e) The project will directly or indirectly, such as through induced development, have significant adverse effect upon any of the following:

- (i) Local ambient air quality.
- (ii) Local noise levels.
- (iii) Surface and groundwater quantity or quality.
- (iv) Fish.
- (v) Shellfish.
- (vi) Wildlife.
- (vii) Wildlife natural habitats.

(f) The project will generate significant public controversy.

(6) Based on the EIS, a record of decision (ROD) summarizing the findings of the EIS will be issued identifying those conditions under which the proposed project can proceed and maintain compliance with the national environmental policy act (NEPA) of 1969, 42 U.S.C. §4321 et seq.

(7) If 5 or more years have elapsed since a determination of compliance with NEPA, or if significant changes in the project have taken place, a redetermination of compliance with NEPA requirements is necessary. The project shall be reevaluated and the director may do any of the following:

(a) Reaffirm the original FNSI or ROD through the issuance of a public notice or statement of finding.

(b) Issue an amendment to a FNSI or revoke a FNSI and issue a public notice that the preparation of an EIS will be required.

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

(8) Action regarding approval of a project plan or provision of financial assistance shall not be taken during a 30 day public comment period after the issuance of a FNSI or ROD.

R 323.955 Municipal coordination requirements.

Rule 5. (1) A municipality is responsible for obtaining any federal, state, or local permits or clearances required for the project and shall perform any surveys or studies which are required in conjunction with such permits or clearances.

(2) A municipality shall incorporate all appropriate provisions, conditions, and mitigative measures included in the applicable studies, surveys, permits, clearances, and licenses into the construction documents. These documents are subject to review by the director for conformity with environmental determinations and coordination requirements.

(3) All applicable and appropriate conditions and mitigative measures shall be enforced by the municipality or its designated representative and shall apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

(4) For tier I projects, where existing state law does not address the scope of federal interest as described in the provisions of 40 C.F.R. part 6, subpart C, other federal coordination requirements contained in that subpart shall be adhered to.

(5) Applicants may seek guidance from the director regarding coordination requirements specified in this rule.

R 323.956 Tier 11 environmental review requirements.

Rule 6. (1) A project plan and any other documentation provided shall be adequate to ensure that the project is environmentally sound and consistent with state environmental laws. This documentation shall take into consideration project need, alternatives analysis, and environmental considerations.

(2) Before issuing an order of approval for a project, the director may consult with other review, licensing, or permitting authorities, as necessary, to ensure that the project is consistent with all applicable state environmental laws.

R 323.957 Development of state priority system.

Rule 7. (1) The fund will be managed in accordance with a state priority system for wastewater treatment projects designed to achieve optimum water quality management. Such management shall be consistent with the goals and requirements of the federal water pollution control act of 1972, 33 U.S.C. §1251 et seq., Act No. 451 of the Public Acts of 1994, as amended, being §324.3101 et seq. of the Michigan Compiled Laws and the act.

(2) The priority system will be used to develop 2 separate priority lists. One list shall be for sewage treatment works projects and 1 list shall be for nonpoint source projects. The priority system consists of both of the following:

(a) The methodology to rank eligible projects on the annual project priority list (PPL).

(b) The process for bypassing a sewage treatment works project on the PPL if a higher priority project fails to proceed in a timely fashion pursuant to the provisions of section 5310 of the act.

(3) In allocating the funds between sewage treatment works and nonpoint source projects, the director will use the resulting overall water quality improvement as the principal criteria for any proposed allocation identified in the annual intended use plan.

(4) The priority system developed in accordance with this rule shall be effective on October 1, 1990. Pursuant to the provisions of section 5315 of the act, the priority system provided pursuant to the provisions of Act No. 329 of the Public Acts of 1966, as amended, being §323.111 et seq. of the Michigan Compiled Laws, shall be utilized through September 30, 1990.

R 323.958 Ranking sewage treatment works projects on annual priority list; criteria.

Rule 8. (1) Priority points will be assigned to a project or to separate components of a project based on the project plan submitted, and as is set forth in these rules and section 6 of the act.

(2) Sewage treatment works projects that receive priority point assignment under the provisions of section 6 of the act will be ranked in descending order on the project priority list, based on points assigned as follows:

(a) Water pollution severity points. A sewage treatment works project will be assigned water pollution severity points based on the pollutant load or the receiving water impairment that the proposed project will abate. Each project will be assessed in 5 categories. Each project will receive a score between 0 and 100 for each of the 5 categories, with the higher score corresponding to a greater degree of water quality improvement. The cumulative sum will comprise the total score for the project's water pollution severity points. The 5 categories are as follows:

- (i) Dissolved oxygen.
- (ii) Nutrients.
- (iii) Toxic materials.
- (iv) Microorganisms.
- (v) Groundwater discharges.

(b) Enforcement points. If the proposed sewage treatment works project is necessary to comply with a construction schedule established by an order, permit, or other document issued by the director or the water resources commission, or entered as part of an action brought by the state against a municipality, 300 enforcement points will be assigned.

(c) Population points. A municipality will be assigned population points from the chart set forth in this subdivision, based upon the total existing residential population to be served by the sewage treatment works project, as shown in the final project plan.

<u>POINT ASSIGNMENT</u>	<u>POPULATION</u>
100	150,000 or more
95	50,000 to 149,999
90	21,000 to 49,999
85	10,000 to 20,999
80	6,000 to 9,999
75	4,000 to 5,999
70	2,600 to 3,999
65	2,200 to 2,599
60	1,800 to 2,199
55	1,300 to 1,799
50	900 to 1,299
45	700 to 899
40	500 to 699
35	300 to 499
30	1 to 299

(d) Dilution ratio points. A sewage treatment works project will be assigned dilution ratio points in accordance with the following provisions and chart:

(i) The points shall be based upon a ratio derived from the existing flow discharged, divided by the expected flow of the receiving waters during the period of discharge.

(ii) The expected flow for the Great Lakes and groundwater will be considered to be infinite. For lakes other than the Great Lakes, the expected flow will be considered to be the main stream flow out of the lake. If a lake does not have an outlet, then the expected flow will be 0.

DILUTION RATIO POINTS

DILUTION RATIOS

100	Equal to or greater than .6
85	Less than .6 to .06
70	Less than .06 to .01
55	Less than 0.01 to 0.002
40	Less than 0.002 to 0.0002
25	Less than 0.0002

R 323.959 Ranking nonpoint source projects on the annual priority list; criteria.

Rule 9. Before being considered for priority point assignment of nonpoint source projects, an applicant shall meet at least one of the following conditions:

(a) A municipality has submitted an approved nonpoint source watershed plan, or equivalent, which documents controllable nonpoint source problems. The watershed plan, or equivalent, shall contain all of the following information:

- (i) A description of the watershed.
- (ii) A description of the water quality problem.
- (iii) Recommended programs.
- (iv) Agencies involved.
- (v) Project schedule.
- (vi) Public participation process.
- (vii) Project evaluation criteria.
- (viii) Project costs.

(b) The municipality for which a project is proposed is subject to an order or permit issued by the director or the water resources commission for the control of nonpoint source pollution.

R 323.960 Point assignment for ranking projects on nonpoint source priority list.

Rule 10. Nonpoint source projects that receive priority point assignment under the provisions of section 5303 of the act shall be ranked in descending order on the nonpoint source project priority list (PPL) based on points assigned as follows:

(a) If the proposed nonpoint source project is necessary to comply with an order, permit, or other document issued by the director or the water resources commission or entered as part of an action brought by the state against a municipality, 200 points will be assigned.

(b) If the proposed project is a necessary component of a comprehensive plan developed pursuant to the provisions of R 323.1064, 100 points will be assigned.

(c) If the project will address violations of water quality standards in the watershed or project area, points will be assigned based upon the severity of the receiving water impairment that the proposed project will abate. Each project will receive a score of between 0 and 100 for each standard violated based on the severity of the violation. A maximum of 400 points may be assigned for each project.

(d) If the watershed contains high quality waters which must be maintained, 200 points will be assigned.

(e) If the watershed has high public use value, 200 points will be assigned.

(f) If there is high landowner or municipal willingness to participate in controlling nonpoint sources in the watershed or project area, 200 points will be assigned.

(g) If there is ongoing local, federal, or state nonpoint source initiatives in the watershed or project area, 100 points will be assigned.

R 323.961 Segmenting sewage treatment works project.

Rule 11. (1) Segments of a project will be assigned priority points based on the project as identified in the final project plan.

(2) After funding assistance for the first segment is accepted, the remaining segments will retain first priority for funding assistance on the next 3 fiscal year priority lists.

(3) All projects with previously funded segments will be designated with first priority in accordance with the provisions of subrule (2) of this rule. Ranking order for these projects to receive funding assistance will be subject to the relative ranking of all first segment projects.

R 323.962 Bypass action for sewage treatment works projects.

Rule 12. (1) The director may bypass sewage treatment works projects in accordance with the provisions of section 5310 of the act.

(2) An applicant may submit a written request to the director to extend a negotiated project milestone schedule for a period of not more than 60 days. The request shall show cause for the schedule slippage. A municipality may file 1 additional 30-day extension request to its milestone schedule.

(3) The director will provide affected municipalities with a written notice of intent to bypass not less than 30 days before the bypass action.

(4) For projects bypassed pursuant to the provisions of this rule, the director will transmit, to the municipality, an official notice of bypass for the fundable project, pursuant to the provisions of section 5310 of the act.

(5) A bypassed project may be eligible for ranking on a subsequent fiscal year priority list. A revised milestone schedule will be negotiated consistent with the project rank on a subsequent fiscal year priority list.

(6) Bypass action will not modify any compliance dates established pursuant to a permit, order, or other document issued by the director or the water resources commission or entered as part of an action brought by the state.

(7) The director will notify municipalities with projects outside the fundable range of bypass action, of the amount of bypassed funds available for obligation, and of the deadline for submittal of a complete, approvable application. The director may set the deadline to ensure proper administration of the fund.

R 323.963 Appeals; judicial review.

Rule 13. Determinations made by a designated representative of the director may be appealed to the director. Determinations made by the director are final. Judicial review may be sought pursuant to the provisions of section 631 of Act No. 236 of the Public Acts of 1961, as amended being §600.631 of the Michigan Compiled Laws.

R 233.964 Termination of project; repayments.

Rule 14. (1) An offer of financial assistance will be withdrawn if the municipality fails to accept an offer of assistance from the fund within a period of 30 days after receipt of a proposed loan agreement from the Michigan municipal bond authority (MMBA).

(2) If financial assistance to a project is terminated pursuant to the provisions of section 5312 or 5313 of the act before completion of construction, the municipality shall repay outstanding loan proceeds according to a schedule established by the MMBA.

(3) Any settlement costs incurred in the termination of project assistance are the responsibility of the municipality.

R 323.965 Determination of interest rates.

Rule 15. (1) For purposes of the intended use plan, the director will annually establish a methodology to produce the interest rates to be assessed for tier I and tier II projects. These rates of interest shall be in effect for loans made during the fiscal year commencing on the next October 1 date.

(2) In establishing methodology, all of the following criteria shall be considered:

- (a) Future demands.
- (b) Present demands.
- (c) Market conditions.
- (d) Cost of compliance with program elements.