

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the Register 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 10. WASTEWATER MANAGEMENT AUTHORITY OF ARIZONA

PREAMBLE

1. **Sections Affected**

	<u>Rulemaking Action</u>
R18-10-101	Amend
R18-10-102	Amend
R18-10-103	Amend
R18-10-104	Amend
R18-10-105	Amend
R18-10-106	Amend
R18-10-107	Amend
R18-10-108	Amend
R18-10-109	Amend
R18-10-110	Amend
R18-10-111	Amend
R18-10-112	Amend
R18-10-113	Amend
R18-10-114	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 49-373

Implementing statute: A.R.S. § 49-373
3. **The effective date for the rules:**

May 23, 1996
4. **A list of all previous notices that appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening:
1 A.A.R. 1068, July 14, 1995

Notice of Proposed Rulemaking:
1 A.A.R. 1916, October 20, 1995
5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Primary Contact:
Name: Lynn A. Keeling, Rules Specialist
Address: Department of Environmental Quality
3033 North Central Avenue, Room 844A
Phoenix, Arizona 85012
Telephone: (602) 207-2223
Fax: 602-207-2251

Secondary Contact:
Name: Martha L. Seaman, Manager, Rule Development Section
Address: Department of Environmental Quality
3033 North Central Avenue, Room 831
Phoenix, Arizona 85012

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Telephone: (602) 207-2222
Fax: (602) 207-2251

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

These rules provide procedures that outline the requirements for financing wastewater treatment and nonpoint source facilities pursuant to the Clean Water Act (CWA) and A.R.S. Title 49. These rules include information about how the priority list is created for awarding financial assistance, and the procedure for administering the wastewater treatment revolving fund.

These rules were originally written to describe the procedure for awarding construction grants. In 1987, Congress concluded that grants were less efficient than loans. Congress has given grant money to the states which is to be used for loans to wastewater treatment and nonpoint source facilities which are types of pollution control facilities. Statutory changes were made during the 1994-1995 legislative session. Currently, the rules are not an accurate depiction of the financial arrangement with the Wastewater Management Authority (Authority) for financing pollution control facilities primarily because there have been changes in the Clean Water Act.

Pursuant to A.R.S. § 49-373, the powers of the Authority through its Board include:

1. Issuing negotiable wastewater treatment bonds.
2. Loaning money to provide financial assistance.
3. Guaranteeing debt obligations.
4. Applying for and accepting grants from the United States government.
5. Entering into capitalization grant agreements with the United States Environmental Protection Agency (EPA).
6. Adopting rules governing the application for and awarding of wastewater treatment facility and nonpoint source project financial assistance.

These rules have been amended to exclude construction grant language, and include the procedure that a wastewater treatment facility or a nonpoint source should follow to obtain financial assistance from the Board. Therefore, the goal of this rulemaking is to modify the rules found in 18 A.A.C. 10, Article 1 to conform with the current federal mandates for administering loans, to simplify the application process, to remove construction grant language, and make the priority list more equitable.

The Authority was created to help finance construction of pollution control devices such as wastewater treatment facilities and nonpoint sources. However, the current rules contain many out-of-date requirements, and requirements that favor large municipalities. As a result, the requirements impede the application and financial award process.

Some sections are duplicative of information found in the Clean Water Act. For example, all wastewater treatment facilities and nonpoint sources must comply with the Clean Water Act and A.R.S. Title 49; therefore, it is not necessary to repeat the elements of the requirements in this rule.

The current rules require the applicant to provide more information than may be needed by the Board to evaluate financial capability (see R18-10-107). Arizona Department of Environmental Quality (ADEQ) has a dedicated resource called the State Revolving Fund Coordinator, who works with applicants to simplify the information-gathering and provide financial options to the applicant. ADEQ has environmental engineers who evaluate the environmental impacts and grant the appropriate permits. Therefore, detail about the environmental impacts and the permit process are not necessary in this rule.

Language within the rule that was inaccurate or inequitable has been amended. The financial capability was originally based upon population, which favored awarding financial assistance to large communities rather than small communities. This inequity has been removed by excluding population as a factor for priority list ranking. The federal requirements found in R18-10-110 are duplicative of the Clean Water Act (CWA) in some areas, and incorrect in others.

The current rule does not reflect the financial assistance service the Board provides. The Board is supposed to financially assist facilities with original loans instead of refinancing. The loan is to be used for pollution control, to properly size and design pollution control facilities, and to prevent noncompliance with the pollution prevention laws and rules. This rulemaking removes out-of-date requirements, simplifies the loan application process, and removes duplicative language which is repeated in the CWA.

To promote use of the fund, the Board needs to make these rules simple and consistent with federal and state law. This is the primary reason for this rulemaking.

The process for the funding from the Board currently is as follows: The Board receives grant monies from the EPA, monies appropriated from the Legislature (referred to as the state match), monies from issuing bonds, monies for repayment of bonds, and interest from investment of money that is collateral for the bonds. This sum of money is referred to as the "fund" in the preamble and the rule.

The Board currently issues bonds using the grant money from the EPA as collateral to secure bonds. The Board then invests the EPA grant money, and uses the interest to help retire the debt and pay for administering the fund. The benefit of the secured bond is a lower interest rate to the applicant. Most bonds are issued with a 20-year repayment and are managed by a guaranteed investment contract. Additionally, the secured bond means a lower rate for the bond which generally results in a savings on the monthly rate assessed to the users of the wastewater treatment facility or the nonpoint source.

This financial assistance program is 1 of a number of available financing options. There are other financial assistance programs

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which potential borrowers may use, for example, the U.S. Farmers Home Administration and block grants from the U.S. Housing and Urban Development. To assure that the fund is used, the Board needs to modify the rule to make the procedures comparable to the other financial assistance programs.

The Board is interested in promoting pollution control, therefore the financing is based on a facility's readiness to proceed. There are currently over 200 projects in Arizona that are financed by the fund. Approximately 1,000 facilities have been identified with a need for financial assistance.

The specific changes to the definition Section are as follows:

1. The "clerk" was amended to identify it as a member of the Board of the Wastewater Management Authority of Arizona.
2. The definition of "board" is included to clarify the board's role with respect to the Authority.
3. The definition of "Governmental unit" is included for clarity.
4. Intended use plan" was amended because it is no longer required to describe how the uses of the project support the goals of the fund.
5. Regulatory authority" has been modified to add the word "city" to ensure that city health departments are included.
6. "State match" was amended to expressly state its portion of the fund.
7. "Treatment works" was amended to remove the "most economical cost" because it is such a subjective variable, it cannot be evaluated in an equitable manner.
8. "User charge" was amended because the ad valorem tax is construction grant language. Ad valorem tax is not found in the federal regulation, therefore it is not a part of this program.
9. The following terms are no longer used in the rule:
 - "force account work"
 - "inflow"
 - "minor"
 - "useful life"
 - "value engineering"
10. All other changes are believed to be self-explanatory.

The changes to the Types of Financial Assistance Available are as follows:

1. R18-10-102 contains the types of financial assistance which are modified for clarity and grammatical purposes.
2. The 2 primary sources for water pollution controls are wastewater treatment facilities and nonpoint sources. The language in R18-10-103(A)(2) is modified to reflect this.
3. The language deleted in R18-10-103(B)(1) is redundant.
4. The changes in R18-10-103(B)(3) and (4) are to clarify the distribution of payments. Pre-construction payments are the only approved payments allowed until the environmental review is completed by ADEQ and all permits are obtained.
5. R18-10-103(C)(1) is deleted to clarify that only 1 priority list is created. The list will include both wastewater treatment facilities and nonpoint sources. The remaining changes to subsection (C) were done for grammatical purposes.
6. R18-10-103(D)(1) has been amended to correct passive voice. R18-10-103(D)(2) and (3) were deleted because (2) is explained in the priority list therefore this is redundant and (3) is a restriction that has no basis in law.
7. R18-10-104(A) changes the fiscal year from federal to state to accommodate accounting for disbursement of funds. R18-10-103(C) was amended to show that each project is treated independently. The citations to sections of the CWA in R18-10-103(D) were deleted because they are renumbered frequently. R18-10-103(G) was amended to clarify that each condition could trigger a modification to the priority list.
8. R18-10-104(H)(2) is added to expressly state that lack of financial need is a reason to remove a project from the priority list.
9. R18-10-105 has been modified to conform cross references and to clarify language.
10. R18-10-106(C) has been modified to remove the variable "population affected" from the priority list ranking algorithm. Inclusion of the variable "population affected" caused a higher ranking to be assigned to the largest facilities. This ranking was not equitable because a small political subdivision could never qualify for financial assistance because of its population. The Board considered changing the variable "population affected" to favor the smaller communities who generally have the greater need for financial assistance, but ultimately decided that this variable should have no bearing on financial assistance.

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The legislative intent for the ranking criteria is to favor the facilities that need construction or refurbishing over the facilities that are constructed and merely want to refinance their debt. Therefore the financial capability criteria is structured to reflect a ranking for construction projects higher than refinancing (see R18-10-106(G)). The deletion found in R18-10-106(E)(3)(a) is because completion of the facility plan is no longer required by federal law.

"Project Schedule" was removed from the priority list ranking primarily because this is already a part of readiness to proceed, therefore, the priority list ranking does not need to duplicate this element. "Operation and Maintenance" was removed from the priority list ranking because the rule only required a minimum standard be met. There are other rules for enforcement of operation and maintenance of a pollution prevention control facility.

"Financial Capability" as a variable was added to the proposed rule and then removed in the final rule because "Affordability Factor" as a variable was clearer and more understandable to applicants who participated in the changes. "Affordability Factor" as a variable relates directly to the ability of the applicant to repay the bonds.

The priority list is intended to give the highest ranking to a project with some or all of the following characteristics:

Removal of nitrates and disease-carrying organisms which create a threat to an endangered species, Biochemical Oxygen Demand or suspended solids, and pH or turbidity. The final rule removes "toxic substances or conditions which create acute or chronic toxicity" because it is a condition that should never occur.

If the water is either a domestic water source or discharge into a sole source for a drinking water supply, rather than a water source incidental to human contact.

If the project reclaims, reuses, or recharges rather than a project that merely uses water without reclamation.

If a project was denied funding due to a lack of funds rather than an interim solution to a problem or a future project.

If the project is for construction or rehabilitation rather than refinancing a completed project.

In summary, R18-10-106 assigns the point values used for ranking a project to be funded by the Board. This final rule amends the point values to assign more points for funding construction or rehabilitation of a project that will correct or prevent a threat to humans or has some form of water reclamation over refinancing a completed project.

11. R18-10-107 has been modified to be consistent with A.R.S. §§ 49-373 and 49-374. The funding that is possible by this rule affects numerous types of projects which may be associated with numerous types of project owners. To make these rules useful, the Board of Directors of the Authority (the Board) has found it substantially more beneficial for the applicant to have the Board interview the applicant about its past fiscal history. Some of the information deleted from this Section does not always have relevance due to the various types of community projects.

Some of the small communities in Arizona have operated on a cash basis and have never issued a bond. Therefore, the Board prefers to provide a financial worksheet applicable to the applicant that complies with the federal loan grant requirements.

12. R18-10-108 has been modified to direct the applicant to comply with appropriate federal and state law. Due to the numerous types of water pollution control facilities, the requirements for an environmental assessment depend on the applicable environmental laws. The proposed rule deleted this Section. During the public hearings, applicants requested the information found in this Section be restored because it provided a helpful guideline.

Any project found out of compliance with the laws affect the project's priority. A project that has shown an effort to come into compliance will be ranked higher on the priority list than a project that has not made an effort to rehabilitate the facility. In fact, a facility that has ongoing violations and has shown no effort to come into compliance may be bypassed. Therefore, the final rule has been amended to instruct the applicant to comply with the appropriate federal regulations and to A.R.S. Title 49.

13. R18-10-109 has been modified for consistency with other rule text.
14. R18-10-110 has been modified to omit redundancies found in the CWA.
15. R18-10-111 was modified to delete the requirements for approval to construct because this information was found in the wastewater treatment and nonpoint source facilities rules. However, after meeting with applicants, the Board was requested to restore the information because it was beneficial to the applicants. Therefore, all of subsection (A) has been restored.
16. R18-10-112 has been modified to include disbursement for incurred project expenses. The requirement in subsection (D) is deleted because the costs indicated are indirect costs, and the Board will not pay for indirect costs.
17. R18-10-113 has been modified to include the state match authorized by statute.
18. R18-10-114 has been modified for conformity.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

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8. **The summary of the economic, small business, and consumer impact statement:**

Pursuant to A.R.S. § 41-1055(D)(3), a rulemaking that decreases monitoring, recordkeeping, or reporting burdens on agencies, political subdivisions, businesses, or persons is not required to prepare an economic impact statement. If the increased costs of implementation of the rule do not equal or exceed the reduction burdens, there is no requirement for the rule to include an economic, small business and consumer impact statement. The Board believes the amendments to these rules do not require an economic, small business and consumer impact statement because each amendment either reduces reporting which is no longer required by the Clean Water Act or it removes a duplicative requirement that is found in another statute or federal regulation.

Subsection R18-10-106(G) is the only new language in the rule. The additional variable called "Affordability Factor" was added to the priority algorithm to make the priority list more equitable by favoring an applicant who can repay their debt over 1 who is less able to repay the debt. The new variable does not impose an additional cost to the public or the Board.

The Board does not expect any implementation and enforcement costs from this rulemaking. Therefore, no increase in staff at ADEQ will result from these rules, and no incremental cost is expected to be incurred by ADEQ to implement this rule. For these reasons, the Board is not preparing an economic and small business and consumer impact statement for this rulemaking.

9. **A description of the changes between the proposed rules, and final rules:**

ISSUE: The Board recognized that the word "shall" did not need to be a part of the 1st subsection of R18-10-101.

ANALYSIS: The Board supports consistent rule format.

RESPONSE: R18-10-101 is amended as noted by the underlined and stricken text that follows:

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-371, the terms of this Article, unless otherwise specified, ~~shall~~ have the following meanings:

ISSUE: The Board decided on its own initiative that the definition of "Board" ought to be included in the rule.

ANALYSIS: When reading the rule, it is helpful to understand that the Board is the entity that acts for the Authority.

RESPONSE: R18-10-101 is amended as follows:

5. "Board" means the board of directors of the authority pursuant to A.R.S. § 49-371.

ISSUE: The Board decided on its own initiative that the use of the word plan should not be used in the definition of "Intended Use Plan."

ANALYSIS: The proper format for defining a term is to not use the term in the definition.

RESPONSE: R18-10-101 is amended as noted by the underlined and stricken text that follows:

~~2021.~~ "Intended Use Plan" means the plan document prepared by the Board for submittal to EPA identifying the intended uses of the fund pursuant to R18-10-114 ~~and describing how those uses support the goals of the fund.~~

ISSUE: The Board on its own initiative made grammatical changes in R18-10-102.

ANALYSIS: The Section on Types of Financial Assistance Available was difficult to read due to the sentence construction. Some of the sentences were not properly separated into subsections for clarity. Additionally, passive voice was changed to active voice.

RESPONSE: R18-10-102 is amended as noted by the underlined and stricken text:

R18-10-102. Types of Financial Assistance Available

A. The Authority may use the fund only for the following ~~types of financial assistance~~ purposes:

1. Financial assistance, which includes any 1 of the following:

~~a. To make loans~~ Loans consistent with § 603(d)(1) of the Clean Water Act;

~~2.b. To~~ The purchase or refinance of local debt obligations which were incurred after March 7, 1985, ~~and if~~ building began after that date;

~~3.c. To~~ The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;

~~4.d. As security or~~ Security as a source of revenue for the payment ~~repayment~~ of principal and interest on bonds issued by the Authority provided that the net proceeds of the bonds are deposited in the fund;

~~5.e. To guarantee~~ Guarantees of debt obligations ~~of by~~ political subdivisions which are issued to finance eligible projects;

~~6.2.~~ Investments to earn interest to be deposited into the fund ~~To earn interest;~~ or

~~7.3.~~ To pay Payments of costs to administer the fund and the activities described in this Article;

B. The Board shall describe projects and proposed financial assistance ~~shall be described by the Board in the~~ in its Intended Use Plan, ~~as developed under~~ pursuant to R18-10-114.

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ISSUE: The Board recognized active voice is generally preferable to passive voice in regulatory drafting.

ANALYSIS: Rules are clearer when written in the active voice.

RESPONSE: R18-10-103 is amended and noted by the underlined and stricken text that follows:

- (A)(3). The applicant shall complete or shall be in the process of completing the environmental review process described in R18-10-108 for all design and construction projects. Until the environmental review process is completed, the Board shall limit payments of financial assistance shall be limited to pre-construction activity;
4. The applicant shall receive obtain or shall be in the process receiving of obtaining all applicable permits and approvals required by federal, state, and local authorities. Until all applicable permits and approvals required by federal, state and local authorities are received obtained, the Board shall limit payments of financial assistance to pre-construction activity;
 5. The applicant shall ensure that the proposed design or construction of the project shall be is consistent with the Certified Water Quality Management Plan; and
 6. The applicant shall ensure that the project shall be is consistent with applicable requirements of Title VI of the Clean Water Act as described in R18-10-110.
- C. ~~A~~ An eligible political subdivision or eligible entity that has proposed a project eligible under pursuant to subsection (A)(2) of this Section shall also meet all of the following requirements prior to receiving financial assistance:
- ~~1.~~ The project shall appear on the Priority List developed pursuant to the administration of the Nonpoint Source Program;
 - ~~2.1.~~ The applicant shall demonstrate the financial capability under this Article, including all the following to satisfy any financial obligation to be made with the Authority, shall identify
 - a. Identification of the dedicated revenue source for repayment of the financial assistance; ~~and shall demonstrate~~
 - b. Demonstration of the legal authority to enter into financial agreements with the Authority; ~~and to develop~~
 - c. Development of any needed construction, operation, and maintenance associated with the Nonpoint Source Program project;
 - ~~3.2.~~ The applicant shall receive obtain or be in the process to receive of obtaining all applicable permits and approvals required by federal, state, and local authorities;
 - ~~4.3.~~ The applicant shall ensure that the project shall be is consistent with the Certified Water Quality Management Plan ~~and the Nonpoint Source Program;~~ and
 - ~~5.4.~~ The applicant shall ensure that the project shall be is consistent with § 319 and Title VI of the Clean Water Act.
- D. The Board shall provide financial assistance to eligible political subdivisions or eligible entities for proposed projects in priority order, ~~subject to the following provisions:~~ according to the priority list developed pursuant to R18-10-104.
- ~~1.~~ If the Board determines that a project an applicant will not be able to proceed with a project in a manner consistent with the Intended Use Plan, then the Board shall bypass that project. The Board shall replace the bypassed projects shall be replaced by project with the next project or projects on the Priority List in rank order that are able ready to accept financial assistance. The Board shall provide written notice to the applicant that the project has been bypassed.

ISSUE: The Board decided on its own initiative to clarify the priority of types of funding. The Board does not intend for the Authority to be in the business of refinancing, therefore, the criteria for removal of a project from the Priority List has been modified.

ANALYSIS: The Board found that removal of a project which has been financed from another source may not expressly state that "long-term" indebtedness is implied. A short term indebtedness would not be refinanced by the Board, therefore this statement only has meaning with the modification found below.

RESPONSE: R18-10-104 is amended as noted in the underlined and stricken text that follows:

- H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:
1. The project has received all financial assistance from the fund requested by the applicant;
 2. The project has been financed with long-term indebtedness from another source;
 - ~~2.3.~~ The project is no longer an eligible project; or
 - ~~3.4.~~ The removal is requested by the applicant.

ISSUE: The Board recognized that active voice is generally preferred over passive voice in regulatory drafting.

ANALYSIS: Rules are clearer when written in the active voice.

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RESPONSE: R18-10-104 and R18-10-105 are amended as noted in the underlined and stricken text that follows:

- A. Each year the Board shall adopt the Priority List for the ~~forthcoming next~~ fiscal year. ~~except that a new list shall not be required~~ The Board shall not adopt a new list for years where funds are not adequate to assist any projects. The fiscal year shall be the ~~federal-state~~ fiscal year ~~when a federal capitalization grant or other federal assistance is provided.~~
- B. When the Priority List is required pursuant to subsection (A), the ~~listing~~ list of wastewater treatment facility projects shall consist of 2 parts:
 - 1. Part 1, ~~shall be a listing~~ a list of those wastewater treatment facility projects where the start of construction is planned within 5 years and that are under development or have been scheduled as part of an applicant's capital improvement plan. ~~This 5-year listing shall be ranked~~ The Board shall rank this 5-year list by priority class, priority points, and year; and
 - 2. Part 2, ~~shall be a listing~~ a list of all other wastewater treatment facility projects ranked by priority class and priority points.
- E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting ~~shall be published~~ in newspapers statewide at least 45 days prior to the meeting date. Copies of the draft Priority List shall be available to the public at least 30 days prior to the meeting date.
- G. The Board shall make additions or modifications to the Priority List ~~shall be made by the Board~~ whenever any 1 of the following conditions are met:
 - 1. The project meets the criteria for Priority Class A specified in R18-10-105(B);
 - 2. Funds are available to cover the cost of the project and to honor any funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match; ~~and or~~
 - 3. The additions or modifications are made by the Board at a public meeting.

R18-10-105. Priority Classes

- D. The Board may designate a project as Priority Class C if the goal of the project is to correct water quality which violates applicable permit requirements. ~~Such~~ The Board shall ensure that the violations shall be ~~are~~ documented by required or special monitoring reports which confirm that the discharge limits for a parameter were exceeded either 3 consecutive months or any 4 months during the past year.
- F. The Board may designate ~~any~~ a project which does not receive a designation pursuant to subsections (B) through (E) of this Section as Priority Class E, ~~including if either the projects are project is for future growth only or if the projects have project has been financed from another source of long-term indebtedness. All projects designated as Priority Class E shall be completing or have completed construction.~~

ISSUE: The Board on its own initiative after informal consultation with the regulated community that the ranking system rewarded those who were minimally compliant with the law in operation and maintenance and the ability to repay the debt was not considered.

ANALYSIS: The basis for this rule is to explain the criteria for qualifying for financing for a wastewater treatment facility. The Board believes financing rather than refinancing is more beneficial to the residents and visitors to Arizona. Therefore, the rule should rank projects based upon their ability to repay and their greatest benefit to the public. This results in removal of the project schedule, the operation and maintenance factors being removed and an additional factor called "Affordability Factor" be included. The Affordability Factor grants more points to the project which is less able to raise the capital because the cost per household exceeds 1.75% of the median household income of the community.

RESPONSE: R18-10-106(A) is amended as noted by the underlined and stricken text that follows:

- A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

$$PV = VF + PA + CW + CI + PS + OM + FC AF$$

where:

PV = Priority Value

VF = Violation Factor

~~PA = Population Affected~~

CW = Classification of Waters

CI = Conservation Index

~~PS = Project Schedule~~

~~OM = Operation and Maintenance~~

~~FC = Financial Capability~~

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AF = Affordability Factor

ISSUE: The Board decided on its own initiative after consultation with the regulated community that the current point system for priority list ranking criteria had points assigned for situations that should never occur.

ANALYSIS: In R18-10-106, the point assignment was modified to establish a priority system that awarded points to a long term project either for construction of a wastewater treatment facility or for upgrading an out-of-compliance wastewater treatment facility. The violation factor for toxic substances or conditions has been eliminated because it is considered a critical "short-term" problem that cannot await funding. Furthermore, the Board found after inquiry that wastewater treatment facilities do not believe this condition will occur.

RESPONSE: R18-10-106 is amended as follows:

- B.** Whenever the Board determines that a project seeks to correct a violation of a water quality standard or a violation of a condition contained in a valid water quality permit issued by a regulatory authority, the Board shall award Violation Factor points. The Board shall use documentation requirements specified under Priority Classes B and C as contained in R18-10-105(C) and R18-10-105(D) to assign Violation Factor points. VF points shall equal the sum of the points specified in each of the following categories up to a maximum of ~~50~~ 30 points:
- ~~1. Toxic substances or conditions which create acute or chronic toxicity shall receive 20 points;~~
 - ~~2.1.~~ 1. Nitrates, disease organisms or indicators, or conditions which create a threat to an endangered species shall receive 15 points;
 - ~~3.2.~~ 2. Biochemical Oxygen Demand (BOD), Suspended Solids, or Phosphates shall receive 10 points; and
 - ~~4.3.~~ 3. pH, Turbidity, or Temperature shall receive 5 points.

ISSUE: The Board recognized that the criteria used in the conservative index unintentionally penalized certain projects.

ANALYSIS: The conservative index penalized a project that did not reclaim, reuse, or recharge wastewater when it was Class A. This was not the desired outcome of the ranking.

RESPONSE: R18-10-106(E) is amended as noted by the underlined and striken text that follows:

~~E.D.~~ The Board shall award Conservation Index points as follows:

- 1. 30 points if the project will replace an existing groundwater use by reclaiming, reusing, or recharging a major portion of wastewater consistent with state law;
- 2. 20 points if the project will reclaim, reuse, or recharge a major portion of wastewater consistent with state law;
- 3. 10 points if the project will productively recycle wastewater constituents or recover energy; ~~and~~
- 4. 0 points if the project will not reclaim, reuse, or recharge wastewater and is designated by the Board as a Class A project; and
- ~~4.5.~~ 5. Negative 20 points if the project will not reclaim, reuse, or recharge wastewater and is designated by the Board as a Class B, Class C, Class D, or Class E project.

ISSUE: The Board on its own initiative after consultation with the regulated community determined that the project schedule had no impact on the funding.

ANALYSIS: The project schedule is another way of explaining readiness to proceed, therefore this requirement did not need to be stated differently in 2 separate places in the rule. The Operation and Maintenance criteria is compliance and enforcement, and this rule is not intended to be used as a compliance and enforcement tool.

RESPONSE: R18-10-106(E) and (F) are amended as noted by the underlined and striken text that follows:

~~F.E.~~ The Board shall award Project Schedule points as follows:

- ~~1. 25 points if the applicant has received prior approval of a project that meets all requirements of this Article, could have received funding if funds were adequate, and has initiated construction;~~
- ~~2. 15 points if the applicant has initiated a Department approved interim solution adequate to remedy the problem until the construction of a permanent solution is complete and, in addition, has submitted a project schedule. Any project utilizing an interim solution shall not lose its priority class or ranking; or~~
- ~~3. 10 points for those projects where a project schedule acceptable to the Department Board has been provided prior to March 1 of each year. The Board shall apply the points to the Priority List prepared for the following year. Minimum targets to be addressed in the schedule include dates for all of the following:~~
 - ~~a. Completion of the facility plan required under R18-10-110(H);~~
 - ~~b.a. Completion of plans and specifications;~~
 - ~~c.b. Voter approval or participation in assistance program;~~

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~~d.e. Award of construction contract; and~~

~~e.d. Project completion.~~

~~G.F. The Board shall award Operation and Maintenance points for operation, maintenance, or demonstrated capability as follows:~~

- ~~1. 20 points if the operation and maintenance of all of the applicant's facilities were in compliance with minimum standards of the Department, according to the Department's annual compliance report, during 4 of the preceding 5 years. If at least 1 of the facilities was in noncompliance for those 4 years, the OM points shall equal a negative 20 points; and~~
- ~~2. 10 points if the operation and maintenance of all of the applicant's facilities were in compliance with minimum standards of the Department at the last regular inspection made by the Department. If at least 1 of the facilities was in noncompliance at the last inspection, OM points shall be a negative 5 points.~~

~~E. The Board shall award Affordability Factor points up to a maximum of 10 points as follows:~~

- ~~1. 10 points if the cost per household for prior capital improvements and the proposed project exceeds 1.75% of the median household income of the community; or~~
- ~~2. 5 points if the cost per household for operation, maintenance, prior capital improvements and the proposed project exceeds 1.5% of the median household income of the community.~~

~~G. The Board shall award 20 Financial Capability points if the applicant is seeking financial assistance in the form of long-term indebtedness to construct or rehabilitate a facility.~~

ISSUE: The Board on its own initiative added clarifying language to R18-10-107.

ANALYSIS: Due to the varied information that is necessary for demonstrating financial capability, the proposed rule removed the explanation of all possible information that might be needed. The rule was then modified during public comment to list generally what would be necessary to determine financial capability.

RESPONSE: R18-10-107 is amended as noted in the redline text below.

- B. When determining an applicant's financial capability, the Board shall consider the facility's past fiscal history in a format approved by the Board which is provided to the applicant. The applicant will need to provide information about the cost of the project to be funded and the rate structure to pay for the project, certified by the applicant and may consider the following criteria:

ISSUE: The Board on its own initiative after consultation with the regulated community found that the deletions in the Environmental Review, R18-10-108 made the rule appear to no longer require the environmental review. The review is still required for funding.

ANALYSIS: The Board always gives an applicant a packet which lists the required information for processing a loan application. This is to ensure the applicant is knowledgeable about what is required to receive a loan from the Board. Therefore, although the environmental review was proposed to be deleted because it was contained in the Clean Water Act, the regulated community preferred a complete set of all possible information that might be required even though the applicant would only submit information applicable to its specific project. Additionally, the regulated community requested these rules be a complete set of information even if it cross-references other regulations.

RESPONSE: R18-10-108 is substantially restored to its original wording. The underlined and stricken text was proposed as deleted, and now is not deleted. The sections restored are subsections (B) through (I) as noted by the underlined and stricken text that follows:

R18-10-108. Environmental Review

- A. ~~The If applicable, the Department shall conduct an environmental review pursuant to this Section for the design or construction of treatment works in accordance with applicable federal and state law. As part of the application process, the Authority shall provide information on conducting an environmental review consistent with the Clean Water Act and A.R.S. Title 49. The Department may accept an environmental review completed prior to the effective date of this Article if the Department determines that the environmental review complies generally with the requirements of this Section. An environmental review conducted under this Section shall be prepared in coordination with any applicable facility plan developed pursuant to R18-10-110(H) and applicable amendments to the Certified Water Quality Management Plan.~~
- B. An applicant may request, in writing, a categorical exclusion. If the Department determines that a categorical exclusion is warranted under this subsection, the project shall be exempted from the requirements of this Section.
 1. The Department shall grant an exclusion if existing information and documents demonstrate that the project qualifies under 1 of the following categories:
 - a. Any project for which the planning is directed towards rehabilitation of existing facilities, functional replacement of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities which do not affect the degree of treatment or capacity of the existing facility;

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- b. Any project in sewerred communities which is for minor upgrading and minor expansion of existing treatment works; or
- c. Any project in unsewerred communities where on-site technologies are proposed.
- 2. The Department shall deny a request for exclusion if the project falls under any of the following categories:
 - a. The project will create a new, or relocate an existing, discharge to surface or ground waters;
 - b. The project will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters;
 - c. The project is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions;
 - d. The project is known or expected to directly or indirectly affect cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones; or other resource areas;
 - e. The project is known or expected to cause significant public controversy; or
 - f. The project is known or expected not to be cost-effective.
- C. If the Department determines that a categorical exclusion is not warranted under subsection (B) of this Section, or if no request for an exclusion is made, the applicant shall prepare an Environmental Information Document (EID). The EID shall be of sufficient scope to assist in the development of an environmental assessment (EA) under subsection (D) of this Section.
- D. The EA may be conducted by the Department or by the applicant under the supervision of the Department and shall include consideration of all of the following factors:
 - 1. For the delineated planning area, the existing environmental conditions relevant either to the analysis of alternatives or to determining the environmental impacts of the proposed project;
 - 2. The relevant future environmental conditions of the delineated planning area, including the alternative of no action;
 - 3. The purpose and need for the project in the planning area, including the existing public health or water quality problems and their severity and extent;
 - 4. A comparative analysis of feasible alternatives, including no action, throughout the project area. The comparison shall focus on the beneficial and adverse consequences, both direct and indirect, on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation conducted under this Section. The comparison shall also include an analysis of all of the following factors:
 - a. Land use and other social parameters, including recreation and open-space considerations;
 - b. Consistency with population projects used to develop state implementation plans under the Clean Air Act, 42 U.S.C. 7401-7626;
 - c. Cumulative impacts, including anticipated community growth within the project study area; and
 - d. Other anticipated public works projects, including coordination with such projects;
 - 5. A full range of relevant impacts of the project, including any irreversible or irretrievable commitments of resources to the project and the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
 - 6. Proposed structural and nonstructural measures to mitigate or eliminate adverse effects on the human and natural environments. Among other measures, structural provisions include changes in project design, size, and location; and non-structural provisions include staging facilities, monitoring and enforcement of environmental rules, and local commitments to develop and enforce land use rules.
- E. Upon completion of the EA required by subsection (D) of this Section, the Department shall determine whether an environmental impact statement (EIS) is necessary.
 - 1. The Department shall prepare an EIS pursuant to subsection (F) of this Section if any of the following conditions exist:
 - a. The project is known or expected to have a significant adverse effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions;
 - b. The project is known or expected to directly or indirectly adversely affect recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones, or other resource areas;
 - c. The project is likely to cause significant public controversy or is known or expected not to be cost-effective; or

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- d. The project discharges into a body of water where the present protected or designated use is not being met or is being challenged as inadequate to protect existing uses, and the discharge will not be of sufficient quality or quantity to meet the requirements of these uses.
 2. If the Department determines pursuant to subsection (E)(1) that an EIS is not necessary, the Department shall issue a finding of no significant impact (FNSI). The FNSI shall be accompanied by a finalized EA. Upon issuance of the FNSI, the project may proceed under the other requirements of this Article.
- F. An EIS required by subsection (E)(1) of this Section shall be prepared as follows:
1. The Department shall 1st prepare and distribute a Notice of Intent;
 2. As soon as possible after the publication of the Notice of Intent required by subsection (F)(1), the Department shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the scope of the EIS shall be determined by considering a number of factors, including all of the following:
 - a. The significant issues to be analyzed in depth in the EIS;
 - b. The preliminary range of alternatives to be considered;
 - c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties;
 - d. The method for EIS preparation and the public participation strategy; and
 - e. The relationship between the EIS and the completion of the facility plan required under R18-10-110(H) and any necessary coordination between the preparers of both documents;
 3. Upon completion of the scoping process described in subsection (F)(2), the Department shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may also be addressed, or others eliminated, and the reasons documented as part of the EIS; and
 4. After the analysis of issues is conducted pursuant to subsection (F)(3), the Department shall issue a draft EIS for public comment. Following public comment pursuant to subsection (I) of this Section, the Department shall prepare a final EIS, consisting of all of the following:
 - a. The draft EIS;
 - b. Comments received on the draft EIS;
 - c. A list of persons commenting on the draft EIS;
 - d. The Department's responses to significant comments received;
 - e. A determination of consistency with the Certified Water Quality Management Plan; and
 - f. Any other information added by the Department.
- G. After a final EIS has been issued under subsection (F) of this Section, the Department shall prepare and issue a record of decision (ROD) containing the Department's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include mitigation measures derived from the EIS process. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.
- H. Any project awaiting financial assistance which has a 5- or more year-old categorical exclusion, FNSI, or ROD under this Section shall be subject to an environmental re-evaluation. The Department shall re-evaluate the project, environmental conditions, and public views and, in writing, either reaffirm or modify its original decision. Any new information used by the Department in making its determination shall be included.
- I. Public notice and participation under this Section shall be conducted as follows:
1. If a categorical exclusion is granted under subsection (B) of this Section, the Department shall provide public notice of that fact by publishing the notice as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned;
 2. If a FNSI is issued under subsection (E)(2) of this Section, the Department shall provide public notice pursuant to A.A.C. R18-1-401(A) that the FNSI is available for public review. The notice shall provide that comments on the FNSI may be submitted to the Department for a period of 30 days from the date of publication of the notice. If no comments are received, the FNSI shall immediately become effective;
 3. If a Notice of Intent is prepared and distributed under subsection (F)(1) of this Section, the Department shall publish it as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned;
 4. If a draft EIS is issued under subsection (F)(4) of this Section, the Department shall provide public notice pursuant to A.A.C. R18-1-401(A) that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Department for a period of 30 days from the date of publication of the notice. In addition,

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tion, if the Department determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comment pursuant to A.A.C. R18-1-401(B);

5. If the Department reaffirms or revises a decision pursuant to subsection (H) of this Section, the Department shall provide public notice of that fact by publishing the notice as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned; and
6. When public notice is required under this subsection, the Department shall also provide written notice to the applicable Designated Water Quality Management Planning Agency.

ISSUE: The Board on its own initiative after consultation with the regulated community determined R18-10-111, which was substantially deleted in the proposed rule should be restored. Although the information is found in the rules that regulate the construction of wastewater treatment facilities and nonpoint sources, the regulated community preferred the cross-reference within in the rule for clarity.

ANALYSIS: A rule should be clear, concise, and understandable. A rule should provide the reader notice of all applicable requirements in order to comply with the law. Therefore, the information found in this Section should be restored.

RESPONSE: R18-10-111 is amended as follows: The underlined and stricken text was proposed to be deleted and is now not deleted, and the stricken text that was proposed as new language, but is being removed from the final rule.

R18-10-111. Project Construction

- A. Construction of a wastewater treatment facility project shall conform to all of the following requirements: ~~of the Department.~~
1. The Department shall not issue an Approval to Construct to an applicant or recipient until all of the following have occurred:
 - a. An on-site inspection by the Department;
 - b. The development by the applicant or recipient of a sludge management use and disposal plan; and
 - c. A review of all set-back requirements by the Department.
 2. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
 - a. All easements and rights of way have been obtained;
 - b. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq.; and
 - c. All required approvals and permits have been obtained from the following entities:
 - i. The Department, including the requirements contained in 18 A.A.C. 9; and
 - ii. Applicable federal, state, and local authorities as related to:
 - (1) Leases;
 - (2) Zoning permits;
 - (3) Building permits;
 - (4) Flood plain approvals;
 - (5) Air quality permits; and
 - (6) Solid waste approvals.
 3. During construction of wastewater treatment facilities, both of the following requirements shall be met:
 - a. All work shall be conducted in compliance with the requirements of 18 A.A.C. 9; and
 - b. Construction management and inspection shall be under the direct supervision of a qualified registered professional engineer.
 4. Upon project completion, all of the following requirements shall be satisfied:
 - a. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 9;
 - b. The recipient shall accept the project in writing;
 - c. Any required operation and maintenance manual shall be completed; and
 - d. As-built plans and specifications shall be submitted to the Department and the recipient.
 5. One year after project completion, the recipient shall certify that the wastewater treatment facility meets design specifications and all effluent limitations. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the wastewater treatment facility does not meet design standards or effluent limits and what will be done to correct the deficiency, together with a schedule for the corrective action.

ISSUE: The Board recognized active voice is generally preferable to passive voice in regulatory drafting.

ANALYSIS: Rules are clearer when written in the active voice.

RESPONSE: R18-10-114 is amended as noted in the underlined and stricken text that follows:

- A. The Board shall publish an Intended Use Plan for each year in which it ~~is anticipated~~ anticipates that it will provide financial assistance ~~will be provided~~ for eligible projects. At a minimum the Intended Use Plan shall identify the projects by eligible political subdivision or eligible entity, name, type of project, type of financial assistance, amount of financial assistance, and interest rates to be charged. The Intended Use Plan shall also identify 1st use and equivalency projects. The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as 1 of the required documents to obtain a grant under Title VI of the Clean Water Act, the Intended Use Plan shall include such additional information as required.

10. A summary of the principal comments and the agency response to them:

ISSUE: One commenter explained that the voters from his city created a corporation to handle funding of capital projects. He requested the Board expressly change the rule to allow this voter created entity to apply and receive funds from the Authority without obtaining another voter approval of the bond funds.

ANALYSIS: The applicant is required by law to obtain voter approval of financing provided by the Authority before funds can be committed. Therefore, the Board is unable to amend the rule in response to this comment.

RESPONSE: No change to the rule.

All other changes were a result of informal input by the regulated community to the Board. There were no written comments.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules

Not applicable

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:

Not applicable.

14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 10. WASTEWATER MANAGEMENT AUTHORITY OF ARIZONA

ARTICLE 1. FINANCING WASTEWATER FACILITIES AND NONPOINT SOURCE DISCHARGE PROGRAMS

- R18-10-101. Definitions
- R18-10-102. Types of Financial Assistance Available
- R18-10-103. Eligibility Criteria for Financial Assistance
- R18-10-104. Priority List
- R18-10-105. Priority Classes
- R18-10-106. Priority List Ranking Criteria
- R18-10-107. Financial Capability Criteria
- R18-10-108. Environmental Review
- R18-10-109. Application Process
- R18-10-110. Federal Requirements
- R18-10-111. Project Construction
- R18-10-112. Fund Disbursements and Repayments
- R18-10-113. Fund Administration
- R18-10-114. Intended Use Plan and Interest Rate Determinations

ARTICLE 1. FINANCING WASTEWATER FACILITIES AND NONPOINT SOURCE DISCHARGE PROGRAMS

R18-10-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-371, the terms of this Article, unless otherwise specified, shall have the following meanings:

1. "Applicant" means any governmental unit, ~~political subdivision or any entity~~ identified in the Nonpoint Source Program, that is seeking financial assistance from the fund pursuant to the provisions of this Article.

2. "Application" means a request for financial assistance submitted to the Board, by an applicant.
3. "Approval to Construct" means the written approval issued by the Department to an applicant or recipient indicating that project construction may begin.
4. "Authority" means the Wastewater Management Authority of Arizona pursuant to A.R.S. § 49-371.
5. "Board" means the board of directors of the authority pursuant to A.R.S. § 49-371.
- 4-6. "Certified Water Quality Management Plan" means a plan prepared by the designated Water Quality Management Planning Agency, pursuant to § 208 of the Clean Water Act, and certified by the Governor.
- 5-7. "Clerk" means the ~~Manager of the Construction Grants Section at the Department~~ Clerk of the Board of the Wastewater Management Authority of Arizona.
8. "Collector" means a network of pipes or sewers used to collect and transport wastewater to a treatment plant or disposal system.
- 6-9. "Construction" means, for a project, any placement, assembly, or installation of a building, structure, equipment, treatment process, or water pollution control activity.
- 7-10. "Design life" means the period during which a treatment works is planned and designed to be operated.
- 8-11. "Designated Water Quality Management Planning Agency" means a single representative organization des-

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- ignated by the Governor pursuant to § 208 of the Clean Water Act to develop a Certified Water Quality Management Plan for the area.
- ~~9-12.~~ "Disbursement" means the transfer of cash from the fund to a recipient.
- ~~10-13.~~ "EPA" means the United States Environmental Protection Agency and its successor.
- ~~11-14.~~ "Equivalency Project" means a wastewater treatment facility under § 212 of the Clean Water Act constructed in whole or in part before October 1, 1994, with funds equaling the amount of the federal capitalization grant.
- ~~12-15.~~ "Federal capitalization grant" means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the fund.
- ~~13-16.~~ "Financial assistance" means the use of monies in the fund for any of the purposes identified in R18-10-102.
- ~~14-17.~~ "Financial assistance agreement" means any agreement, including a loan repayment agreement, that defines the terms for financial assistance given pursuant to this Article.
- ~~15-18.~~ "First Use Project" means a project identified by EPA and the state as part of the National Municipal Policy List for the state.
- ~~16.~~ "Force account work" means the use of the applicant's or recipient's own employees or equipment for construction, construction-related activities, or for repair or improvements to a wastewater treatment facility.
- ~~17-19.~~ "Fund" means the wastewater treatment revolving fund established pursuant to A.R.S. § 49-374.
- ~~20.~~ "Governmental unit" means a political subdivision or Indian tribe that may receive financial assistance from the Authority pursuant to A.R.S. § 49-373.
- ~~18-21.~~ "Infiltration" means water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes.
- ~~19.~~ "Inflow" means water other than wastewater that enters a sewer system, including sewer service connections, sources such as roofleaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, and drainage.
- ~~20-22.~~ "Intended Use Plan" means the plan document prepared by the Board for submittal to EPA identifying the intended uses of the fund pursuant to R18-10-114 and describing how those uses support the goals of the fund.
- ~~21-23.~~ "Interceptor" means a sewer which is designed for 1 or more of the following purposes:
- a. To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;
 - b. To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - c. To transport wastewater from 1 or more municipal collector collectors sewers to another municipality or to a regional plant for treatment; and
 - d. To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
- ~~22.~~ "Minor" means, in terms of upgrading or expansion, rehabilitation, replacement, construction, or other improvements which do not affect the degree of treatment or capacity of an existing wastewater treatment facility.
- ~~23-24.~~ "Nonpoint Source Program" means Arizona's Nonpoint Source Water Quality Management Program, approved by EPA under § 319 of the Clean Water Act for controlling pollution from nonpoint sources.
- ~~24-25.~~ "Priority List" means the ranking of wastewater treatment facility projects developed by the Board pursuant to R18-10-104 and the ranking of nonpoint source projects developed pursuant to the administration of the Nonpoint Source Program.
- ~~25-26.~~ "Project" means any distinguishable segment or segments of a wastewater treatment facility or the Nonpoint Source Program which can be bid separately and for which financial assistance is being requested or provided.
- ~~26-27.~~ "Project completion" means the date, as determined by the Department after consultation with the applicant or recipient, that operation of the project is initiated or is capable of being initiated, whichever occurs 1st.
- ~~27-28.~~ "Recipient" means an applicant who has entered into a financial assistance agreement with the Authority.
- ~~28-29.~~ "Replacement" means obtaining and installing equipment; or accessories; or appurtenances which are necessary during the design or useful life, whichever is longer, and operation of the treatment works to maintain the capacity and performance for which such works were designed and constructed.
- ~~29-30.~~ "Regulatory authority" means the Department, EPA, the Department of Health Services, a county, city, or other local health department, a county environmental agency, or a sanitary district.
- ~~30-31.~~ "State match" means the monies deposited into the fund by the Authority as required by that may be used to meet the requirements of § 602(b)(2) of the Clean Water Act.
- ~~31-32.~~ "Treatment works" means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement § 201 of the Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the design life of the works.
- ~~32.~~ "Useful life" means the period during which a treatment works operates.
- ~~33-33.~~ "User charge" means a charge levied on users of a treatment works or that portion of the ad valorem taxes paid by a user for the user's proportionate share of the cost of operation and maintenance, including replacement of such works.
- ~~34.~~ "Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

R18-10-102. Types of Financial Assistance Available

A. The Authority may use the fund only for the following types of financial assistance purposes:

1. Financial assistance, which includes any 1 of the following:

a. ~~To make loans~~ Loans consistent with § 603(d)(1) of the Clean Water Act;

b. ~~To~~ The purchase or refinancing of local debt obligations which were incurred after March 7, 1985, and if building began after that date;

c. ~~To~~ The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;

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~~4.d. As security or Security as a source of revenue for the payment repayment of principal and interest on bonds issued by the Authority provided that the net proceeds of the bonds are deposited in the fund;~~

~~5.e. To guarantee Guarantees of debt obligations of by political subdivisions governmental units which are issued to finance eligible projects;~~

~~6.2. Investments to earn interest to be deposited into the fund To earn interest; or~~

~~7.3. To pay Payments of costs to administer the fund and the activities described in this Article;~~

B. ~~The Board shall describe projects and proposed financial assistance shall be described by the Board in the in its Intended Use Plan, as developed under pursuant to R18-10-114.~~

R18-10-103. Eligibility Criteria for Financial Assistance

A. To be eligible for to receive financial assistance ~~a an applicant shall propose a project shall be proposed~~ for either of the following purposes:

1. ~~The planning, design, and construction, or refinancing of treatment works which are all or part of a wastewater treatment facility owned by an eligible political subdivision a governmental unit; or~~
2. ~~The implementation of the Nonpoint Source Program Water pollution controls as identified by Arizona's Nonpoint Source Management Plan.~~

B. A project eligible under subsection (A)(1) of this Section shall also meet all of the following applicable requirements prior to receiving financial assistance:

1. The project shall appear on the Priority List developed pursuant to R18-10-104 ~~and the priority list developed for the award of grants pursuant to Title II of the Clean Water Act. If the Priority List has not been developed under this Article, the Title II priority list may be used;~~
2. The applicant shall demonstrate the financial capability pursuant to R18-10-107 ~~to satisfy any financial obligations to be made with the Authority;~~
3. The applicant shall complete or shall be in the process of completing the environmental review process described in R18-10-108 for all design and construction projects. Until the environmental review process is completed, the Board shall limit payments of financial assistance to pre-construction activity;
4. The applicant shall receive obtain or shall be in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities. Until all applicable permits and approvals required by federal, state, and local authorities are obtained, the Board shall limit payments of financial assistance to pre-construction activity;
5. The applicant shall ensure that the proposed design or construction of the project shall be is consistent with the Certified Water Quality Management Plan; and
6. The applicant shall ensure that the project shall be is consistent with applicable requirements of Title VI of the Clean Water Act as described in R18-10-110.

C. A governmental unit that has proposed a project eligible under pursuant to subsection (A)(2) of this Section shall also meet all of the following requirements prior to receiving financial assistance:

- ~~1. The project shall appear on the Priority List developed pursuant to the administration of the Nonpoint Source Program;~~
- ~~2.1. The applicant shall demonstrate the financial capability under this Article, including all the following: to satisfy any financial obligation to be made with the Authority, shall identify~~

a. Identification of the dedicated revenue source for repayment of the financial assistance, and shall demonstrate;

b. Demonstration of the legal authority to enter into financial agreements with the Authority; and to develop

c. Development of any needed construction, operation, and maintenance associated with the Nonpoint Source Program project;

~~3.2. The applicant shall receive obtain or be in the process of obtaining~~ all applicable permits and approvals required by federal, state, and local authorities;

~~4.3. The applicant shall ensure that the project shall be is consistent with the Certified Water Quality Management Plan and the Nonpoint Source Program; and~~

~~5.4. The applicant shall ensure that the project shall be is consistent with § 319 and Title VI of the Clean Water Act.~~

D. The Board shall provide financial assistance to eligible ~~political subdivisions or eligible entities governmental units~~ for proposed projects in priority order, ~~subject to the following provisions: according to the priority list developed pursuant to R18-10-104.~~

~~1. If the Board determines that a project an applicant will not be able to proceed with a project in a manner consistent with the Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed Bypassed projects shall be replaced by project with the next project or projects on the Priority List in rank order that are able is ready to accept financial assistance. The Board shall provide written notice to the applicant that the project has been bypassed.~~

~~2. The Board shall consider only wastewater treatment facility projects on the Priority List developed pursuant to R18-10-104. However, if 1 of the following conditions are met, the Board may then consider nonpoint source projects on the Priority List developed pursuant to the administration of the Nonpoint Source Program:~~

- ~~a. The amount of financial assistance sought by applicants in a fiscal year for wastewater treatment facilities is less than the total assistance available; or~~
- ~~b. The assistance available is less than the amount sought by any remaining applicant proposing a wastewater treatment facility which has met the requirements of this Article to receive financial assistance.~~

~~3. The Board shall not provide financial assistance to eligible projects until all 1st use projects are any 1 of the following:~~

- ~~a. In compliance;~~
- ~~b. On an enforceable schedule;~~
- ~~c. Subject to an enforcement action; or~~
- ~~d. Subject to a funding commitment during or prior to the 1st year covered by the Intended Use Plan.~~

R18-10-104. Priority List

A. Each year the Board shall adopt the Priority List for the ~~forthcoming next fiscal year. except that a new list shall not be required~~ The Board shall not adopt a new list for years where funds are not adequate to assist any projects. The fiscal year shall be is the federal state fiscal year when a federal capitalization grant or other federal assistance is provided.

B. When the Priority List is required pursuant to subsection (A), the listing list of wastewater treatment facility projects shall consist of 2 parts:

1. Part 1, shall be a listing a list of those wastewater treat-

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ment facility projects where the start of construction is planned within 5 years and that are under development or have been scheduled as part of an applicant's capital improvement plan. ~~This 5-year listing shall be ranked~~ The Board shall rank this 5-year list by priority class, priority points, and year; and

2. Part 2, ~~shall be a listing a list~~ of all other wastewater treatment facility projects ranked by priority class and priority points.
 - C. Applicants, desiring placement on the Priority List, shall make their request for placement of 1 or more proposed projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit ~~all of~~ the following information:
 1. A brief description of the project indicating category of need, such as secondary treatment, advanced treatment, or collection system;
 2. A brief description of the water quality or public health problem to be addressed by the project;
 3. Estimated costs associated with the project, including applicable planning, design, and construction; and
 4. A project schedule.
 - D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C) of this Section, all requests made by regulatory authorities, all plans prepared pursuant to §§ ~~205(j), 208, 303(e), and 319~~ of the Clean Water Act, and the most recently adopted Priority List.
 - E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting ~~shall be published~~ in newspapers statewide at least 45 days prior to the meeting date. Copies and make copies of the draft Priority List ~~shall be~~ available to the public at least 30 days prior to the meeting date.
 - F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall also consider the criteria identified in subsection (C) of this Section. The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the fund during the following fiscal year.
 - G. The Board shall make additions or modifications to the Priority List shall be made by the Board whenever any 1 of the following conditions are met:
 1. The project meets the criteria for Priority Class A specified in R18-10-105(B);
 2. Funds are available to cover the cost of the project and to honor ~~any~~ funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match; ~~and or~~
 3. The additions or modifications are made by the Board at a public meeting.
 - H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:
 1. The project has received all financial assistance from the fund requested by the applicant;
 2. The project has been financed with long-term indebtedness from another source;
 - ~~2-3.~~ 3. The project is no longer an eligible project; or
 - ~~3-4.~~ 4. The removal is requested by the applicant requests removal.
 - I. The Board shall retain a project A bypassed by the Board pursuant to R18-10-103(D)(1) shall remain on the Priority List in its assigned priority ranking if it is bypassed pursuant to R18-10-103(D).
- R18-10-105. Priority Classes**
- A. The Board shall evaluate each wastewater treatment facility project on the Priority List ~~shall be evaluated by the Board and placed~~ place it into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may re-evaluate project priority classes ~~consistent with~~ under R18-10-104(G) when supported by information such as facility plans ~~developed pursuant to R18-10-110(G),~~ feasibility studies, enforcement actions, and environmental reviews conducted under R18-10-108. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project ~~shall be~~ is ineligible for financial assistance.
 - B. The Board may designate a project as Priority Class A if both the following conditions ~~described in subsection (B)(1) and (2)~~ exist:
 1. The goal of the project is to eliminate either:
 - a. An environmental nuisance as defined in A.R.S. § 49-141; or
 - b. A public health hazard declared by a regulatory authority; and
 2. Corrective action or mitigation measures have been initiated as evidenced by 1 of the following:
 - a. An administrative order issued by a regulatory authority;
 - b. A court order or decision;
 - c. A voluntary compliance agreement with a regulatory authority;
 - d. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development; or
 - e. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.
 - C. The Board may designate a project as Priority Class B if the goal of the project is to eliminate a violation of water quality standards documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 of the following:
 1. An administrative order issued by a regulatory authority;
 2. A court order or decision;
 3. A voluntary compliance agreement with a regulatory authority;
 4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development; or
 5. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.
 - D. The Board may designate a project as Priority Class C if the goal of the project is to correct water quality which violates applicable permit requirements. Such The Board shall ensure that the violations shall be are documented by required or special monitoring reports which confirm that the discharge limits for a parameter were exceeded either 3 consecutive months or any 4 months during the past year.
 - E. The Board may designate a project as Priority Class D if any 1 of the following conditions exists:

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1. The project will provide capacity required to serve existing needs;
2. The project is designed for wastewater reuse, to conserve water, or to recharge wastewater; or
3. The project is necessary to remedy interceptors which are overloaded.

F. The Board may designate ~~any~~ a project which does not receive a designation pursuant to subsections (B) through (E) of this Section as Priority Class E, including if the projects are project is for future growth only or if the project has been financed from another source of long-term indebtedness.

R18-10-106. Priority List Ranking Criteria

A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

$$PV = VF + PA + CW + CI + PS + OM + AF$$

where:

PV = Priority Value

VF = Violation Factor

PA = Population Affected

CW = Classification of Waters

CI = Conservation Index

PS = Project Schedule

OM = Operation and Maintenance

AF = Affordability Factor

B. Whenever the Board determines that a project seeks to correct a violation of a water quality standard or a violation of a condition contained in a valid water quality permit issued by a regulatory authority, the Board shall award Violation Factor points. The Board shall use documentation requirements specified under Priority Classes B and C as contained in R18-10-105(C) and R18-10-105(D) to assign Violation Factor points. VF points shall ~~equal the sum of the points specified in each of the following categories~~ be awarded as follows up to a maximum of ~~50~~ 30 points:

- ~~1. Toxic substances or conditions which create acute or chronic toxicity shall receive 20 points;~~
- ~~2.1. Nitrates 15 points for nitrates, disease organisms or indicators, or conditions which create a threat to an endangered species shall receive 15 points;~~
- ~~3.2. 10 points for Biochemical Oxygen Demand (BOD), Suspended Solids, or Phosphates shall receive 10 points; and~~
- ~~4.3. 5 points for pH, Turbidity, or Temperature shall receive 5 points.~~

C. The Board shall award points for the Population Affected only for the existing population that will be connected to or served by the project. Points for additions to treatment works shall be based on the existing population that actually will be connected to or served by the addition. In the case of overloaded treatment works or interceptors, points shall be given based on the population associated with the overload plus any existing population that will be connected to the new facility within 1 year after project completion. PA points shall be awarded as follows up to a maximum of 40 points:

Points	Population
5	0 - 500
10	501 - 1,000
15	1,001 - 4,000
20	4,001 - 10,000
25	10,001 - 50,000
30	50,001 - 100,000
35	100,001 - 500,000
40	greater than 500,000

~~D.C.~~ The Board shall award points for either surface water or groundwater categories but not both. The most stringent protected use within each category shall be the sole determiner of the Classification of Waters. CW points shall be are awarded

as follows up to a maximum of 30 points:

1. For surface water, CW points shall be awarded for discharges into a water body assigned 1 of the following protected use classifications under ~~R18-11-208~~ R18-11-101:
 - a. 30 points for "full body contact" or "domestic water source." For purposes of this subsection, a project not meeting that is not within either of those classifications may receive 30 points if the discharge is into a water body classified as a "unique water" under R18-11-203 defined in R18-11-101;
 - b. 20 points for "aquatic and wildlife-(cold water fishery)";
 - c. 15 points for "aquatic and wildlife" that is not a cold water fishery; or
 - d. 10 points for "incidental human contact".
2. For groundwater, CW points shall equal:
 - a. 30 points for discharges into an aquifer which serves as the sole source for a drinking water supply;
 - b. 20 points for discharges into an aquifer which provides part of a drinking water supply; or
 - c. 10 points for discharges into an aquifer which is not used as a drinking water supply.

~~E.D.~~ The Board shall award Conservation Index points as follows:

1. 30 points if the project will replace an existing groundwater use by reclaiming, reusing, or recharging a major portion of wastewater consistent with state law;
2. 20 points if the project will reclaim, reuse, or recharge a major portion of wastewater consistent with state law;
3. 10 points if the project will productively recycle wastewater constituents or recover energy; and
4. ~~Negative 20 0~~ points if the project will not reclaim, reuse, or recharge wastewater.

~~F.~~ The Board shall award Project Schedule points as follows:

- ~~1. 25 points if the applicant has received prior approval of a project that meets all requirements of this Article, could have received funding if funds were adequate, and has initiated construction;~~
- ~~2. 15 points if the applicant has initiated a Department-approved interim solution adequate to remedy the problem until the construction of a permanent solution is complete and, in addition, has submitted a project schedule. Any project utilizing an interim solution shall not lose its priority class or ranking; or~~
- ~~3. 10 points for those projects where a project schedule acceptable to the Department has been provided prior to March 1 of each year. The Board shall apply the points to the Priority List prepared for the following year. Minimum targets to be addressed in the schedule include dates for all of the following:

 - ~~a. Completion of the facility plan required under R18-10-110(I);~~
 - ~~b. Completion of plans and specifications;~~
 - ~~c. Voter approval or participation in assistance programs;~~
 - ~~d. Award of construction contract; and~~
 - ~~e. Project completion.~~~~

~~G.~~ The Board shall award Operation and Maintenance points for operation, maintenance, or demonstrated capability as follows:

- ~~1. 20 points if the operation and maintenance of all of the applicant's facilities were in compliance with minimum standards of the Department, according to the Department's annual compliance report, during 4 of the preceding 5 years. If at least 1 of the facilities was in noncompliance for those 4 years, the OM points shall equal a negative 20 points; and~~

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2. 10 points if the operation and maintenance of all of the applicant's facilities were in compliance with minimum standards of the Department at the last regular inspection made by the Department. If at least 1 of the facilities was in noncompliance at the last inspection, OM points shall be a negative 5 points.

E. The Board shall award Affordability Factor points up to a maximum of 10 points as follows:

1. 10 points if the cost per household for prior capital improvements and the proposed project exceeds 1.75% of the median household income of the community; or
2. 5 points if the cost per household for operation, maintenance, prior capital improvements and the proposed project exceeds 1.5% of the median household income of the community.

R18-10-107. Financial Capability Criteria

A. The applicant shall obtain Board approval of its financial capability, using a format provided by the Authority, as part of the prior to submission of an application process.

B. When determining an applicant's financial capability, the Board shall consider the facility's applicant's past fiscal history in a format approved by the Board which is provided to the applicant. The applicant shall provide information about the cost of the project to be funded and the rate structure to pay for the project, certified by the applicant and may consider the following criteria:

1. A financial report which provides the 3 most recent years of historical financial audits of the applicant's utility fund or the fund that will be used for payment of operation and maintenance costs of the project, including replacement;
2. An economic profile which accomplishes all of the following:
a. Describes the 5 largest employers;
b. States the most recent employment levels in the applicant's jurisdiction; and
c. Describes the service area employers and employment when the data in subsections (a) or (b) of this subsection do not apply to the project service area;
3. A system profile which accomplishes all of the following:
a. Describes the wastewater treatment capacity;
b. Certifies compliance with all federal and state regulations;
c. States the average and peak daily system flows for the prior 3 years;
d. Lists the users of the system with greater than 2% of the system's sales or revenues;
e. Describes the system's current rate structure;
f. Provides 3 years of user rate history in the form of monthly user charges;
g. Describes any rate increases being considered to fund the proposed project;
h. Provides a comparison with the monthly sewer bills for municipalities around the applicant's service area;
i. States the current and future population to be served by the project;
j. States the most recent credit rating for revenue and general obligation bond debt;
k. Provides copies of documents relating to outstanding revenue bonds secured by system revenues, showing any coverage or other covenants applicable to the system and to future borrowing; and
l. Describes the source of revenues to be used to repay the loan or debt obligation;
4. A capital improvement profile which accomplishes all of the following:

- a. Describes any future capital needs for the system other than the proposed project now being funded;
b. Describes how the applicant intends to fund such capital needs; and
c. Specifies any existing project-related interagency agreements; and
5. Other information identified in the application package which the Board has determined is relevant to a complete assessment of the applicant's financial capability, such as:
a. Total cost of the proposed project;
b. Existing and proposed operation and maintenance costs of the project, including replacement;
c. Annual costs per household of the households defined by the applicant to be affected by project costs;
d. Per capita income of the households defined by the applicant to be affected by project costs;
e. Existing annual outstanding debt of the applicant;
f. The applicant's overall debt repayment schedule;
g. The applicant's outstanding per capita debt; and
h. Revenues collected annually by the applicant, including total billed, total collected, and delinquency rates.

R18-10-108. Environmental Review

A. The ~~if applicable, the~~ Department shall conduct an environmental review pursuant to this Section for the design or construction of treatment works in accordance with applicable federal and state law. ~~As part of the application process, the Authority shall provide information on conducting an environmental review consistent with the Clean Water Act and A.R.S. Title 49. The Department may accept an environmental review completed prior to the effective date of this Article if the Department determines that the environmental review complies generally with the requirements of this Section. An environmental review conducted under this Section shall be prepared in coordination with any applicable facility plan developed pursuant to R18-10-110(II) and applicable amendments to the Certified Water Quality Management Plan.~~

B. An applicant may request, in writing, a categorical exclusion. If the Department determines that a categorical exclusion is warranted under this subsection, the project shall be exempted ~~is exempt~~ from the requirement of this Section.

- C. No change.
D. No change.
E. No change.
F. No change.
G. No change.
H. No change.
I. No change.

R18-10-109. Application Process

A. Eligible applicants ~~Governmental units~~ shall apply to the Board for each type of financial assistance on forms provided by the Board. Applications shall be made at times specified by the Board in special mailings or in the Intended Use Plan.

B. The Board shall determine when an application is complete and correct. In making ~~such the~~ determination, the Board shall consider the application form and supporting documents which demonstrate compliance ~~if they comply~~ with R18-10-103.

C. After a determination has been made that an application is complete and correct ~~under pursuant to~~ subsection (B) of this Section, the Authority may enter into a financial assistance agreement with the applicant. The Authority shall enter into financial assistance agreements consistent with the Priority List and the availability of money in the fund.

R18-10-110. Federal Requirements

- A. The Board shall identify Federal requirements applicable to each project pursuant to the Clean Water Act.
- B. ~~Combined sewer overflow projects under § 201(n)(1) of the Clean Water Act shall not be eligible for financial assistance from the fund.~~
- C. ~~First Use and Equivalency Projects shall comply with §§ 201(b), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), and 201(o) of the Clean Water Act. Applicants shall include the evaluations and documents required by those sections in the facility plan in order to obtain Department approval pursuant to subsection (H) of this Section.~~
- D. ~~First Use and Equivalency Projects shall be subject to the limitations contained in §§ 201(g)(1), 204(a)(1), 204(a)(2), 211, and 513 of the Clean Water Act. Appropriations by the U.S. Congress that modify the limitations may be accepted by the Board.~~
- E. ~~First Use and Equivalency Projects shall demonstrate compliance with § 204(d)(2) of the Clean Water Act by fulfilling the requirements of this subsection. On the date 1 year after project completion, the owner of the project shall certify to the Department whether or not the project meets the design specifications, effluent limitations, and permit conditions contained in the financial assistance agreement and any permits issued by the Department for the project. If the owner cannot certify that the project meets design specifications, effluent limitations, and permit conditions, any failure to meet design standards, effluent limitations, and permit conditions shall be corrected to allow affirmative certification at other than fund expense.~~
- F. ~~First Use and Equivalency Projects shall comply with § 218 of the Clean Water Act. Compliance with § 218 (a), (b), and (c) shall be demonstrated in the facility plan pursuant to subsection (H) of this Section. Consistent with § 218(e), all projects costing more than \$10 million shall include a value engineering review as part of the plans and specifications submitted to the Department for approval. Value engineering recommendations shall be implemented to the maximum extent feasible.~~
- G. ~~First Use and Equivalency Projects shall demonstrate compliance with § 204(b)(1) of the Clean Water Act by fulfilling the requirements of this subsection. Prior to approval of an assistance agreement by the Board, the applicant shall submit its existing or proposed user charge system and sewer use ordinance to the Department for approval.~~
 - i. ~~The sewer use ordinance or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance or other legally binding document shall also require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that will allow any of the following to occur:~~
 - a. ~~Endanger public safety and the physical integrity of the treatment works;~~
 - b. ~~Cause violation of effluent or water quality limitations; or~~
 - c. ~~Preclude the selection of the most cost effective alternative for wastewater treatment and sludge disposal.~~
 - 2-B. The If applicable, the applicant shall design a user charge system shall be designed to produce adequate revenues required for operation and maintenance, including replacement. ~~The~~ user charge system shall provide that each a user which discharges ~~discharging~~ pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment

works shall pay proportionately for such the increased cost. ~~The user charge system shall be based on either actual use under subsection (D)(a), ad valorem taxes under subsection (D)(b), or a combination of the 2.~~

- a. ~~An applicant's user charge system, based on actual or estimated use of wastewater treatment services, shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of treatment works within the applicant's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.~~
- b. ~~An applicant's user charge system which is based on ad valorem taxes may be approved if all of the following requirements are met:~~
 - i. ~~On December 27, 1977, the applicant had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the applicant's service area and the applicant has continued to use that system;~~
 - ii. ~~The ad valorem user charge system distributes the operation and maintenance, including replacement, costs for all treatment works in the applicant's jurisdiction to the residential and small non-residential user class, including at the applicant's option nonresidential, commercial, and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works, in proportion to the use of the treatment works by this class;~~
 - iii. ~~Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance, including replacement, of the treatment works based upon charges for actual use; and~~
 - iv. ~~The applicant demonstrates both that it possesses the legal authority to impose such a tax and that the tax has been legally authorized by the applicant's governing body.~~
- e. ~~Each user charge system shall provide that each user be notified, at least annually and in conjunction with a regular bill or other means acceptable to the Department, of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.~~
- d. ~~Each user charge system shall include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance, including replacement, of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy, and administration.~~
- e. ~~The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users, such as infiltration and inflow, be distributed among all users based upon either of the following:~~
 - f. ~~In the same manner that it distributes the costs for their actual use; or~~
 - ii. ~~Under a system which uses 1 or any combination of~~

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the following factors on a reasonable basis:

- (1) Flow volume of the users;
- (2) Land area of the users;
- (3) Number of hookups or discharges of the users; and
- (4) Property valuation of the users, if the applicant has an approved user charge system based on ad valorem taxes.

f.C. After completion of building a project is completed, the governmental unit shall use revenue from the project, including the sale of sludges, gases, liquids, crops, or revenue from leases, should be used to offset the costs of operation and maintenance. The applicant governmental unit shall proportionately reduce all user charges.

g.D. One or more municipal legislative enactments or other appropriate authority shall incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this Section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.

h. The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of § 204(b)(1)(A) of the Clean Water Act and this Section.

i. A user charge system which imposes a lower charge for low-income residential users shall be approved by the Department if the system was adopted after public notice and hearing.

3. The applicant shall adopt its sewer use ordinance and implement its user charge system before the treatment works is placed into operation. Further, the applicant shall implement the user charge system and sewer use ordinance for the useful life of the treatment works.

H. First Use and Equivalency Projects shall submit to the Department a facility plan prior to approval of financial assistance. The Department shall review the facility plan and approve it if the requirements of this subsection are met.

1. Facilities planning consists of those necessary plans and studies which directly relate to facilities needed to comply with enforceable requirements of the Clean Water Act. Facilities planning shall investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic, and institutional characteristics of the area, it shall demonstrate that the selected alternative is the most economical means of meeting the applicable effluent, water quality, and public health requirements over the design life of the treatment works while recognizing environmental and other non-monetary considerations. For seweried communities with a population of 10,000 or less, consideration shall be given to appropriate low cost technologies such as facultative ponds, trickling filters, oxidation ditches, or overland flow land treatment. For unsewered portions of communities of 10,000 or less, consideration shall be given to onsite systems. The facility plan shall also demonstrate that the selected alternative is implementable from legal, institutional, financial, and management standpoints.

2. A completed facility plan shall include all of the following:

a. A description of both the proposed treatment works

and the complete waste treatment system of which it is a part;

b. A cost effectiveness analysis of the feasible conventional, innovative, and alternative wastewater treatment works, processes, and techniques capable of meeting the applicable effluent, water quality, and public health requirements over the design life of the treatment works while recognizing environmental and other non-monetary considerations. The planning period for the cost effectiveness analysis shall be 20 years. The monetary costs to be considered shall include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The Board shall establish the discount rate to be used in the cost effectiveness analysis. The population forecasting in the analysis shall be consistent with the official state and county projections prepared by the Arizona Department of Economic Security and adopted by the Designated Water Quality Management Planning Agency. A cost effectiveness analysis shall include all of the following:

i. An evaluation of alternative flow reduction methods;

ii. A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

iii. An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

iv. An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

v. A consideration of systems with revenue generating applications;

vi. An evaluation of opportunities to reduce use of, or recover, energy; and

vii. Cost information on total capital costs and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users;

e. A demonstration of the non-existence or possible existence of excessive infiltration and inflow in the sewer system;

d. An analysis of the potential open space and recreation opportunities associated with the project;

e. An evaluation of the environmental impacts of alternatives conducted pursuant to R18-10-108;

f. An evaluation of the water supply implications of the project; and

g. For the selected alternative, a concise description at an appropriate level of detail, including all of the following:

i. Relevant design parameters;

ii. Estimated capital construction and operation and maintenance costs, and a description of the manner in which local costs will be financed;

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- iii. ~~Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;~~
- iv. ~~Cost impacts on wastewater system users;~~
- v. ~~Institutional and management arrangements necessary for successful implementation; and~~
- vi. ~~If the selected alternative does not include the reuse or recharge of a major portion of wastewater, there shall be an explanation of why a reuse or recharge alternative was not selected.~~

~~I. First Use and Equivalency Projects shall undertake all necessary affirmative steps to assure that small, minority, and women's businesses are used when possible and shall report the level of participation for such businesses to the Board. The affirmative steps shall include:~~

- ~~1. Placing qualified small, minority, and women's businesses on solicitation lists;~~
- ~~2. Assuring that small, minority, and women's businesses are solicited whenever they are potential sources;~~
- ~~3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority, and women's businesses;~~
- ~~4. Establishing delivery schedules, where the requirements of the work permit, which encourage participation by small, minority, and women's businesses;~~
- ~~5. Using appropriate services and assistance of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and~~
- ~~6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this subsection.~~

~~J. First Use and Equivalency Projects shall meet both of the following requirements:~~

~~1-E. The applicant shall demonstrate the legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of the treatment works throughout the applicant's jurisdiction. This demonstration shall include an explanation of the roles and responsibilities of the local governments involved, how and the manner in which construction, operation, and maintenance of the facilities will be financed. The applicant shall provide a current estimate of the cost of the facilities, and a calculation of the annual costs per household. It shall also include a written certification signed by the applicant that the applicant has both analyzed the costs and financial impacts of the proposed facilities and has the capability to finance and manage their construction, operation, and maintenance in accordance with this Article; and~~

~~2-F. The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kick-backs, collusion, conflict of interest, or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment facility project.~~

~~K-G. First use and equivalency projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, and all other applicable federal laws.~~

R18-10-111. Project Construction

A. Construction of a wastewater treatment facility project shall conform to all of the following requirements:

- 1. The Department shall not issue an Approval to Construct to an applicant or recipient until all of the following have occurred:
 - a. An on-site inspection by the Department;
 - b. The development by the applicant or recipient of a sludge management use and disposal plan; and

c. A review of all set-back requirements by the Department.

2. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:

- a. All easements and rights-of-way have been obtained;
- b. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq., and
- c. All required approvals and permits have been obtained from the following entities:
 - i. The Department, including the requirements contained in 18 A.A.C. 9; and
 - ii. Applicable federal, state, and local authorities as related to:
 - (1) Leases;
 - (2) Zoning permits;
 - (3) Building permits;
 - (4) Flood plain approvals;
 - (5) Air quality permits; and
 - (6) Solid waste approvals.

3. During construction of wastewater treatment facilities, the recipient shall both of the following requirements shall be met:

- a. ~~All work shall be conducted~~ Conduct work in compliance with the requirements of 18 A.A.C. 9; and
- b. ~~Construction management and inspection shall be under the direct supervision of a qualified registered professional engineer~~ Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.

4. Upon project completion, all of the following requirements shall be satisfied:

- a. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 9;
- b. The recipient shall accept the project in writing;
- c. Any required operation and maintenance manual shall be completed; and
- d. As-built plans and specifications shall be submitted to the Department and the recipient.

5. One year after project completion, the recipient shall certify that the wastewater treatment facility meets design specifications and all effluent limitations. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the wastewater treatment facility does not meet design standards or effluent limits and what will be done to correct the deficiency, together with a schedule for the corrective actions.

~~B. Any construction associated with~~ The recipient shall construct a Nonpoint Source Program project shall be in a manner consistent with the plan which is the basis of the project or as specified in the financial assistance agreement. In addition, the applicant or recipient shall obtain all necessary approvals and permits for any construction requiring approvals and permits as identified in subsection (A) (2)(c) of this Section.

R18-10-112. Fund Disbursements and Repayments

A. The Authority shall ensure that disbursements from the fund shall be in accordance are consistent with the financial assistance agreement and incurred project expenses, which at a minimum shall be based on payment intervals as related to work progress and incurred expense.

B. The Authority shall charge a late payment to fee for any loan repayment 30 days past the due date and every 30 days there-

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after. The Authority shall refer any loan repayment over 90 days past due to the Office of the Attorney General for appropriate action pursuant to A.R.S. § 49-375(J).

- C. The recipient shall maintain a project account in accordance with generally accepted government accounting standards. After reasonable notice by the Board or EPA, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Article and Title VI of the Clean Water Act.
- ~~D. If a recipient has received financial assistance under this Article for facility planning and preparation of plans, specifications, and estimates for the building of treatment works and subsequently receives both a grant under § 201(g) of the Clean Water Act for the construction of such treatment works and an allowance under § 201(l)(1) of the Clean Water Act, the recipient shall promptly repay the financial assistance to the extent of the allowance.~~

R18-10-113. Fund Administration

- A. The Board ~~may take from the fund~~ may use up to 4% of all federal capitalization grant awards to pay the reasonable costs of both administering the fund and conducting activities under this Article.
- B. The Board may also require a recipient to pay a proportionate share of the expenses of administering the fund. ~~Such~~ The

recipient shall deposit these payments shall be deposited in an account separate from the fund and shall ~~be used~~ use them for the payment of the reasonable costs of administering the fund in excess of the 4% limitation described in subsection (A) of this Section. The recipient may also use the payments as a state match.

R18-10-114. Intended Use Plan and Interest Rate Determinations

- A. The Board shall publish an Intended Use Plan for each year in which it ~~is anticipated~~ anticipates that it will provide financial assistance ~~will be provided~~ for eligible projects. At a minimum the Intended Use Plan shall identify the projects by eligible political subdivision or eligible entity, name, type of project, type of financial assistance, amount of financial assistance, and interest rates to be charged. The Intended Use Plan shall also identify 1st use and equivalency projects. The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as 1 of the required documents to obtain a grant under Title VI of the Clean Water Act, the Intended Use Plan shall include such additional information as required.
- B. No change.
- C. No change.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY

UNDERGROUND STORAGE TANKS

PREAMBLE

1. Sections Affected

R18-12-101
R18-12-102
R18-12-103
R18-12-701
R18-12-702
R18-12-703
R18-12-704
R18-12-705
R18-12-706
R18-12-707
R18-12-708
R18-12-709
R18-12-710
R18-12-711
R18-12-712
R18-12-713
R18-12-714

Rulemaking Action

Amend
Amend
Amend
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 49-104(B)(4)

Implementing statutes: A.R.S. §§ 49-1015 and 49-1072

3. The effective date of the rules:

May 23, 1996

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

1 A.A.R. 462, May 12, 1995

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Notice of Proposed Rulemaking:

1 A.A.R. 2265, November 3, 1995

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Margaret McClelland or Martha L. Seaman

Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

Telephone: (602) 207-2222

Fax: (602) 207-2251

TTD Number: (602) 207-4829

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Department of Environmental Quality (Department) has adopted R18-12-101 through R18-12-103 and R18-12-701 through R18-12-714, which establishes definitions and the requirements for the Underground Storage Tank Grant Program.

A. Background for the Adopted Rule

In 1994, the Arizona Legislature passed House Bill (HB) 2226, which revised A.R.S. Title 49, Chapter 6, Article 4 to repeal the provisions for a loan program and establish, in its place, a grant account. The applicable statutory sections are A.R.S. §§ 49-1071 through 49-1073. The statutes provide that the Department may make a grant of a limited amount to an owner or operator of an underground storage tank (UST) for purposes of stated corrective actions, system upgrades or closures. The statute also provides for the Department's reasonable costs for administering the account to be reimbursed from the grant account.

The grant account is currently funded with approximately \$6.8 million, made up of \$5.6 million which was previously in the loan account, plus the interest earned on that initial funding. The grant account is not a revolving fund and there is no provision for additional funds to go into the account, except for interest earned on the account balance.

The legislative purpose for establishing the grant account was to benefit small or "mom and pop" UST operations, especially those in rural areas. The account will assist these UST owners and operators in upgrading their USTs to meet 1998 federal tank design requirements, closing USTs which will not be upgraded, and conducting corrective actions, without incurring considerable expense which could force the owners and operators to close down operation and abandon the tanks.

B. Section-by-Section Explanation of the Adopted Rules

R18-12-101. Definitions: A through F

R18-12-102. Definitions: G through P

R18-12-103. Definitions: R through Z

Definitions which are applicable to the proposed rules were added to these Sections to clarify what those terms mean within the context of the proposed rules.

R18-12-701. Allocation of Grant Account Funds

This Section clarifies how funds in the grant account will be allocated. It also sets forth when the amount available from the fund will be determined, how the monies in the fund will be allocated to administrative costs, and how the amounts available will be apportioned among local governments and those applicants which are not local governments. Currently, money in the fund is collecting interest. At the end of the submission period, the Department will determine, based upon principal and the interest accrued, the amount available for issuing grants.

R18-12-702. Eligible Projects

A.R.S. § 49-1072 establishes the projects for which the Department may make a grant from the grant account. This Section further clarifies those projects and what statutory requirements must be met. This Section also establishes projects and activities which may not be conducted with grant funds.

R18-12-703. Maximum Amount of Grant Per Applicant or Facility

This Section clarifies the amount available to each owner or operator who may have more than facility. Given the limited amount available in the fund, and the fact that there is no provision made for any further allocations to the fund, the Department interprets A.R.S. § 49-1072 to limit the amount per owner or operator to a \$100,000 lifetime cap on the amount that a particular owner or operator may receive. If the owner and operator are the same person, only lifetime cap is permitted. In the interest of equity, a limit of \$100,000 of grant funds may be used at any facility. This allows the Department to spread the limited amount of available funds to more applicants and facilities.

R18-12-704. Grant Application Submission Period

The Section clarifies the time periods when applications for grant funds will be received. The time period during which the application will be received is the submission period. The Department will determine the dates of the submission period and notice of the dates shall appear in the *Underground Storage Tank News*, a Department publication, and in a public notice in the *Arizona*

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Republic newspaper. The rule also clarifies that applications received after the submission period shall not be considered for that submission period. However, the applicant may reapply during any subsequent submission period. It is currently unknown whether there will be more than one submission period. The Department expects that all funds currently available in the grant account will be used up after one submission period. The grant account is not a revolving account, meaning the legislature has not made provision for further placement of funds into the account. However, should additional funds be made available by the legislature, the rules, as written, would allow for further submission periods.

R18-12-705. Grant Application Process

This Section describes when an application shall be submitted to the Department by an applicant and the process for receiving and processing an application by the Department.

This Section describes the chronological order of the grant application process from submittal of the application by the applicant to determination by the Department of which applicants will receive a grant. The applicant is not required to provide, initially, the information required in R18-12-707(A)(6) through (9), which is the surety bond, insurance policy, mechanics lien and a copy of all contracts. These documents are not necessary prior to determination that the applicant will accrue priority points under R18-12-711 or R18-12-712.

R18-12-706. Grant Application Contents

This Section provides Section where all of the requirements for application contents are located. It sets forth the specific information required regarding the applicant, the facility and the project. Among the necessary information is the information which will be used to develop priority points to determine which applicants will receive grants, 3 cost bids to determine the amount of the grant, and, when required, a work plan or business plan. A provision is also included for a certification by the applicant that all submitted information is true and complete to the best of the applicants knowledge and belief.

R18-12-707. Work Plan

This Section sets forth the requirements for the work plan for an eligible project for which the grant funds will be used. The work plan must include a diagram of the facility, a description of the activities necessary to complete the project, and the time table for accomplishing those activities. Also to be included are the specifications for equipment to be installed, a surety bond and certificate of insurance or the actual policy covering the contractor's work and liability coverage, a copy of any mechanic liens, and a copy of all signed contracts. Where the project involves installation of corrosion protection, the engineering plan is required. Where the project involves corrective action, the requirements of the work plan provided for in the State Assurance Fund rules must be included. Where the project is limited to removal of a UST, the work plan must meet the requirements of a specified, nationally recognized code of practice.

R18-12-708. Business Plan

This Section sets forth the requirements for the business plan which is required when the project involves UST replacement or upgrade. The intent is to reasonably ensure that a facility which receives grant funds will be able to continue to operate for at least 3 years following the issuance of a grant. Where the projects are confined to corrective actions or UST removal without replacement, a business plan is not required. The business plan must contain a description of the current operations of the facility, resumes of the owners and managers of the applicant and facility, and a description of the projected operations of the facility. The projected operations subsection includes requirements for projected financial statements. The Section also contains the standards for Departmental review and acceptance.

R18-12-709. Review of Application

This Section provides for review of applications and contains procedures for informing the applicant of deficiencies. Where an applicant is notified of a deficiency, the applicant is given 30 days to complete the application information. Provision is also made for a complete application which meets the requirements of the Article to be approved and proceed to the prioritization step. Where an applicant fails to meet the requirements, even after the deficiency notification, and the resubmission time has lapsed, that application will not be further considered.

R18-12-710. Feasibility Determination

This Section establishes the standards which will be used by the Department to determine the feasibility of upgrading a UST with corrosion protection. A determination is required when the request is for either upgrade of an existing UST with corrosion protection or replacement of a UST. If the request is for replacement and the existing system can be upgraded, the amount of grant funds will not exceed the cost of upgrading. Where the UST cannot be upgraded, the grant may be approved for the cost of replacement. The cost of replacement is substantially more than upgrade and, with the limitation of \$100,000 per owner or operator or facility, may exceed the ceiling amount.

R18-12-711. Criteria for Determining Priority Points for Applicants other than Local Governments

This Section establishes the methods and standards which will be used to determine the number of priority ranking points for an application from an applicant who is not a local government.

R18-12-712. Criteria for Determining Priority Points for Applicants who are Local Governments

This Section was developed to establish the methods and standards which will be used to determine the number of priority ranking points for an application from an applicant who is a local government.

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R18-12-713. Determination of Grants to be Issued

This Section sets forth the system the Department will use to determine which of the approved applicants will receive a grant award if the cumulative amount requested in approved applications exceeds the amount available for grants for a submission period. The Section lists the information needed to make the determination. Applications with the highest number of points will be 1st to be awarded grant funds, and where a point tie exists, the date of receipt of the complete application will be the determining factor.

R18-12-714. Grant Issuance: Notification; Payment

This Section establishes that applicants will be notified of the results of their application for a grant, and the requirements for payment of the grant funds to the applicant. The Section provides that payments in excess of any itemized cost on the bid will not be made, and where all necessary information is provided and the invoice amount is not more than the cost bid, the invoice will be paid. If an applicant fails to submit the necessary information within 60 days of being notified of the grant issue, the Department will inform the applicant that a forfeiture of the grant funds has occurred.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a local government of this state:

Not applicable.

8. The summary of the economic, small business and consumer impact:

This Section summarizes the Department's final analysis on anticipated impacts of this rule. An Economic, Small Business, and Consumer Impact Statement (EIS) was completed by the Department. It is available from the Secretary of State and the Department upon request.

This summary is organized as follows:

- A. Program Overview
 - B. Cost Bearers
 - C. Estimated Impacts to UST Owners or Operators
 - D. Estimated Impacts to Consultants and Contractors
 - E. Estimated Impacts to Equipment Vendors
 - F. Estimated Impacts to Surety and Insurance Businesses
 - G. Estimated Impacts to Private Persons/Consumer
 - H. Estimated Impacts to the State
 - I. Estimated Impacts to Political Subdivisions
- A. Program Overview

This rule provides for grants to UST owners or operators which do not have to be re-paid to the state. The maximum grant amount for any owner or operator is \$100,000. The Department expects the average grant amount to be between \$50,000 and \$100,000. If this expectation turns out to be correct, 65 to 130 applicants could receive grants. The Department concludes that probable benefits of this rule will outweigh probable costs.

In 1990 an excise tax was levied upon UST owners or operators at a rate of 1¢ per gallon of regulated substance (primarily gasoline). The UST statute provided for 1/10 of this excise tax to be credited to a loan account. These tax monies would fund this account until its balance exceeded \$5.6 million. In 1994, the legislature changed the loan account to a grant account. The Department will make these grants from monies allocated to what was formerly a loan account.

The current balance of the grant account is approximately \$6.8 million. This amount includes \$5.6 million from the loan account plus accrued interest. The Department expects that the cost of administering this program to be up to 5% of the grant fund balance.

The Department will award grants in descending order of priority points received. Priority points are based on 5 statutory criteria. One important criterion is financial need. Successful applicants can use grants to undertake eligible projects as statutorily provided.

The impact on employment is expected to be relatively insignificant. Existing service providers impacted by this program should be able to handle the additional business generated. Some businesses may hire additional personnel. This program may result in some UST facilities remaining open rather than closing. This could mean saving jobs, particularly in rural areas. Furthermore, this grant program is expected to have no impact on state revenues. Finally, the impact of this grant program on the Department is 2.37 FTEs.

B. Cost Bearers

Because this is a grant program which is fully funded, there are no cost bearers. Technically, there were 2 classes of persons that were cost bearers in the recent past, i.e., owners or operators of USTs, and consumers of UST regulated substances. It is

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believed that the majority of the UST owners or operators passed on the 1¢ per gallon excise tax to consumers, i.e., mainly vehicle owners or operators.

C. **Estimated Impacts to UST Owners or Operators**

It is unknown how many applicants will apply for grants. Some of these applicants will be owners or operators of the 3,365 active UST facilities in Arizona. Other applicants could be owners or operators of closed facilities.

Successful applicants will benefit from the receipt of about \$6.5 million in grant funds (\$100,000 individual maximum). These funds will enable them to meet 1998 federal upgrade requirements, close USTs, and take corrective actions. Without these grants, owners or operators might not be able to afford to undertake these projects. It is anticipated that most application costs for grant applicants will be made part of the grant awards. However, unsuccessful applicants will not recover their application costs.

It is anticipated that some of these applicants will include rural gas stations which will not have to close their doors because they cannot afford to meet the 1998 federal upgrade requirements. This means an increased probability of having sources of regulated substances available to consumers in rural areas. The potential also exists for maintaining real estate values on properties that will be able to undergo corrective action. This could have a positive impact to surrounding properties.

This program is designed to assist small businesses. The Department estimates that as many as 2/3 of the UST grant applicants could be owners or operators of small businesses. For many of these applicants, these grants may alleviate a compliance burden. For successful applicants it provides an avenue to come into voluntary compliance.

For the smallest of small businesses, an additional 5 priority points are available. For a small business to qualify for these extra priority points, it must meet all 3 of these requirements: 1) its annual gross revenues must be less than \$1 million; 2) at least 50% of its business revenues must be generated from the operation of UST facilities; and 3) it must not own or operate more than 2 UST facilities.

D. **Estimated Impacts to Consultants and Contractors**

Consultants and contractors are expected to benefit from increased revenues as a result of contracting with owners or operators. Most of these monies will pass through them for equipment and other costs of doing business.

E. **Estimated Impacts to Equipment Vendors**

Equipment vendors also are expected to benefit from increased revenues as a result of providing UST equipment and accessories for eligible projects under this grant program. These revenues are estimated at \$3,245,800. Equipment sales are estimated at 50% of available grant funds.

F. **Estimated Impacts to Surety and Insurance Businesses**

This category combines businesses that will issue surety bonds and provide certificates of insurance naming the Department as an insured on the policy. These businesses are expected to benefit from increased revenues. These revenues were calculated at 2.5% of grant funds (\$162,300).

G. **Estimated Impacts to Private Persons/Consumers**

The general public is expected to benefit from the results of corrective action, UST system upgrades, and avoidance of future damages to human health and the environment. Consumers are expected to benefit from preserved availability of UST regulated substances (primarily gasoline), as well as maintained competition. Some facilities may be forced to close if they cannot meet 1998 federal upgrading requirements or perform corrective action. Therefore, this program could assist retail facilities to remain open for business. This is especially important in rural communities.

H. **Estimated Impacts to the state**

The Department is expected to benefit from having necessary staff to administer the grant program. This will enable the Department to process grant applications and to perform related tasks. As a result of successful applicants completing eligible projects that they might not otherwise be financially able to complete, the Department may save enforcement costs from increased compliance by owners or operators.

I. **Estimated Impacts to Political Subdivisions**

Local governments may apply for grants under this program. Federal and state government owners or operators are excluded from this program. UST Section data reveal 301 active local government facilities. This represents 9.5% of all active UST facilities. The UST statute allocates funds to local governments according to their proportionate share of all UST facilities. Therefore, approximately \$617,000 will be allocated to local governments. These applicants are expected to be impacted about the same as other UST owners or operators.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The summary of the principal comments and the agency response to them in question #10 below, and the Concise Explanatory Statement (CES) contain all changes made to the rules between proposal and adoption of the rule by the Department. A CES Addendum reflects that changes were made to the final rule for purposes of clarity and consistency with rule writing style at the request of the Governor's Regulatory Review Council. Both the CES and CES Addendum are on file at the Office of the Secretary of State and the Department.

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10. A summary of the principal comments and the agency response to them:

A. Changes initiated by the Department

1. R18-12-101(7). The definition for "Consultant" was revised to encompass the full scope of activities in which a consultant might engage under Article 7, and to be consistent with the definition in the rules which the Department will propose for underground storage tank technical standards, published in the *Arizona Administrative Register* on February 9, 1996, as follows:

"Consultant" means a person who performs environmental services in a advisory, investigative, or remedial capacity. ~~environmental services in response to a release from an UST.~~

2. R18-12-101(8). The definition for "Contractor" was revised to encompass the full scope of activities in which a contractor might engage under Article 7 and to be consistent with the definition in the rules which the Department has proposed for underground storage tank technical standards as follows:

"Contractor" means a person who is required to obtain and hold a valid license from the Arizona Registrar of Contractors which permits bidding and performance of ~~performs~~ removal, excavation, repair, or construction services, associated with an UST ~~at the facility where an UST release has occurred where that work is accomplished as part of a corrective action.~~

3. R18-12-101(13). The definition for "Current assets" was revised for clarity as follows:

"Current assets" means assets which can be converted to cash within 1 year and are available to finance current operations or to pay current liabilities ~~which can be converted to cash within 1 year.~~

4. R18-12-102(3). The definition for local government has been revised to read as follows:

"Local government" means a county, city, town, school district, water and aqueduct management district, irrigation district, power district, electrical district, agricultural improvement district, drainage and flood control district, tax levying public improvement district, local government public transportation system, and any political subdivision as defined under A.R.S. § 49-1001(12)."

This change was made for clarity and to be consistent with the definition which has been proposed in the rules for underground storage tank technical standards being developed by the Department. The text previously read as follows:

"Local government" has the meaning given this term by Arizona. The term is generally intended to include: 1.) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and 2.) Special districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

5. R18-12-103(6) The definition for "Tester" was revised to encompass the full scope of activities in which a tester might engage under Article 7, and to be consistent with the definition in the rules which the Department will propose for underground storage tank technical standards as follows:
6. "Tester" means a person who performs tightness tests on underground storage tank systems, or on any portion of an underground storage tank system including tanks, piping, or leak detection systems ~~where those tests are performed as part of a corrective action taken in response to a release from the UST system, and who meets qualifications pursuant to R18-12-601-F.~~
6. R18-12-701(2). The reference to "Administrative fees" was changed to "Administrative expenses" to be consistent with paragraph (1) of that Section.
7. R18-12-702(A)(3) has been revised to add the phrase "of equal or smaller volume" after the 2nd acronym "UST".
8. R18-12-706(D)(7)(a) is revised to correct a typographical error. The word "and" is added before the word "whether".
9. R18-12-706(E)(3) has been revised to add after the word "partnerships" the phrase ", limited liability companies," to clarify that the requirements of this subsection also apply to this type of entity.
10. The 2nd sentence of R18-12-708(A) is revised to add the word "is" between "UST" and "located", which was omitted.
11. The provisions for surety bonds and insurance in R18-12-707(A)(6) and (7) are revised for clarification. Because there are 2 obligees, subsection (6) now provides for submission of a duplicate or an original of the surety bond. Also, the most current U.S. Department of Treasury circular has been incorporated by reference. The provisions of subsection (7) are revised to include a limit of liability, to give more assurance that the amount recoverable under the policy would be sufficient to cover the potential liabilities. R18-12-707(A)(6) has been revised as follows:
 6. The original or duplicate of the surety bond with a penal sum in the amount of the contract which names the Department and the applicant as obligee and the contractor as principal for each service provider on the eligible project. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended as of June July 30 4, 1995 1994, and no future editions, incorporated by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.

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R18-12-707(A)(7) has been revised as follows:

7. A copy of the general liability insurance policy or a certificate of insurance for the general liability insurance policy providing coverage for ~~of~~ each contractor who will provide services during the completion of the eligible project. The general liability insurance policy shall have a minimum limit of liability of \$1,000,000 and include coverage for pollution liability and shall name the Department as an named additional insured for any liabilities incurred in relation to the eligible project.
12. R18-12-708(A) was revised to correct a typographical error. The word "is" had been omitted and has been inserted between "UST" and "located".
13. The Department realized that the ratio in R18-12-711(B)(3)(a) may not work if the individual has a negative tangible net worth. Such an individual would have a negative percentage resulting in zero priority points. Therefore, the Department revised the rule as follows:
 - a. A maximum of 25 priority points may be accrued based on the ratio, expressed as a percentage, of the grant request divided by tangible net worth. The tangible net worth shall be determined from the information submitted as required under R18-12-706(E) through (G) and the provisions of subsections (1) and (2) of this subsection. If the information submitted and the provisions of this subsection indicate the applicant has a negative tangible net worth, 25 priority points shall accrue. Where the indicated tangible net worth is positive, Priority priority points shall be accrued as follows:
14. R18-12-713(A) was revised to add the phrase "within 90 days following the close of the submission period," after the word "determine", to clarify the time frame under which the Department will operate.
15. In R18-12-714(D), the phrase "subsection (B)" is stricken and replaced with "subsection (B)(1)", to further clarify the applicable requirements.
16. A special session of the Arizona Legislature held in December, 1995, passed House Bill 2001 (HB 2001). The statutory revisions, which become effective on March 13, 1996, impacts these adopted rules. Consequently, the Department has revised these rules to comply with the statutory revisions.

HB 2001 revised the provisions of A.R.S. § 49-1054 to eliminate the "deductible" concept and replaced it with a "co-payment" of 10% of the total amount subject to the requirements of the State Assurance Fund program. The revision to A.R.S. § 49-1054 necessitated a revision also to A.R.S. § 49-1072, the implementing statutory authority for these rules. A revision to R18-12-701(A)(4), as a result of the revisions to A.R.S. § 49-1072, now requires payment of costs for corrective actions which are "determined to be reasonable and necessary costs but that are not covered by the department from the assurance account...". The Department has revised R18-12-702(A)(4) to be in compliance with the statutory authority, as follows:

4. Payment of that portion of necessary and reasonable corrective action expenses which are not covered by the assurance account as prescribed in A.R.S. § 49-1054, equal to or less than either of the lower coverage limits prescribed in A.R.S. § 49-1054(A). The lower coverage limit shall be selected by the grant applicant, and designated on the grant application, at the time of submission. ~~The corrective action shall meet the requirements of A.R.S. § 49-1005 and the rules promulgated thereunder.~~

HB 2001 provides for grants to be made for the purpose of paying for expedited review of specified plans and reports by a contractor provided by the Department for that purpose. Because this provides for a new use of grant monies, a new subsection (6) is added to subsection R18-12-702(A) as follows:

6. Payment for expedited review of the applicant's workplan, site characterization reports, corrective action plans, monitoring reports, and other information as prescribed in A.R.S. § 49-1052.

Because the deductible concept is no longer a part of the State Assurance Fund, the information set forth in subsection R18-12-706(D)(6) of the proposed rule is no longer required. R18-12-706(D)(6) is revised to describe the information required where the project is described under R18-12-702(A)(6) as follows:

6. If the eligible project is described under R18-12-702(A)(6), the application shall contain the information required under subsections (B), (C), and (E) through (I) of this Section and subsections (D)(1), (3), and (5) of this subsection except that the schedule of costs for expedited review of documents shall be used to determine the amount of the grant request. The type of document and the cost for expedited review of that document shall be shown for each document which is included in the application. If the purpose of the grant is to conduct corrective action, documentation of the amount of the State Assurance Fund deductible which will be chosen.

Another provision of HB 2001 requires the Department to develop emergency rules to provide for pre-approval requirements under the State Assurance Fund (SAF). The emergency rulemaking will provide substantial detail in the description of SAF workplan requirements. The Department will continue to use R18-12-607(B) to establish basic requirements; however, the specific language which will appear in that subsection is unknown at this time.

17. The workplan requirements in R18-12-707(B), if the eligible project involves corrective action, referred to the information required under R18-12-607(B)(1) and (2). To prevent future confusion, subsection R18-12-707(B) is revised as follows:

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- B. A work plan for a grant for an eligible project under R18-12-702(A)(4) shall consist of the information required under R18-12-607(B)(~~1~~) and (~~2~~) and the requirements of subsections (A)(6) through (A)(9) of this Section.
18. R18-12-713(A)(1) was revised to change the word "expense" to "expenditure". The term "expenditure" has no relation to whether or not something has actually been paid. It relates only to the type of accounting system involved. With a fund accounting system, as the Department has, use of the term "expenditure" is proper.
19. R18-12-714(B)(4) has been revised to change the phrase "designates the person" to "designates the name" to clarify that only name can appear on the warrant.

B. General Comments and Responses

1. The Department received 2 comments on the manner in which input was solicited prior to the publication of these rules. The commenters expressed concern about not having been informed of the roundtable meetings and the lack of involvement of other public sector entities. The commenters also expressed concern that they had not had an opportunity to present their own financial needs test for the Department to consider prior to publication of the rules.

Response: While it is true that the League of Cities and Towns was the only public sector entity in attendance, Mr. Alan McGuire of the McGuire Company was also representing the public sector perspective. Mr. McGuire is recognized in the State of Arizona as an expert in the area of public sector financing. Additionally, Mr. Kenneth J. Sweet from the Northern Arizona Council of Governments and Mr. Tom Swanson from the Pima Association of Governments were invited to participate in the roundtable on behalf of the public sector entities. Both individuals confirmed that they would be in attendance, but, subsequently failed to attend the meeting. Therefore, the League of Arizona Cities and Towns was not the only public sector entity invited to attend.

Further, the roundtables, which are not required by statute, were held by the agency to gain input from representatives of affected groups early in the process. Membership had to be limited to facilitate discussion and consensus building.

With regard to submitting alternative financial need tests to the Department, the public sector representatives were given from May 24, 1995 through August 21, 1995, to develop an acceptable alternative financial need test to the presented by ADEQ.

The 1st proposal from the League of Arizona Cities and Towns, delivered verbally at the 2nd roundtable on June 21, 1995, was to delete any financial need test for the public sector and simply award points based upon the other priority classifications specified in A.R.S. § 49-1072(B). The Department informed the representatives at that meeting that the Department had no authority to ignore a criterion set by the legislature.

A 2nd proposal was presented verbally to the Department in a special meeting with the manager of the UST/LUST program on July 21, 1995. That proposal involved the submission of a financial need statement and description of the problem instead of the use of a formula. The representatives were informed that the proposal could not be considered for 2 reasons: 1) there was no way to compare relative financial need among public sector entities; and, 2) there was no mechanism for the agency to verify claims presented in the statement.

The representatives were then informed time was of the essence for submission of revised test, and that a revised submission was due at the Department within 30 days. The representatives were informed that the Department would incorporate the final alternative proposed if it was a true test of relative financial need over the spectrum of public sector entities; if not, the Department language would be submitted.

The final proposal from the representatives was submitted by fax on August 21, 1995. The test used a priority points system based on a ratio of actual UST expenditures to the total general fund budget. Hence, the more an entity had to spend on UST activities, the more points that entity would receive. An entity without resources under the final proposal would be unable to accrue any priority points. This proposal failed to meet the objective.

2. Comment: EPA Region 9 commends the Arizona Department of Environmental Quality (the Department) for taking an inclusive approach towards development of the UST grant rules. The commenter stated, "Specifically, we recognize the efforts made by the department to solicit the knowledge and expertise of local government administrators, UST owners and operators, UST marketers and dealers associations, chamber of commerce and banking representatives, and State legislators in roundtable discussions, as well as public comment in oral proceedings held in Phoenix, Tucson, and Flagstaff. When promulgated, these rules will benefit UST owners and operators and will further the department's goal of meeting the federal UST technical standards by 1998."

Response: The Department appreciates the comment.

3. Comment: The commenter asked, as a representative of a state-wide association, that the format for distribution not be altered.

Response: The Department will not alter the formula at this time.

4. Comment: The commenter stated that it is important that ADEQ not allow monies generated for UST cleanup to be used for any other environmental cleanups or for compliance as it is money that is designated for this type of use.

Response: The Department can and will use the funds only as is statutorily allowed. However, the legislature could at some later time determine that monies should be used for other purposes. The Department would have no control over

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such legislative decisions.

5. Comment: Timely approval of these rules is of critical importance.

Response: The Department agrees and the Department seeks to have the rules approved as soon as possible.

C. Specific Comments and Responses

1. Comment: The definition of "Applicant" is appropriate for the Grant Program; however, it will cause confusion when the term is applied to the State Assurance Fund.

Response: The Department agrees and the definition has been revised as follows:

"Applicant" means, for the purposes of Article 7 only, an owner or operator who applies for a grant from the UST grant account in accordance with the provisions of Article 7 of this Chapter.

2. R18-12-706

Comment: It would be a difficult for some "mom and pop" UST owners or operators to comply with the grant process because of the necessity of the 3 firm fixed bids. Some "mom and pop" owners or operators may not be able to put together a bid package on which a contractor could bid that would be precise enough not to really work. The commenter suggests a 2-tiered system which would allow applicants to use all the scoring except for the scoring factor which applies to the amount of the grant and then have those people ranked and possibly make available to them as much \$5000 for them to hire someone to put together a proper bid packet. Once a packet has been "properly put together", the applicant could then go on to apply for the larger grant.

Response: The commenter is referring to the requirements of R18-12-706(D)(3). If the UST Grant Program was not limited to the disbursement of a fixed amount, the suggestion would be appropriate. Because of the limitation of funds and the projected high demand, the Department must provide an efficient method of determining which applicants will receive funds and which will not. Without a fixed amount, determined by the firm, fixed bid, this cannot be accomplished. It is standard operating procedure in business to request bids and that the costs of bid preparation are a cost of doing business (general overhead to the consultant/contractor). The state procurement procedures include bidding for all contracts over \$10,000 with no remuneration to the companies for costs associated with submitting bids. Accordingly, the rule has been revised to remove the provision for payment of charges for obtaining bids. Additionally, the Department is requesting that all 3 bids be submitted and the Department will assist the applicant in determining what really works. The rule is revised as set forth in the response to comment 3 below.

3. Comment: Subsection R18-12-706(D)(4) is a description of the make-up of cost bids; it fails, however, to require that all of the bids be included with the application. Without the Department having copies of the bids, a determination that the requested amount is, in fact, the lowest cannot be made.

Response: The Department agrees. The intent was to have the copies of the 3 competing bids included with the application. Subsections R18-12-706(D)(4) and (5) have been revised in accordance with the responses to comments made on Section R18-12-706 as follows:

4. Each written firm fixed cost bid shall be included with the application and include, for each itemized cost, a description of the kind of work, equipment, or materials and any labor, transportation or other activities which make up the itemized cost. Each itemized cost shall refer to the specific item contained in the work plan which will be completed for that itemized cost.
5. The total amount of costs incurred for professional services directly related to the preparation of the grant application, ~~including the cost, if any, of the written firm, fixed cost bids.~~

R18-12-707

Comment: The commenter recommends changing the last sentence of this Section to read, "...the work plan must meet the requirements of " a the specified, nationally recognized code of practice." Since the rules refer to only code of practice for UST removal and disposal (that in the American Petroleum Institute Publication 1604), the preamble should indicate just code of practice and not imply more than.

Response: This comment refers to the Section-by-Section discussion of this rule in the preamble, which is not a part of the rule text. The text of the rule is very clear as to which publication it refers. No change to the rule is necessary.

R18-12-710

Comment: Subsection (B) includes the case where a UST cannot be upgraded with corrosion protection, and where the application requests a grant for upgrade of the UST. The commenter stated, "Given that the rules allow the Department to "...approved the amount of the estimated replacement cost of the existing UST," it is not clear who is responsible for determining the estimated replacement cost. The applicant would have stated in the grant application the estimated cost of upgrading the UST, but not of replacing it. Will the Department estimate the replacement cost, or will it require the applicant to do so, presumably also requiring 3 cost bids per R18-12-706(D)(3)?"

Response: The Department will still require 3 cost bids where upgrade with corrosion protection is not feasible. Where the applicant has not submitted bids for both upgrade and replacement, the Department will estimate the replacement

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cost. This will be necessary because a delay by applicant in obtaining bids for replacement would delay, for all applicants, the determination of which grants will be issued. The Department will not award grant monies in excess of the actual bids, but will use the estimate of replacement cost as a ballpark figure for estimating replacement cost, until the 3 bids are received. There has been no change to the rule.

R18-12-711

1. Comment: Under subsections (B)(3)(a), (B)(3)(b), and (F), does "up to" mean "up to but not including"?

Response: That is correct.

2. Comment: The commenter stated, "Concerning subsection (D), we are pleased the Department is proposing that 25 priority points (of a total possible 105 points) may be accrued based on the threat to human health and the environment by the presence of an active leaking UST. However, this subsection is ambiguous: it appears that priority points may be awarded to the applicant based on the presence of a leaking UST without requiring that the grant money be spent on corrective action.

In the case of a leaking UST, the intent of the Department may be to financially assist the applicant with a removal, replacement, or upgrade of the leaking UST, assuming that the applicant would pursue corrective action through other financial means. Yet, if the applicant is in need of financial assistance in general, money for corrective action may not be readily available to the applicant. The Department might find itself awarding grants for UST work, while corrective action goes unaddressed."

Response: The Department disagrees that the rule is ambiguous. A.R.S. § 49-1072 provides for use of the grant monies for any of the listed eligible projects. The statute does not provide for the Department to impose a project priority scheme among those listed projects. However, R18-12-711(D) is revised as follows to clarify that priority points will accrue under this subsection where the threat to human health and the environment is being addressed by the eligible project:

- D. If the eligible project is described under subsections R18-12-702(A)(4) or (6), A maximum of 25 priority points may be accrued based on the threat to human health and the environment by the presence of an active leaking underground storage tank (LUST) site at the facility which is the subject of the eligible project as follows:

3. Comment: It is possible under the proposed rules that an applicant could receive priority points for a leaking UST, while requesting a grant for work on a different, non-leaking UST.

Response: The change made to R18-12-711(D), as discussed in comment 2 above, ensures that point accrual is related to the purpose of the eligible project. No further change is made to the rule.

4. Comment: The threat to human health and the environment refers only to "impacted groundwater" and does not include the threat posed by leaking vapors. UST's holding gasoline have been known to leak vapors which can accumulate in the soil, sewer lines and other underground utilities, and underground rooms (e.g. basements, parking garages). We urge the department to consider the public health risks of vapor leaks when reviewing grant applications.

Response: The Department disagrees. The rule clearly provides that if an active LUST site exists at the facility and groundwater is impacted, 25 priority points are accrued. If there is an active LUST site at the facility which has not impacted groundwater, 15 priority points are accrued. There has been no change to the rule.

5. Comment: The proposed priority point accrual system does not account for leaks discovered at the time of excavation. Has the Department considered revisiting an application to increase its priority if the applicant confirms a leak while work is in progress?

Response: The nature of the application process requires that the eligible projects must be those planned for in advance. This is the only way that the 3 cost bids can be developed. Once the determination has been made which applicants will receive funds and work is in progress, the Department cannot later recalculate additional funds. If a release is discovered during the completion of the project, the applicant may submit another application during the next submission period if the full amount for which the applicant is eligible has not been used. Also, there is a high probability that there will be only enough money for grant application submission period. There has been no change to the rule.

6. Comment: In subsection (F), what is the Department's intent if the regulated substance is not motor fuel? Was not the intent behind the words "availability of alternative services" in A.R.S. § 49-1072(B) to insure the continued availability of unspent motor fuel, not of spent fuel, waste oil, or hazardous substances?

Response: The cited statute has, as the last priority consideration, "... and the availability of alternative services to the community." We find no limitation in this classification to motor fuel. The use of the word "services" does imply something along the lines of marketing or at least "providing" regulated substances to others; however, the regulated substance may well be kerosine or heating fuel (by a jobber) or perhaps a hazardous substance. There are no eligibility restrictions which would limit projects to those involving petroleum UST systems. There has been no change to the rule.

R18-12-712

1. Comment: Half of the priority points in the proposed test for local governments are based on an assets and liabilities test, while the other half are based on the size of fund balances. Cities and towns accounting methods are fund based. There-

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fore, it would be illogical to use assets and liabilities to determine their financial need. Also, cities and towns are under a constitutionally imposed expenditure limitation. Even if a large fund balance were present, a city or town may not be able to spend it because of the mandated limit.

Response: Balance sheets from local governments and private sector entities both deal with assets and liabilities. The difference is in the basic "formula" of each type of balance sheet. In the private sector, assets less liabilities equals owner's equity. In the local government, balance sheet assets less liabilities equals fund balance. This being the case, it is not illogical to use assets and liabilities to determine financial need. In the financial test for local governments, as with other types of organizations, looking at current assets and current liabilities (the current ratio) is a measure of cash flow. Cash flow is just as important to cities and towns as it is to the private sector. Use of this ratio in the financial test for local governments is not illogical.

The use of fund balance is also appropriate. If the fund balance cannot be spent, it cannot be considered as an unreserved or undesignated balance. If a fund balance is large because the local government entity has reached a spending limit, that balance is, in fact, designated as unspendable and therefore reserved or designated. To provide clarity, the definition for "reserved and designated funds" needs to be clarified to include those funds which cannot be spent because the entity has reached its statutory limitation and thus cannot spend the money on UST.

R18-12-103(2) is revised as follows:

2. "Reserved and designated funds" means those funds of a nonprofit, not-for profit, or local government entity which, by action of the governing authority of the entity, ~~or~~ by the direction of the donor, or by statutory or constitutional limitation, may not be used for conducting UST upgrades, replacements, or removals, or for installing UST leak detection systems, or conducting corrective actions, including payment for expedited review of related documents by the Department, on releases of regulated substances.

R18-12-714(B)

Comment: The limit of 60 days from issuance of the grant until all the documentation for completion of the grant has been submitted should be extended to 120 or 180 days to account for weather conditions or other things that might slow those who want to comply.

Response: The Department disagrees that the time frame needs to be extended beyond 60 days. The Department does agree that a revision to R18-12-714 is necessary to correct a typographical error. The citation should have been restricted to subsection R18-12-714(B)(1) instead of to the entire subsection. The documents required under subsection (B)(1) are the surety bond, insurance policy, mechanic liens, and contracts. These cannot realistically be included with the application without the applicant incurring the associated costs. To avoid having those who will not ultimately receive a grant incur those costs, the requirement to provide those documents becomes applicable within 60 days of the notice of grant issue. R18-12-714(D) is revised as follows:

- D. If all of the requirements of subsection (B) of this Section are met and subject to the provisions of subsection (C) of this Section, the Department shall issue a warrant for the amount of the submitted invoice. If an applicant has been notified of a grant issuance but fails to meet the requirements of subsection subsection (B)(1) of this Section within 60 days of the notice of grant issue, the applicant shall be informed in writing by the Department that the grant issue has been forfeited by the applicant. A forfeited grant issue shall be returned to the grant fund.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

12. Incorporation by reference and their location in the rules:

R18-12-707(A)(6) - Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended as of June 30, 1995.

R18-12-707(C) - American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks", amended as of December 1987, Supplement March 1989, Washington, D.C.

R18-12-710(A) - American Petroleum Institute publication 2015 "Safe Entry and Cleaning of Petroleum Storage Tanks" (January, 1991) and the American Petroleum Institute publication 1632 "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems" (December 1987, Supplement March 6, 1989).

13. Was this rule previously adopted as an emergency rule? If so, please indicate the Register the citation:
No.

14. The full text of the rules follows:

TITLE 18: ENVIRONMENTAL QUALITY

CHAPTER 12: DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANK

ARTICLE 1. DEFINITIONS

- R18-12-101. Definitions: A. through F.
R18-12-102. Definitions: G. through P.
R18-12-103. Definitions: R. through Z.

ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

- R18-12-701. Allocation of Grant Account Funds
R18-12-702. Eligible Projects
R18-12-703. Amount of Grant Per Applicant or Facility
R18-12-704. Grant Application Submission Period
R18-12-705. Grant Application Process
R18-12-706. Grant Application Contents
R18-12-707. Work Plan
R18-12-708. Business Plan
R18-12-709. Review of Application
R18-12-710. Feasibility Determination
R18-12-711. Criteria for Determining Priority Ranking Points for Applicants Other Than Local Governments
R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments
R18-12-713. Determination of Grants to Be Issued
R18-12-714. Grant Issuance: Notification; Payment

ARTICLE 1. DEFINITIONS

R18-12-101. Definitions: A. through F
In addition to the definitions prescribed in A.R.S. § 49-1001, the terms used in this Chapter shall have the following meanings:

1. "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank UST that results in a need for corrective action, compensation for bodily injury or property damage, or both, and that is neither expected nor intended by the tank owner and operator.
2. "Ancillary equipment" means any devices device used to distribute, dispense, meter, monitor, or control the flow of regulated substances to and from an UST, including, but not limited to, such devices as piping, leak detection equipment, fittings, flanges, valves, and pumps.
3. "Applicant", for purposes of Article 7 only, means an owner or operator who applies for a grant from the UST grant account.
4. "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.
- 3-5. "Bodily injury" has the meaning given to this term by Arizona law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.
- 4-6. "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors which that are attached to a tank system and through which regulated substances flow. For the purpose of determining To determine how much piping is connected to any an individual UST system, the piping that joins 2 UST systems shall be allocated equally between them.
- 5-7. "Consultant" means a person who performs environmental services in a advisory, investigative, or remedial

capacity, environmental services in response to a release from an UST.

- 6-8. "Contractor" means a person who is required to obtain and hold a valid license from the Arizona Registrar of Contractors which permits bidding and performance of performs removal, excavation, repair, or construction services; associated with an UST at the facility where an UST release has occurred where that work is accomplished as part of a corrective action.
- 7-9. "Controlling interest" means direct ownership of at least 50% of a firm, through voting stock, or otherwise.
- 8-10. "Corrective action services" means any services work that are is required to be performed by the Department in order to fulfill the regulatory requirements of A.R.S. § 49-1005 and the rules promulgated thereunder.
11. "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a The person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.
- 9-12. "Cost ceiling amount" as described in R18-12-605 means the maximum amount determined by the Department above which a cost to be reasonable and reimbursable for a corrective action service is not considered reasonable and shall not be reimbursed.
13. "Current assets" means assets which can be converted to cash within 1 year and are available to finance current operations or to pay current liabilities.
14. "Current liabilities" means those liabilities which are payable within 1 year.
- 40-15. "Eligible person" means a member of the class of persons regulated by A.R.S. Title 49, Chapter 6, and the rules promulgated thereunder, not otherwise excluded, and including all of the following:
 - a. Any owner, operator, or designated representative of an owner or operator;
 - b. A political subdivision pursuant to A.R.S. § 49-1052-G 49-1052(H); and
 - c. A person described by A.R.S. § 49-1052-H 49-1052(I).
- 44-16. "Facility" means, with respect to any owner and operator, all underground storage tank systems used for the storage of regulated substances which are owned or operated by such owner and operator and located on a single parcel of property, or on any contiguous or adjacent property.
- 42-17. "Financial reporting year" means the latest consecutive twelve-month period, either fiscal or calendar, for which financial statements used to support the financial test in R18-12-305 are prepared, including any of the following if applicable:
 - a. A 10-K report submitted to the Securities and Exchange Commission;
 - b. An annual report of tangible net worth submitted to

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- Dun and Bradstreet, or
- c. Annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

~~13-18.~~ "Firm" means any for-profit entity, not-for-profit entity, or governmental subdivision. An individual doing business as a sole proprietor is a firm for purposes of this chapter.

~~14-19.~~ "Free product" means a regulated substance that is present as a nonaqueous phase liquid.

R18-12-102. Definitions: G. through P.

In addition to the definitions prescribed in A.R.S. § 49-1001, the terms used in this Chapter shall have the following meanings:

1. "Grant request" means the total amount requested on the application for a grant from the UST grant account, plus any cost to the Department for conducting a feasibility determination in accordance with R18-12-710, in conjunction with the application.
- ~~1-2.~~ "Legal defense cost" means any expense that an owner ~~and~~ or operator, or provider of financial assurance incurs in defending against claims or actions brought under any ~~one~~ of the following circumstances:
 - a. By EPA or a state to require corrective action or to recover the costs of corrective action;
 - b. By or on behalf of a 3rd party for bodily injury or property damage caused by an accidental release; or
 - c. By any person to enforce the terms of a financial assurance mechanism.
3. "Local government" means a county, city, town, school district, water and aqueduct management district, irrigation district, power district, electrical district, agricultural improvement district, drainage and flood control district, tax levying public improvement district, local government public transportation system, and any political subdivision as defined under A.R.S. § 49-1001(12)."
- ~~2-4.~~ "Petroleum marketing facilities" mean all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
- ~~3-5.~~ "Petroleum marketing firms" mean all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.
- ~~4-6.~~ "Petroleum UST system" means an underground storage tank UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. ~~Such~~ These systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- ~~5-7.~~ "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.
- ~~6-8.~~ "Property damage" shall have the meaning given this term by Arizona law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.
- ~~7-9.~~ "Provider of financial assurance" means an entity that provides financial assurance to an owner and operator of an underground storage tank through of the mechanisms listed in R18-12-305 through R18-12-309 and R18-12-312, including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit.

R18-12-103. Definitions: R. through Z.

In addition to the definitions prescribed in A.R.S. § 49-1001, the terms used in this Chapter shall have the following meanings:

1. "Report of work" means a written summary of corrective actions performed, either in their entirety or in phases as described in A.R.S. § 49-1005 and any rules promulgated thereunder and in 40 CFR 280 Subpart F., for addressing the UST release at the site. 40 CFR 280 Subpart F. as amended as of July 1, 1991, (and no future editions), is incorporated ~~herein~~ by reference and is on file with the Department of Environmental Quality and the Office of the Secretary of State.
2. "Reserved and designated funds" means those funds of a nonprofit, not-for profit, or local government entity which, by action of the governing authority of the entity, by the direction of the donor, or by statutory or constitutional limitation, may not be used to upgrade, replace, or remove a UST, install a UST leak detection system, or conduct corrective actions, including payment for expedited review of related documents by the Department, on releases of regulated substances.
- ~~2-3.~~ "Substantial business relationship" means the extent of a business relationship necessary under Arizona law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.
- ~~3-4.~~ "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. ~~For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.~~
- ~~4-5.~~ "Termination" under 40 CFR 280.97(b)(1) and (2) as referenced in R18-12-307(B), means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy. 40 CFR 280.97(b)(1) and (2), as amended as of July 1, 1991 (and no future editions), is incorporated by reference and is on file with the Department of Environmental Quality and the Office of the Secretary of State.
- ~~5-6.~~ "Tester" means a person who performs tightness tests on ~~underground storage tank UST~~ systems, or on any portion of an ~~underground storage tank UST~~ system including tanks, piping, or leak detection systems ~~where those tests are performed as part of a corrective action taken in response to a release from the UST system, and who meets qualifications pursuant to R18-12-601.F.~~
- ~~6-7.~~ "UST" means an underground storage tank pursuant to A.R.S. § 49-1001.17.
8. "UST grant account" or "grant account" means the account designated pursuant to A.R.S. § 49-1071.
- ~~7-9.~~ "UST regulatory program" means the program established by and described in A.R.S. Title 49, Chapter 6 and the rules promulgated thereunder.
- ~~8-10.~~ "UST system" or "Tank system" means an underground storage tank, and connected piping, ancillary equipment, and containment system, if any.
11. "Unreserved and undesignated funds" means those funds that are not reserved or designated funds and can be transferred at will by the governing authority to other funds.

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ARTICLE 7. UNDERGROUND STORAGE TANK GRANT PROGRAM

R18-12-701. Allocation of Grant Account Funds

The Department shall determine the total amount of funds in the grant account on the last day of the application submission period. Subject to the provisions of A.R.S. § 49-1015(A), the Department shall allocate the total amount of available funds as follows:

1. Up to and including 5.0% of the total amount of available funds shall be allocated for the expenses incurred by the Department in administering the fund.
2. Of the total amount available after the allocation for administrative expenses, an amount for use by applicants classified as local governments shall be reserved based on the number of active facilities, developed from the UST database, in accordance with the following formula:
$$\text{Percentage amount reserved for local governments} = \frac{\text{number of local government facilities}}{\text{the total number of facilities, excluding state and federal facilities}}$$
3. Funds remaining, after subtracting the amounts determined under subsections (A)(1) and (2) from the total amount in the grant account, shall be reserved for applicants classified as other than local governments.

R18-12-702. Eligible Projects

- A. An owner or operator of a UST may apply to the Department, during an application submission period, for a grant for the purpose of funding any of the following eligible projects:
 1. Installing a leak detection system that meets the requirements of A.R.S. § 49-1003 and the rules promulgated thereunder.
 2. Upgrading a UST system by the addition of spill prevention, overflow prevention, or corrosion protection that meets the requirements of A.R.S. § 49-1009 and the rules promulgated thereunder.
 3. Replacing a non-complying UST with a UST of equal or smaller volume that meets the requirements of A.R.S. § 49-1009 and the rules promulgated thereunder. The eligible project may include the cost of removing of the existing UST system. Removal of an existing UST system shall meet the requirements of A.R.S. § 49-1008 and the rules promulgated thereunder.
 4. Paying the portion of necessary and reasonable corrective action expenses not covered by the assurance account as prescribed in A.R.S. § 49-1054. The corrective action shall meet the requirements of A.R.S. § 49-1005 and the rules promulgated thereunder.
 5. Removing a UST from the ground if the UST will not be replaced and the removal meets the requirements of A.R.S. § 49-1008 and the rules promulgated thereunder.
 6. Paying for expedited review of the applicant's workplan, site characterization reports, corrective action plans, monitoring reports, and other information as prescribed in A.R.S. § 49-1052.
- B. An eligible project shall be limited to the work specified in the application, which shall be approved by the Department pursuant to R18-12-709. An eligible project shall not include any of the following:
 1. Adding to or altering of all or part of any building or appurtenant structure at the facility.
 2. Demolishing a building or appurtenant structure at the facility unless the demolition is necessary to complete the eligible project. If demolishing a building or appurtenant structure is necessary to complete the eligible project, grant funds shall not be used to reconstruct or replace all or part of the building or appurtenant structure

demolished.

3. Resurfacing with new materials of a kind and quality exceeding those in place before beginning the project. Resurfacing shall be limited to the minimum area of surfacing required to be removed or destroyed during the project. Resurfacing shall not include the cost of replacing islands unless necessary for the continued operation of the facility as demonstrated in the business plan required under R18-12-708.
4. Replacing or refurbishing dispensers, canopies, awnings, or similar items that are not part of the actions necessary to comply with the statutory requirements for the project set forth in subsection (A).

R18-12-703. Amount of Grant Per Applicant or Facility

- A. Under this Article, the Department shall grant to any owner or operator a maximum of \$100,000. If the owner and the operator are the same person, a maximum of \$100,000 shall be granted to that person.
- B. Under this Article, the Department shall grant a maximum of \$100,000 for eligible projects to be completed at any 1 facility.

R18-12-704. Grant Application Submission Period

- A. The Department shall establish the beginning and ending dates of each grant application submission period. The Department shall publish the dates of each submission period in the public notices section of the *Arizona Republic* newspaper and in the *Underground Storage Tank News*, a quarterly newsletter published by the Department and available at the Department upon request.
- B. The Department shall consider an application to be received on the date the application is postmarked or, if hand delivered, on the date stamped on the application by the Department. The Department shall not consider an application received after the ending date of the submission period.

R18-12-705. Grant Application Process

- A. In accordance with the provisions of R18-12-706(A), an owner or operator shall submit to the Department during a grant application submission period described in R18-12-704, all of the information described under R18-12-706, except that the work plan required by R18-12-706(D)(2) does not need to include the information required by R18-12-707(A)(6) through (9) until the Department has notified the applicant, in accordance with R18-12-714(A), whether a grant has been approved or denied.
- B. After the close of the submission period, the Department shall review grant applications in the order received and allocate priority ranking points to each application in accordance with R18-12-711 or R18-12-712. If no priority points are allocated under R18-12-711(B)(3)(a) or R18-12-712(1)(a), the Department shall inform the applicant in writing that the application has been rejected.
- C. If an application is not rejected, the Department shall review the application and determine whether there are deficiencies in the information submitted. The Department shall inform the applicant in writing of any deficiencies and of the resubmission provisions under R18-12-709(B).
- D. If a grant application involves either upgrading a UST system with corrosion protection under R18-12-702(A)(2) or replacing a UST system under R18-12-702(A)(3), the Department shall determine the feasibility of upgrading the system in accordance with the requirements of R18-12-710.
- E. Following the end of the re-submission period, the Department shall determine which applicants are to receive grant funds in accordance with R18-12-713 and make payments in accordance with R18-12-714.

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R18-12-706. Grant Application Contents

- A.** An owner or operator seeking a grant to fund an eligible project, as described in R18-12-702 shall submit to the Department an application on a form provided by the Department. The application may contain information on more than 1 project at the facility if all requirements under this Article are met for each project. If the same information is required for more than 1 project on the same application, the information shall be included only once and a reference made on the application to that information.
- B.** The application shall contain all of the following information:
1. The name, daytime telephone number, and mailing address of the applicant;
 2. The federal employer identification (tax) number or social security number of the applicant;
 3. A description of the applicant's status as either an owner or operator and classification as either a local government or other than local government;
 4. The total number of UST facilities owned or operated by the applicant;
 5. The UST owner identification number assigned by the Department to the person who owns the facility where the eligible project will be conducted; and
 6. The name and telephone number of a person the Department may contact if there are questions regarding the application or its attachments.
- C.** The application shall contain all of the following information regarding the facility at and UST on which the eligible project will be conducted:
1. The facility name, site address, and the associated County Assessor book, map, and parcel number;
 2. The UST facility identification number assigned by the Department;
 3. The date of installation of the UST;
 4. The regulated substance stored in the UST over the past 12 months;
 5. The Leaking Underground Storage Tank number assigned by the Department to any releases at the facility;
 6. A statement as to whether the facility is involved in marketing regulated substances from UST systems;
 7. The distance, in miles, from the facility to the nearest alternative source of the same regulated substance as stored in the UST system; and
 8. If the eligible project is described under R18-12-702(A)(1) through (3), a business plan prepared in accordance with R18-12-708.
- D.** An application, except an application for an expedited review as described in R18-12-702(A)(6), shall contain the information required by subsections (D)(1) through (5) and (7) for the eligible project. An application for an expedited review as described in R18-12-702(A)(6) shall contain the information required by subsection (D)(6).
1. A statement of the kind of eligible project as listed in R18-12-702(A).
 2. A work plan which meets the requirements of R18-12-707. The work plan shall be the basis for all cost bids submitted with the application.
 3. The total amount of grant funds requested. The amount requested shall be the lowest of 3 written, detailed, firm, fixed cost bids for completing the eligible project. All 3 cost bids shall be for projects that will use the same methodology to achieve compliance with the regulatory requirements for the project.
 4. The 3 bids, which shall include, for each itemized cost, a description of the kind of work, equipment, or materials and any labor, transportation, or other activities that constitute the itemized cost. Each itemized cost shall refer to the specific item contained in the work plan that will be completed for that itemized cost.
- E.** The total amount of costs incurred for professional services directly related to the preparation of the grant application.
- 6.** If the eligible project is an expedited review, as described in R18-12-702(A)(6), the application shall contain the information required by subsections (B), (C), and (E) through (I) and subsections (D)(1), (D)(3), and (D)(5). The schedule of costs for an expedited review of documents shall be used to determine the amount of the grant request. The type of document and the cost for the expedited review of that document shall be shown for each document included in the project.
- 7.** The name and address of each service provider, including sub-contractors, that performed, or will perform, services required to conduct the eligible project, and all of the following information for each service provider:
- a. Identification as a consultant, contractor, engineer, sub-contractor, tester, or other professional classification and whether a license from the Board of Technical Registrations is required for the profession;
 - b. Contractor license number issued by the Registrar of Contractors;
 - c. License number issued by the Board of Technical Registrations; and
 - d. The name and daytime telephone number of the project contact person.
- E.** An applicant applying on behalf of an individual, or a firm classified as other than local government, shall submit to the Department the information described in subsections (E)(1) through (3) and, if applicable, (E)(4).
1. For all applicants, the balance sheet from the most recent completed fiscal year for the firm, and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:
 - a. Total assets and total liabilities.
 - b. Total intangible assets.
 - c. Total current assets and total current liabilities, and
 - d. Current year-end net worth.
 2. For individuals and sole proprietorships, the applicant's personal financial statement that meets all of the requirements of subsection (E)(1).
 3. For partnerships, limited liability companies and S corporations, the personal financial statement that meets the requirements of subsection (E)(1) for each owner of 20% or more of the firm.
 4. For applicants who wish to be eligible for priority ranking points under R18-12-711(G), a copy of the most current federal and state annual income tax returns that show all of the following:
 - a. Total revenues and total expenses, and
 - b. Total revenues from operation of UST facilities.
- F.** If the applicant firm is a wholly-owned subsidiary, the applicant shall provide to the Department a copy of all documents required under subsection (E) for the parent firm. The Department shall determine financial need based upon the financial statements of the parent firm.
- G.** If an application is made on behalf of a nonprofit or not-for-profit entity organized under the provisions of A.R.S. Title 10, the applicant shall submit to the Department a copy of the letter from the Corporation Commission granting nonprofit or

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not-for-profit status and the most recent year-end balance sheet and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:

1. The information described under subsections (E)(1)(a) through (d).
2. Current year-end and the prior year-end reserved and designated fund balances.
3. Current year-end and the prior year-end unreserved and undesignated fund balance.
4. If the applicant wishes to be eligible for priority ranking points under R18-12-711(G), a copy of the most recent year-end statement of revenues and expenses prepared simultaneously with the balance sheet that shows all of the information required under subsections (E)(4)(a) and (b).

H. If application is made on behalf of a local government, the applicant shall submit to the Department a copy of the balance sheet for the most recent completed fiscal year and all prepared notes and schedules to the balance sheet. The closing date of the balance sheet shall not be more than 1 year from the date of the application. The balance sheet shall include all of the following:

1. Current year-end and the prior year-end reserved and designated fund balances.
2. Current year-end and the prior year-end unreserved and undesignated fund balance, and
3. Total current assets and total current liabilities.

I. The applicant shall sign, have notarized, and attach to the application a certification statement that, to the applicant's best information and belief, all information provided on the application and attachments to the application is true and complete.

R18-12-707. Work Plan

A. A work plan for a grant for an eligible project under R18-12-702(A)(1) through (3) shall contain all of the following:

1. A site plan, drawn to scale, that includes a diagram of the facility showing the location of each UST involved in the project, the access routes to each UST involved, any obstructions to access to each UST including natural or artificial barriers, canopies, buildings, and other structures;
2. A plan that includes specific actions to be taken during the installation or removal of any equipment or material;
3. A timetable for the incremental steps and completion of the project;
4. The specifications, as supplied by the manufacturer, for all equipment to be installed, including, if exists, the 3rd-party certification of performance standards for probability of detection and probability of false alarm for leak detection equipment in accordance with A.R.S. § 49-1003;
5. If the eligible project includes the addition of corrosion protection to an UST under R18-12-702(A)(2) or replacement of an UST under R18-12-702(A)(3), the engineering plan, if necessary, for the installation of the UST prepared by a corrosion expert and supporting documents that demonstrate the effectiveness of the corrosion protection system under the site-specific conditions where it will be operating;
6. The original or duplicate of a surety bond with a penal sum in the amount of the contract, which names the Department and the applicant as dual obligees and the contractor as principal for each service provider on the eligible project. The surety company issuing the bond shall be among those listed as acceptable sureties on fed-

eral bonds in Circular 570 of the U.S. Department of the Treasury, Washington, D.C., as amended on June 30, 1995, and no future editions, incorporated by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State;

7. A copy of the comprehensive general liability insurance policy or a certificate of insurance for the general liability insurance policy providing coverage for each contractor who will provide services during the eligible project. The comprehensive general liability insurance policy shall have a minimum limit of liability of \$1,000,000, include coverage for pollution liability, and name the Department as a named insured for any liabilities incurred in relation to the eligible project;
 8. A copy of any mechanic's lien placed on the facility or the equipment at or to be installed at the facility in conjunction with the eligible project; and
 9. A copy of each contract signed by the owner or operator concerning the eligible project.
- B.** A work plan for a grant for an eligible project under R18-12-702(A)(4) shall consist of the information required under R18-12-607(B) and the requirements of subsections (A)(6) through (9).
- C.** A work plan for a grant for an eligible project under R18-12-702(A)(5) shall comply with the requirements of subsections (A)(1) through (4), and (A)(6) through (9) and contain provisions for compliance with the standards of the American Petroleum Institute Publication 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks", amended December 1987, Supplement March 1989, Washington, D.C., and no future editions, incorporated by reference and on file with the Department and the Secretary of State.

R18-12-708. Business Plan

A. An application for an eligible project under R18-12-702(A)(1) through (3) shall contain a business plan that demonstrates the potential for continued operation, for at least 3 years after issuance of the grant, of the facility at which the UST is located. The business plan shall contain all of the following:

1. A description of the current operations of the applicant which contains all of the following:
 - a. The designation of the applicant as an individual, sole proprietorship, general partnership, limited partnership, C-corporation, S-corporation, joint venture, nonprofit or not-for-profit entity, local government, or another specified form of legal organization;
 - b. The nature of the operation and its history during its life or the last 3 years, whichever is the shorter period;
 - c. A discussion of the market in which the applicant operates, including the kinds of products and services provided, the geographic area served, and a general description of the size, growth, density, and distribution of the population served; and
 - d. The number of employees and the number of hours worked per week by each.
2. A written statement of the job history and work experience of each owner or officer of the applicant and of each manager of the facility; and
3. A description of projected operations of the facility that includes all of the following:
 - a. A description of planned changes to the operation of the facility. If no changes are planned, a statement of the reason for requesting a grant and how receipt of the grant will assist in continued operation of the facility; and

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b. An estimate of expected revenue and expenses by year for the 3-year period following issuance of a grant. The estimate shall contain the major assumptions for:

- i. Revenue by source by year; and
- ii. Expenses, including annual debt service and contingent liabilities, by year.

B. The Department shall review the business plan in accordance with generally accepted accounting principles, to determine whether the business is a viable entity capable of continuing in business for 3 years following the grant issue. All of the following shall be considered:

1. Existence of a significant contingent liability.
2. History of profits or losses from operations.
3. Extent of owner equity.
4. Market potential.
5. Stability of key management personnel, and
6. Legality of operations.

C. The applicant shall have the financial statements required under this Section prepared in accordance with generally accepted accounting principles. A financial analysis by a certified public accountant shall not result in a qualification.

R18-12-709. Review of Application

A. The Department shall review a grant application to determine whether the application contains all of the information required by this Article.

B. If the Department determines the application is not complete or otherwise fails to meet the requirements of this Article, the Department shall send to the applicant, by certified mail, a written statement of deficiencies. The Department may include in the mailing, any part of the application found to be deficient. The applicant shall have 30 days from the date of receipt, as evidenced by the date on the return receipt, to correct all deficiencies and resubmit the application or information to the Department. The Department shall consider the date the application is postmarked or hand delivered to be the date of resubmission to the Department. The Department shall not consider an application that remains deficient at the end of the resubmission period.

C. If the Department determines that an application contains information required by this Article, the Department shall approve the application and place it in priority order in accordance with the provisions of R18-12-713.

R18-12-710. Feasibility Determination

A. For eligible projects listed in R18-12-702(A)(2) and (3) that involve corrosion protection, the Department shall determine the feasibility of upgrading or replacing the UST. The Department shall base its feasibility determination on an internal UST inspection report of the existing UST, conducted by an Arizona licensed contractor. The inspection report shall include a certification by the contractor that the inspection was conducted and the feasibility determination made in accordance with the American Petroleum Institute publication 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks", (January, 1991) and the American Petroleum Institute publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", (December 1987, Supplement March 6, 1989), and no later amendments or editions, both of which are incorporated by reference and on file with the Department and the Office of the Secretary of State.

B. The Department shall ensure that the amount of grant monies approved for an eligible project correlates with the results of the feasibility determination. If the feasibility determination concludes that a UST can be upgraded with corrosion protection, but the application requests grant funds for replacing the

UST, the Department shall not approve an amount in excess of the estimated cost of upgrading the UST. If a UST can not be upgraded with corrosion protection, and the application requests grant funds to upgrade the UST, the Department may approve the amount of the estimated cost of replacing the UST.

R18-12-711. Criteria for Determining Priority Ranking Points for Applicants Other Than Local Governments

A. The Department shall allocate priority ranking points to a grant application for an owner or operator who is not a local government in accordance with this Section. The maximum number of priority ranking points is 105.

B. Subject to the provisions of subsections (B)(1) and (2) and in accordance with subsections (B)(3)(a) and (b), the Department shall allocate a maximum of 50 priority ranking points for financial need.

1. If the applicant is a Chapter S corporation, the balance sheets from the most current completed fiscal year for the corporation and for each person who owns 20% or more of the corporation shall be combined to determine the total tangible net worth, current assets, and current liabilities to be used in subsections (B)(3)(a) and (b).

2. If the applicant is a nonprofit or not-for-profit entity organized under A.R.S. Title 10, the total tangible net worth, current assets, and current liabilities used to determine the number of priority ranking points under subsections (B)(3)(a) and (b) may be reduced by any reserved and designated fund balances. All reserved and designated fund balances to be deducted shall appear on the balance sheet submitted in accordance with R18-12-706(G).

3. Priority ranking points shall be allocated as follows:

a. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of the grant request divided by tangible net worth. The tangible net worth shall be determined from the information submitted as required under R18-12-706(E) through (G) and the provisions of subsections (B)(1) and (2). If the applicant has a negative tangible net worth, 25 priority ranking points shall be allocated. If the indicated tangible net worth is positive, priority ranking points shall be allocated as follows:

PERCENTAGE	POINTS
20% or more	25 Points
16% up to but not including 20%	20 Points
12% up to but not including 16%	15 Points
8% up to but not including 12%	10 Points
4% up to but not including 8%	5 Points
Less than 4%	0 Points

b. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of total current assets divided by total current liabilities. Current assets and current liabilities shall be determined from the information submitted as required under R18-12-706(E) through (G) and subsections (B)(1) and (2). Priority ranking points shall be allocated as follows:

PERCENTAGE	POINTS
Less than 100%	25 Points
100% up to but not including 125%	20 Points
125% up to but not including 150%	15 Points
150% up to but not including 175%	10 Points
175% up to but not including 200%	5 Points
200% or more	0 Points

C. A maximum of 10 priority ranking points shall be allocated based on the date of installation of the tank as follows:

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<u>DATE OF INSTALLATION</u>	<u>POINTS</u>
1. After December 22, 1988	0 Points
2. May 7, 1985 through December 22, 1988	3 Points
3. Before May 7, 1985	10 Points

D. If the program is described under subsection R18-12-702(A)(4) or (6), a maximum of 25 priority ranking points shall be allocated based on the threat to human health and the environment by the presence of an active leaking underground storage tank (LUST) site at the facility that is the subject of the eligible project as follows:

1. Active LUST site at the facility that has impacted groundwater	25 Points
2. Active LUST site at the facility that has not impacted groundwater	15 Points
3. No active LUST site at the facility	0 Points

E. A maximum of 5 priority ranking points shall be allocated based on the extent of the geographic area served depending on whether or not the facility markets regulated substances as follows:

1. Marketing facility	5 Points
2. Other than Marketing facility	0 Points

F. A maximum of 10 priority ranking points shall be allocated based on the distance to the nearest alternative source of regulated substance to the community as follows:

<u>DISTANCE</u>	<u>POINTS</u>
1. Less than 5 miles	0 Points
2. Five miles up to 10 miles	5 Points
3. Ten miles or more	10 Points

G. An additional 5 priority ranking points shall be allocated to an applicant who, based on information in the application, meets all of the following:

1. Has annual total revenue of less than \$1 million.
2. Derives at least 50% of annual total revenue from the operation of UST facilities, and
3. Owns or operates no more than 2 UST facilities.

R18-12-712. Criteria for Determining Priority Ranking Points for Applicants That Are Local Governments

The Department shall allocate priority ranking points to a grant application of an owner or operator that is a local government in accordance with this Section. The maximum number of priority ranking points is 100.

1. The Department shall allocate a maximum of 50 priority points for financial need.

a. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of the grant request divided by total unreserved and undesignated fund balance as follows:

<u>PERCENTAGE</u>	<u>POINTS</u>
20% or more	25 Points
16% up to but not including 20%	20 Points
12% up to but not including 16%	15 Points
8% up to but not including 12%	10 Points
4% up to but not including 8%	5 Points
Less than 4%	0 Points

b. A maximum of 25 priority ranking points shall be allocated based on the ratio, expressed as a percentage, of total current assets divided by total current liabilities. Current assets and current liabilities shall be determined from the balance sheet submitted in accordance with R18-12-706(H). Priority ranking points shall be allocated in accordance with R18-12-711(B)(3)(b).

2. Additional priority ranking points shall be allocated in accordance with R18-12-711(C) through (F).

R18-12-713. Determination of Grants to Be Issued

A. The Department shall determine the following within 90 days after close of the submission period:

1. The total amount of the request for each application which is approved under R18-12-709, and any feasibility determination expenditure incurred by the Department in complying with the requirements of R18-12-710. Subject to the provisions of R18-12-703, the total of the amount approved and the feasibility determination expense shall be the amount of the grant issue;

2. The total number of priority ranking points allocated to each applicant under R18-12-711 or R18-12-712;

3. The amount of funds available for each classification of applicant in accordance with R18-12-701(2) and (3); and

4. The date on which each complete application was received or, if the application was not complete, the date on which the information requested in the deficiency statement which completed the application was received.

B. The Department shall rank each application within each applicant classification in numerical order by priority ranking points with the greatest number of priority ranking points being the highest rank.

C. From the total amount of funds available for each applicant classification, the Department shall subtract, in descending order of total priority ranking points allocated to each applicant, the amount approved for each eligible project until all available funds are committed. Applications that have funds committed shall be approved for issuance. Applications that do not have funds committed shall be denied for issuance.

D. If 2 or more applicants have the same number of priority ranking points and available grant funds are insufficient to make issues to all of these applicants, the applications shall be ranked by date received. The application with the earliest received date stamped on the application shall have 1st commitment for grant issue. The application with the next earliest date received shall have next commitment, and so forth until all available grant funds are committed. If an application was received incomplete and the deficiencies were corrected later, the application shall be deemed received on the date the material completing the application was received.

R18-12-714. Grant Issuance; Notification; Payment

A. Within 90 days following the end of the submission period, the Department shall notify each applicant, in writing, of the denial or approval of a grant issuance. The determination of denial or approval shall be made in accordance with R18-12-713. A notice of grant approval shall contain all of the following:

1. A statement of the original amount of the applicant's grant request;

2. An explanation of all reductions or adjustments that reduce or change the original grant request amount and the reason for each change;

3. A statement of the amount of the grant issue, and

4. The provisions of subsections (B) through (D).

B. The Department shall not make any payment to the applicant or a person providing services or equipment to the applicant for the purpose of completing the approved eligible project until the Department receives all of the following:

1. The documents required under R18-12-707(A)(6) through (9);

2. Original invoices for work performed or equipment installed in conjunction with the eligible project. Each invoice shall reference the work performed or the equipment installed to the specific item or task in the work plan;

3. A written statement, signed by the applicant and the per-

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- son acting as general contractor on the eligible project which certifies that all work, equipment, or materials itemized on each invoice have been performed, used, or installed in accordance with the work plan approved by the Department. The statement shall contain, for each invoice itemized, the invoice number and the total amount of the invoice. The signatures appearing on the certification shall be notarized; and
4. An agreement signed by the applicant and the person serving as general contractor on the approved eligible project, which designates the name to be shown as payee on all warrants issued in payment for work and equipment on the approved project.
- C. The Department shall not make total payments in excess of the amount in the written, detailed, firm, fixed cost estimates approved by the Department.
- D. If all of the requirements of subsection (B) are met, and subject to the provisions of subsection (C), the Department shall issue a warrant for the amount of the submitted invoice. If an applicant is notified of a grant issuance but fails to meet the requirements of subsection (B)(1) within 60 days of the notice of grant issue, the Department shall inform the applicant in writing that the grant issue has been forfeited by the applicant. The Department shall return a forfeited grant issue to the grant fund.