

APA-2
11/96

Alabama Department of Environmental Management
Permits & Services Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Environmental Management
RULE NO. & TITLE: 335-7-13 Drinking Water State Revolving Fund (Repeal)

INTENDED ACTION:

The Alabama Department of Environmental Management proposes to repeal chapter 335-7-13 of its Administrative Code.

SUBSTANCE OR PROPOSED ACTION:

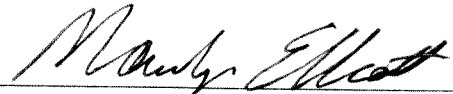
The repealed rule will be replaced by the proposed chapter 335-11-2.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held September 17, 2012 at 10:00 a.m. in the Hearing Room at the Alabama Department of Environmental Management, 1400 Coliseum Boulevard, Montgomery, AL 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 17, 2012

CONTACT PERSON AT AGENCY: Aubrey White (334) 271-7711



Lance R. LeFleur
Director

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
WATER DIVISION - WATER SUPPLY PROGRAM

CHAPTER 335-7-13 (REPEALED)
DRINKING WATER STATE REVOLVING FUND

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335-7-13-.01 Applicability. This chapter shall constitute the rules of the Alabama Department of Environmental Management (ADEM) governing the disposition of appropriations in accordance with the Safe Drinking Water Act or "SDWA" as amended in 1996 and Alabama Act No. 97-415 or other monies appropriated to the Drinking Water State Revolving Fund (DWSRF).

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.02 Purpose. This chapter is promulgated for the following purposes:

(a) To implement the purposes and objectives of the Federal Safe Drinking Water Act Amendments of 1996, Environmental Management Act, and the Alabama Drinking Water Finance Authority.

(b) To establish policies and procedures for the distribution of funds appropriated in accordance with the Safe Drinking Water Act Amendments of 1996: State Revolving Fund and other monies appropriated to the Drinking Water State Revolving Fund to provide financial assistance to public water systems in financing the costs of infrastructure needed to achieve or maintain compliance with the SDWA and protect public health.

(c) Ensure that appropriated monies are spent in a proper manner and for the intended purposes;

(d) To assure that the distribution and use of monies provided is consistent with the laws and policies of the State and Federal Government;

(e) To establish minimum standards of conduct to prevent fraud, waste, abuse and conflicts of interest and to ensure proper administration; and

(f) To establish loan repayment requirements.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.03 Definitions. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(a) "Act" means Alabama Act No. 97-415, establishing the Drinking Water Finance Authority.

(b) "Allowable costs" are 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 Fund loan agreement.

(c) "Applicant" means any local governmental unit that applies for a Fund loan in accordance with the provisions of these rules and regulations.

(d) "Authority" is the corporation organized in accordance with the provisions of the Act as a public corporation, agency and instrumentality of the state and known as the Alabama Drinking Water Finance Authority.

(e) "Authorizing resolution" means a resolution or order adopted by the Board of Directors of the authority authorizing the issuance of bonds by the Authority in accordance with the Act or by a public body.

(f) "Board of Directors" means the Board of Directors of the Alabama Drinking Water Finance Authority, which consists of the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Director of ADEM, and the Director of Finance.

(g) "Bonds" are the drinking water finance bonds, notes or obligations or other evidence of indebtedness issued by the Authority under the provisions of the Act.

(h) "Bond proceeds" are the direct proceeds of the sale of bonds or notes, and the income derived from the investment of such proceeds.

(i) "Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.

(j) "Construction costs" are the cost for the acquisition, erection, alteration, remodeling, improvement or extension of water treatment or distribution facilities. This definition includes administrative and legal fees, land (an integral part of the treatment or distribution process), fiscal, engineering and inspection costs and costs associated with the planning and design of the project.

(k) "Cross-cutters" are Federal laws, executive orders and government-wide policies that apply by their own terms to projects and activities receiving Federal financial assistance including environmental laws such as the National Historic Preservation Act and the Wild and Scenic Rivers Act, and social and economic policy authorities such as Executive Orders on Equal Employment Opportunity and government-wide debarment and suspension rules.

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

(m) "Director" means the Alabama Department of Environmental Management Director.

(n) "Federal grant" means a grant awarded in accordance with section 1452 of the SDWA Amendments of 1996.

(o) "Final construction cost" means the total actual allowable cost of the final work in place for the project, in accordance with the scope as defined in the Fund loan agreement.

(p) "Fund" means the Drinking Water Revolving Fund established in accordance with the Act.

(q) "Fund loan" means a loan from the Drinking Water Revolving Fund for the allowable costs of a project.

(r) "Fund loan agreement" means the legal instrument executed between the Authority and the applicant.

(s) "Initiation of operation" means the date specified by the recipient on which use of the project begins for the purposes that it was planned, designed and built.

(t) "Loan modification" means any written alteration of the Fund loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(u) "Local governmental unit" includes each county, state agency, incorporated city or town, public corporation, district, cooperative, association, authority or and instrumentality thereof created by or in accordance with 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.

(v) "Low bid construction cost" means the total actual allowable cost for the project as reflected in the award of all contracts within a project scope to the low bidder(s).

(w) "Nonviable" means the lack of technical, managerial and financial capability to maintain the system as demonstrated by the system's history of monitoring, reporting, and operating in accordance with ADEM requirements.

(x) "Project completion date" is the date the project is estimated to be completed as stated in the full application received by the applicant, and as determined by the Department to be consistent with the scope and complexity of the project and project plans and specifications.

(y) "Project priority list" means the list developed by ADEM in conformance with the Federal Safe Drinking Water Act Amendments of 1996, and any amendatory or supplementary acts thereto, and State regulations as contained in this chapter of the ADEM Administrative Code.

(z) "Project" is the scope of services to be provided via the construction of specified facilities as approved by the Department in the Fund loan agreement.

(aa) "Recipient" means any local governmental unit which has received a Fund loan in accordance with this chapter.

(bb) "SDWA" is the Safe Drinking Water Act as amended in 1996.

(cc) "Scope of work" means the detailed description of the extent of services required to construct proposed water treatment or distribution facilities.

(dd) "Substantial alteration" means any change that results in an alteration of the project costs or a change of 90 days or more in the project schedule.

(ee) "Water Conservation Program" means a comprehensive program to effectively manage the demand for water supply for a local governmental unit. The program may include, but is not limited to, the following: a program to detect and minimize leakage from the distribution system; a program to educate the public on the importance of minimizing water consumption; and a program to encourage the use of high efficiency toilets and showerheads, etc.

(ff) "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: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

Amended: March 12, 2002.

335-7-13-.04 Drinking Water Revolving Fund or "Fund". Use of the proceeds of bond sales, Federal and State appropriations, payments of loan principal and interest, and interest earned on the fund shall be subject to the following conditions:

(a) The minimum loan amount shall be \$100,000 for EPA direct funds and \$300,000 for state bond funds.

(b) Buying or refinancing the debt obligation of water systems shall occur only when such debt obligations were incurred and building began after July 1, 1993; and public notice was conducted, and appropriate state and federal cross cutters were considered.

(c) To serve as a source of revenue or security for the payment of principal and interest on revenue bonds issued by the Authority if the net proceeds of the sale of such bonds are deposited in the Fund.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

Amended: March 12, 2002.

335-7-13-.05 Systems Eligible for Funding. Loans shall be made only to local governmental units that:

- (a) Are on the State Drinking Water project priority list;
- (b) Demonstrate tangible financial capability to assure sufficient revenues to operate and maintain the proposed facilities over their useful life and to repay the loan;
- (c) Provide security as required by the Department for repayment of the loan;
- (d) Agree to periodically adjust fees and charges for services of the water system in order that loan repayments and costs of the water system are timely paid;
- (e) Agree to maintain records in accordance with governmental accounting standards and to conduct an annual audit of the system's financial records and;
- (f) Provide such assurances as reasonably required by the Authority and the Department.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

Amended: March 12, 2002.

335-7-13-.06 Project Components Eligible for Funding.

(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; and

(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.

(2) Land is an allowable cost only if it is integral to a project that is 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 has to be from a willing seller.

(3) The Fund may provide assistance for the costs of project planning, design and other related costs. The provision of assistance for design and planning costs does not guarantee a system that the Fund program will provide funding for the construction of the project. The State may choose to combine the loan for planning and design with a construction loan.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.07 Allowable Project Costs. The Department shall not provide Fund loan monies for costs of work that the Department determines are not in compliance with the SDWA. In general, allowable costs may include, but may not be limited to, the following:

(a) Costs of salaries, benefits, and expendable material the applicant incurs for planning and administration of the project;

(b) Costs under construction contracts;

(c) Professional and consultant services;

(d) Facilities planning directly related to the treatment works;

(e) Project feasibility and engineering reports;

(f) Costs of complying with the National Environmental Policy Act, including costs of public notices and hearings;

(g) Preparation of construction drawings, specifications, estimates, and construction contract documents;

- (h) Landscaping;
- (i) Removal and relocation or replacement of utilities, for which the applicant is legally obligated to pay;
- (j) Materials acquired, consumed, or expended specifically for the project;
- (k) A reasonable inventory of laboratory chemicals, supplies, and equipment necessary to initiate water treatment plant operations;
- (l) Development and preparation of an operation and maintenance manual;
- (m) Project identification signs;
- (n) Costs of complying with procurement requirements; and
- (o) Site acquisition of the land that will be an integral part of the water treatment process or is used in the ultimate disposal of residues resulting from such treatment. For site acquisition costs made with funds directly made available by the Environmental Protection Agency (EPA) capitalization grants, such acquisition shall be in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PL 91-646.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

Amended: March 12, 2002.

335-7-13-.08 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 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 primarily intended to serve future growth;
- (j) Projects with adverse environmental impact or strong public objection; or
- (k) Operator training.

(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 over the long-term. 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: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.09 Terms of the Loans from the Drinking Water Revolving Fund.

(1) The Fund may offer loans of up to 100 percent of allowable project costs for the construction of water treatment and distribution facilities. Such loans must be made at or below market interest rates as determined by the Authority.

(2) The total term of the loans shall not exceed 20 years. Repayments shall begin not later than one year after completion of construction for which such loan was made, and shall be repaid in full no later than 20 years. Thereafter, loan repayments shall be made in accordance with the repayment schedule indicated in the borrower's Fund loan agreement. Principal and accrued interest with respect to a particular Fund loan may, however, be prepaid in accordance with the provisions of the relevant Fund loan agreement.

(3) Fund loan payments will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved, but not more often than once a month or unless the Fund loan is awarded on a restrictive basis for the reimbursement of eligible prior expenditures.

(4) The specific terms and conditions of the Fund loan shall be incorporated in the Fund loan agreement to be executed by the applicant and the Department.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.10 Criteria for Project Loan Priority.

(1) Each year, the Department shall develop a project priority list in accordance with the SDWA for the forthcoming fiscal year. The criteria for ranking projects gives priority to projects that: 1) protect public health, and return systems to compliance; 2) benefit the most people per dollar expended; 3) assist systems most in need on a per household affordability basis; and 4) use consolidation with other systems to correct existing deficiencies and improve management. Each year, the project priority list shall be the subject of a public notice, including a public comment period. Water systems desiring to place a project on the list shall make their request for placement by May 1 of each year, or as otherwise established by the Department. Those projects will be ranked in accordance with the priority system and placed on the list. The pre-application, in the form of an Engineering Report, shall be submitted by the authorized representative of the water system with a request for placement on the list:

- (a) Brief description of the project;
- (b) Brief description of existing deficiencies (for example, low pressure, inadequate treatment, bacteriological contamination, etc.);
- (c) Number of customers for entire water system;
- (d) Number of customers for project area;
- (e) Estimated costs associated with the project including planning and design expenses;
- (f) Financial information summary including, but not limited to, the following:
 - 1. Annual operations and maintenance cost estimates;
 - 2. Total existing water system debt obligations;
 - 3. Total annual revenues;
 - 4. Most recent financial statement;
 - 5. Existing water service rates and proposed increases;
 - 6. Average annual customer water bill based on historical usage; and
 - 7. Median household income for project area;
 - 8. Where one or more project option exists, projected costs for each option.
- (g) Engineering Report as described in rule 335-7-4-.04, unless otherwise directed by the Department; and
- (h) Benefits of pollution prevention or water shed enhancement project.

Each project considered eligible for assistance shall be assigned a point rating (P) computed according to the following formula:

$$P = A+B+C+D+E+F+G$$

Where:

A= Violations of National Drinking Water Standards

B= Quantity Deficiencies

C= Treatment Deficiencies

D= Affordability

E= New Customers Served

F= Consolidation

G= Benefit/Cost

A = Violations of National Drinking Water Standards

Maximum Contaminant Levels (MCLs) are established by the EPA for those contaminants that may be detrimental to public health. Exceedences of these levels during the 30-month period prior to pre-application submittal (3 years for secondary contaminants) carry the following weightings:

Condition	Priority Points
a. Bacteriological	
1. No MCL violations	0
2. 1-2 MCL violations	30
3. Greater than 2 violations	40
b. Nitrate	
1. < 1.0 mg/L	0
2. 1.0 – 5.0mg/L	5
3. 5.0 – 10.0mg/L	20
4. MCL violations	40
c. Turbidity in the last 30 months	
1. No MCL violations	0
2. 1-2 MCL violations	30
3. Greater than 2 violations	40
d. Primary Organic, Inorganic, and Radionuclide	

Standards

1.	No MCL violations during last 2 monitoring periods	0
2.	1-2 violations	30
3.	Greater than 2 violations	40

Total Trihalomethanes (TTHM)

1.	No MCL violations during last 2 monitoring periods	0
2.	1-2 violations	30
3.	Greater than 2 violations	40
f.	Secondary Standards – MCL exceedences	20
g.	Boil Water Status in the last 3 years	30
h.	Lead or Copper Exceedence	30

B = Quantity Deficiencies. Quantity deficiencies or shortages due to water source/storage.

Condition	Priority Points
Adequate quantity for the present	0
<u>Source</u>	
Continual Shortage	30
Shortage during peak demands (daily)	20
Shortage during seasonal high use with an implemented conservation program.	15
Shortage during seasonal high use without an <i>implemented</i> conservation program	5
<u>Storage (less than 24 hrs available based on average demand)</u>	
Inadequate storage with <i>implemented</i> conservation program	20

Inadequate storage without <i>implemented</i> conservation program	5
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Pressure

Consistently < 20 psi	30
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Occasionally < 20 psi	15
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C = Treatment/Design Deficiencies. Design deficiencies are those which could be corrected by enlargement, repair, installation or replacement of all or a portion of the system.

Condition	Priority Points
No filtration of surface water or groundwater under the influence of surface water	30
No filtration of groundwater with the following raw water quality referenced in 335-7-5-.20 Administrative Code	
1. Turbidity > 5.0 NTU	25
2. Total Coliform > 100 per 100 ml of sample	20
3. Fecal Coliform > 20 per 100 ml of sample	25
4. Iron > 0.6 mg/L	15
5. Iron >0.3 <0.6 mg/L	10
6. Manganese > 0.1 mg/L	15
7. Manganese >0.05 <0.1mg/L	10
Inadequate treatment or process facilities	12
Distribution or plant capacity deficiencies	12
Improper well construction	12
Other contaminants of concern such as cryptosporidium or Giardia with monitoring or studies to demonstrate existence or high potential for occurrence	25

Bonus Points:

System has implemented or committed (by letter) to implementing a source water protection program	15
System has completed or in process (by letter) of delineating source water areas and assessing contaminants.	10

D = Affordability Factor. An affordability factor will be assigned to each project to reflect the relative needs of applicants on a per household basis. The affordability factor is defined as the ratio of the Average Annual Household water bill to the 1997 median household income for the project area.

Condition	Priority Points
<u>Average annual household water bill</u>	X 100
Median household income of project area	
a. > 2.00%	24
b. 1.76 – 2.00	21
c. 1.51 - 1.75	18
d. 1.26 – 1.50	15
e. 1.01 - 1.25	11
f. 0.51 - 1.00	7
h. < or = 0.5	3

E = New Customer Connections Served.

Condition	Priority Points
New customer connections the project will serve:	
a. < 20 connections	10
b. 21-50	12
c. 51-100	14

d. 101-150	16
e. 151-200	18
f. 201-300	20
g. 301-400	22
h. 401-600	24
i. > 600	26

F = Consolidation. Projects which result in the consolidation, interconnection, or improvement of services for two or more drinking water systems, will have the following weighted factor.

Condition	Priority Points
No consolidation	0
Total system consolidation	50
Physical interconnection	30
Management consolidation	20
Improvement of Services (managerial, operational, and financial)	10

G = Benefit/Cost Factor. Benefit/Cost points assigned to each project will be determined using the following formula:

$$\text{Benefit/Cost Factor} = \frac{\text{Number of benefitting connections}}{\text{Amount of DWSRF Loan (in \$1.0 millions)}}$$

Applicants must furnish information (including hydraulic analyses, if necessary) to support their estimate of the number of benefitting connections. The amount of DWSRF loan is in millions of dollars.

Condition	Priority Points
a. factor > 10,000	22
b. factor 3,001 to 10,000	20
c. factor 1501 to 3,000	18
d. factor 801 to 1,500	16
e. factor 501 to 800	14
f. factor 301 to 500	12
g. factor 201 to 300	10
h. factor 121 to 200	8
i. factor 61 to 120	6

- | | |
|--------------------|---|
| j. factor 26 to 60 | 4 |
| k. factor 0 to 25 | 2 |

(2) The priority list shall be divided into a fundable and extended portion. The fundable portion shall include those projects anticipated to be funded from the projected available loan funds for the applicable period. The extended portion shall include those projects anticipated for funding from future projected loan funds.

(3) Following completion of the ranking process, the priority list will be reviewed to determine if at least 15% of amount projected to be funded is for public water systems which regularly serve fewer than 10,000 people, as required by the SDWA. If this is not the case, the priority list will be adjusted by exchanging the lowest ranking projects above the funding line that serve 10,000 or more with the highest ranking projects below the funding line that serve fewer than 10,000, until the 15% requirement is satisfied.

(4) When two or more projects score equally under the project priority system, a tie breaking procedure will be utilized. The project with the smallest number of existing customers served will receive the higher ranking.

(5) A project on the fundable portion of the list may be bypassed and the next eligible project funded if it is determined that the project will not be ready to proceed during the funding year. The applicant whose project is to be bypassed will be given written notice by the Department. Projects that have been bypassed may be funded at a later date when the project is ready to proceed.

Author: Joe Alan Power; Timothy Johnson.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.11 Preapplication Procedures.

(1) Local governmental units are urged to be familiar with the requirements of this chapter and to contact the Department early in the planning process so that their projects are in a position to proceed.

(2) The Department may require a pre-application conference with potential applicants prior to submission of a formal application for a Fund loan.

(3) Questions concerning the program and requests for a pre-application conference should be directed to:

ADEM-Water Division
Water Supply Branch
P O Box 301463
Montgomery, AL 36130-1463

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.12 Application Procedures.

(1) Each application for a Fund loan shall be submitted by the deadline established each year by the Department and generally no later than May 1 of the fiscal year for which funding is requested. Department approval of the planning documents, plans and specifications are required as part of the application for a Fund loan.

(2) Submissions which do not comply with this chapter shall not be processed, and shall be returned to the applicant.

(3) The following shall be submitted when applying for a Fund loan:

(a) An application for a Fund loan in accordance with this chapter for construction of water treatment systems. Each application shall constitute a commitment by the applicant to comply with the requirements of this chapter and, upon execution of the agreement by the Authority and the applicant, acceptance of the terms and conditions of the Fund loan agreement;

(b) A resolution passed by the local governmental unit authorizing the filing of an application for a Fund loan, specifying the individual authorized to sign the Fund loan application on behalf of the local governmental unit. The resolution must be published in the local newspaper or posted in a local municipal building for a period of 5 days in order to notify the public. If two or more local governmental units are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

(c) A statement of assurances in conformance with rule 335-7-13-.17;

(d) Department concurrence with plans, specifications and technical design report;

(e) Project cost breakdown;

(f) Projected cash flow schedule;

(g) Project construction schedule;

(h) System financial information summary;

(i) Certificate (legal opinion) from counsel and the authorized representative as to title, or mechanism to obtain title, necessary for project sites and easements;

(j) A certification that required permits and approvals, if applicable for building the water treatment facilities, was received from the following agencies;

Water Supply Branch of ADEM;
Alabama Historical commission (historical, archaeological, cultural resources);
U.S. Army Corps of Engineers (wetlands);
U.S. Fish and Wildlife Services (flood plains/wetlands);

(k) 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 and design of the project;

(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 that specify engineering costs;

(o) A description of how the applicant plans to repay the Fund loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Fund loan that shall guarantee that at the time of the signing of the Fund loan agreement it shall be irrevocably committed to repay the Fund loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all Fund loans in a manner acceptable to the Authority, pledging to provide funds to repay the debt, even if the Fund loan is terminated in accordance with rule 335-7-13-.37; and

(p) Such other information as the Department may require.

(4) Applicants shall obtain all necessary Federal, State and local permits and approvals prior to the award of a loan unless the lack of such permits does not significantly affect the loan award. Excluded from prior acquisition are permits and approvals that are impractical to obtain prior to the loan award (e.g., road opening permit, blasting permit, etc.).

- (5) All loan applications shall be submitted to:

ADEM-Water Division
Water Supply Branch
P O Box 301463
Montgomery, AL 36130-1463

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.13 Evaluation of Application.

(1) The Department shall notify the applicant that it has received the application and is evaluating it in accordance with this section. Each application shall be subject to a:

(a) Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

(b) Programmatic, technical, and scientific evaluations to determine the relevance of the project to the Department's program objectives;

(c) Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable;

(d) Final administrative evaluation;

(e) Financial information review to determine system capability of repaying the loan; and

(f) Requirement that the applicant is not in default on any grant, loans, or contracts with the Department.

(2) Upon the completion of a full review and evaluation of each application, the Department shall either approve the application or make the determination that the Fund loan award shall be deferred.

(3) The Department shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action shall result in one of the following:

(a) An approval of the application if the outstanding issues are addressed to the satisfaction of the Department within the specified time frame;
or

(b) A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Department within the specified time frame.

(4) The Department shall promptly notify applicants in writing of any disapproval. A disapproval of an application shall not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Fund loan application and/or processing of a Fund loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.14 Supplemental Information. At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.15 Fund Loan Agreement. The Authority shall prepare and transmit the Fund loan agreement to the applicant.

(a) The applicant shall execute the Fund loan agreement and return it within 30 calendar days after receipt. The Authority may, at its discretion, extend the time for execution. The Fund loan agreement shall be signed by a person authorized by resolution to obligate the applicant to the terms and conditions of the Fund loan agreement being executed. The authorizing resolution shall also be submitted at this time.

(b) The Fund loan agreement shall set forth the terms and conditions of the Fund loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

(c) The Fund loan agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

(d) The Authority shall not execute the Fund loan agreement if the applicant is in current default on any State or Federal loan.

(e) After the Authority has completed its internal processing of the Fund loan agreement, it shall transmit a copy of the executed Fund loan agreement to the recipient.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.16 Effective Date of Loan Award.

(1) On the date of execution of the Fund loan agreement by the Authority and the recipient, the loan shall become effective and shall constitute an obligation of the Fund in the amount and for the purposes stated in the Fund loan agreement.

(2) The award of the Fund loan shall not commit or obligate the Authority to award any continuation Fund loan to cover cost overruns of the project. Cost overruns for any project or portion thereof may be the sole responsibility of the recipient.

(3) The award of a Fund loan by the Authority shall not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all required permits, licenses and operating certificates for its respective project.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.17 Loan Conditions.

(1) The following requirements, in addition to rule 335-7-13-.19 through 335-7-13-.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are applicable to disbursements under a Fund loan agreement:

(a) The recipient shall certify that it is maintaining its financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

(b) The recipient shall comply with the requirements of all Public Water Supply Permits that may be held;

(c) The recipient shall comply with all applicable requirements of Federal, State and local laws;

(d) The recipient shall pay the unallowable costs of the construction of the project;

(e) The Fund loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Department requirements;

(f) The recipient shall retain a certified water operator in accordance with ADEM Administrative Code, Division 335-10;

(g) Construction of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of Federal, State, and local laws, ordinances, rules and regulations and to contract specifications and requirements;

(h) No Fund loan monies shall be disbursed to a local governmental unit who is in current default on any Fund loan. Nothing in this paragraph shall in any way limit any right or duty of the Authority to demand and collect at any time the total due under any such defaulted loan;

(i) The Authority may assess penalties to late loan repayments as appropriate and as specified in the Fund loan agreements;

(j) The recipient shall certify that the project, or phase of the project, will be initiated and completed in accordance with the time schedule specified in the Fund loan agreement;

(k) The recipient must submit proof that it, and its contractors and subcontractors, will comply with all insurance requirements of the Fund loan agreement and that it shall be able to certify that the insurance is in full force and effect and that the premiums have been paid.;

(l) The Authority and/or the Department may require an administrative fee payable each year by the borrower starting in the first year of the loan repayment until fund loan payment in an amount determined by the Authority and/or Department based upon administrative costs to the Authority and/or Department.;

(m) The Department may impose such other conditions as may be necessary and appropriate to implement the SDWA and laws of the State to meet the purpose and intent of the Act.

(2) The recipient shall certify that it is in compliance with all other requirements and conditions of the Fund loan agreement.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.18 Administration and Performance of Loan. The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing the Fund loan objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the recipient to the Department. The primary concern of the Department is that Fund loan monies be used in conformance with these rules and the Fund loan agreement to achieve the Fund loan objectives and to ensure that the purposes set forth in the Act and the SDWA are fully executed.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.19 Project Changes and Loan Modifications.

(1) There shall be no Fund loan modification increasing the funding amount beyond adjustments to cover the low bid construction costs. Adjustments due to the low bid construction costs will be made only after a subsequent passage of a legislative appropriations act or if funds exist which are unobligated or not already targeted for other projects on the recipient.

(2) The recipient shall promptly notify the Water Supply Branch, Water Division, in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification, including but not limited to:

- (a) Rebudgeting;
- (b) Changes in approved technical plans or specifications for the project;
- (c) Changes which may affect the approved scope or objectives of the project;
- (d) Significant, changed conditions at the project site;
- (e) Acceleration or deceleration in the time for performance of the project or any major phase thereof; or
- (f) Changes which may increase or substantially decrease the total cost of a project.

(3) If the Authority decides a formal Fund loan amendment is necessary, the recipient shall be notified and a formal Fund loan amendment shall be processed in accordance with rule 335-7-13-.20. If the Authority decides a formal Fund loan amendment is not necessary, the Department shall follow the procedures of rule 335-7-13-.21 or .22, as applicable.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.20 Formal Loan Amendments.

(1) The Authority may require a formal Fund loan amendment to change principal provisions of a Fund loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof, or substantially alter the objective or scope of the project.

(2) The Authority and recipient may effect a formal Fund loan amendment only by a written amendment to the Fund loan agreement executed by the Authority and the recipient.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.21 Administrative Loan Changes. Administrative changes by the Department, such as a change in the office to which a report is to be transmitted by the recipient, or a change in the disbursement schedule for Fund loans for construction of a water project, constitute changes to the Fund loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and generally be effected by a letter to the recipient.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.22 Other Changes. All other project changes, which do not require a formal Fund loan amendment as stated in rule 335-7-13-.21 shall be undertaken only upon written approval of the Department.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.23 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;

(3) The recipient, and all contractors and subcontractors which contract directly with the recipient or receive a portion of State monies, 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: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.24 Authority Disbursement. Disbursement of Fund loan monies shall be made at intervals as work progresses and expenses are incurred not to exceed a monthly basis but in no event shall disbursement exceed the allowable costs that have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department. Should the recipient be receiving Fund loan monies for expenditures incurred prior to the award of the Fund loan, the disbursement schedule shall be as indicated in the Fund loan agreement.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.25 Assignment. The right of a recipient to receive disbursements from the Authority under a Fund loan may not be assigned, nor may repayments due under a Fund loan be similarly encumbered.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.26 Unused Funds. Where the total amount of the construction costs after bids are taken is less than the initial loan award, the Fund loan agreement may be adjusted and the difference shall be retained by the Fund to be reallocated to other water projects. Where allowable cost overruns occur, Fund monies may be used to cover those cost overruns up to the loan amount adjusted due to the low bid construction cost.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.27 Publicity and Signs.

(1) Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge Department loan support.

(2) A project identification sign, at least eight feet long and four feet high shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department, and shall be configured in a manner acceptable to the Department as shown in Figure 1.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.28 Project Initiation.

(1) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the Fund loan agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this chapter.

(2) The recipient shall not advertise any contract until a construction permit has been issued by the Department.

(3) Once bids are received, the recipient shall not award any subagreement(s) until authorization to award has been given by the Department.

(4) The recipient and the contractor to whom any 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, where required, for building all "significant" elements of the project

no later than 12 months after execution of the loan agreement, unless a longer time period has been approved by the Department.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.29 Project Performance.

(1) Within 30 days of the actual date of initiation of operation of the project, the recipient shall, in writing, notify the Department.

(2) For a water treatment process portion of any project, on the date one year after the initiation of operation, the recipient shall certify to the Department the performance record of the project. If the Department or the recipient concludes that the project does not meet the water treatment facilities' performance standards as specified in the Fund loan agreement, the recipient shall submit the following:

(a) A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

(b) The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

(c) The scheduled date for certifying to the Department that the project is meeting the specified performance standards.

(3) The recipient shall take corrective action necessary to bring a project into compliance with the specified performance standards at its own expense.

(4) Nothing in this section:

(a) Prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements and from any part performing project work; or

(b) Affects the Department's right to take remedial action, including enforcement, against a recipient that fails to carry out its obligations.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.30 Preaward Costs.

(1) The Department shall not award loan assistance for construction costs incurred for activities performed prior to the award of the loan for the project, except:

(a) To buy or refinance local debt obligations (e.g., retire existing municipal bonds to reduce the interest rate, or extend the maturity date, or both) at or below market rate, where such debt was incurred after July 1, 1993 subject to the following conditions:

1. The local governmental unit has submitted all applicable items required by rule 335-7-13-.12 to the Department prior to the advertisement of any contract for which cost reimbursement is being sought;

2. The local governmental unit has not advertised any contract, for which cost reimbursement is being sought, prior to the authorization to advertise the contracts being given by the Department; and

3. The local governmental unit has not awarded any contract for which cost reimbursement is being sought prior to the authorization to award the contracts being given by the Department;

(b) In emergencies or instances where delay could result in significant cost increases or significant environmental impairment. The Department may approve preliminary building activities such as procurement of major equipment requiring long lead times, acquisition of allowable land or advanced construction of minor portions of a water treatment facility. However, advanced approval shall not be given until after the Department reviews and approves an environmental assessment and other specific documents necessary to adequately evaluate the proposed action.

(2) If the Department approves preliminary building activities, such approval is not an actual or implied commitment of Fund loan monies and the local governmental unit proceeds at its own financial risk. The local governmental unit shall receive cost reimbursement of approved activities only upon execution of a binding Fund loan agreement.

Author: Joe Alan Power

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.31 Reserve Capacity.

(1) The Department shall limit the recipient's Fund loan assistance to the cost of the project with a capacity based upon existing demand and demands anticipated for a reasonable population growth.

(2) For any project providing for capacity in excess of that provided by this section, all incremental costs shall be paid by the recipient. Incremental costs include all costs which would not have been incurred but for the additional excess capacity (that is, any cost in addition to the most cost effective alternative with allowable capacity as described in paragraph (1) of this section).

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.32 Fraud and other Unlawful or Corrupt Practices.

(1) The recipient shall administer Fund loans, acquire property in accordance with the award documents, and award contracts and subcontracts in accordance with those loans free from bribery, graft, and other corrupt practices. The recipient bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The Department shall also have the right to pursue administrative or other legally available remedies.

(2) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Department when such allegation or evidence comes to its attention, and shall periodically advise the Department of the status and ultimate disposition of any related matter.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.33 Debarment.

(1) No recipient shall enter into a contract for work on a water project with any person debarred, suspended or disqualified.

(2) The recipient, prior to acceptance of Fund loan monies, shall certify that no contractor or subcontractor is included on the list of debarred, suspended and disqualified bidders as a result of action by a Federal agency. If Fund loan monies are used for disbursement to a debarred firm, the Authority reserves the right to immediately terminate the Fund loan and/or take such other action as is appropriate.

(3) Whenever a bidder is debarred, suspended, or disqualified, the recipient may take into account the loss of Fund loan monies under these regulations which result from awarding a contract to such bidder, in

determining whether such bidder is the lowest responsive and responsible bidder in accordance with laws, and the recipient may advise prospective bidders that these procedures shall be followed.

(4) Any person included on the Federal list as a result of action by a Federal agency, who is or may become a bidder on any contract which is or shall be funded by a Fund loan under this section, may present information to the Department why this section shall not apply to such person. If the Department determines that it is essential to the public interest, the Department may grant an exception from the application of this section with respect to a particular contract.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.34 Noncompliance. In addition to any other remedies as may be provided by law or in the Fund loan agreement, in the event of noncompliance with any loan condition, requirement of this chapter, or contract requirement or modification, the Authority may take any of the following actions or combinations thereof:

(a) Issue a notice of noncompliance in accordance with rule 335-7-13-.35;

(b) Withhold Fund loan monies in accordance with rule 335-7-13-.36; and/or

(c) Terminate the Fund loan in accordance with rule 335-7-13-.37.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.35 Notice of Noncompliance. Where the Department determines that the recipient is in noncompliance with any condition or requirement of these rules or requirements, it shall notify the recipient of the noncompliance. The Department may require the recipient to take and complete corrective action within 10 working days of receipt of notice. If the recipient fails to take corrective action or if the action taken is inadequate, then the Department may withhold disbursement. The Department may, however, withhold disbursement in accordance with rule 335-7-13-.36 without issuing a notice in accordance with this section.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.36 Withholding of Funds. The Department may withhold, upon written notice to the recipient, a Fund loan disbursement or any portion thereof where it is determined that a recipient has failed to comply with any loan condition, provision of this chapter, or contract specification or requirement.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

335-7-13-.37 Termination of Loans.

(1) Termination of loans by the Authority shall be conducted as follows:

(a) The Authority may terminate a Fund loan in whole or in part for good cause. The term "good cause" shall include but not be limited to:

1. Substantial failure to comply with the terms and conditions of the Fund loan agreement:

2. Default by the recipient;

3. A determination that the Fund loan was obtained by fraud;

4. Without good cause therefor, substantial performance of the project work has not occurred;

5. Gross abuse or corrupt practices in the administration of the project have occurred; or

6. Fund monies have been used for non-allowable costs.

(b) The Authority shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Fund loan, in whole or in part, at least 30 days prior to the intended date of termination.

(c) The Authority shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Authority may, in writing (certified mail, return receipt requested), terminate the Fund loan in whole or in part.

(2) Project termination by the recipient shall be subject to the following:

(a) A recipient shall not unilaterally terminate the project work for which a Fund loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Department of any complete or partial termination of the project work by the recipient.

(b) If the Department determines that there is good cause for the termination of all or any portion of a project for which the Fund loan has been awarded, the Authority may enter into a termination agreement or unilaterally terminate the Fund loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Fund loan shall be solely within the discretion of the Authority. If the Authority determines not to terminate, the recipient shall remain bound by the terms and conditions of the Fund loan agreement.

(c) If the Authority determines that a recipient has ceased work on a project without good cause, the Authority may unilaterally terminate the Fund loan in accordance with this section.

(3) The Authority and recipient may enter into a mutual agreement to terminate at any time in accordance with terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Fund loan.

(4) Upon termination, the recipient may be required to immediately refund or repay to the Authority the entire amount of the Fund loan money received. The Authority may, at its discretion, authorize the immediate repayment of a specific portion of the Fund loan and allow the remaining balances to be repaid in accordance with a revised Fund loan repayment schedule.

(5) The recipient shall reduce the amount of outstanding commitment insofar as possible and report to the Department the uncommitted balance of Fund monies awarded under the Fund loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

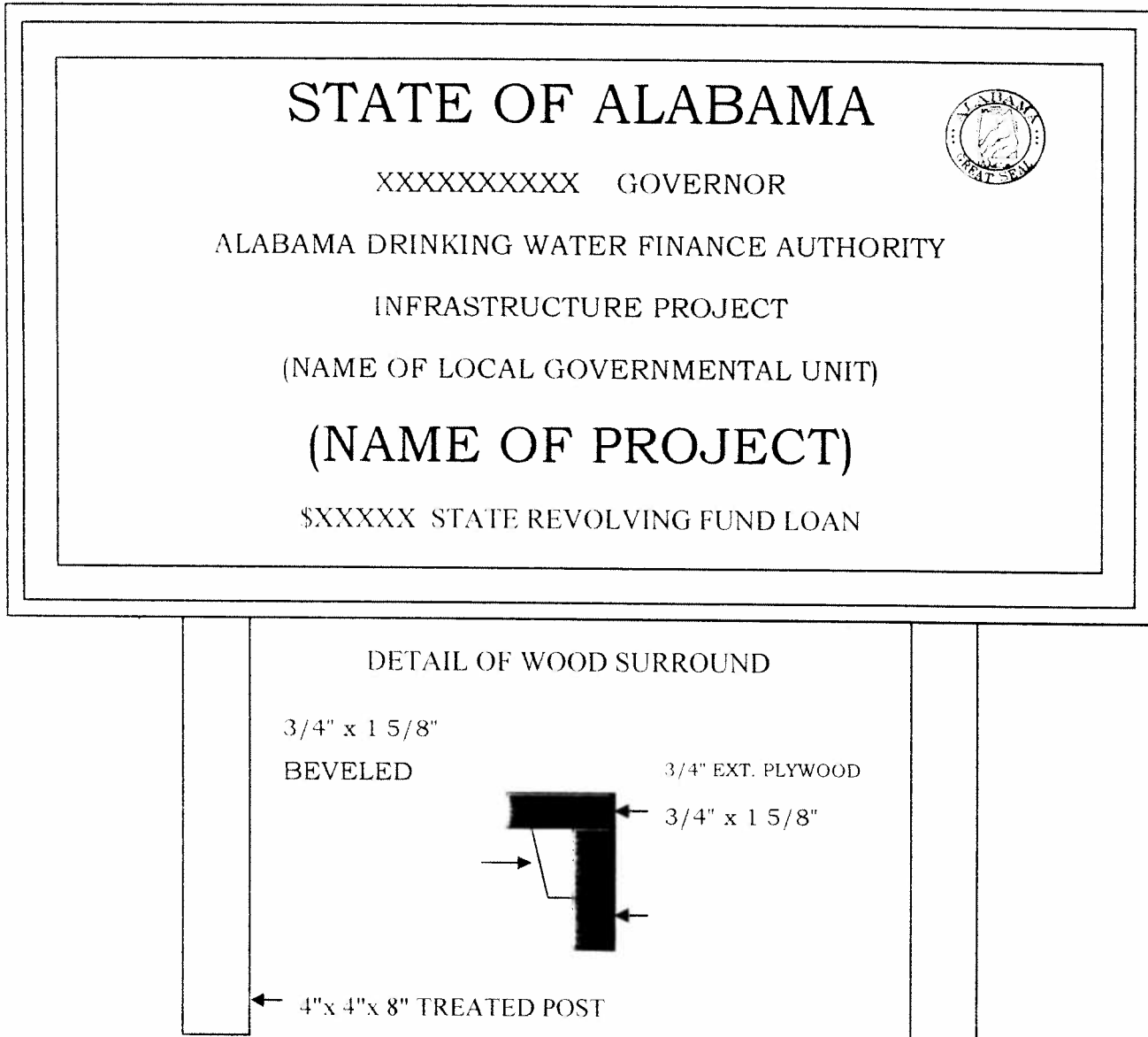
(6) In addition to any termination action, the Authority retains the right to pursue other legal remedies as may be available under Federal, State and local law as warranted.

Author: Joe Alan Power.

Statutory Authority: Alabama Drinking Water Finance Authority Act, Act No. 97-415 (May 14, 1997)

History: Adopted October 28, 1997. Effective Date: December 12, 1997.

FIGURE 1



DETAIL OF PROJECT SIGN:

1. SIGN TO BE CONSTRUCTED ON 4' X 8' EXTERIOR GRADE PLYWOOD.
2. PAINT WITH TWO COATS OF BEST GRADE EXTERIOR PAINT BEFORE LETTERING.
3. BACKGROUND COLOR WHITE. ALL LETTERING BLUE OR BLACK.
ALL LETTERING SIZES PROPORTIONATE TO SIGN LAYOUT.
4. SIGN TO BE PLACED IN PROMINENT LOCATION, EASILY READABLE FROM EXISTING STREET OR ROADWAY.
5. SIGN TO BE MAINTAINED IN GOOD CONDITION UNTIL COMPLETION OF PROJECT.