STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY
1201 DUNBAR AVENUE
DUNBAR, WV 25064

(304) 348-3612

June 13, 1985

NOTICE OF FINAL FILING - LEGISLATIVE RULE

LEGISLATIVE RULE: Chapter 20, Article 5C, Series I, Section 8.

The attached legislative rule is hereby final filed with the Secretary of State by the West Virginia Water Development Authority, as authorized by Senate Bill No. 399, Section 64-2-20 (5C) (6).

Edgar N. Henry
Director

bbm

FILED
1985 JUN 13 PM 1:52
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY
1201 DUNBAR AVENUE
DUNBAR, WV 25064

(304) 348-3612

June 11, 1985

FILED
1985 JUN 11 AM 10: 23
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Mr. Rich O. Hartman, Director
Administrative Law
Secretary of State
Capitol Building
Charleston, WV 25305

In accordance with a telephone conversation with Koop Berry of your office, the Water Development Authority desires to make the following correlation changes in its final filing of its Legislative Rules:

1) Change references to "Workmen's Compensation" to "Workers' Compensation."

2) In Section 8 (which is the section amended through the legislative process), the words "Step III project" were corrected to read "Construction Project." In Section 9 (which has not been amended at any time), the Authority proposes to change three references to "Step III projects" to "Construction Projects."

If these correlation changes are acceptable, as indicated by Ms. Berry, please sign the enclosed copy of this letter and return it to the Authority. If these corrections are not acceptable, please let me know.

Edgar N. Henry

EDGAR N. HENRY, PE - DIRECTOR

bbm

OK

[illegible]

# SENATE BILL NO. 390

(By Mr. R. Williams

)

Introduced March 6, 1985;

referred to the Committee on Natural Resources; then to the Committee on the Judiciary]

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty (five-c)(six), relating to authorizing the water development authority to promulgate legislative rules relating to hardship grant funds.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty (five-c)(six), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-20(5c)(6). Water development authority.

The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred eighty-four, relating to the water development authority (hardship grant funds) be authorized.

NOTE: The purpose of this bill is to authorize the water development authority to promulgate legislative rules relating to hardship grant funds.

This section is new; therefore, strike-throughs and underscoring have been omitted.

H. B. 1636

(By Delegate Casey)

(Introduced March 6, 1985; referred to the Committee on the Judiciary)

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty (five-c)(six), relating to authorizing the water development authority to promulgate legislative rules relating to hardship grant funds.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty (five-c)(six), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-20(5c)(6). Water development authority.

The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred eighty-four, relating to the water development authority



1636

(hardship grant funds) be authorized.

NOTE: The purpose of this bill is to authorize the water development authority to promulgate legislative rules relating to hardship grant funds.

This section is new; therefore, strike-throughs and underscoring have been omitted.

Promulgation History Abstract

Rule Title: Chapter 20, Article 5C, Series I, Section 8.

Requirements concerning disbursement of hardship grant funds for assisting in the construction of sewage treatment facilities and appurtenances.

Rule Type: Legislative

Filed Notice for Public Hearing: July 25, 1984

Public Hearing Held: August 27, 1984

Filed Agency Approved Rule: August 30, 1984

Filed Agency Approved Rule with LRMRC: August 30, 1984

Action by LRMRC: (Approved) October 2, 1984

Legislative Action: (Authorized) April 13, 1985

Final Rule Filed with Secretary of State: June 13, 1985

Effective Date: July 1, 1985

Edgar N. Henry

Director

Entered

Title 44

~~WEST VIRGINIA~~ LEGISLATIVE RULES
WATER DEVELOPMENT AUTHORITY
~~CHAPTER 20-5C~~
SERIES ~~1C~~ 1

Title: Requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects.

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Section 1. General

1.1 Scope - These legislative rules establish requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects.

1.2 Authority - West Virginia Code 20-5C-6.

1.3 Filing Date - June 13, 1985.

1.4 Effective Date - July 1, 1985.

Section 2. Definitions

Except where the context indicates otherwise, the following terms as used in these regulations shall have the meaning ascribed to them in Article 5C of Chapter 20, Code of West Virginia.

2.1 General Definitions.

2.1.1 "Applicant" shall mean either: (1) any municipal corporation, county or other public body or any combination thereof which is included in the appropriate West Virginia priority list, which is consistent with the State's comprehensive water management plan existing or in process by the department of natural resources and which is consistent with the water quality standards set by the state water resources board; or (2) the Authority when constructing such facilities to service such municipal corporations, counties or other public bodies.

2.1.2 "Eligible Project Costs" shall mean, as to projects funded pursuant to Title II of the Federal Water Pollution Control Act Amendments of 1972, the total eligible project costs as set forth in United States environmental protection agency documents developed for projects which qualify for federal grants under Title II of Public Law 92-500.

2.1.3 "Contract Service Charge" shall mean the service charge related to the Water Development Authority loan made to the applicant and covered in the agreement between the applicant and the Authority.

2.1.4 "Contract Period" shall mean the period within which the applicant will provide payment of loan and service charge to the Authority as set forth in the agreement between the applicant and the Authority.

2.1.5 "Federal Water Pollution Control Act Amendments of 1972" shall mean Public Law 92-500, 92nd Congress, 1972.

2.2 Definitions Relating to Projects Funded Pursuant to Title II of the Federal Water Pollution Control Act Amendments of 1972.

2.2.1 "Title II Federal Participation Costs" shall mean, whether incurred before or after the date of the agreement between the Authority and the applicant which is referred to in paragraph (c) of Section 3.1.3 of Section 3, such of the costs, or portions thereof, as are eligible for grant moneys from the United States of America on the date of such agreement under the provisions of Title II of the Federal Water Pollution Control Act Amendments of 1972 and the rules and regulations relating thereto.

2.2.2 "Title II Local Participation Costs" shall mean, whether incurred before or after the date of the agreement between the Authority and the applicant which is referred to in paragraph (c) of Section 3.1.3 of Section 3, such of the following costs, or portions thereof, that must be provided to make up the remaining portion of the total eligible costs so that the total of the federal grant share and the local share equal 100 percent of the total eligible costs.

2.2.3 "Title II Supplementary Grant" shall mean a grant from the United States of America or any department or agency thereof which by law can be made only as a supplement to other grants from the United States of America or any department or agency thereof and which is made to supplement a grant made by the United States of America or a department or agency thereof to a project pursuant to Title II of the Federal Water Pollution Control Act Amendments of 1972.

2.2.4 "Title II Supplementary Grant Percentage" shall mean the percentage equal to the percentage of the Title II federal participation costs paid from the Title II supplementary grants.

2.2.5 "Title II Federal Multiplier Percentage" shall mean the percentage equal to 100 percent minus the percentage of the Title II federal participation costs paid from the grant made pursuant to Title II of the Federal Water Pollution Control Act Amendments of 1972 minus the Title II supplementary grant percentage, if any.

2.2.6 "Step I Project Requirements" shall mean:

A. Federal:

Step I. Facilities plan and related elements required to apply for Step II grant assistance. An application for a grant for Step I shall include:

(1) A plan of study presenting (i) the proposed planning area; (ii) an identification of the entity or entities that will be conducting the planning; (iii) the nature and scope of the proposed Step I project, including a schedule for the completion of specific tasks; and (iv) an itemized description of the estimated costs for the project;

(2) Proposed subagreements, or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work;

(3) Required comments or approvals of relevant State, local and federal agencies (including clearinghouse requirements of Office of Management and Budget (OMB) Circular A-95, promulgated at 38 FR 32874 on November 28, 1973).

B. Water Development Authority:

Shall include satisfaction of the federal requirements and the filing of the Step I application in a form set forth by the Authority and such agreements as may be included as a part of the application.

2.2.7 "Step II Project Requirements" shall mean:

A. Federal:

Step II. Preparation of construction drawings and specifications. Prior to the award of a grant or grant amendment for a Step II project, the following must have been furnished:

(1) A facilities plan (including an environmental assessment in accordance with Part 6 of Title 40, Protection of Environment, Chapter I - Environmental Protection Agency) in accordance with §§ 35.917 through 35.917-9;

(2) Satisfactory evidence of compliance with the user-charge provisions of §§ 35.925-11 and 35.935-13;

(3) Satisfactory evidence of compliance with the industrial cost-recovery provisions of §§ 35.925-12, 35.928 and 35.935-13, if applicable;

(4) A statement regarding availability of the proposed site, if relevant;

(5) Satisfactory evidence of a proposed or existing program for compliance with the Relocation and Land Acquisition Policies Act of 1970 in accordance with §§ 30.403(d) and Part 4 of aforementioned Title 40, Chapter I, if applicable;

(6) Satisfactory evidence of compliance with other applicable federal statutory and regulatory requirements (see Part 30, Subpart C of aforementioned Title 40, Chapter I);

(7) Proposed subagreements or an explanation of the intended method of awarding subagreements for performance of any substantial portion of the project work;

(8) Required comments or approvals of relevant State, local and federal agencies (including clearinghouse requirements of Office of Management and Budget (OMB) Circular A-95) if a grant application has not been previously submitted.

B. Water Development Authority:

Shall include satisfaction of the federal requirements and the filing of the Step II application in a form set forth by the Authority and such agreements as may be included as a part of the application.

2.2.8 "Step III Project Requirements" shall mean:

A. Federal:

Step III. Building and erection of a treatment works. Prior to the award of a grant or grant amendment for a Step III project, each of the items specified in paragraph 2.2.7 A. hereof and in addition (1) two sets of construction drawings and specifications (suitable for bidding purposes) and (2) a schedule for or evidence of compliance with §§ 35.925-10 and 35.935-12 concerning an operation and maintenance program must have been furnished.

Step II/III. Design/construct project. Prior to the award of a grant or grant amendment for a design/construct project, the items in paragraphs 2.2.7 A. and 2.2.8 A. hereof must have been furnished, except that in lieu of construction drawings and specifications, the proposed performance specifications and other relevant design/construct criteria for the project must have been submitted.

B. Water Development Authority:

Shall include satisfaction of the federal requirements and the filing of the Step III application in a form set forth by the Authority and such agreements as may be included as a part of the application.

2.3 Definitions Relating to Public Law 660 Projects.

2.3.1 "PL-660" shall mean Public Law 84-660, Federal Water Pollution Control Act.

2.3.2 "Cost Overrun" shall mean that amount which is the total amount of cost overrun multiplied by the percentage level of the State matching grant initially awarded the grantee.

2.3.3 "Total Eligible Costs" shall mean the total eligible costs as defined in PL-660 and in rules and regulations promulgated relative to PL-660.

Section 3. Step I Projects - State Loans

3.1 Eligibility for Participation in Program.

3.1.1 Governmental agencies eligible for participation in program. All municipal corporations, counties and other public bodies or any combination thereof required to construct sewage treatment facilities, interceptor sewers and sewage collection systems and the Authority, when constructing such facilities to service such municipal corporations, counties or other public bodies, shall be eligible to participate in the program.

3.1.2 Application for participation in the program. Any eligible municipal corporation, county or other public body or any combination thereof which desires to participate in the program shall make a separate application to the Authority on forms prescribed by the director of the Authority for each project for which such participation is desired.

3.1.3 Determination of priority for participation in program. The priority for each project for which an application is received by the Authority shall be fixed in relation to other projects for which applications are received by the Authority on the date which the applicant has satisfied the following conditions:

(a) Provided documentation satisfactory to the Authority that the project is a sewage treatment facility and/or interceptor sewers and/or collection system and that the project has received a commitment from the United States of America to make a grant of 75 percent of the Title II federal participation costs of the project and that the project is consistent with the applicable comprehensive plan of water management approved by the director of the department of natural resources or is in the process of preparation by such director and is not inconsistent with the standards set by the state water resources board for waters of the State affected by the project.

(b) Demonstrated to the satisfaction of the Authority the capability of the applicant to pay the loan and service charge referred to in Section 3.3.1 hereof.

(c) Delivered to the Authority an agreement for the repayment of the loan and service charge of the project between the applicant and constituents, where appropriate, and the Authority which is consistent with Sections 3.3.1 and 3.4.1 hereof which has been authorized and approved by the legislative authority or authorities of the applicant and which has been executed by the applicant.

3.2 Payment of Costs of Projects.

3.2.1 Payment of eligible project costs by Authority. Upon entering into the agreement between the Authority and the applicant referred to in paragraph (c) of Section 3.1.3 hereof and determination of the project's priority pursuant to Section 3.1.3 hereof, the nonfederal share of eligible project costs not to exceed 25 percent shall be paid by the Authority. In the event such agreement is terminated by the Authority pursuant to, and not in breach of, the provisions of such agreement, or in the event such agreement is terminated by the applicant whether or not in breach of this agreement, the eligible project costs incurred prior to the date of completion of the work under the Step I project or the date of such termination, whichever is earlier, shall be paid by the applicant or by the applicant and its constituents. Any moneys paid by either party pursuant to such agreement which become the obligation of the other party under the provisions of the agreement shall be repaid in not more than three years after termination.

3.2.2 Source of payment of eligible project costs. The payment of the eligible project costs by the Authority as provided in Section 3.2.1 hereof shall be made from funds appropriated to the Authority or from funds contained in Authority accounts which provide for such use.

3.2.3 Distribution of moneys constituting eligible project costs. Unless the law governing a particular governmental agency requires otherwise, the Authority shall pay directly to the party from whom an eligible project cost has been incurred upon the approval by the applicant of such payment as to those eligible project costs which the applicant or one of the governmental agencies constituting applicant has not paid from its own funds. As to those eligible project costs which the applicant or one of the governmental agencies constituting the applicant has paid from its own funds, the Authority shall reimburse the applicant or such governmental agency upon an accounting to the Authority of such payment and a request for reimbursement.

In the event the law controlling the governmental agency does not permit the foregoing, an arrangement for the disbursement of the moneys from the Authority for payment of eligible project costs shall be made which is satisfactory to both the applicant and the Authority.

3.2.4 Availability of funds. The loan funds available for the purposes herein provided will be disbursed to eligible projects on a continuing basis subject to the level of appropriation to the Authority and to the Authority account balances in the accounts provided for this purpose.

3.3 Participation Payments by Applicant.

3.3.1 Amount and length of time of participation payments. The loan and service charge shall be payable upon completion of financing arrangements for the Step III project which consummates the Step I and Step II projects, or any portion thereof, developed therefor, or three years after award of the Step I loan or two years after award of the Step II loan, whichever occurs first. If a public entity fails to meet either or both of these deadlines, it may appeal to the Water Development Board for an extension of time; and, if the delay is justified in the opinion of the Board, a time extension will be granted. In the event the Step I project scope consists of more than one governmental agency, the agreement referred to in paragraph (c) of Section 3.1.3 hereof shall set forth the respective shares of the total participation charge each governmental agency shall be required to pay.

3.3.2 Loan and service charge. The loan as provided herein is a no-interest loan of up to 25 percent of the total eligible project costs. The service charge is set at one percent of the value of the loan.

3.4 Miscellaneous.

3.4.1 Agreement between Authority and applicant. The agreement between the Authority and the applicant referred to in paragraph (c) of Section 3.1.3 hereof shall be consistent with these regulations and shall contain such additional provisions which the Authority determines are necessary to the implementation of these regulations and ensure the proper carrying forward of the program. As to those projects for which the applicant is the Authority, the agreement shall be between the Authority in its capacity as applicant and the Authority acting in its own behalf.

Section 4. <u>Step II Projects - State Loans</u>

4.1 Eligibility for Participation in Program.

4.1.1 Governmental agencies eligible for participation in program. All municipal corporations, counties and other public bodies or any combination thereof required to construct sewage treatment facilities, interceptor sewers and sewage collection systems and the Authority, when constructing such facilities to service such municipal corporation, counties or other public bodies, shall be eligible to participate in the program.

4.1.2 Application for participation in the program. Any eligible municipal corporation, county or other public body or any combination thereof which desires to participate in the program shall make a separate application to the Authority on forms prescribed by the director of the Authority for each project for which such participation is desired.

4.1.3 Determination of priority for participation in program. The priority for each project for which an application is received by the Authority shall be fixed in relation to other projects for which applications are received by the Authority on the date which the applicant has satisfied the following conditions:

(a) Provided documentation satisfactory to the Authority that the project is a sewage treatment facility and/or interceptor sewers and/or collection system and that the project has received a commitment from the

United States of America to make a grant of 75 percent of the Title II federal participation costs of the project and that the project is consistent with the applicable comprehensive plan of water management approved by the director of the department of natural resources or is in the process of preparation by such director and is not inconsistent with the standards set by the state water resources board for waters of the State affected by the project.

(b) Demonstrated to the satisfaction of the Authority the capability of the applicant to pay the loan and service charge referred to in Section 4.3.1 hereof.

(c) Delivered to the Authority an agreement for the repayment of the loan and service charge of the project between the applicant and constituents, where appropriate, and the Authority which is consistent with Sections 4.3.1 and 4.4.1 hereof, which has been authorized by the legislative authority or authorities of the applicant and which has been executed by the applicant.

4.2 Payment of Costs of Projects.

4.2.1 Payment of eligible project costs by Authority. Upon entering into the agreement between the Authority and the applicant referred to in paragraph (c) of Section 4.1.3 hereof and determination of the project's priority pursuant to Section 4.1.3 hereof, the nonfederal share of eligible project costs not to exceed 25 percent shall be paid by the Authority. In the event such agreement is terminated by the Authority pursuant to, and not in breach of, the provisions of such agreement, or by subsequent agreement of the parties, or in the event such agreement is terminated by the applicant whether or not in breach of this agreement, the eligible project costs incurred prior to the date of completion of the work under the Step II project or the date of such termination, whichever is earlier, shall be paid by the applicant. Any moneys paid by either party pursuant to such agreement which become the obligation of the other party under the provisions of the agreement shall be repaid in not more than three years after termination.

4.2.2 Source of payment of eligible project costs. The payment of the eligible project costs by the Authority as provided in Section 4.2.1 hereof shall be made from funds appropriated to the Authority or from funds contained in Authority accounts which provide for such use.

4.2.3 Distribution of moneys constituting eligible project costs. Unless the law governing a particular governmental agency requires otherwise, the Authority shall pay directly to the party from whom an eligible project cost has been incurred upon the approval by the applicant of such payment as to those eligible project costs which the applicant or one of the governmental agencies constituting applicant has not paid from its own funds. As to those eligible project costs which the applicant or one of the governmental agencies constituting applicant has paid from its own funds, the Authority shall reimburse the applicant or such governmental agency upon an accounting to the Authority of such payment and a request for reimbursement.

In the event the law controlling the governmental agency does not permit the foregoing, an arrangement for the disbursement of the moneys from the Authority for payment of eligible project costs shall be made which is satisfactory to both the applicant and the Authority.

4.2.4 Availability of funds. The loan funds available for the purposes herein provided will be disbursed to eligible projects on a continuing basis subject to the level of appropriation to the Authority and to the Authority account balances in the accounts provided for this purpose.

4.3 Participation Payments by Applicant.

4.3.1 Amount and length of time of participation payments. The loan and service charge shall be payable upon completion of financing arrangements for the Step III project which consummates the Step I and Step II projects, or any portion thereof, developed therefor, or three years after award of the Step I loan or two years after award of the Step II loan, whichever occurs first. If a public entity fails to meet either or both of these deadlines, it may appeal to the Water Development Board for an extension of time; and, if the delay is justified in the opinion of the Board, a time extension will be granted. In the event the applicant consists of more than one governmental agency, the agreement referred to in paragraph (c) of Section 4.1.3 hereof shall set forth the respective shares of the total participation charge each governmental agency shall be required to pay.

4.3.2 Loan and service charge. The loan as provided herein is a no-interest loan of up to 25 percent of the eligible project costs. The service charge is set at one percent of the value of the loan.

4.4 Miscellaneous.

4.4.1 Agreement between Authority and applicant. The agreement between the Authority and the applicant referred to in paragraph (c) of Section 4.1.3 hereof shall be consistent with these regulations and shall contain such additional provisions which the Authority determines are necessary to the implementation of these regulations and ensure the proper carrying forward of the program. As to those projects for which the applicant is the Authority, the agreement shall be between the Authority in its capacity as the applicant and the Authority acting in its own behalf.

Section 5. Step III Projects - State Grants

5.1 Eligibility for Participation in Program.

5.1.1 Governmental agencies eligible for participation in program. All municipal corporations, counties and other public bodies or any combination thereof required to construct sewage treatment facilities, interceptor sewers and sewage collection systems and the Authority, when constructing such facilities to service such municipal corporations, counties or other public bodies, shall be eligible to participate in the program.

5.1.2 Application for participation in the program. Any eligible municipal corporation, county or other public body or any combination thereof which desires to participate in the program shall make a separate application to the Authority on forms prescribed by the director of the Authority for each project for which such participation is desired.

5.1.3 Determination of priority for participation in program. The priority for each project for which an application is received by the Authority shall be fixed in relation to other projects for which applications are received by the Authority on the date which the applicant has satisfied the following conditions:

(a) Provided documentation satisfactory to the Authority that the project is a sewage treatment facility and/or interceptor sewers and/or collection system and that the project has received a commitment from the United States of America to make a grant of 75 percent of the Title II federal participation costs of the project and that the project is consistent with the applicable comprehensive plan of water management approved by the director of the department of natural resources or is in the process of preparation by such director and is not inconsistent with the standards set by the state water resources board for waters of the State affected by the project.

(b) Demonstrated to the satisfaction of the Authority provision for the repayment of any loans and service charges owed to the Authority by the applicant as provided in Section 5.3.1 hereof.

(c) Delivered to the Authority an agreement for the construction, maintenance and operation of the project between the applicant and the Authority which is consistent with Section 5.6.1 hereof, which has been authorized and approved by the legislative authority or authorities of the applicant and which has been executed by the applicant.

(d) Provided certification that detailed plans, profiles, cross sections, estimates, specifications and such other requirements as are appropriate have been approved by all legally required agencies.

5.1.4 Eligibility for participation in program if project should be combined with another project. If the Authority determines that a project for which application is made should be combined with another project or should serve governmental agencies not included as the applicant, the Authority may delay the date upon which the project's priority is established in relation to other projects for which applications are received until such date as the project is expanded to include the additional project or projects or governmental agency or agencies.

5.2 Payment of Costs of Projects.

5.2.1 Payment of eligible project costs by Authority. Upon entering into the agreement between the Authority and the applicant referred to in paragraph (c) of Section 5.1.3 hereof and determination of the project's priority pursuant to Section 5.1.3 hereof, five percent (5%) of the total eligible project costs shall be paid by the Authority. In the event such agreement is terminated by the Authority pursuant to, and not in breach of, the provisions of such agreement, or by subsequent agreement of the parties, or in the event such agreement is terminated by the applicant whether or not in breach of this agreement, the State grant of 5% of the total eligible project costs will be immediately withdrawn.

5.2.2 Source of payment of eligible project costs. The payment of 5% of the total eligible project costs by the Authority as provided in Section 5.2.1 hereof shall be made from funds appropriated to the Authority or from funds contained in Authority accounts which provide for such use.

5.2.3 Distribution of moneys constituting eligible project costs. Unless the law governing a particular governmental agency requires otherwise, the Authority shall pay directly to the party from whom an eligible project cost has been incurred upon the approval by the applicant of such payment as to those eligible project costs which the applicant or one of the governmental agencies constituting applicant has not paid from its own funds. As to those eligible project costs which the applicant or one of the governmental agencies constituting the applicant has paid from its own funds, the Authority shall reimburse the applicant or such governmental agency upon an accounting to the Authority of such payment and a request for reimbursement.

In the event the law controlling the governmental agency does permit the foregoing, an arrangement for the disbursement of the moneys from the Authority for payment of eligible project costs shall be made which is satisfactory to both the applicant and the Authority.

5.2.4 Availability of funds. The grant funds for the purposes herein provided will be disbursed to eligible projects as set forth in Section 5.1 and will be disbursed until all such projects have been satisfied or until the funds so provided have been exhausted, whichever comes first.

5.3 Participation Payments by Applicant.

5.3.1 Amount and length of time of participation payments. As a part of the applicant's financing program for a Step III project, the loan and service charge provided by the Authority to cover the nonfederal or local share of all participating Step I and Step II projects shall be included so as to enable and require payment to the Authority the total amount of the loan and service charge as a first or initial disbursement from the funds obtained in the participant's financing program. In the event the Authority is the applicant for a Step I or Step II project, the funds obtained in financing the Step III project will be repaid to the Authority by the Step III applicant (the Authority) as hereinabove provided.

In the event the applicant consists of more than one governmental agency, the agreement referred to in paragraph (c) of Section 5.1.3 hereof shall set forth the respective shares of the total participation charge each governmental agency shall be required to pay.

5.3.2 Grants. The grant as herein provided is a grant of up to five percent (5%) of the total eligible project costs.

5.4 Rights of Access - Construction Requirements.

5.4.1 Rights of access to property. In the event the applicant or one or more of the governmental agencies constituting the applicant either acquires or owns the real and personal property constituting the project, the Authority shall have rights of access to the project as may be reasonably necessary to inspect the construction of the project and as may be reasonably necessary to ensure the proper operation and maintenance of the project following construction. Similar rights of access shall be given by the Authority to the applicant if the Authority acquires or owns the real and personal property constituting the project.

5.4.2 Requirements which governmental agency must follow when constructing project. If the project is constructed by applicant or one or more of the governmental agencies constituting the applicant, such governmental agencies shall: (i) obtain all federal, state, county and municipal approvals required under existing law in connection with the construction of the project; (ii) advertise for bids or construction contracts only after approval by the Authority; (iii) require that each construction contractor furnish a performance and payment bond in an amount equal to 100 percent (100%) of his contract price as security for the faithful performance of his contract and payment of his subcontract; (iv) require that each of its contractors and subcontractors maintain during the life of his contract workers' compensation insurance, public liability, property damage and vehicle liability insurance in the amounts and in terms satisfactory to the Authority; (v) provide and maintain competent and adequate resident engineering services satisfactory to the Authority covering the supervision and inspection of the development and construction of the project and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the Authority and the applicant at the completion of construction that construction is in accordance with approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

5.5 Operation and Maintenance of Project.

5.5.1 Option to determine who shall operate and maintain project. If the project serves directly the sewerage system of only one governmental agency, the project may be operated and maintained by the Authority or the applicant at the option of the applicant. If the project serves directly the sewerage systems of more than one governmental agency, the project may be operated and maintained by the Authority at the option of the Authority or by one or more of the governmental agencies. Whether operated by one or more than one governmental agency, the operation and maintenance of the project must meet Authority requirements.

5.5.2 Requirements which governmental agency must follow when operating and maintaining project. If the project is operated and maintained by applicant or one or more of the governmental agencies constituting the applicant such governmental agency shall: (i) provide adequate operation and maintenance of the project to comply with the water quality standards established for the river basin affected thereby and with all applicable rules and regulations of the West Virginia department of natural resources; (ii) retain sufficient qualified operating personnel certified by the State of West Virginia to operate the project and perform all operational tests and measurements necessary to determine compliance with the preceding sentence (i) to ensure proper and efficient operation and maintenance of the project from time of commencement of operation until the approval of the discontinuance of the operation of the project by the Authority and all legally required agencies; (iii) operate and maintain the sewerage system or systems of the applicant which the project serves in a manner which is consistent with design capacity and capability of the project in accordance with a sewer-use ordinance or resolution acceptable to the West Virginia public service commission; (iv) provide property and casualty insurance satisfactory to the Authority; (v) if the governmental agency shall fail to comply with either (i), (ii) or (iii) above, it shall permit the Authority at its discretion to remedy such default and it shall pay the cost of remedying such default to the Authority together with interest thereon from the date of payment by the Authority.

5.5.3 Requirements which governmental agency must follow when Authority operates and maintains project. If the project is operated and maintained by the Authority, the applicant shall: (i) agree to provide the funds necessary to pay the cost of operating and maintaining the project at such times as will permit the prompt payment of such costs by the Authority from the funds of the applicant; (ii) operate and maintain the sewage system or systems of the applicant which the project or treatment facility serves in a manner which is consistent with the design capacity and capability of the project and in accordance with a sewer-use ordinance or resolution acceptable to the Authority; (iii) cooperate fully with the Authority in the operation and maintenance of the project in relation to the operation and maintenance of the sewerage system which the project serves.

5.6 Miscellaneous.

5.6.1 Agreement between Authority and applicant. The agreement between the Authority and the applicant referred to in paragraph (c) of Section 5.1.3 hereof shall be consistent with these regulations and shall contain such additional provisions which the Authority determines are necessary to the implementation of these regulations and ensure the proper carrying forward of the program.

Section 6. <u>PL-660 Projects - State Matching Grants - Cost Overruns</u>

6.1 Eligibility for Participation in Program.

6.1.1 Governmental agencies eligible for participation in program.

All municipal corporations, counties and other public bodies or any combination thereof not having but required to construct sewage treatment facilities, interceptor sewers and sewage collection systems and the Authority, when constructing such facilities to service such municipal corporations, counties or other public bodies, shall be eligible to participate in the program.

6.1.2 Application for participation in the program. Any eligible municipal corporation, county or other public body or any combination thereof which desires to participate in the program shall make a separate application to the Authority on forms prescribed by the director of the Authority for each project for which such participation is desired.

6.1.3 Determination of priority for participation in program. The priority for each project for which an application is received by the Authority shall be fixed in relation to other projects for which applications are received by the Authority on the date which the applicant has satisfied the following conditions:

(a) Provided documentation satisfactory to the Authority that the project is a sewage treatment facility and/or interceptor sewers and/or collection system and that the project has received a commitment from the United States of America under PL-660 and has received a matching grant from the State of West Virginia and that the project is consistent with the applicable comprehensive plan of water management approved by the director of the department of natural resources or is in the process of preparation by such director and is not inconsistent with the standards set by the state water resources board for waters of the State affected by the project.

(b) Demonstrated to the satisfaction of the Authority the correctness of the amount of cost overrun due to the project recognizing that the State portion of the overrun under this regulation is directly related to the amount of the State matching grant and would be proportional, on a percentage basis, only to that amount.

(c) Delivered to the Authority an agreement for the construction, maintenance and operation of the project between the applicant and the Authority which is consistent with Section 6.5.1 hereof, which has been authorized and approved by the legislative authority or authorities of the applicant and which has been executed by the applicant.

(d) Provided certification that detailed plans, profiles, cross sections, estimates, specifications and such other necessary information has been approved by all legally required agencies.

6.2 Payment of Cost Overruns.

6.2.1 Payment of eligible project cost overrun by Authority. Upon entering into the agreement between the Authority and the applicant referred to in paragraph (c) of Section 6.1.3 hereof and determination of the project's priority pursuant to Section 6.1.3 hereof, the amount of cost overrun as set forth in paragraph (b) of Section 6.1.3 hereof shall be paid by the Authority. In the event such agreement is terminated by the Authority pursuant to, and not in breach of, the provisions of such agreement, or by subsequent agreement of the parties, or in the event such agreement is terminated by the applicant whether or not in breach of this agreement, the subject cost overrun of the project shall be paid by the applicant.

6.2.2 Source of payment of eligible project cost overrun. Payment of the project cost overrun by the Authority as provided in Section 6.2.1 hereof shall be made from funds appropriated to the Authority or from funds contained in Authority accounts which provide for such use.

6.2.3 Distribution of moneys constituting eligible project cost overrun. Unless the law governing a particular governmental agency requires otherwise, the Authority shall pay directly to the party from whom an eligible project cost overrun has been incurred upon the approval by the applicant of such payment as to those eligible project cost overruns which the applicant or one of the governmental agencies constituting the applicant has not paid from its own funds. As to those eligible project cost overruns which the applicant or one of the governmental agencies constituting the applicant has paid from its own funds and which were project cost overruns eligible for Authority payment, the Authority shall reimburse the applicant or such governmental agency upon an accounting to the Authority of such payment and a request for reimbursement.

In the event the law controlling the governmental agency does not permit the foregoing, an arrangement for the disbursement of the moneys from the Authority for payment of eligible project cost overruns shall be made which is satisfactory to both the applicant and the Authority.

6.2.4 Availability of funds. The grant funds available for the purposes provided herein will be disbursed to eligible projects as set forth in Section 6.1 and will be disbursed until all project cost overruns as provided in Section 6.1.3 (b) have been satisfied or until the funds so provided have been exhausted, whichever occurs first.

6.3 Rights of Access - Construction Requirements.

6.3.1 Rights of access to property. In the event the applicant or one or more of the governmental agencies constituting the applicant either acquires or owns the real and personal property constituting the project, the Authority shall have rights of access to the project as may be reasonably necessary to ensure the proper operation and maintenance of the project following construction. Similar rights of access shall be given by the Authority to the applicant if the Authority acquires or owns the real and personal property constituting the project.

6.3.2 Requirements which governmental agency must follow when constructing project. If the project is constructed by the applicant or one or more of the governmental agencies constituting the applicant, such governmental agencies shall: (i) obtain all federal, state, county and municipal approvals required under existing law in connection with the construction of the project; (ii) advertise for bids or construction contracts only after approval by the Authority; (iii) require that each construction contractor furnish a performance and payment bond in an amount equal to 100 percent of his contract price as security for the faithful performance of his contract and payment of his subcontract; (iv) require that each of its contractors and subcontractors maintain during the life of his contract workers' compensation insurance, public liability, property damage and vehicle liability insurance in amounts and in terms satisfactory to the Authority; (v) provide and maintain competent and adequate resident engineering services satisfactory to the Authority covering the supervision and inspection of the development and construction of the project and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the Authority and the applicant at the completion of construction that construction is in accordance with approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

6.4 Operation and Maintenance of Project.

6.4.1 Option to determine who shall operate and maintain project. If the project serves directly the sewerage system of only one governmental agency, the project may be operated and maintained by the Authority or the applicant at the option of the applicant. If the project serves directly the sewerage systems of more than one governmental agency, the project may be operated and maintained by the Authority at the option of the Authority or by one or more of the governmental agencies. Whether operated by one or more than one governmental agency, the operation and maintenance of the project must meet Authority requirements.

6.4.2 Requirements which governmental agency must follow when operating and maintaining project. If the project is operated and maintained by applicant or one or more of the governmental agencies constituting the applicant, such governmental agency shall: (i) provide adequate operation and maintenance of the project to comply with the water quality standards established for the river basin affected thereby and with all applicable rules and regulations of the West Virginia department of natural resources; (ii) retain sufficient qualified operating personnel certified by the State of West Virginia to operate the project and perform all operational tests and measurements necessary to determine compliance with the preceding sentence (i) to ensure proper and efficient operation and maintenance of the project from time of commencement of operation until the approval of the discontinuance of the operation of the project by the Authority and all legally required agencies; (iii) operate and maintain the sewerage system or systems of the applicant which the project serves in a manner which is consistent with design capacity and capability of the project and in accordance with a sewer-use ordinance or resolution acceptable to the West Virginia public service commission; (iv) provide property and casualty insurance satisfactory to the Authority; (v) if the governmental agency shall fail to comply with either (i), (ii) or (iii) above, it shall permit the Authority at its discretion to remedy such default and it shall pay the cost of remedying such default to the Authority together with interest thereon from the date of payment by the Authority.

6.4.3 Requirements which governmental agency must follow when Authority operates and maintains project. If the project is operated and maintained by the Authority, the applicant shall: (i) agree to provide the funds necessary to pay the cost of operating and maintaining the project at such times as will permit the prompt payment of such costs by the Authority from funds of the applicant; (ii) operate and maintain the sewerage system or systems of the applicant which the project or treatment facility serves in a manner which is consistent with the design capacity and capability of the project and in accordance with a sewer-use ordinance or resolution acceptable to the Authority; (iii) cooperate fully with the Authority in the operation and maintenance of the project in relation to the operation and maintenance of the sewerage system which the project serves.

6.5 Miscellaneous.

6.5.1 Agreement between Authority and applicant. The agreement between the Authority and the applicant referred to in paragraph (c) of Section 6.1.3 hereof shall be consistent with these regulations and shall contain such additional provisions which the Authority determines are necessary to the implementation of these regulations and ensure the proper carrying forward of the program.

Section 7. PL-660 Projects - State Grants

7.1 Eligibility for Participation in Program.

7.1.1 Governmental agencies eligible for participation in program. All municipal corporations, counties and other public bodies or any combination thereof not having but required to construct sewage treatment facilities, interceptor sewers and sewage collection systems and the Authority, when constructing such facilities to service such municipal corporation, counties or other public bodies, shall be eligible to participate in the program.

7.1.2 Application for participation in program. Any eligible municipal corporation, county or other public body or any combination thereof that desires to participate in the program shall make a separate application to the Authority on forms prescribed by the director of the Authority for each project for which such participation is desired.

7.1.3 Determination of priority for participation in program. The priority for each project for which an application is received by the Authority shall be fixed in relation to other projects for which applications are received by the Authority on the date which the applicant has satisfied the following conditions:

(a) Provided documentation satisfactory to the Authority that the project is a sewage treatment facility and/or interceptor sewers and/or collection system and that the project has received a commitment from the United States of America under PL-660 and that the project is consistent with the applicable comprehensive plan of water management approved by the director of the department of natural resources or is in the process of preparation by such director and is not inconsistent with the standards set by the state water resources board for waters of the State affected by the project.

(b) Demonstrated to the satisfaction of the Authority the intent and capability of the applicant to proceed promptly with the consummation of the project upon receipt of the State grant and arrangement for such other financing as may be necessary.

(c) Delivered to the Authority an agreement for the construction, maintenance and operation of the project between the applicant and the Authority which is consistent with Section 7.5.1 hereof, which has been authorized and approved by the legislative authority or authorities of the applicant and which has been executed by the applicant.

(d) Provided certification that detailed plans, profiles, cross sections, estimates, specifications and such other necessary information have been approved by all legally required agencies.

7.2 Payment of State Five-Percent Grants.

7.2.1 Payment of five-percent (5%) grants by Authority. Upon entering into the agreement between the Authority and the applicant referred to in paragraph (c) of Section 7.1.3 hereof and determination of the project's priority pursuant to Section 7.1.3 hereof, the 5% State grant, which is based on the total eligible costs of the project as defined in Section 2.3 hereof, shall be paid by the Authority. In the event such agreement is terminated by the Authority pursuant to, and not in breach of, the provisions of such agreement, or by subsequent agreement of the parties, or in the event such agreement is terminated by the applicant whether or not in breach of this agreement, the nonfederal share of the total eligible costs shall be paid by the applicant.

7.2.2 Source of payment of five-percent (5%) grants by Authority. The payment of the 5% grant by the Authority as provided in Section 7.2.1 hereof shall be made from funds appropriated to the Authority or from funds contained in Authority accounts which provide for such use.

7.2.3 Distribution of moneys constituting five-percent (5%) grants by Authority. Unless the law governing a particular governmental agency requires otherwise, the Authority shall pay directly to the party from whom an eligible project cost has been incurred upon the approval by the applicant of such payment as to those eligible project costs which the applicant or one of the governmental agencies constituting applicant has not paid from its own funds. As to those eligible project costs which the applicant or one of the governmental agencies constituting the applicant has paid from its own funds and which included a portion including the 5% State grant, the Authority shall reimburse the applicant or such governmental agency upon an accounting to the Authority of such payment and a request for reimbursement.

In the event the law controlling the governmental agency does not permit the foregoing, an arrangement for the disbursement of the moneys from the Authority for payment of eligible project costs shall be made which is satisfactory to both the applicant and the Authority.

7.2.4 Availability of funds. The grant funds available for the purposes provided herein will be disbursed to eligible projects as set forth in Section 7.1 and will be disbursed until all such projects as provided in Section 7.1.3 (b) have been satisfied or until the funds so provided have been exhausted, whichever occurs first.

7.3 Rights of Access - Construction Requirements.

7.3.1 Rights of access to property. In the event the applicant or one or more of the governmental agencies constituting the applicant either acquires or owns the real and personal property constituting the project, the Authority shall have rights of access to the project as may be reasonably necessary to inspect the construction of the project and as may be reasonably necessary to ensure the proper operation and maintenance of the project following construction. Similar rights of access shall be given by the Authority to the applicant if the Authority acquires or owns the real and personal property constituting the project.

7.3.2 Requirements which governmental agency must follow when constructing project. If the project is constructed by applicant or one or more of the governmental agencies constituting the applicant, such governmental agencies shall: (i) obtain all federal, state, county and municipal approvals required under existing law in connection with the construction of the project; (ii) advertise for bids or construction contracts only after approval by the Authority; (iii) require that each construction contractor furnish a performance and payment bond in an amount equal to 100 percent (100%) of his contract price as security for the faithful performance of his contract and payment of his subcontract; (iv) require that each of its contractors and subcontractors maintain during the life of his contract workers' compensation insurance, public liability, property damage and vehicle liability insurance in amounts and in terms satisfactory to the Authority; (v) provide and maintain competent and adequate resident engineering services satisfactory to the Authority covering the supervision and inspection of the development and construction of the project and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the Authority and the applicant at the completion of construction that construction is in accordance with approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

7.4 Operation and Maintenance of Project.

7.4.1 Option to determine who shall operate and maintain project. If the project serves directly the sewerage system of only one governmental agency, the project may be operated and maintained by the Authority or the applicant at the option of the applicant. If the project serves directly the sewerage systems of more than one governmental agency, the project may be operated and maintained by the Authority at the option of the Authority or by one or more of the governmental agencies. Whether operated by one or more than one governmental agency, the operation and maintenance of the project must meet with Authority requirements.

7.4.2 Requirements which governmental agency must follow when operating and maintaining project. If the project is operated and maintained by applicant or one or more of the governmental agencies constituting the applicant, such governmental agency shall: (i) provide adequate operation and maintenance of the project to comply with the water quality standards established for the river basin affected thereby and with all applicable rules and regulations of the West Virginia department of natural resources; (ii) retain sufficient qualified operating personnel certified by the State of West Virginia to operate the project and perform all operational tests and measurements necessary to determine compliance with the preceding sentence (i) to ensure proper and efficient operations and maintenance of the project from time of commencement of operation until the approval of the discontinuance of the operation of the project by the Authority and all legally required agencies; (iii) operate and maintain the sewerage system or systems of the applicant which the project serves in a manner which is consistent with design capacity and capability of the project and in accordance with a sewer-use ordinance or resolution acceptable to the West Virginia public service commission; (iv) provide property and casualty insurance satisfactory to the Authority; (v) if the governmental agency shall fail to comply with either (i), (ii) or (iii) above, it shall permit the Authority at its discretion to remedy such default and it shall pay the cost of remedying such default to the Authority together with interest thereon from the date of payment by the Authority.

7.4.3 Requirements which governmental agency must follow when Authority operates and maintains project. If the project is operated and maintained by the Authority, the applicant shall: (i) agree to provide the funds necessary to pay the cost of operating and maintaining the project at such times as will permit the prompt payment of such costs by the Authority from the funds of the applicant; (ii) operate and maintain the sewerage system or systems of the applicant which the project or treatment facility serves in a manner which is consistent with the design capacity and capability of the project and in accordance with a sewer-use ordinance or resolution acceptable to the Authority; (iii) cooperate fully with the Authority in the operation and maintenance of the project in relation to the operation and maintenance of the sewerage system which the project serves.

7.5 Miscellaneous.

7.5.1 Agreement between Authority and applicant. The agreement between the Authority and the applicant referred to in paragraph (c) of Section 7.1.3 hereof shall be consistent with these regulations and shall contain such additional provisions which the Authority determines are necessary to the implementation of these regulations and ensure the proper carrying forward of the program.

Section 8. Priority System for Construction Grant Recipients to Determine Whether a State Hardship Grant Should be Provided to Help Relieve a Hardship in Local Funding

8.1 Introduction.

In fiscal year 1975-76, the West Virginia Water Development Authority received funds for the first time to assist communities in the funding of needed sewage facilities.

In accordance with Public Law 92-500, the Federal Water Pollution Control Act Amendments of 1972, as amended, the division of water resources of the department of natural resources has established a priority rating system for determination of construction grant recipients to accomplish the goals set forth in the act. The priority system is a mechanism through which water quality problems are ranked State-wide relative to their severity and volume. Once a community has obtained a priority, the eligible portions of the project are recommended for a federal grant.

In accordance with provisions of Chapter 20, Article 5C, Code of West Virginia, the Authority has developed the following criteria to identify grant applicants who may experience a financial hardship and thereby qualify for State hardship grant funds. However, availability of hardship funds will NOT be retroactive to entities where construction has been initiated.

8.2 Criteria.

In order to accurately evaluate the financial impact a proposed system will have on a given community, several factors must be considered. The most accurate information relating to the financial impact of a proposed sewage system is not available, however, until the applicant is ready to initiate construction of the project. Therefore, a hardship grant will not be awarded until a project is ready for construction, as determined by the Authority.

8.2.1 Criteria for grant applicants. The Authority intends to evaluate the financial impact a proposed system will have on a community due to the installation of wastewater treatment facilities. Therefore, the following constraints will be used to determine the eligibility of project for State hardship grants:

a

(1) The applicant must have adequately addressed the cost-effective aspects of the project and project alternatives.

b

(2) The applicant must have approvable plans and specifications, as determined by the Authority.

c

(3) As appropriate, the applicant must have been awarded a construction grant by the United States environmental protection agency.

1

A. Criteria to determine grant applicants that qualify as hardship:

A

(1) The State median family income is used as the basis for determining the acceptable sewer user charge level. The determination will be made using a methodology to be the subject of periodic review by the Water Development Board at public meetings held as required.

B

(2) Projects with proposed user charges in excess of the values determined in item (1) would be considered for hardship grant award.

2

B. Criteria to determine allocation of hardship funds:

Applicants recommended as hardship under Section 8.2.1 A. (i) will be allocated funds in such a manner that those communities with a relatively high user charge will be eligible for a larger hardship fund allocation.

A

(1) Funding of projects recommended as hardship under Section 8.2.1 A. will be developed in the following manner: The hardship grant amount is based on the difference between the proposed user charge, which is derived using criteria prescribed by the Authority, and the recommended (see Section 8.2.1 A.) sewer user charge. The difference in costs would then be used to calculate the reduction in the project's debt service necessary to reduce the proposed user charge to the recommended level. Since the maximum size of the hardship grant is set by the Water Development Board, the grant may be insufficient to meet the needs of the project in bringing the user charge down to the recommended level.

B

(2) In the event a community funded by a hardship grant is able to reduce its user charge rates to the recommended level and subsequently receives additional grant funds for the project, the community must return the Authority's funds in excess of those required to maintain the user charge at the recommended level.

C

(3) Hardship grant funds may be withdrawn from a project if the project does not proceed promptly (as determined by the Authority) to completion upon award of a hardship grant.

D

(4) Appropriations in any fiscal year may not be sufficient to fund all the recommended applicants. Grants will be made until all qualifying projects have received grants or grant funds are exhausted, whichever occurs first.

8.3 Definitions of Terms.

8.3.1 State median family income. This is the median income for the State. This value will be provided by the Authority.

8.3.2 User charge. As a minimum, these are charges levied to recover from the system's users the cost of operation and maintenance, existing debt service and debt service incurred from the proposed project. These represent the anticipated costs of serving each family unit on an individual connection.

8.3.3 WDA. This is the abbreviation for the West Virginia Water Development Authority.

8.3.4 Construction. As used in this regulation, this means any wastewater project where a formal award of construction contracts has been made.

Section 9. <u>Loans to Governmental Agencies for Construction or Acquisition of Water Development Projects</u>

9.1 Purpose and Objectives.

These regulations are promulgated for the purpose of setting forth the procedures by which the Authority shall make loans to governmental agencies for the acquisition or construction of water development projects by such governmental agencies. This Section 9 shall apply only to loans to governmental agencies which have received a commitment from the United States of America to make a construction grant to pay all or a portion of the cost of a water development project, and the proceeds of the loan from the Authority shall be used to pay all or part of such cost as is not provided by such grant or by funds from other sources. The objective of such a loan program is to stimulate the construction of water development projects by governmental agencies in the State, by providing all or a portion of the funds required for such construction.

9.2 Definitions Applicable to this Section.

9.2.1 The "Act" means Chapter 20, Article 5C of the Code of West Virginia.

9.2.2 The "Authority" means the West Virginia Water Development Authority.

9.2.3 "Applicant" means a governmental agency which applies for a loan pursuant to the provisions of this Section 9.

9.2.4 The terms "Cost," "Governmental Agency" and "Water Development Project," as used in this Section 9, shall have the meanings ascribed to them in the Act.

9.2.5 "Loan" means a loan made by the Authority to an applicant pursuant to this Section 9.

9.2.6 "Loan Agreement" means an agreement entered into between the Authority and the applicant pertaining to a loan and as more particularly described in Section 9.5 hereof.

9.3 Description of Loans.

9.3.1 Source of loan funds. It is anticipated that the Authority shall obtain the funds with which to make loans from the proceeds of revenue bonds and notes issued from time to time by the Authority pursuant to the Act, although the Authority may use funds from other sources to make such loans.

9.3.2 Evidence of and security for loans. The loans shall be evidenced by revenue bonds or notes or other debt instruments issued by applicants and purchased by the Authority, at par or at a discount to reflect the costs of the Authority incurred in issuing its obligations to provide the funds to make the loans, and other costs related to financing such water development projects, and shall be secured by a pledge of the fees, charges and all other revenues of the water development projects to be constructed in whole or in part with the proceeds of the loans and any other collateral required by the Authority.

9.3.3 Amount of loan. Each loan shall be in an amount which shall cover all costs of the water development project to be constructed by the applicant for which funds from the aforesaid construction grant or other sources are not available.

9.4 Eligibility for Loans.

9.4.1 Governmental agencies eligible for loans. All governmental agencies, or any combination thereof, which have the authority under applicable law to undertake a water development project shall be eligible for a loan.

9.4.2 Application for loan. Any eligible governmental agency which desires to obtain a loan shall make a separate application to the Authority on forms prescribed by the director of the Authority for each water development project for which a loan is desired.

9.4.3 Determination of priority for loan. The priority of each water development project for which an application for a loan is received by the Authority shall be fixed in relation to other water development projects for which such applications are received on the date on which the applicant has:

(a) Provided documentation satisfactory to the Authority that the water development project is a sewage treatment facility and/or interceptor sewer and/or collection system eligible for a loan under the provisions of the Act and has received a commitment from the United States of America to make a construction grant to pay all or a portion of the costs of such water development project and the water development project is consistent with the applicable comprehensive plan of water management approved by the director of the West Virginia department of natural resources or in the process of preparation by such director and is not inconsistent with the standards set by the water resources board for the State of West Virginia.

(b) Demonstrated to the satisfaction of the Authority that it has adopted or will adopt all necessary ordinances or resolutions in form and substance satisfactory to the Authority and has taken or will take all proceedings required by law to enable it to enter into a loan agreement and to issue its revenue bonds or notes for purchase by the Authority and that it has obtained or will obtain from the public service commission of West Virginia and all other necessary governmental agencies approval of user charges for the water development project which will provide annual net revenues to the applicant which exceed, by an amount or percentage specified in the loan agreement, the annual payments required to be made by the applicant to the Authority under the loan agreement.

9.5 Loans to be Subject to Loan Agreement Between Authority and Applicant.

Prior to the making of a loan, the Authority shall execute and enter into a loan agreement with the applicant, pursuant to the provisions of Section 6 of the Act, which shall include such provisions as may be required by the Authority, including without limitation the following:

(a) The cost of such water development project, the amount of the loan, the terms of repayment of the loan and the security therefor, which may include, in addition to the pledge of all fees, charges and other revenues from such water development project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such water development project;

(b) The specific purposes for which the proceeds of the loan shall be expended, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the applicant in regard to the construction or acquisition of the water development project;

(c) The agreement of the applicant to impose, collect and, if required to repay the obligations of such applicant under the loan agreement, increase service charges from persons using said water development project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of such applicant under the loan agreement; and,

(d) The agreement of the applicant to comply with all applicable laws, rules and regulations issued by the Authority or other state, federal and local bodies in regard to the financing, construction, operation, maintenance and use of the water development project.

9.6 Repayment of Loans; Interest on Loans; Fees and Charges.

9.6.1 Payment of principal and interest on loan. Payments of the principal of the loan shall be made by the applicant on an annual basis as scheduled by the Authority, and interest payments on the loan shall be made by the applicant on a semiannual basis as scheduled by the Authority, in accordance with the provisions of the loan agreement.

9.6.2 Computation of interest on loans. Each loan shall bear interest from the date of the delivery of the bonds or notes of the applicant evidencing the loan to the applicant at a coupon rate or rates per annum which shall be equal to the coupon rate or rates per annum borne by the obligations of the Authority issued to provide the funds to make the loan: Provided that pursuant to the provisions of the loan agreement, the Authority may purchase the bonds or notes of the applicant at par or at a discount to reflect the costs of the Authority incurred in issuing its said obligations and other costs relating to the making of the loan.

9.6.3 Fees and charges. In addition to payments of principal and interest on the loan, each applicant shall agree in the loan agreement to pay fees and charges to the Authority equal to the applicant's share of the administrative expenses of the Authority relating to the loan program referred to in this Section 9 including without limitation the fees and expenses of the trustee and paying agents for the bonds to be issued by the Authority to make the loan.

9.7 Agreement of Authority to Make Loans Conditioned upon Sale of Bonds.

The obligation of the Authority to make any loan is and shall be conditioned upon receipt by the Authority of the proceeds of bonds issued by the Authority or funds from other sources in such amounts and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the loans.

9.8 Construction of Water Development Project.

Each applicant receiving a loan shall, prior to commencement of construction of the water development project, comply with all applicable provisions of the Act, of the loan agreement and of the resolution or ordinance authorizing the issuance of bonds or notes evidencing the loan, including without limitation, that the applicant shall obtain all federal, state and local approvals.

Section 10. <u>Financing Water Development Projects by Issuance of Revenue Bonds in Conjunction with the Small Business Administration Guarantee of Lease Between Authority and Small Business Concern</u>

10.1 Purpose and Objectives.

These regulations are promulgated for the purpose of setting forth the procedures by which the Authority shall finance water development projects to be leased to eligible credit-worthy small business concerns in West Virginia by the Authority's issuing its water development revenue bonds which will be paid from lease payments made by such small business concerns. The financing afforded pursuant to this Section 10 is available only in conjunction with a one hundred percent guaranty by the small business administration of the periodic payments to be made by a small business concern under such lease.

10.2 Definitions Applicable to this Section.

10.2.1 The "Act" means Chapter 20, Article 5C of the Code of West Virginia.

10.2.2 The "Authority" means the West Virginia Water Development Authority.

10.2.3 "Applicant" means an entity which applies for financing pursuant to the provisions of this Section 10.

10.2.4 "Water Development Project" has the meaning ascribed to it in the Act.

10.2.5 "Bonds" mean the water development revenue bonds issued by the Authority to provide financing for water development projects under this Section 10.

10.2.6 "Lease" means an agreement entered into between the Authority and an applicant pertaining to a water development project and as more particularly described in Section 10.4 hereof.

10.2.7 "SBA" means the small business administration of the United States.

10.2.8 "SBA Regulations" mean regulations issued by the SBA from time to time respecting SBA pollution control financing guarantees including Part III of Title 13 of the Code of Federal Regulations.

10.3 Eligibility for Financing.

An applicant which is a "small business concern" within the meaning of the Small Business Investment Act of 1958, as amended, and the regulations promulgated thereunder, is eligible for the financing afforded pursuant to this Section 10, provided such applicant:

(a) Meets all the requirements for the one hundred percent SBA guarantee of lease payments provided for in the SBA regulations;

(b) Holds valid, current permits issued by the National Pollution Discharge Elimination System (United States environmental protection agency) and the division of water resources of the department of natural resources at the time the application is made; and,

(c) Meets the credit standards of the Authority.

10.4 Financing to be Subject to Terms of Lease.

Each applicant shall submit an application in the form prescribed by the Authority and, if such application is approved, execute and enter into a lease which shall satisfy the requirements of a "qualified contract" within the meaning of the SBA regulations. The financing afforded pursuant to this Section 10 shall be subject to the terms and conditions of the lease. Further, the lease shall contain such descriptions, terms and conditions relative to the water development project as may be required by the Authority; and, finally, the terms and conditions of the financing of the water development project must be approved by the Authority. The lease shall also conform to the requirements of the Act.

10.5 Agreement of Authority to Finance Water Development Projects to be Conditional.

Notwithstanding any agreement contained in the lease or elsewhere to the contrary, the obligation of the Authority to finance any water development project pursuant to this Section 10 is and shall be conditioned upon receipt by the Authority of (i) the commitment of SBA to guarantee one hundred percent of the periodic payments which the applicant is required to make under the lease, in accordance with the terms of the SBA regulations, and (ii) the proceeds of bonds in such amounts and on such terms and conditions as, in the sole judgment of the Authority, will enable it to finance such water development project.