

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(c), 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(c)(1), section 7(c)(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(c)(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:

~~$f \times 100$ (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 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~~

*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:

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

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~~
- (c) ~~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 (c) 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:~~
 ~~$f \times 100 - (\text{Total Bonded Indebtedness} + \text{Total Points}) = \text{Estimated Project Cost}$~~

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.*