

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**Public Notice
Proposed Rulemaking Governing
Water Pollution Control Loans**

Notice is hereby given that the Director of Environmental Protection, under the authority of Section 6111.036 of the Ohio Revised Code and in accordance with Chapter 119, proposes to original file the following rules of the Ohio Administrative Code:

3745-150-01	Definitions.	Amendment
3745-150-02	Environmental review purpose and applicability.	No-change
3745-150-03	Environmental information.	No-change
3745-150-04	Environmental review.	Amendment
3745-150-05	Limited environmental review and limited environmental review document.	Amendment
3745-150-06	Environmental assessment document.	Amendment
3745-150-07	Supplemental study.	Amendment
3745-150-08	Findings of significant impact.	Amendment
3745-150-09	Finding of no significant impact.	Amendment
3745-150-10	Reaffirmation of previous environmental decisions.	Amendment
3745-150-11	Phasing the environmental review.	Amendment
3745-150-12	Obligations of assistance recipients.	Amendment
3745-150-13	State priority system and priority list.	Amendment
3745-150-14	Economic and financial need.	Amendment
3745-150-15	First use of funds.	Amendment

These rules address water pollution control loans regulations.

The purpose of this rule making is to satisfy requirements mandated by Ohio Revised Code (ORC) Section 119.032 which requires all state agencies to review each of their rules every five years to determine whether or not to continue the rules without change, amend the rules, or rescind the rules.

The public comment period will run until January 5, 2012. A public hearing on this proposed rule making will be held to consider public comments in accordance with Section 119.03 of the Ohio Revised Code. This hearing will be held at Ohio EPA, 50 W. Town St., Suite 700, Columbus, OH 43215, Conference Center Room B, on January 5, 2012 at 1:30pm.

To facilitate the scheduling of oral presentations, persons intending to give testimony at the hearing should notify the Ohio EPA Public Interest Center, P.O. Box 1049, Columbus, Ohio 43216-1049, (614) 644-2160. Prior registration will ensure that registrants are heard ahead of those individuals who register at the hearing. Oral testimony may be limited to five minutes, depending on the number of persons testifying. All interested persons are entitled to attend or be represented and to present oral and/or written comments concerning the proposed rule making.

Written testimony should be sent to the attention of Becky Hegyi at the Division of Environmental and Financial Assistance (DEFA), P.O. Box 1049, Columbus Ohio 43216-1049. Written comments may also be submitted to the Hearing Officer at the public hearing. Written testimony will receive the same consideration as oral testimony. All testimony received at the hearing or by close of business on January 5, 2012, will be considered by Ohio EPA prior to final action on this rulemaking proposal. Written comments submitted after this date may be considered as time and circumstances permit.

Questions regarding this rule package should be directed to Becky Hegyi at becky.hegyi@epa.ohio.gov. Please include a phone number where you can be contacted during the hours of 8:00 am to 5:00 pm.

To receive a copy of the proposed rules, please contact the DEFA receptionist at (614) 644-2798. In addition, full copies of all proposed rules are available for review at any Ohio EPA district office and at the Ohio EPA central office. The proposed rules are also accessible on DEFA's rule web page at <http://epa.ohio.gov/Default.aspx?tabid=2194>.

3745-150-01 **Definitions.**

The following definitions shall apply to this chapter:

- (A) ~~For purposes of this chapter, director~~ "Director" means the director of the Ohio environmental protection agency, or ~~his~~ the director's duly authorized representative.
- (B) "Assistance ~~Proposal~~proposal" means a proposal to receive financial assistance from the Ohio water pollution control loan fund under section 6111.036 of the Revised Code for the implementation of activities.
- (C) "Applicant" means a person filing an assistance proposal.

Effective:

R.C. 119.032 review dates: 11/30/2011

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 6111.036
Rule Amplifies: 6111.036
Prior Effective Dates: 12/21/2006

3745-150-02

Environmental review purpose and applicability.

- (A) The director shall conduct an independent, comprehensive environmental review pursuant to this chapter for each assistance proposal that receives assistance under section 6111.036 of the Revised Code, including an evaluation of the environmental effects of the disposal system, or the overall activities, of which the assistance proposal is a part.
- (B) The director shall also conduct an environmental review after an environmental review has been conducted previously pursuant to section 6111.036 of the Revised Code, where a significant change has occurred in:
- (1) The assistance proposal;
 - (2) The potential adverse environmental impacts; or
 - (3) The ambient environmental conditions in the subject geographic area.
- (C) Consistent with section 6111.036 of the Revised Code, no financial assistance for implementation of an assistance proposal will be provided from the Ohio water pollution control loan fund unless the director has issued a finding of no significant impact.

R.C. 119.032 review dates: 11/30/2011 and 11/30/2016

CERTIFIED ELECTRONICALLY

Certification

11/30/2011

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Prior Effective Dates:	12/21/2006

3745-150-03

Environmental information.

- (A) Applicants shall develop and submit environmental information as required by the director as a part of the director's review of their assistance proposals.
- (B) Applicants shall submit facilities plans or project plans prepared in support of their assistance proposals under section 6111.036 of the Revised Code.
- (C) Applicants shall conduct public participation and provide a record thereof as may be required by the director, as a part of their submission of facilities plans or project plans. Depending on the complexity of assistance proposal and the disposal system, or the overall activities, of which the assistance proposal is a part, any known public controversy, and the type of environmental review being conducted, without limitation the director may require:
- (1) Distribution by the applicant of fact sheets with an opportunity provided for the public to comment,
 - (2) Public meetings held by the applicant in which the assistance proposal and the disposal system, or the overall activities, of which the assistance proposal is a part and its environmental effects are described, and for which a summary of comments and responses is produced, and
 - (3) Public hearings held by the applicant for which a transcript is produced.

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3745-150-04 **Environmental review.**

- (A) In conducting an environmental review the director shall consider potential direct, indirect, and cumulative short-term and long-term environmental impacts associated with the assistance proposal and the disposal system, or the overall activities, of which it is a part. The director shall conduct the review in sufficient detail to be an adequate basis to determine whether to issue a finding of no significant impact or a finding of significant impact.
- (B) The director shall, without limitation, consider the following attributes in the environmental review:
- (1) Air quality,
 - (2) Archaeological and historical resources,
 - (3) Aquatic habitat,
 - (4) Coastal zones,
 - (5) Endangered species,
 - (6) Farmland protection,
 - (7) Fish and wildlife,
 - (8) Floodplains,
 - (9) Ground water resources,
 - (10) Safety,
 - (11) Safe drinking water,
 - (12) Surface water resources,
 - (13) Terrestrial habitat,
 - (14) Wetlands, and,
 - (15) Wild and scenic rivers.

- (C) For each environmental review, the director may, without limitation, also consider any other attributes that ~~he~~ the director may determine to be relevant to potential significant adverse impacts to either the natural or human environments.
- (D) If, based upon the director's environmental review, the director determines that a potential for an associated significant adverse impact exists, the director may request that the applicant develop measures that avoid or sufficiently mitigate the potentially significant adverse environmental impact. If the applicant provides measures that reduce the potential adverse impacts to a non-significant level, as determined by the director, the director may issue a finding of no significant impact after preparation of an environmental assessment document as provided for in rule 3745-150-06 of the Administrative Code.
- (E) The director may prepare a supplemental study in accordance with rule 3745-150-07 of the Administrative Code when ~~he~~ the director determines there is a potential for significant adverse environmental impacts.

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3745-150-05

Limited environmental review and limited environmental review document.

- (A) The director may approve assistance for the following types of assistance proposals after conducting a limited environmental review, provided that the assistance proposals also meet the conditions under paragraph (B) of this rule:
- (1) Actions in sewerred communities that are for minor upgrading and/or minor expansion of existing treatment works including, but not limited to, minor rehabilitation of existing facilities, infiltration and inflow correction, functional replacement of existing mechanical equipment or structures, and construction of new ancillary facilities adjacent or appurtenant to existing facilities. This category does not include actions that directly or indirectly involve the extension of new collection sewer systems.
 - (2) Actions in unsewered communities where on-site wastewater treatment technologies are proposed.
 - (3) Nonpoint source pollution control actions consisting of non-structural practices or minor removal of surface or sub-surface structures on disturbed, abandoned industrial sites.
- (B) A limited environmental review may be performed only if the director determines that the assistance proposal and the disposal system, or the overall activities, of which the assistance proposal is a part:
- (1) Will have no potential for associated significant adverse environmental impact;
 - (2) Will not require extensive impact mitigation unique to the assistance proposal;
 - (3) Is not the subject of significant public interest;
 - (4) Will not create a new, or relocate an existing, discharge to surface or ground waters, or cause pollution of surface or ground waters;
 - (5) Will not result in substantial increases in the volume of discharge, or the loading of pollutants from an existing source or from new facilities to receiving waters; and
 - (6) Will not provide capacity to serve a population substantially greater than the existing population.

(C) The director shall document and give public notice of ~~his~~ the director's decision to conduct a limited environmental review through issuance of a limited environmental review document.

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3745-150-06

Environmental assessment document.

- (A) If a limited environmental review is not conducted pursuant to rule 3745-150-05 of the Administrative Code, the director shall prepare an environmental assessment document to document ~~his~~ the director's determinations under rule 3745-150-04 of the Administrative Code, and shall provide an opportunity for public review and comment on the contents of the environmental assessment document.
- (B) Without limitation, in each environmental assessment document the director shall describe the following as applicable to each disposal system, or the overall activities, of which the assistance proposal is a part:
- (1) The existing environment of the affected geographic area;
 - (2) The potential future environment without the disposal system, or the overall activities, of which the assistance proposal is a part;
 - (3) The need for the assistance proposal;
 - (4) A comparative analysis of environmentally sound, feasible alternatives throughout the study area including, if appropriate, no action, which evaluates the potential direct, indirect and cumulative short-term and long-term environmental impacts associated with both the selected disposal system, or the overall activities, and their alternatives;
 - (5) Mitigative measures to reduce or eliminate adverse effects on the environment associated with the disposal system, or the overall activities, of which the assistance proposal is a part;
 - (6) Conclusions regarding information gained through public participation activities during project planning; and
 - (7) A statement of the director's findings regarding the significance of the potential adverse environmental impacts associated with the disposal system, or the overall activities, of which the assistance proposal is a part.

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3745-150-07

Supplemental study.

- (A) Where the director determines the need for a supplemental study to provide a more detailed analysis of environmental impacts of the assistance proposal and the disposal system, or the overall activities, of which the assistance proposal is a part, unless the applicant withdraws the assistance proposal for funding consideration or proposes measures to avoid the environmental impacts that would be the subject of the supplemental study, the director shall:
- (1) Identify the basis or need for the supplemental study;
 - (2) Solicit public input concerning the scope of the supplemental study;
 - (3) Establish, after consulting with the applicant and considering public input, the scope of the supplemental study investigation, its conduct, the range of alternatives to be investigated, and its relationship to the facilities plan or project plan prepared which includes the assistance proposal; and
 - (4) Conduct the supplemental study investigation accordingly, and prepare a statement summarizing the investigation, its results, and the director's findings regarding the significance of the potential adverse environmental impacts.
- (B) The director shall incorporate the results of the supplemental study in the environmental assessment of the assistance proposal.

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3745-150-08

Findings ~~Finding~~ of significant impact.

- (A) If the director determines as a result of an environmental assessment that a potentially significant adverse environmental impact may occur, unless the applicant withdraws the assistance proposal for funding consideration or modifies the assistance proposal to avoid ~~avoids~~ the potentially significant environmental impact, the director shall distribute a draft finding of significant impact and the environmental assessment document for public review for a thirty day period. The draft finding of significant impact shall identify the potential significant impacts to environmental attributes.
- (B) The director may consider public comments received regarding the draft finding of significant impact in determining whether to issue a final finding of significant impact. If, as a result of public comments received, ~~his~~ the director's conclusions regarding the potential for significant environmental impacts remain unchanged, the director may provide the applicant with an opportunity to submit a proposal for avoiding or mitigating the identified significant adverse environmental impacts. If the applicant chooses not to submit a proposal for avoiding or mitigating the identified significant adverse environmental impacts, then the director shall issue a finding of significant impact.
- (C) The director shall not provide financial assistance from the Ohio water pollution control loan fund to any assistance proposal for which the most recent environmental review has resulted in a finding of significant impact.

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3745-150-09

Finding of no significant impact.

- (A) Where the director has determined that an assistance proposal meets the criteria for a limited environmental review, the director shall issue a public notice of the finding of no significant impact with the limited environmental review document.
- (B) Where the director determines not to conduct a limited environmental review, and where the director determines as a result of the environmental review that there will not be potentially significant adverse direct, indirect or cumulative short-term or long-term environmental impacts, the director shall issue for public review a draft finding of no significant impact with the environmental assessment document. The draft finding of no significant impact shall identify the director's basis for determining there will be no potential significant adverse impacts to environmental attributes. Thirty days shall be provided for public review, during which no action will be taken on the assistance proposal.
- (C) The director may consider public comments received regarding the draft finding of no significant impact in determining whether to issue a finding of no significant impact. If, as a result of public comments received, ~~his~~ the director's conclusions regarding the potential for no significant adverse environmental impacts remain unchanged, then the director shall issue a finding of no significant impact.
- (D) Where the director has determined that certain mitigative measures will be implemented, or the applicant has proposed to implement mitigative measures, the applicant shall implement the mitigative measures in the manner required by the director.
- (E) Without limitation, the director's approval of the facilities plan or other assistance proposal plan and the director's provision of financial assistance for the assistance proposal is conditioned upon implementation by the applicant of the assistance proposal and the disposal system, or the overall activities, of which the assistance proposal is a part, in conformance with the contents of the environmental assessment document and the results of any supplemental studies, and implementation by the applicant of identified mitigative measures.
- (F) The director shall not provide financial assistance from the Ohio water pollution control loan fund to any assistance proposal for implementation unless a finding of no significant impact has been issued.

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3745-150-10

Reaffirmation of previous environmental decisions.

- (A) If a finding of no significant impact or other environmental decision is less than five years old, and if circumstances change or new information comes to light after a finding of no significant impact has been issued, prior to providing additional financial assistance or to disbursing additional funds for the assistance proposal the director shall re-evaluate the environmental review and either:
- (1) Allow the original environmental decision to stand if the basis for the decision remains unchanged, or
 - (2) Perform a new environmental review as provided under this chapter if the basis for the decision has changed.
- (B) If a finding of no significant impact or other applicable environmental decision for an assistance proposal is five years old or older, prior to providing additional financial assistance or to disbursing additional funds for the assistance proposal the director will re-evaluate the environmental review and the director shall either:
- (1) Issue a notice reaffirming the original environmental decision if the basis for the decision remains unchanged, or
 - (2) Perform a new environmental review as provided under this chapter if the basis for the decision has changed.

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3745-150-11

Phasing the environmental review.

- (A) The director may conduct an environmental review in phases if ~~he~~ the director determines that implementation of a part or parts of the assistance proposal prior to completing the environmental review is necessary to either:
- (1) Remedy an environmental or public health emergency as determined to exist by the director;
 - (2) Comply with state or federal enforcement actions;
 - (3) Realize significant cost savings;
 - (4) Effectively coordinate the assistance proposal with other construction activities;
or
 - (5) Prevent a disproportionate share of the Ohio water pollution control loan fund from being used to finance any one assistance proposal or applicant in a single year.
- (B) In addition to satisfying the requirements set forth in paragraph (A) of this rule, the director may conduct an environmental review in phases and authorize funding of part or parts of an assistance proposal prior to completing the environmental review if the director determines that:
- (1) For publicly-owned treatment works, such funding does not preclude more cost-effective alternatives for the remaining parts of the disposal system;
 - (2) An environmental review will be completed in accordance with rule 3745-150-04 of the Administrative Code, regardless of whether the remaining parts of the assistance proposal will be funded through the Ohio water pollution control loan fund;
 - (3) The parts of the assistance proposal authorized in advance of completing an environmental review will not cause potentially significant adverse direct, indirect, or cumulative short-term or long-term environmental impacts, including those which cannot be acceptably mitigated without completing the entire disposal system, or the overall activities, of which the assistance proposal is a part;
 - (4) The assistance proposal is not highly controversial; and

- (5) The financial assistance agreement requires the recipient to ensure the disposal system, or the overall activities, of which the phased portion is a part, will be operational and will comply with the requirements of its discharge permit, if any, according to a schedule specified in the financial assistance agreement, regardless of whether Ohio water pollution control loan fund financing is available for remaining phases and segments.
- (C) Remaining phases of the assistance proposal will be subject to the environmental review procedures as contained in this chapter.

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3745-150-12

Obligations of assistance recipients.

- (A) A recipient of Ohio water pollution control loan fund financial assistance shall carry out its implementation of the assistance proposal and the disposal system, or the overall activities, of which the assistance proposal is a part, including mitigation measures to reduce environmental impacts, as described in the approved facilities plan or other assistance proposal plan, the environmental assessment, the limited environmental review document and the finding of no significant impact. ~~The director may require such actions through special or general assistance conditions in the assistance agreement and special conditions in applicable plan approvals, permits to install, or other administrative actions. If, in the judgment of the director, a recipient fails to comply with this rule, the director may pursue all available remedies to achieve compliance. Non-compliance shall be grounds for default by the recipient of its financial assistance agreement.~~
- (B) The director may require implementation of such actions through special or general assistance conditions in the assistance proposal's financing agreement and special conditions in applicable plan approvals, permits to install, or other administrative actions. If, in the judgment of the director, a recipient fails to comply with this rule, the director may pursue all available remedies to achieve compliance. Non-compliance shall be grounds for default by the recipient of its financial assistance agreement.

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3745-150-13

State priority system and priority list.

- (A) The director shall maintain a state priority system and priority list for the purpose of establishing the relative priority of assistance proposals nominated for Ohio water pollution control loan fund assistance under section 6111.036 of the Revised Code.
- (B) The director shall periodically prepare and adopt a state priority system which rates and ranks eligible assistance proposals that have been nominated for consideration for financial assistance. Assistance proposals may be nominated to the priority list by the director or by an applicant responsible for implementing the assistance proposal.
- (C) The priority system shall be designed to rank assistance proposals according to the state's water quality goals and objectives, as determined by the director. Without limitation, the priority system shall rate and rank assistance proposals according to the following common factors:
- (1) Human health. This factor applies to assistance proposals which are designed to protect human health. Higher priority shall be given to assistance proposals designed to address confirmed instances of disease outbreak.
 - (2) Water resources protection and restoration.
 - (a) Rivers, streams, inland lakes, ~~and Lake Erie, and the Ohio River.~~ Assistance proposals affecting rivers, streams, inland lakes, ~~and Lake Erie, and the Ohio River~~ shall be ranked based on their ability to protect or restore water resources. The priority system shall be developed in accordance with the following factors:
 - (i) Importance of resource. The priority system shall place greater value on a water body that has the capability to support a healthy biological community composed of diverse and pollution sensitive organisms than a water body that cannot support a healthy biological community. This determination shall be made by using the aquatic life habitat use designations in Ohio's water quality standards.
 - (ii) Restoration potential. The priority system shall place greater value on water bodies that, although impaired, have the potential to be restored to their designated aquatic life use than on those water bodies that will not be restorable to their designated aquatic life use.

- (iii) Effectiveness of action. The priority system shall place greater value on proposals that have a greater correlation between the assistance proposal and improvements to water quality.
- (b) Wetlands. The priority system shall rank wetland assistance proposals based on the ecological integrity of the wetland, placing greater value on wetlands with greater ecological integrity. For purposes of making this determination, ~~wetlands~~ the wetland shall be evaluated using the "Ohio Rapid Assessment Method for Wetlands," version 5.0; published February 1, 2001; available at http://www.epa.ohio.gov/portals/35/401/oram50um_s.pdf.
- (c) Ground water. The priority system shall rank ground water assistance proposals such that greater value is placed on ground water resources that are used for human consumption. The priority system shall place greater value on those water resources that are more sensitive to pollution.
- (3) Financial need. In fulfillment of the financial need provisions of section 6111.036 of the Revised Code, the priority system shall give additional priority to assistance proposals which provide residential wastewater treatment service and qualify under the economic need determinations made by the director pursuant to rule 3745-150-14 of the Administrative Code. The director shall determine the level of additional priority, and shall calculate their priority ratings accordingly.
- (D) As determined by the director, the priority system may be revised to include additional factors to rate assistance proposals on the basis of achieving statewide water quality objectives, or achieving the objectives of the Ohio water pollution control loan fund.
- (E) The director may establish a water resource restoration sponsor program to finance the restoration or protection, or both, of the aquatic life uses of Ohio water resources. ~~Without~~ Consistent with paragraph (F) of this rule, and without limitation, assistance proposals nominated for financing under the water resource restoration sponsor program shall be included on the project priority list, and ~~their~~ the ratings shall be done by using the rivers, streams, inland lakes, ~~and Lake Erie,~~ and the Ohio River, and wetlands components of the priority system. ~~Such~~ Without limitation, such assistance proposals shall be eligible for funding if they will result, either by themselves or in conjunction with other actions to be implemented, in restoration or protection of the aquatic life use standards of the benefitted water resource as defined below:

- (1) In the case of rivers, streams, inland lakes, ~~and~~ Lake Erie, and the Ohio River, the benefitted water resource shall attain at least warmwater habitat standards or better unless the assistance proposal benefits a high quality but impaired water body where habitat protection is an immediate need to prevent habitat loss.
 - (2) In the case of wetlands, the benefit to wetlands from assistance proposals restoring or protecting wetlands will be evaluated using the most current version of the Ohio rapid assessment method version 5.0 for wetlands and be rated according to the categories established in the assessment method. If the assistance proposal is for protection of the benefitted water resource then the wetland shall attain category 3. If the assistance proposal is for restoring and protecting an impaired wetland, then the wetland shall attain a category of at least 2 or 3 gray zone.
- (F) Assistance proposals that have been nominated for consideration and that have been determined by the director to be eligible and allowable for assistance under section 6111.036 of the Revised Code and the program plan prepared pursuant to division (I) of section 6111.036 of the Revised Code shall be ranked according to their priority system ratings.
- (G) The director shall periodically review the state priority system and priority list, may amend ~~them~~ the state priority system and priority list at ~~his~~ the director's discretion, and shall present them for public review and comment prior to issuance as a final action under Chapter 3745-47 of the Administrative Code. As part of that public review the director shall hold a public meeting to obtain comments on the draft priority system and priority list.
- (H) The director may revise the priority system at any time by amending it as a final action under Chapter 3745-47 of the Administrative Code.
- (I) The director may amend the priority list at any time without advance public notice or review by amending ~~it~~ the priority list as a final action under Chapter 3745-47 of the Administrative Code.
- (J) Assistance for proposed activities from the water pollution control loan fund shall be limited to those activities appearing on that priority list and shall be awarded based upon their priority ranking on the list and applicants' readiness to proceed with the proposed activities.

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3745-150-14

Economic and financial need.

- (A) To define assistance proposals which may receive reduced interest rates under the high economic need provision of section 6111.036 of the Revised Code, the director shall develop criteria which consider median household income, size of population served, and economies of scale, and may incorporate other factors related to paying for the costs of the construction and operation of wastewater collection and treatment systems. Only assistance proposals which provide residential wastewater treatment service shall be eligible for such rates. ~~The director shall determine the level of economic need, and the interest rates to be awarded under this provision. Projects qualifying for reduced interest rates under this rule shall also receive additional ranking points, as provided in paragraph (C) of rule 3745-150-13 of the Administrative Code.~~
- (B) The director shall determine the level of economic need, and the interest rates to be awarded under this provision. Projects qualifying for reduced interest rates under this rule shall also receive additional ranking points, as provided in paragraph (C) of rule 3745-150-13 of the Administrative Code.

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3745-150-15

First use of funds.

Consistent with the Code of Federal Regulations, Chapter 40, Part 35, Section 35.3135(e), the director has satisfied the requirement of division (J) of section 6111.036 of the Revised Code that financial assistance from the water pollution control loan fund first shall be used to ensure maintenance of progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements under the Federal Water Pollution Control Act.

~~(A) Consistent with the Code of Federal Regulations, Chapter 40, Part 35, Section 35.3135(e), the director has satisfied the requirement of RC 6111.036(J) that financial assistance from the water pollution control loan fund first shall be used to ensure maintenance of progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements under the Federal Water Pollution Control Act.~~

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