

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days. For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.1 that the Department of Environmental Quality intends to adopt the rules cited as 15A NCAC 01W .0101-.0105.

Codifier of Rules approved this rule as an emergency rule effective February 14, 2025 and received for publication the following notice and proposed temporary rules on: February 5, 2025.

Public Hearing:

Date: February 27, 2025

Time: 1:00 p.m.

Location: DEQ Green Square Office Building, 217 West Jones Street, Raleigh, NC 27603, Room 2301 - Eno River Conference Room (2nd floor), or virtually using Cisco WebEx, Digital Hearing Link:

<https://ncgov.webex.com/ncgov/j.php?MTID=m480611ed669f79ab0d0365c4b35a4f6e>

Meeting Password: NCDEQ (62337 when dialing from a phone or video system)

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003, Access code: 2426 523 5797

If you wish to speak at the digital public hearing, you must register, provide the required information, and follow instructions on ways to join the public hearing. Registration must be completed by 5:00 PM on February 26, 2025. To register, please use the following link: <https://forms.office.com/g/BBSBBrwnzb>

*For instructions on ways to join the public hearing, please refer to the following link: <https://www.deq.nc.gov/about/boards-and-commissions/how-attend-webex-meeting-0>

Reason for Proposed Temporary Action: The effective date of a recent act of the General Assembly or of the U.S. Congress: S.L. 2024-53, s. 4C.8.(l), effective October 25, 2024.

S.L. 2024-53 establishes an emergency infrastructure bridge loan program for commercial underground storage tanks, which is intended to provide immediate temporary funding to assist tank owners and operators in areas affected by Hurricane Helene with recovery efforts to return to operational status. The loans would be repaid with funds that the owner or operator expects to receive from FEMA, private insurance, or other reimbursement sources which may not be immediately available. Emergency rules are required by the Session Law and are necessary for the Department to clarify multiple aspects of the Session Law requirements, including application and review procedures and repayment requirements. The Session Law states: "The Department shall adopt emergency rules to implement the provisions of this section. Temporary and permanent rules adopted to replace emergency rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes."

Comment Procedures: Comments from the public shall be directed to: Adam Ulishney, Attn: Underground Storage Tank Section, 1646 Mail Service Center, Raleigh, NC 27699-1646; email dwm.publiccomments@deq.nc.gov. The comment period begins February 12, 2025 and ends March 5, 2025.

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01W - EMERGENCY INFRASTRUCTURE BRIDGE LOAN PROGRAM FOR COMMERCIAL USTS

SECTION .0100 - EMERGENCY INFRASTRUCTURE BRIDGE LOAN PROGRAM FOR COMMERCIAL USTS

15A NCAC 01W .0101 APPLICABILITY AND DEFINITIONS

(a) Applicability. The rules of this Subchapter shall apply to emergency infrastructure bridge loans for commercial underground storage tanks as established by S.L. 2024-53, s. 4C.8 for short-term financial liquidity necessary to immediately conduct emergency services in the affected area, pending federal disaster relief or payment or reimbursement by insurance. The requirements of S.L. 2024-53, s. 3.1.(b), (c), and (d) are applicable to the rules of this Subchapter, including subsequent amendments or editions. 15A NCAC 02N is incorporated by reference including subsequent amendments or editions.

(b) Documents and payments required to be submitted to the Division by the rules of this Subchapter may be submitted to the Division of Waste Management's Underground Storage Tank Section at the Division's mailing address at 1646 Mail Service Center, Raleigh, NC 27699-1646.

(c) Definitions. The definitions found in Part 2A of Article 21A of Chapter 143 of the General Statutes, the definitions in 15A NCAC 02N, and the definitions in Sections 1.4 and 4C.8 of S.L. 2024-53 shall apply to the rules of this Subchapter. For the purposes of this Subchapter, "applicant" means the owner or operator of a commercial underground storage tank permitted by the Division in accordance

with 15A NCAC 02N that is located in the affected area, and that is submitting an application for an emergency infrastructure bridge loan.

Authority S.L. 2024-53, s. 4C.8.(l).

15A NCAC 01W .0102 LOAN APPLICATION

(a) An owner or operator of a commercial underground storage tank permitted by the Division in accordance with 15A NCAC 02N that is located in the affected area may apply for an emergency infrastructure bridge loan in accordance with S.L. 2024-53, s. 4C.8 and the rules of this Subchapter. The application shall be submitted on a form provided by the Division, which can be found on the Division's website at <https://www.deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/bridge-loan-program>, and shall include the following information and attachments:

- (1) the owner's contact information, including the name, phone number, email address, and mailing address for the contact person or authorized representative for the owner, and the business name if the owner is a business;
- (2) the operator's contact information, including the name, phone number, email address, and mailing address for the contact person or authorized representative for the operator, and the business name if the operator is a business;
- (3) the UST facility name, UST facility identification number for the operating permit issued by the Division in accordance with 15A NCAC 02N, and the physical address and the county in which the UST system is located;
- (4) a description of the impacts and damage to the UST system from Hurricane Helene, including photographs of the impacts or damage;
- (5) a description of the testing and repairs and the scope of work for which the applicant is requesting funds;
- (6) a list of contractors the applicant is proposing to use for completion of the scope of work;
- (7) the project costs, including costs expended at the time of application and estimated future costs;
- (8) a description and the amount of federal disaster relief funds and private insurance reimbursement that the applicant has applied for and the source of those funds;
- (9) a description and the amount of disaster relief funds that the applicant has already received from other sources as of the date of the application;
- (10) copies of repair cost estimates, contracts, or receipts that comply with Paragraphs (d), (e), and (f) of this Rule;
- (11) a description of the attachments included with the application; and
- (12) a certification signed by the applicant or the applicant's authorized representative certifying that the application and documentation provided to the Division are true and accurate to the best of the applicant's knowledge.

(b) The application shall be submitted by June 30, 2025.

(c) The Division shall review the submitted application and provide a response in writing stating either that the application is complete and under review, or that the application is incomplete and stating the information or attachments that are required to be submitted for the application to meet the requirements of Paragraph (a) of this Rule. The owner or operator shall submit any additional information requested by the Division in the response within 30 days following the date the Division's response was issued.

(d) The UST system testing and repairs for which the loan is being requested shall comply with S.L. 2024-53 and the rules of this Subchapter.

(e) Copies of receipts from testing or repairs in accordance with Paragraph (d) of this Rule that have been completed and paid for at the time the application is submitted shall be submitted with the application. The receipts shall include the name and contact information for the contractor, a description of the testing or repair, and the actual cost for the testing or repair.

(f) Copies of cost estimate documentation such as quotes, invoices, contracts, or similar documents for testing and repairs in accordance with Paragraph (d) of this Rule shall be submitted with the application for testing or repairs that are proposed or in progress and have not been paid for at the time the application is submitted. The testing or repair estimates shall include the name and contact information for the contractor, a description of the proposed testing or repair, and the estimated cost of the proposed testing or repair.

Authority S.L. 2024-53, s. 4C.8.(l).

15A NCAC 01W .0103 APPLICATION REVIEW AND LOAN ELIGIBILITY

(a) The Division shall review an application submitted that complies with Rule .0102 of this Section and determine whether the loan is eligible for approval. The Division may determine that the loan is not eligible for approval, that the loan is eligible for the amount requested, or that the loan is eligible for a portion of the amount requested. In making the determination for loan approval and the amount approved, the Division may consider the following criteria:

- (1) the information submitted in the application;
- (2) the remaining amount of loan funds available;
- (3) the location of the UST system within the affected areas as defined in S.L. 2024-53, with priority given to the areas with the greatest impacts from Hurricane Helene;
- (4) whether the costs included in the scope of work are significantly different from a range of expected or reasonable costs for such work, as determined by the Division;
- (5) federal disaster relief or private insurance reimbursement received for Hurricane Helene response prior to submittal of the application;
- (6) the level of need for other submitted applications under review by the Division that have not yet been awarded pursuant to S.L. 2024-53, s. 4C.8.(h);
- (7) the type of work included in the scope of work, with funding priority given to the specific examples of repairs and testing listed in the definition of emergency services in S.L. 2024-53, s. 4C.8.(b); and
- (8) the operational status of the UST system and the status of the scope of work submitted.

(b) If the Division determines that the loan is eligible for approval, either for the requested amount or a portion of the requested amount, the Division shall send the applicant a letter of intent to award the loan in accordance with S.L. 2024-53, s. 4C.8.(i) with a copy of the loan agreement developed in accordance with Rule .0104 of this Section within 60 days after receipt of the application. Within 30 days after the offer is issued, the recipient shall:

- (1) accept the offer by executing a loan agreement in accordance with Rule .0104(c) of this Section and returning it to the Division; or
- (2) provide a written response to the Division rejecting the offer.

(c) If the applicant has not accepted or rejected the offer in accordance with Paragraph (b) of this Rule within 30 days after the offer is issued, the Division may rescind the offer to award the loan by providing written notice to the applicant. The awarding of new loans shall cease on June 30, 2028.

(d) If the Division determines that the loan is not eligible for approval because it does not comply with S.L. 2024-53 or the rules of this Subchapter, the Division shall send the applicant a letter via certified mail outlining the reasons that the applicant is not eligible within 60 days after receipt of the application.

(e) If the applicant disagrees with the Division's determination, the applicant may elect to submit an informal appeal to the Division supplying additional supporting information. The appeal must be submitted within 30 days of the date the Division issued the notification of the Division's determination. The Division shall review the additional information and shall issue a final written agency decision via certified mail. Pursuant to S.L. 2024-53, s. 4C.8.(h), the Division's determination of need is conclusive.

Authority S.L. 2024-53, s. 4C.8.(l).

15A NCAC 01W .0104 LOAN AGREEMENT

(a) Within 10 business days after an applicant elects to accept a loan after it is awarded in accordance with S.L. 2024-53, s. 4C.8.(i), the recipient shall submit a signed NC Substitute W-9 form to the Division. The Substitute W-9 form may be obtained from the NC Office of the State Controller website at: <https://www.osc.nc.gov/state-north-carolina-sub-w-9>.

(b) Loan Agreement. If an applicant elects to accept a loan after it is offered in accordance with S.L. 2024-53, s. 4C.8.(i), a loan agreement shall be executed between the Division and the recipient. The loan agreement shall include the terms and conditions of the agreement such as:

- (1) the conditions for issuance of the loan, including the requirements in Paragraph (a) of this Rule;
- (2) information regarding the intended use of the loan proceeds;
- (3) a deadline by which the applicant shall have entered into a construction contract to begin testing and repairs;
- (4) conditions under which the loan will be repaid including any payment plan schedules requested by the applicant;
- (5) the rights and responsibilities of the parties;
- (6) the loan identification number assigned by the Division; and
- (7) any other applicable terms and conditions of the loan as outlined in Rule .0105 of this Section.

(c) The loan agreement shall be signed and notarized by the recipient and an original signed copy shall be returned to the Division. The Division shall also sign and notarize the agreement to execute the agreement. The agreement shall be effective on the date the agreement is signed and notarized by the Division.

(d) After the loan agreement is executed, the applicant may submit a request in writing for an amendment to the loan amount or the terms of the loan agreement. The request shall include the amendment being requested and supporting evidence for the request, including supporting documentation such as updates to any information that was provided in the application that has changed since the application was submitted. The Division shall review and respond to the request in accordance with Rule .0103 of this Section. If approved, the agreement shall be revised accordingly and shall be signed and notarized by the Division and the recipient. No amendments to awarded loans shall be approved after June 30, 2028.

Authority S.L. 2024-53, s. 4C.8.(l).

15A NCAC 01W .0105 LOAN TERMS, LIMITATIONS, AND CONDITIONS

(a) In addition to the loan terms in S.L. 2024-53, s. 4C.8 and the applicable requirements of s. 3.1, a bridge loan from the program is subject to the following terms and conditions:

- (1) The total amount awarded for the loan shall be repaid in full by the maturity date as defined in S.L. 2024-53, s. 4C.8, and no later than June 30, 2030.
- (2) A loan may be repaid early or on a payment plan outlined in the loan agreement prior to the maturity date without penalty.
- (3) Loan payments shall be submitted to the Division of Waste Management Underground Storage Tank Section by certified check or money order.

(b) In addition to the loan limitations in S.L. 2024-53, s. 4C.8, a bridge loan from the program shall not be used for purposes that do not comply with the requirements of S.L. 2024-53, such as the following purposes:

- (1) removal of a commercial underground storage tank unless the applicant provides evidence in the loan application that damage or impacts from Hurricane Helene necessitated the removal, and the removal is necessary to restore the UST system to operational capacity;
- (2) work or testing or repairs related to aboveground storage tanks or non-commercial underground storage tanks, notwithstanding new action from the General Assembly;
- (3) purposes that are or may be eligible for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund in accordance with G.S. 143-215.94B;

- (4) any repairs or testing that have already been paid for or reimbursed by federal disaster relief or private insurance or other emergency funding sources; or
- (5) any repairs or testing that occurred or were necessary prior to the date of Hurricane Helene, or that were not a result or impact of Hurricane Helene.

(c) The recipient shall submit a final report within 90 days after completion of testing and repairs. The report shall include a description of:

- (1) the operational capacity of the UST system;
- (2) any deviations from the scope of work submitted in the application; and
- (3) receipts for completed repairs that were not submitted in the application.

(d) If a recipient fails to comply with S.L. 2024-53, the rules of this Subchapter, or the loan agreement, the Division shall notify the recipient in writing that they are in default, and provide the actions the recipient must take in order to cure the default and the deadlines to take those actions. If the recipient fails to take the required actions by the deadlines stated in the notice, the loan shall be considered to be in default and the Division will refer the loan for collection in accordance with State law.

Authority S.L. 2024-53, s. 4C.8.(l).