

Title 11: Mississippi Department of Environmental Quality

Part 10: Mississippi Municipality and County Water Infrastructure Grant Program

Part 10, Chapter 1: Mississippi Commission on Environmental Quality Regulations for the Mississippi Municipality and County Water Infrastructure Grant Program

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Rule 1.1 Introductory Provisions

A. Scope of Regulations.

- (1) These regulations, adopted pursuant to Senate Bill No. 2822 of the Mississippi Legislature's 2022 Regular Session, shall govern the Mississippi Municipality and County Water Infrastructure (MCWI) Grant Program.
- (2) These regulations may be superseded by the MCWI Grant Agreement, as defined herein, when approved by the Executive Director and when not in conflict with any State or federal laws or executive orders.
- (3) Nothing in these regulations shall limit the authority of the Executive Director to take action to enforce requirements of or conditions of the law, including actions necessary to prevent evasions of these regulations and actions necessary for recoupment of MCWI Grant Funds.

B. Compliance with Law and Regulations.

- (1) Grant Recipients must comply with all applicable requirements of the Program and governing regulations implemented thereunder, all applicable requirements of Section 9901 of ARPA and governing regulations thereunder, found at 31 CFR Part 35 and 2 CFR Part 200, and any other applicable State or federal laws, regulations or executive orders.
- (2) The Executive Director is authorized to and may proscribe additional requirements as may be necessary and appropriate.

C. Effective Date of Regulations. These regulations are effective July 1, 2022.

- D. Reporting and Request for Other Information. When requested by the Executive Director, MCWI Grant Recipients shall provide reports accounting for the uses of MCWI Grant Funds and such other information as the Executive Director may require for the administration of the MCWI Grant Program. False or incomplete statements or claims may result in termination of Recipient's Grant Agreement and subject Recipient to any other sanctions, penalties and/or other remedies available by law.
- E. Definitions. The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:
- (1) Act – the Mississippi Municipality and County Water Infrastructure Grant Program Act of 2022, established by Senate Bill No. 2822 of the Mississippi Legislature's 2022 Regular Session.
 - (2) ARPA – the federal American Rescue Plan Act of 2021, Public Law 117-2, which amends Title VI of the Social Security Act.
 - (3) Awarded – Grant Funds are awarded to the Grant Recipient by a fully executed Grant Agreement on the date that the Grant Agreement is executed by the Executive Director.
 - (4) Coronavirus Local Fiscal Recovery Funds or Local Recovery Funds – funds awarded to metropolitan cities, non-entitlement units of local governments and counties through Section 603 of Title VI of the Social Security Act amended by Section 9901 of the federal American Rescue Plan Act of 2021, Public Law 117-2.
 - (5) Coronavirus State Fiscal Recovery Funds or State Recovery Funds – funds awarded to states through Section 602 of Title VI of the Social Security Act amended by Section 9901 of the federal American Rescue Plan Act of 2021, Public Law 117-2.
 - (6) Department – the Mississippi Department of Environmental Quality.
 - (7) Executive Director – the Executive Director of the Mississippi Department of Environmental Quality.
 - (8) Expended – Grant Funds are expended when they have been paid by MDEQ to the Grant Recipient for costs submitted by the Grant Recipient within the scope of the Project and approved by the Department.
 - (9) MCWI Grant Agreement or Grant Agreement – an agreement between the Department and the Grant Recipient through which the Department provides MCWI Grant Funds for eligible assistance and the Grant Recipient promises to follow the rules and regulations of the Program over the period of the Grant Agreement.
 - (10) MCWI Grant Applicant or Applicant – a municipality, county, or public utility eligible to apply for Grant Funds.

- (11) MCWI Grant Application or Application – the information required by the Department and supplied by the Applicant necessary to evaluate the Project for MCWI grant funding eligibility and award.
- (12) MCWI Grant Funds or Grant Funds – the funds awarded to the Grant Recipient by the Department for eligible assistance in completing the Project.
- (13) MCWI Grant Program or Program – the Mississippi Municipality and County Water Infrastructure Grant Program.
- (14) MCWI Grant Recipient or Grant Recipient – a municipality, county, or public utility that receives Grant Funds.
- (15) Non-Entitlement Unit – those municipalities with populations of less than 50,000 excluding cities that are designated principal cities of metropolitan statistical areas.
- (16) Obligations/Obligated – orders placed for property and services, contracts executed and subawards made, and similar transactions that require payment by the Grant Recipient or where the Grant Recipient has otherwise designated Project obligations for payment.
- (17) Professional Fees – fees for the services of attorneys and engineering, surveying, and environmental studies.
- (18) Project – the infrastructure improvements described in an Application that (i) comply with all requirements of the federal American Rescue Plan Act of 2021 and (ii) are eligible for Grant Funds under the Program.
- (19) Registered Professional Engineer – the engineer, registered by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors, retained or employed by the Grant Recipient to provide professional engineering services during the planning, design, and/or construction of the Project.
- (20) Round – the process of submission of Applications, evaluation of the Applications by the Department, and the selection of Projects by the Executive Director that will receive MCWI Grant Funds.
- (21) Unique Entity Identifier – the official identifier used for doing business with the government.

Rule 1.2 Program Requirements

A. Use of Funds.

- (1) In general. A Grant Recipient may only use Grant Funds to cover costs that have been obligated during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in section D, as applicable.

- (2) Cost expended. Grant Funds must be expended by December 31, 2026 or such other time as the Department may proscribe.

B. Eligible Applicants.

- (1) The following entities are eligible for Grant Funds under the Program, provided each is an operator-member of Mississippi 811, Inc., as defined in Section 77-12-3 of the Mississippi Code:
 - (a) any Mississippi municipality;
 - (b) any Mississippi county; and
 - (c) any Mississippi public utility that is not regulated by the Public Service Commission.
- (2) Each Applicant must have or will have Local Recovery Funds to be used as matching funds for the Project.
 - (a) A county must have been awarded or will be awarded Local Recovery Funds directly from the federal government.
 - (b) A municipality:
 - (1) must have been awarded or will be awarded Local Recovery Funds directly from the federal government; or
 - (2) must have been awarded or will be awarded Local Recovery Funds from the Department of Finance and Administration through the NEU (Non-Entitlement Unit) program; or
 - (3) may satisfy this requirement through a transfer of Local Recovery Funds from a county or another municipality.
 - (c) A public utility that is not regulated by the Public Service Commission may satisfy this requirement through a transfer of Local Recovery Funds from a county or a municipality.

C. Eligible Projects.

- (1) Projects that are eligible under the EPA's Clean Water State Revolving Fund (CWSRF) program,¹ including the following:

¹ Projects must meet the eligibility requirements of section 603 (c) of the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. 1383 (c).

- (a) Construction of publicly owned treatment works;
 - (b) Projects pursuant to the implementation of a nonpoint source pollution management program established under the Clean Water Act;
 - (c) Construction, repair or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;
 - (d) Measures that manage, reduce, treat, recapture of stormwater or subsurface drainage water;
 - (e) Projects designed to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse measures;
 - (f) Development and implementation of a conservation and management plan under Section 320 of the Clean Water Act;
 - (g) Watershed projects meeting the criteria set forth in Section 122 of the Clean Water Act;
 - (h) Energy consumption reduction for publicly owned treatment works;
 - (i) Reuse or recycling of wastewater, stormwater, or subsurface drainage water; and
 - (j) Measures to increase the security of publicly owned treatment works;
- (2) Projects that are eligible under the EPA's Drinking Water State Revolving Fund (DWSRF) program,² including the following:
- (a) Facilities to improve drinking water quality;
 - (b) Transmission and distribution, including improvements of water pressure, prevention of contamination in infrastructure, and lead service line replacements, provided that, in the case of lead service line replacement Projects, the full length of the service line is replaced, not a partial portion of the service line;
 - (c) New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage;

² Projects must meet the eligibility requirements of Section 1452 of the Safe Drinking Water Act, 42 U.S.C. 300j-12, as implemented by the regulations adopted by the EPA under 40 CFR 35.3520 (c)(2), with certain exceptions. Additional information about DWSRF Projects may be found in EPA's Drinking Water State Revolving Fund Eligibility Handbook dated 2017.

- (d) Green infrastructure, including green roofs, rainwater harvesting collection, and permeable pavement;
 - (e) Storage of drinking water, such as to prevent contaminants or equalize water demands;
 - (f) Purchase of water systems and interconnection of systems; and
 - (g) New community water systems;
- (3) Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure;
 - (4) Infrastructure to improve access to safe drinking water for individuals served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination;
 - (5) Dam and reservoir rehabilitation, if the primary purpose of dam or reservoir is for drinking water supply and Project is necessary for the provision of drinking water;
 - (6) Lead remediation Projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act; and
 - (7) Any other drinking water, wastewater or stormwater Project eligible through ARPA guidelines, guidance, rules, regulations, and other criteria, as may be amended from time to time, by the United States Department of the Treasury.

D. Necessary Investments.

- (1) Each Project receiving funding under the Program must be a necessary investment in infrastructure;
- (2) A necessary investment in infrastructure is:
 - (a) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise;
 - (b) a cost-effective means for meeting that need, considering available alternatives; and
 - (c) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life;
- (3) CWSRF and DWSRF-eligible Projects are generally presumed to be necessary investments;

- (4) Recipients are required to assess cost-effectiveness of Projects for:
 - (a) the creation of new drinking water systems;
 - (b) dam and reservoir rehabilitation; or
 - (c) the extension of drinking water service to meet population growth needs.

E. Matching Funds.

- (1) For all Applicants, except municipalities that received less than One Million Dollars (\$1,000,000) in Local Recovery Funds, Grant Funds are available on a one-to-one matching basis, *i.e.*, funds are available at a rate of one dollar of Grant Funds for every dollar of Local Recovery Funds obligated to the Project.
- (2) Local Recovery Funds that a county transfers to a municipality or that a county or municipality transfers to a public utility not regulated by the Public Service Commission are eligible for the one-to-one match.
- (3) For municipalities that received less than One Million Dollars (\$1,000,000.00) in Local Recovery Funds, Grant Funds are available on a two-to-one matching basis. For example, funds are available at a rate of two dollars of Grant Funds for every dollar of eligible Local Recovery Funds obligated to the Project. The two-to-one match is limited to the Local Recovery Funds awarded or to be awarded to the municipality from the federal government or from DFA or transferred from another municipality that also received less than One Million Dollars (\$1,000,000.00) in Local Recovery Funds. Any funds transferred to a municipality from a county are not eligible for the two-to-one match, but they are eligible for a one-to-one match pursuant to these regulations.
- (4) The total Grant Funds awarded for two-to-one matches shall not exceed Fifty Million Dollars (\$50,000,000.00). After the \$50,000,000.00 cap has been reached, Projects may be funded on a one-to-one matching basis.
- (5) The dollar amount for Professional Fees allowed to be reimbursed under the Program is limited to 4% of the total of the Local Recovery Funds obligated to the Project and the MCWI Grant Funds.
- (6) Any funds awarded to the City of Jackson shall be deposited in the Capitol City Water/Sewer Projects Fund of the State Treasury.

F. Responsibility and Other Approvals.

- (1) The Applicant/Grant Recipient is responsible for the proper planning, design, construction, operation, maintenance, replacement, performance, and fiscal integrity of the Project. The Department's approval of any document does not relieve the Applicant/Grant Recipient or any others of any liabilities or

responsibilities. The Department's approval of any document is for administrative purposes only and does not establish or transfer any such liability or responsibility.

- (2) It is the responsibility of the Applicant/Grant Recipient to obtain all other approvals, permits, clearances, easements, and/or agreements for the construction and operation of the Project, which may be required.
- (3) The Applicant/Grant Recipient shall provide a Clear site certificate for the Project, if deemed necessary by the Department.
- (4) Any Applicant suspended, debarred, declared ineligible, or voluntarily excluded from eligibility for covered transactions by any Federal department or agency cannot, during the period of suspension, debarment, or exclusion, receive federal grants or be paid from federal grant funds and is, therefore, ineligible to receive MCWI Grant Funds. *See 2 CFR part 180.*

Rule 1.3 Program Procedures and Deadlines

A. Application.

- (1) Applications must be submitted in the form required by the Department. Applicants should only submit Applications after MDEQ announces the opening of the Applicant portal for that Round. Any Applications received prior to the opening of the Applicant portal for that Round will not be considered.
- (2) Applications must be submitted by the Applicant's authorized representative as designated by the resolution required below.
- (3) Applications must contain, except where indicated herein, the following information:
 - (a) Information regarding the Applicant:
 - (1) Applicant's contact information, including a Unique Entity Identifier;
 - (2) a certified copy of a resolution by the Grant Applicant's governing body which authorizes the submission of the Application and designates an authorized representative or office to execute the Application and to be the authorized representative on the Project;
 - (3) documentation of its tax-exempt status under either federal or State law;
 - (4) an Internal Revenue Service Form W-9;
 - (5) Applicant's population (this number may be different from the population described in subsection A.(3)(b)(10) below):

- (a) for municipalities, this number shall be the total population of the entire municipality(ies) determined by the latest 5-year American Community Survey compiled by the United States Census Bureau in Table B01003;
 - (b) for counties, this number shall be the total population of the entire county(ies) determined by the latest 5-year American Community Survey compiled by the United States Census Bureau in Table B01003;
 - (c) for public utilities, this number shall be the total number of customers served by the public utility(ies) as determined by any verifiable source.
- (6) median household income of Applicant's population:
- (a) for municipalities, this number shall be the median household income of the entire municipality(ies) for the previous twelve (12) months determined by the latest 5-year American Community Survey compiled by the United States Census Bureau in Table S1901;
 - (b) for counties, this number shall be the median household income of the entire county(ies) for the previous twelve (12) months determined by the latest 5-year American Community Survey compiled by the United States Census Bureau in Table S1901;
 - (c) for public utilities, this number shall be the median household income of the customers served by the public utility(ies) as determined by any verifiable source.
- (7) unemployment rates of Applicant's civilian labor force:
- (a) for municipalities, this number shall be the unemployment rate for the civilian labor force for the entire municipality determined by the latest 5-year American Community Survey compiled by the United States Census Bureau in Table DP03;
 - (b) for counties, this number shall be the unemployment rate for the civilian labor force for the entire county determined by the latest 5-year American Community Survey compiled by the United States Census Bureau in Table DP03;

- (c) for public utilities, the number shall be the unemployment data for the civilian labor force for the public utility's service area(s) determined by any verifiable source.
 - (8) current water/sewer rates. Applicants shall supply the average annual residential water and sewer bill for its service area. Such rates shall not be combined with any other charges and shall reflect only the water and sewer charges to the customer. For Applicants not supplying both the water and sewer services to its residents, Applicant must make reasonable efforts to obtain this information from other service providers in the Applicant's service area.
- (b) Information regarding the Project:
- (1) Project description and the category of Project: drinking water, wastewater, or stormwater. If the Project consists of multiple categories (*e.g.* wastewater and stormwater), Applicants shall describe the multiple categories in the Project description but shall designate one category as the primary purpose of the Project;
 - (2) Project map;
 - (3) estimated Project budget, including a detailed breakdown of MCWI Grant Funds, Local Recovery Funds, and other funds. For Projects that include work for more than one category, the Application shall provide the cost breakdown for each category. The budget shall include professional fees paid or to be paid on the Project;
 - (4) list of match funds of Local Fiscal Recovery Funds received and to be received from the federal government or from another entity as allowed under these regulations and documentation of the commitment of those funds to the Project;
 - (5) estimated Project schedule and statement of readiness to proceed;
 - (6) all prepared plans, specifications, and professional services contract documents for the planning, design, bidding, and construction phases of the Project. The plans, specifications, and contract documents must bear the seal of the Registered Professional Engineer responsible for preparation of these documents. If these documents are not prepared at the time of Application submittal, they will be submitted to the Department when available and in accordance with the Project schedule;
 - (7) any other engineering reports required by the Project or the Program, including but not limited to, reports showing the Project is a necessary investment;

- (8) a copy of all existing or proposed interlocal agreements related to the Project, if applicable. Such agreements shall be executed by all appropriate parties and shall be verified by the Department prior to any Grant award;
- (9) the following documents or approvals, if applicable to the Project, must be submitted with the Application if available at the time of Application submittal; alternatively, if not available at the time of Application submittal, a statement regarding the status of obtaining such documents or approvals must be submitted:
 - (a) an issued NPDES permit, a completed NPDES permit application, an approval letter from the Department for modifications to an existing system, or a statement from the Department that no NPDES permit or approval letter is needed;
 - (b) an issued Section 404 and/or Section 10 permit, a completed Section 404 and/or Section 10 permit application, or a statement from the Corps of Engineers which states that such permits are not needed;
 - (c) an issued solid waste disposal permit or a completed solid waste disposal permit application;
 - (d) approved archaeological/cultural resource surveys, or a letter from the Mississippi Department of Archives and History which states that such surveys are not needed;
 - (e) approved vegetative/wildlife surveys, or a letter from the Mississippi Natural Heritage Program which states that such surveys are not needed; and
 - (f) any approval letters from the Department or the Department of Health for the Project.
- (10) estimate of population served by the Project;
- (11) documentation of compliance history to be corrected by the Project;
- (12) description of how the Project will promote economic development;
- (13) documentation of previous funding attempts for the Project;
- (14) long terms plans for financial and physical operation and maintenance of the Project;
- (15) number of communities served by the Project;

- (16) number of political subdivisions served by the Project; and
 - (17) documentation of the Project's ability to enhance public infrastructure including transportation and emergency access.
- (4) Certifications.
- (a) Applicants shall certify in the Application that each expenditure of the funds awarded to them under MCWI Grant Program will be in compliance with ARPA guidelines, guidance, rules, regulations, and other criteria, as may be amended from time to time, by the United States Department of the Treasury regarding the use of monies from the State Recovery Funds.
 - (b) Applicants shall certify in the Application that the Local Recovery Funds listed in the Application as match funds have been or will be used for the Project detailed in the Application.

B. Application Deadlines.

- (1) The deadlines for submission of Applications will be posted on the Department's website at www.mdeq.ms.gov and on the MCWI website at www.mswaterinfrastructure.com.

C. Scoring and Ranking.

- (1) The Department shall review all Applications to determine if the Application sets forth required information to be eligible for a MCWI grant. Any Applications missing required information will be rejected. The Applicant will get notice of this rejection and may resubmit the Application with the missing required information. If this resubmittal is before the current Round's Application deadline, the Application will be reviewed for eligibility pursuant to paragraph (2) of this subsection. If this resubmittal is after the current Round's Application deadline, the Application will be reviewed in the next Round, provided there is such a Round.
- (2) The Department shall review all Applications to determine if the Applicant and Project are eligible for a MCWI grant. This determination will be made by conducting a formal Eligibility Risk Assessment relative to all submitted project information. The Eligibility Risk Assessment will be a multi-level review wherein project eligibility is determined in view of federal and state laws, rules and regulations. Any Applications determined to be ineligible after undergoing the Eligibility Risk Assessment process will not be scored and ranked. The Applicant will be given notice of this determination.
- (3) The Department shall develop a scoring system for scoring and ranking Projects for all eligible Applications it receives.

- (4) Based on the score of each eligible Application, the Department will rank each Application received from highest to lowest score by Project category.
- (5) For any Projects receiving the same score, the Department will further rank the Projects based on the median household income of the Applicant, with lower median household income ranking above higher median household incomes.
- (6) All final awards of MCWI grants shall be determined at the discretion of the Executive Director.
- (7) All scores and rankings are final. Applicants not selected may reapply in subsequent Rounds, should such Rounds occur.

D. Available Funds.

- (1) In Round One of grant awards, the Department will award no more than 40% of the total appropriated funds.
- (2) The Department will conduct a second Round of grant funding no later than six months after the first Round. Subsequent grant Rounds may occur if authorized by the Executive Director, with each subsequent Round occurring no later than six months after the previous Round.
- (3) To ensure equitable treatment among the three Project categories (wastewater, stormwater, drinking water), the Department will strive to award a minimum of 20% of the total awards to each category. To accomplish this goal, each of the three categories shall have available for award in Round one a minimum of 20% of the total funds awarded for Round One. If after Round One, any Project category does not have at least 20% of Grant Funds awarded, the difference of 20% of total Grant Funds available for award and the amount awarded to that Project category shall be available for award to that Project category in Round Two, provided there are sufficient Projects in that category in Round Two to award those funds. If in Round Two or subsequent Rounds thereafter, there are insufficient Projects to account for the 20% set aside for a Project category, those Grant Funds may be awarded to another Project category.
- (4) Funds shall be awarded to a Recipient upon the execution of a Grant Agreement between the Department and the Recipient. However, funds will not be paid to the Recipient until approvable invoices for eligible costs are presented to the Department in accordance with the MCWI Grant Agreement.