ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT PERMITS AND SERVICES DIVISION STATE REVOLVING FUND PROGRAMS ADMINISTRATIVE CODE

CHAPTER 335-11-2
DRINKING WATER STATE REVOLVING FUND PROGRAM

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335-11-2-.01 Definitions.

The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(a) "Act" means Alabama Act No. 97-415.

(b) "Allowable Costs" means those costs that are eligible, reasonable, necessary, and allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the assistance agreement.

(c) "Applicant" means the public body that has submitted an application to the Department for financial assistance from the Drinking Water State Revolving Fund.

(d) "Application" means the information submitted by an applicant to the Department to obtain financial assistance, including technical, environmental, and financial information necessary to determine the eligibility for financial assistance from the Drinking Water State Revolving Fund.

(e) "Assistance Agreement" means a loan or grant from the Drinking Water State Revolving Fund for the allowable costs of the project.

(f) "Clean Water State Revolving Fund" or "CWSRF" means the Water Pollution Control Revolving Loan Fund described in Chapter 335-11-1.

(g) "Corpus of the Fund" means the capital of the program, funds generated for the existence and sustenance of the program, a permanent fund kept for the basic expenditures for the administration and survival of the program.

1. Appropriations to the DWSRF from the Alabama Legislature; and,

2. Capitalization grants from the EPA, net of administrative reserves and any additional subsidy requirements.

(h) "Capitalized Interest" means the addition of unpaid interest to the principal balance of a loan and increases when repayments are postponed.

(i) "Department" means the Alabama Department of Environmental Management established by the Alabama Environmental Management Act, Code of Ala. 1975, §§22-22A-1 to 22-22A-13.

(j) "Drinking Water State Revolving Fund" or "DWSRF" means the drinking water revolving loan fund established by the Act.

(k) "EPA" means the United States Environmental Protection Agency.

(l) "Fund" means the Drinking Water State Revolving Fund.

(m) "Project" means the defined services for the construction of improvements as approved by the Department in the assistance agreement.

(n) "Project Priority List" means the list of projects developed by the Department, which includes a priority ranking of applicants eligible for Drinking Water State Revolving Fund assistance pursuant to the federal Safe Drinking Water Act Amendments of 1996, as amended or supplementary acts thereto.

(o) "Project Costs" means costs for construction, procurement of equipment and materials, contingency, demolition, legal and technical services, land acquisition, and capitalized interest.

(p) "Public Body" means any county, state agency, incorporated city or town, public corporation, district, cooperative, association, authority or any instrumentality thereof created by or pursuant to state law and having jurisdiction, power or authority with respect to the transmission, sale, production or delivery of drinking water, including also a combination of two or more of the foregoing.

(q) "Recipient" means any public body that has received a Fund assistance agreement pursuant to this chapter.

(r) "Safe Drinking Water Act" or "SDWA" means the federal Safe Drinking Water Act, 33 USC 300 f-j.

(s) "State Match" means funds provided by the State as required by EPA to receive federal funding for the program.

(t) "Water treatment facilities" are facilities needed for the transmission, production or delivery of drinking water, including but not limited to, water storage tanks, treatment plants (flocculation, sedimentation, and filtration), pumping stations, and water pipes.

Author: Aubrey H. White III, Kris Berry
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335-11-2-.02 Eligible Applicants.

Any public entity shall be eligible to apply for financial assistance for planning, design, and construction of eligible projects described in rule 335-11-2-.03.

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Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
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335-11-2-.03 Eligible Projects.

(1) The Fund may provide assistance to finance the costs of infrastructure needed to achieve or maintain compliance with requirements, and/or meet public health objectives of the SDWA. Examples include projects to:

(a) rehabilitate or develop sources to replace an existing contaminated source;

(b) install or upgrade treatment facilities if, in the Department's opinion, the project is the most economical and would improve the quality of drinking water to comply with primary or secondary standards;

(c) install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the water system;

(d) install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels;

(e) implement green stormwater projects at publicly-owned facilities that are part of an eligible drinking water infrastructure project;

(f) install or retrofit water efficient devices;

(g) replace potable sources with non-potable sources (water reuse or water recycling);

(h) install renewable energy sources that are part of an eligible drinking water infrastructure project;

(i) To the extent funds are made available by the Department, refinance or buy eligible debt obligations of municipalities and intermunicipal and interstate agencies within Alabama at or below market rates, if the debt obligations were incurred after July 1, 1993;

(j) Guaranteeing or purchasing insurance for a local obligation to improve credit market access or reduce the interest rate of the obligations;

(k) Providing a source of revenue or security for the payment of principal and interest on revenue or general obligations bonds issued by the state if the proceeds of the sale of the bonds will be deposited in the fund; and,

(l) Any other use allowable by the United States Environmental Protection Agency and consistent with the Act.

(2) Land is an allowable cost only if it is integral to a project needed to meet or maintain compliance and further public health protection. In this instance, land that is integral to a project is only the land needed to locate eligible treatment or distribution projects. In addition, the acquisition must be from a willing seller.

(3) Projects must be ranked on the Department's project priority list and included in the DWSRF Intended Use Plan to be considered for funding.

Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
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335-11-2-.04 Project Priority List.

(1) The Department shall prepare a ranked priority listing of projects for which DWSRF funding will be made available.

(2) The project priority list shall be included in the Departments Intended Use Plan and subject to public notice and a public comment period.

(3) Projects on the priority list shall be ranked in descending order of the point rating assigned to each project. In the event two or more projects are assigned an identical point rating, such projects shall be ranked in accordance with the following criteria: The project that serves a community with the lowest median household income shall be ranked first. In the event the projects have identical median household incomes, the project with the lowest total cost will be ranked first.

(4) Supplemental projects shall be placed at the top of the priority list regardless of the priority ranking of the initial project. In the event that multiple supplemental applications are submitted, each will be ranked using the initial amount of priority points assigned in comparison to each supplemental application in accordance with 335-11-2-.04(3).

(5) The priority list shall be divided into a fundable and nonfundable, or planning, portion. The list's fundable portion shall include those projects anticipated to be funded from the projected available DWSRF funds. The list's nonfundable portion shall include all projects that are eligible but sufficient

funding is not available from the DWSRF at the time the priority list is prepared.

(6) The Department may remove a project from the priority list at any time provided that one or more of the following conditions is met:

(a) The project has been fully funded; or,

(b) The project is not ready to proceed as determined by the Department; or,

(c) The project is ineligible under the provisions of this chapter or the rules and grant conditions of the EPA.

(7) The Department may add projects to the priority list at any time during the year.

(8) The Department may bypass a project on the fundable portion of the priority list if:

(a) The public body has not submitted a complete application as required by rule 335-11-2-.11 by the deadlines established by the Department;

(b) Bypassing the project will enable the Department to fund an emergency project where, as determined by the Department, a severe public health or water quality problem exists that requires the immediate construction of facilities to eliminate an existing potentially hazardous condition; or

(c) A bypass is necessary to fund certain types of projects as detailed in the Department's project solicitation or as required by EPA capitalization grant conditions; or

(d) The project is not ready to proceed.

(9) Public bodies that wish to have projects listed on the priority list must submit a complete preapplication form with supporting documentation to be considered for funding for the current year funding cycle on or before the date established by the Department.

(10) The Department may limit the amount of funding allocated to each project on the priority list in order to fund additional projects. Any limitation shall be based on either a maximum loan amount or a maximum percentage of available funds allocated to each project.

(11) Funds may be transferred between the Drinking Water State Revolving Fund and the Clean Water State Revolving Fund as allowed by the Safe Drinking Water Act and the Clean Water Act.
Author: Aubrey H. White III, Kris Berry

Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
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335-11-2-.05 Criteria For Ranking.

The Department shall determine the priority for funding eligible projects to be included on the project priority list and included in the Departments Intended Use Plan and and based on the criteria established in 40 CFR Parts 9 and 35; and,

(a) whether the project addresses the most serious risks to human health;

(b) whether the project addresses compliance with the SDWA;

(c) the financial capability of the applicant/affordability of the project;

(d) energy and water efficiency; and,

(e) sustainability of the project.

Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
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335-11-2-.06 Funding Reserves.

The Department may reserve from the DWSRF amounts needed for administration of the fund and any other purposes allowable by the rules and grant conditions of the EPA.
Author: Aubrey H. White III
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: New Rule: Filed October 23, 2012; effective November 27, 2012.

335-11-2-.07 Maintenance Of The Fund.

(1) The Department shall maintain the corpus of the fund in perpetuity.

(2) Payments of principal, interest, and penalties on loans awarded from the DWSRF shall be made to the fund.

(3) All interest earned shall be credited to the DWSRF pursuant to the Act.
Author: Aubrey H. White III
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012.

335-11-2-.08 Administrative Fees.

(1) The Department may require an administrative or legal fee of recipients:

(a) Assessed as a percentage of the outstanding principal, payable on interest payment dates; and/or

(b) An origination fee, to be paid at closing of the assistance agreement.

(2) Fees collected shall be used to defray the Department's expenses of servicing the assistance agreement and necessary operating expenses of the program or provided as the State Match Requirement.
Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-11-2-.09 Terms Of Assistance Agreements From The DWSRF.

(1) The Department may offer loans for projects for up to 100 percent of allowable project costs with a range of options regarding the term and interest rate.

(2) The principal amount of the loan shall be repaid over a period not to exceed EPA requirements or the life of the facilities being financed, whichever is sooner. Repayment shall begin no later than one year after estimated completion of construction, or three years from the date of loan award, whichever comes first. Thereafter, loan repayments shall be made in accordance with the loan amortization in the assistance agreement. The repayment period may be equal to less than the EPA-permitted maximum at the discretion of the Department.

(3) Capitalized interest, if applicable, shall be charged to the borrower as detailed in the assistance agreement.

(4) Loan interest shall be charged to the borrower as detailed in the assistance agreement.

(5) The applicant shall prepare an operation and maintenance manual for any new or substantially upgraded water treatment plant.

(6) The applicant shall conform to all federal, state, and local laws pertaining to construction of the project and procurement of design, inspection, and construction services.

(7) The Department may assess penalties for late loan repayments as stipulated in the assistance agreement.

(8) To ensure adequate funds for major maintenance and replacement of the projects funded by this program, the applicant may be required to set aside annually to a replacement reserve fund from current revenues, after taking into account costs of operations and maintenance and debt service requirements, an amount to be determined by the Department. Funds may be withdrawn from the account if major maintenance or replacement of equipment in excess of budgeted amounts is required.

(9) The assistance agreement shall contain terms and conditions that the Department deems necessary to maintain the financial integrity of the DWSRF.

(10) Loans shall be made only to public entities that:

(a) Are included on the project priority list;

(b) In the opinion of the Department, have demonstrated the technical, financial, and managerial ability to operate and maintain the facilities over their useful life and to repay the loan;

(c) Provide security for repayment of the loan;

(d) Are not in default with any outstanding debt indentures, grant agreements, or loans;

(e) Agree to periodically adjust user fees and charges in order that a revenue stream is generated sufficient to operate and maintain the facilities and repay the loan;

(f) Agree to maintain records in accordance with governmental accounting standards and to conduct annual audits of the public body's financial records; and,

(g) Provide assurances as reasonably required by the Department and EPA.

(11) The Department may impose such other conditions as may be necessary and appropriate to implement the Safe Drinking Water Act and laws of the State.

(12) The specific terms and conditions of the DWSRF loan shall be incorporated in the assistance agreement to be executed by the applicant and the Department.
Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
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335-11-2-.10 Duplicate Funding.

Projects that are funded by other grant or subsidized loan programs are ineligible for DWSRF funding for the identical scope of work. DWSRF funds may be used in conjunction with other grant or subsidized loan programs to the extent that the DWSRF is not reimbursing the same expenditures as the other program. By way of example, a project costing a total of one million dollars ($1,000,000) that receives a federal grant for five hundred fifty-thousand dollars ($550,000) would be eligible for DWSRF assistance in the maximum amount of four hundred fifty-thousand dollars ($450,000).
Author: Aubrey H. White III
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012.

335-11-2-.11 Application Procedures.

(1) Pre-Applications for DWSRF assistance may be submitted at any time during the year. Projects subject to subsidy must submit applications on or before the date established by the Department.

(2) Full applications for DWSRF assistance shall be submitted by the deadline established each year by the Department or by the date agreed upon by the Department and the applicant. The application shall include full and complete documentation and any supplementary materials that the Department may require.

(3) Submissions that do not substantially comply with this chapter shall not be processed, and shall be returned to the applicant.

(4) The following shall be submitted when applying for DWSRF assistance:

(a) A complete application form, with supporting documents;

(b) A resolution passed by the public body authorizing the filing of an application for assistance, specifying the individual authorized to sign. the application on behalf of the applicant. If two or more public bodies are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

(c) Statement of assurances as provided by the Department;

(d) Plans and specifications for the project;

(e) Project cost breakdown;

(f) Projected cash flow schedule;

(g) Construction schedule;

(h) Site certificate from the applicant's legal counsel and the authorized representative as to title or mechanism to obtain title necessary for project sites and easements;

(i) Certification that the applicant has received any required permits from the Department for operation of the project;

(j) A statement from the applicant indicating that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickback, collusion, or conflicts of interest relating to or in connection with the planning, design, and construction of the project;

(k) An environmental information document in such format as the Department may require;

(l) A statement from the applicant which indicates if it used the services of a person for planning or design of the project whose name appears on the Federal list of debarments, suspensions and voluntary exclusions;

(m) Executed intermunicipal agreements, if required;

(n) Draft engineering agreements for construction services which specify engineering and inspection costs to be funded by DWSRF Funds;

(o) A description of how the applicant plans to repay the fund loan with supporting documentation as required by the Department; and,

(p) Any other information the Department may require to ensure the eligibility of the project and to evaluate the financial, technical, and managerial capacity of the applicant.

(5) Applicants shall obtain all necessary federal, state and local permits and approvals prior to the award of an assistance agreement. Excluded from prior acquisition are permits and approvals that are impractical to obtain prior to execution of the assistance agreement (e.g., construction permit, road opening permit, blasting permit, etc.).
Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
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335-11-2-.12 Requisition Of Funds.

(a) Loan proceeds shall be disbursed to recipients on a reimbursement basis as work progresses, but no more often than once per month unless the Department grants prior approval.

(b) The Department shall review each payment request to ensure that it conforms to the approved scope of work and that it complies with the conditions of the assistance agreement before approving payment.
Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-11-2-.13 Project Changes.

The recipient shall immediately notify the Department in writing of events or proposed changes that may require a modification to the assistance agreement, including:

(a) Changes in plans and specifications for the project;

(b) Changes to the scope or objectives of the project;

(c) Significant, changed conditions at the project site;

(d) Significant changes to the construction schedule; and

(e) Changes that may substantially change the total cost of the project.

Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-11-2-.14 Access.

(1) The recipient and its contractor and subcontractors shall provide to Department personnel, and any authorized representative of the Department, access to the facilities, premises and records related to the project.

(2) The recipient shall submit to the Department such documents and information as requested by the Department needed to determine compliance with the assistance agreement and this Chapter.

(3) The recipient, and all contractors which contract directly with the recipient or receive a portion of State funds, may be subject to a financial audit.

(4) Records shall be retained and available to the Department until the final fund loan repayment has been made by the recipient.

Author: Aubrey H. White III
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012.

335-11-2-.15 Project Sign.

A project identification sign shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, DWSRF assistance amount, and other information as required by the Department, and shall be configured in a manner acceptable to the Department.

Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-11-2-.16 Project Initiation.

(1) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the assistance agreement.

(2) The recipient shall not advertise any contract until written notice of acceptance of project plans and specifications has been issued by the Department.

(3) Once bids for building the project initiation are received, the recipient must be issued approval to award by the Department prior to awarding any agreement or subagreement(s).

(4) The recipient and the contractor to whom the subagreement(s) has been awarded shall attend a preconstruction conference with Department personnel prior to the issuance of a notice to proceed by the recipient.

(5) The recipient shall award the subagreement(s) and issue notice(s) to proceed no later than the deadlines established by the assistance agreement.
Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012. **Amended:** Published February 28, 2020; effective April 13, 2020.

335-11-2-.17 Allowable Project Costs.

The Department shall only provide assistance from the DWSRF for costs of work that are eligible under the Safe Drinking Water Act and EPA capitalization grants.
Author: Aubrey H. White III
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012.

335-11-2-.18 Withholding Of Funds.

The Department may withhold disbursements from an assistance agreement when the Department determines that a recipient has failed to comply with any assistance agreement condition,

provision of this chapter, or contract specification or requirement.
Author: Aubrey H. White III
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012.

335-11-2-.19 Project Activities Not Eligible For Funding.

(1) The Fund cannot provide funding assistance for the following projects and activities:

(a) Dams or rehabilitation of dams;

(b) Water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy.

(c) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located.

(d) Laboratory fees for routine monitoring.

(e) Operation and maintenance expenses;

(f) Projects needed mainly for fire protection.

(g) Projects for water systems that lack adequate technical, managerial and financial capability, unless assistance will ensure compliance;

(h) Projects for water systems in significant noncompliance, unless assistance will ensure compliance;

(i) Projects with adverse environmental impact or strong public objection; or

(j) Operator training, except for initial start-up training by a vendor and/or design engineer for equipment installed by a DWSRF-funded project.

(2) The Fund may not provide any type of assistance to a system that has a history of non-compliance or lacks the technical, managerial or financial capability to maintain SDWA compliance, unless the owner or operator of the system agrees to undertake feasible and appropriate changes in operation or if the use of the financial assistance from the Fund will ensure compliance. These changes include consolidation or management changes that will

ensure that the system has the technical, managerial, and financial capability. Costs associated with consolidation, such as legal fees and water buy-in fees, are eligible for funding.

(3) The Fund cannot provide assistance to any water system that is in significant noncompliance with any state drinking water regulation in accordance with ADEM Administrative Code, Division 7 or variance, unless ADEM conducts a review and determines that the project will enable the system to return to compliance and the system will maintain an adequate level of technical, managerial and financial capability to maintain compliance.

(4) The Fund cannot provide assistance to finance the expansion of any drinking water system solely in anticipation of future population growth. However, assistance may be provided to address population growth expected to occur over the useful life of the facility to be funded. If the primary purpose is to supply or attract growth, the project is not eligible to receive assistance. If the primary purpose is to solve a compliance or public health problem, the entire project, including the portion necessary to accommodate a reasonable amount of growth over its useful life, may be eligible.
Author: Aubrey H. White III, Kris Berry
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
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335-11-2-.20 Funding Decisions.

The Department may deny a DWSRF application if, in the opinion of the Department, it cannot be clearly established that the applicant has the technical, financial, and managerial ability to repay the loan and operate its system in a sustainable fashion. The Department may also deny a DWSRF application in order to preserve the sustainability of the DWSRF program.
Author: Aubrey H. White III
Statutory Authority: Code of Ala. 1975, §§22-23B-1, 22-23B-2, 22-23B-3, 22-23B-12.
History: **New Rule:** Filed October 23, 2012; effective November 27, 2012.