**Illinois Instruction 1780**

**Guide 1**





**HANDBOOK**

**FOR OBTAINING**

**USDA RURAL DEVELOPMENT**

**FUNDING ASSISTANCE**

**FOR**

**A**

**WATER AND/OR WASTE PROJECT**

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A

HANDBOOK

FOR

DEVELOPING A WATER AND/OR WASTE PROJECT

AND

OBTAINING USDA RURAL DEVELOPMENT FUNDING ASSISTANCE

NAME OF APPLICANT

ADDRESS

PRESIDENT OR CHAIRPERSON

ADDRESS

TELEPHONE EMAIL

AUTHORIZED REPRESENTATIVE IF OTHER THAN ABOVE

NAME

ADDRESS

TELEPHONE EMAIL

ATTORNEY

ADDRESS

TELEPHONE EMAIL

ENGINEER

ADDRESS

TELEPHONE EMAIL

USDA RURAL DEVELOPMENT

NAME

ADDRESS

TELEPHONE EMAIL

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The following Instructions are to be used with this Handbook:

Illinois Instruction 1780, Guide 6, “Plan for Operation and Maintenance of Water or Waste System”

Illinois Instruction 1780, Guide 9, “Construction Bid Opening Checklist”

RUS Instruction 1780-Subpart A, “General Policies and Requirements"

RUS Instruction 1780-Subpart B, "Loan and Grant Application Processing"

RUS Instruction 1780-Subpart C, “Planning, Designing, Bidding, Contracting, Constructing and Inspections”

RUS Instruction 1780-Subpart D, "Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants"

RUS Staff Instruction 1780-4, “Borrower Accounting Records, Management Reports, and Audited Financial Statements for Water Programs Borrowers”

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GENERAL

USE OF HANDBOOK

This Handbook is intended to serve as a guide in the processing of water and waste projects for applicants requesting USDA Rural Development assistance. This guide covers the period from the time an application is invited through the period when the facility becomes operational.

Copies of this Handbook will be supplied the applicant, its engineer and attorney. The USDA Rural Development representative will rely on its use as well.

RUS Instruction 1780, Subparts A, B, C, and D cover USDA Rural Development National policies and requirements and may be found at <http://www.rurdev.usda.gov/RDU_Regulations_Utilities.html> . Additional guides and forms are (will be) provided as needed.

USDA Rural Development makes loans to supplement, not to take the place of commercial credit. Consequently, it must be established that such credit is not available. A partial list of municipal bond underwriters interested in financing projects by public bodies is provided in Guide 4, Illinois Instruction 1780. Local banks are a possible source of financing for not for profit corporations.

Borrowers agree to seek and accept refinancing of their loans when it appears that private credit is available at reasonable rates and terms.

SUPERVISION AND SERVICING

USDA supervises its loans to the extent necessary to accomplish the purposes of the loan and to protect the interest of the Government. This supervision includes assistance in planning and developing the project; approval of the contracts entered into by the applicant in relation to its project; assistance in its initial operation; and continued help in its subsequent operations.

RELATIONSHIPS - APPLICANT, ENGINEER, ATTORNEY, BOND

COUNSEL, USDA RURAL DEVELOPMENT

Projects financed by USDA are local projects. The local governing body plans the project, makes the decisions, borrows the funds, builds the facility, operates it, and repays its obligations. The applicant retains an attorney, engineer and usually an auditor (CPA) of its choice who are employed by the applicant.

USDA Rural Developmentprojects such as this are accomplished through one of our *Area* Offices. The person in charge of the office and responsible for the program in that assigned area of the State is the Area Director, aided by Area Specialists and a technical staff.

The State Director administers the program in the state and is directly responsible to the Administrator of the agency in Washington, D. C.

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The applicant should appoint one member (and an alternate) of its governing board, preferably the President or Chair, as spokesperson and contact person between the applicant and its consultants (engineer and attorney) and between the applicant and USDA Rural Development. This individual should be available during customary working hours.

USDA Rural Developmentendeavors to channel all communication with anyone involved in the project (engineer, attorney, bond counsel, contractors, and other agencies) through the applicant's designated representative. Likewise, all communications to USDAshould be channeled through this person toUSDA Rural Development.

If the corporation authorizes the Executive Director or Manager to execute all of the documents for the loan, a certified copy of the corporate resolution authorizing same is needed. It should specifically cover the note, mortgage, financing statement, loan resolution/agreement/security agreement, and all other documents needed and required by USDA Rural Development for the loan application and loan.

The applicant is responsible for insuring that its engineer and attorney (bond counsel, if required) do the work for which they are responsible, resolving any problems in coordination of responsibility, and provide the required documentation as requested in order to facilitate the orderly processing of the project.

USER SURVEYS

In the case of new water or sewer systems or extensions of service to additional users, a user survey will be conducted to determine local support for the project. Potential users will be asked to sign a USDA approved user contract which signifies their intention to use the services of the facility promptly once it is installed. An advance tap-on fee, normally equal to one year’s minimum user fee, will be collected prior to loan closing. This survey serves at least these useful purposes:

1. It determines the willingness of the applicant's officials to support the project.

2. It determines the number and location of users for which to design the facility and to establish user rates.

3. It provides a small working fund for preliminary expenses.

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Chronological Steps in Developing a Water and/or Waste Project

(Public Bodies and Not-for-Profit Corporations)

Days From

Start

SF 424 Application NA

Preliminary Engineering Report NA

Environmental Report NA

Professional Services Agreements NA

Authorization By USDA to Process Application 45

Complete Organizational Proceedings 45

USDA Application Conference 45

Develop Preliminary Plans 60

Public Information Meeting 60

Develop the Application 60

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Operation 315 to 680

\*Not-for-Profit Corporations adopt Resolution of Members

#USDA closing instructions may be requested before advertising for construction bids on some projects.

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CONFERENCES

USDA Rural Development’s experience has demonstrated that conferences with the applicant, attorney, engineer, and USDA personnel can be used to good advantage during the loan processing. These should be separate from the regular board meetings of the applicant. They will be arranged by USDA at a mutually agreed upon time and place, preferably at the USDA Rural Development office. Four of these conferences are especially important and will be held at the following times:

1. Application Conference

This is held promptly upon a favorable response to the SF 424. The purpose is to outline the requirements and documentation to be included with the full application. Guide 2 or 2a (as appropriate), Illinois Instruction 1780, lists the material which is needed to complete the application.

2. Docket Conference

USDA Rural Development will make a funding offer in the form a "Letter of Conditions" which outlines the remaining work to be done before a loan can be closed. These requirements will be explained at this conference. Guide 3 or 3A (as appropriate), Illinois Instruction 1780 will be supplied by USDA at this time.

3. Pre-Bid Conference

This conference will be held to assure that all items of Guides 2 and 3, Illinois Instruction 1780 have been provided, all requirements of the letter of conditions have been met including completion of rights-of-way evidence and to coordinate actions subsequent to bid opening so the loan can be closed promptly. Guide 9, Illinois Instruction 1780 will be used to coordinate actions subsequent to bid opening.

4. Pre-Construction Conference

This conference is required after contracts have been awarded and before construction.

LEGAL MATTERS

The applicant will select an attorney (sometimes referred to as "the attorney" or the "local attorney") of its choice. RUS Bulletin 1780-7 supplied with this Handbook may be used to contract for legal services.

As a part of the application the attorney is expected to furnish USDA Rural Development an opinion that the applicant was legally organized and remained in continuous legal existence, has the legal authority to install, operate and maintain the proposed facilities, to borrower money, give security therefore, and to raise revenue for the payment thereof. Form RD-IL 1780-2, "Attorney's Opinion Relative to Organization, Authority and Continuous Existence" with the transcript of the organizational proceedings attached should be used.

1. Tax-Exempt Public Bodies

RUS Instruction 1780, Subpart D outlines the requirements for the use of recognized bond counsel in authorizing the issuance of bonds of tax-exempt public bodies.

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The names of recognized bond counsel firms who have indicated a willingness to provide services in Illinois are listed on Page 9 of this Handbook. The cost of this service should be included as part of the legal or administrative cost of the project.

2. Not-for-Profit Corporations

Associations organizing under the general not-for-profit statutes of Illinois (non public bodies) should obtain Form NFP 102.10 from the Office of the Secretary of State, State of Illinois. Illinois Compiled Statutes (805ILCS 105/101.10) provide instructions for preparing and filing Articles of Incorporation.

RUS Bulletin 1780-20 provides suitable by-laws for water or sewer system projects.

RIGHTS-OF-WAY AND TITLE EVIDENCE

Applicants will be responsible for obtaining adequate, continuous and valid rights-of-way for the construction, operation and maintenance of its facilities.

The attorney for the applicant in cooperation with the engineer should furnish USDA Rural Development properly executed documents (or certified copies) evidencing all such rights as a complete exhibit, indexed and numbered as outlined below.

Title for all structure sites (water towers, water treatment plants, well sites, lake sites, bulk meter pits, water pumping stations, sewage treatment plants, sewage lift stations, etc.) will be evidenced by an attorney's preliminary title opinion or title insurance commitment. This includes structure sites in which there is a fee simple title, perpetual easement or a lease. The type of structure site is to be written on the front page of each title opinion, title insurance document, and the right-of-way map. Title evidence must be current (dated within six months of loan closing or in accordance with the terms of the title insurance commitment).

**For combined water and sewer systems title work for all water and sewer structure sites is required.**

Public bodies which currently have USDA funding must provide title evidence only on newly obtained sites unless the amount of title insurance needs to be increased on existing sites where additional expenditures have been made. Not-for-profit corporations which currently have USDA funding must provide title evidence for **all** new sites **and** updated opinions or date down endorsements on existing sites.

When title opinions will be prepared by the attorney the opinions must be on Office of the General Counsel (OGC) Forms RD-IL 1927-9, "Preliminary Title Opinion" and OGC RD-IL 1927-10, "Final Title Opinion". A Schedule A showing the legal description of each tract must be attached to each opinion. The title opinions must cover the previous forty year period. The opinions will be prepared as follows:

1. Form RD-IL 1927-9 will be prepared and submitted prior to requesting closing instructions from OGC. Form RD-IL 1927-10 will be prepared and submitted shortly after loan closing.

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1. When the land is already owned by the applicant and NO TITLE POLICY will be issued, OGC Form RD-IL 1927-9 will be prepared for each tract or site before loan closing instructions will be issued. Copies of the recorded deeds must be obtained for each tract listed.

3. When land will be purchased from third parties and NO TITLE POLICY will be issued, separate Forms OGC RD-IL 1927-9 will be prepared for each tract of land to be purchased.

4. When permanent easements or leases are obtained for necessary sites, both Forms OGC RD-IL 1927-9 and OGC RD-IL 1927-10 will be prepared at the appropriate time. In addition to showing the name of the record owner, Form OGC RD-IL 1927-10 must also show the interest vested in the borrower as a result of the permanent easement or lease being placed on record.

If title insurance will be used the following conditions must be met:

1. Bonds – A current (6 months) owner’s title insurance commitment will be submitted with the request for closing instructions. The commitment must be in an amount agreeable to USDA (i.e. fair market value of the land plus improvements) and name the borrower as the insured. The commitment can (but need not) cover more than one above ground structure site. At loan closing an owner’s title insurance policy, which meets all of the same requirements as the commitment, will be issued.

2. Note & Mortgage – A current (6 months) mortgagee’s title insurance commitment will be submitted with the request for closing instructions. The commitment must be in an amount at least equal to the market value of the property as improved or the amount of the loan (whichever is less) and name “The United States of America, acting through the United States Department of Agriculture,” as the insured. The commitment can (but need not) cover more than one above ground structure site. At closing a mortgagee’s title insurance policy, which meets the same requirements as the commitment, will be issued.

3. For subsequent loans to NFP Corporations the following is required:

(a) Title insurance as required above for new structure sites.

(b) Date-down endorsements for existing structure sites for which title policies were previously provided.

(c) For existing structure sites on which additional improvements will be made a date-down endorsement and a title policy increasing the amount to the value of the land and existing and new improvements.

Any defects in title must be cured on or before the date of loan closing. The Area Director or Area Specialist will prepare and sign a "Memorandum to the File" to waive any encumbrances, exceptions, reservations, or restrictions (including, but not limited to easements, mineral rights and building restrictions) which appear in any of the opinions or title insurance commitments which will have no adverse affect on the operation of the facilities and will not jeopardize the Government’s security. If any exceptions, reservations or restrictions may adversely affect the successful operation of the project, the State Director, with the advice of the Office of the General Counsel may issue the waiver. The State Director will require a certificate from the engineer and/or the local attorney stating the degree of risk involved if the waiver is issued and why an alternate site should not be selected.Illinois Instruction 1780

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The authority of the grantors to execute any easements or other conveyances must be sufficiently examined to allow the attorney to issue his opinion on Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way". As much of the water/sewer lines as feasible will be installed on private easements to protect the borrower should public roads be improved.

Assemble the complete title evidence in a separate folder as follows:

1. Index Page
2. Opinion of Counsel Relative to Rights-of-Way (Form RD 442-22) with no exceptions
3. Right-of-Way Certificate (Form RD 442-21) signed by applicant's officials with no exceptions
4. Right-of-Way Map - This must show by different colors and an appropriate key all rights-of-way and sites (identify the type of each structure) required for the facility. Use a different color for each type of conveyance. Lot and block numbers, section numbers, highway station numbers and other suitable reference points must be indicated on the map. The engineer must authenticate and date the Right-of-Way Map.
5. Railroad Crossing Easements or Evidence Supporting the following: If a perpetual easement with no restrictive clauses or contingent liability cannot be obtained from the railroad, the crossing should: (a) be made on public roadways; (b) the railway company must approve the plans for the construction or voice no objection to such crossings; (c) an easement or permit for use of the public roadway for this purpose must be obtained from the appropriate State or County Highway Department; and (d) the attorney provide a 40 year title opinion evidencing State or County ownership of the public roadway at the point of intersection with the railway, or a certificate that the public roadway has been condemned in favor of the State or County.

If there are restrictive clauses in the railroad crossing permit, the following statement must be prepared and signed by the attorney and applicant:

State Director, USDA Rural Development

2118 West Park Court, Suite A

Champaign, Illinois 61821

Dear Sir:

Please be advised that I have on ( date ) reviewed the license from the ( name ) Railroad Company dated ( ), with the ( borrower ), ( county name ) County, Illinois. I have pointed out to them that the ( borrower ) agrees to certain liabilities in the license. It is my opinion that this license is adequate for the ( borrower's ) purposes.

Attorney at Law

We the members of the ( borrower ) have had an opportunity to question our attorney about the above referenced license from the ( name ) Railroad Company. We accept full responsibility for accepting this license in lieu of a perpetual easement.

(President)(Chairperson)

(Clerk)(Secretary)

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1. State of Illinois, County and Township Highway Right-of-Way and Crossing Permits.
2. Ordinance authorizing the use by the facility of its streets, alleys, and any other applicant-owned property. (Applicable only to villages, towns, cities.)
3. Originals or photo copies of deeds to property and a preliminary and final title opinion by the attorney (use Form RD-IL 1927-9 and RD-IL 1927-10) relative thereto or title insurance policy as explained above.
4. A copy of the form of easement used in obtaining easements from private property owners. Use Form RD-IL 442-20, "Rights-of-Way Easement." All easements must be recorded.
5. Any other documents that pertain to the title to the land used for the facility.

PREPARATION OF NOTES, BONDS, RESOLUTIONS AND ORDINANCES

1. Tax-Exempt Public Bodies

Loans will be secured by appropriate type bonds (and in some instances notes) in accordance with RUS Instruction 1780, Subpart D.

Selection of bond counsel should be made jointly by the applicant and its attorney no later than the date of receipt of the letter of conditions. The following recognized bond firms have indicated an interest and willingness to perform the services required by RUS Instruction 1780, Subpart D.

Name, Address & Telephone No.

BRYAN, CAVE, McPHEETERS EVANS, FROEHLICH, BETH

& Mc ROBERTS & CHAMLEY

1 Metropolitan Square, Suite 3600 44 Main Street

211 North Broadway P. O. Box 737

St. Louis, MO 63102-2750 Champaign, IL 61820

314-231-8600 217-359-6494

ICE MILLER DONADIO & RYAN KATTEN MUCHIN & ZAVIS

135 South LaSalle Street 525 West Monroe Street

Chicago, IL 60603 Suite 1600

312-726-1567 Chicago, IL 60606

312-902-5200

HART, SOUTHWORTH &

WITSMAN KELTY LAW OFFICES, P.C.

Suite 501 P.O. Box 2243

One North Old State Capitol Plaza Springfield, IL 62705

Springfield, IL 62701-1323 217-789-8901

217-753-0055

THE STOLAR PARTNERSHIP CHAPMAN & CUTLER

(formerly Charles & Trauernicht) 111 West Monroe Street

Lamert Building Chicago, IL 60603

911 Washington Avenue 312-845-3000

St. Louis, MO 63101-1290

314-231-2800

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SHANAHAN & SHANAHAN, LLP QUARLES & BRADY LLP

230 W. Monroe St. 300 N LaSalle Street

Suite 2620 Suite 4000

Chicago, IL 60606 Chicago, IL 60654

312-263-0607 414-277-5773

GILMORE & BELL

One Metropolitan Square

211 N. Broadway, Suite 2350

St. Louis, MO 63102-2733

314-436-1000

The initial submission of material to bond counsel by the local attorney would include at least the following:

* Letter of Conditions.
* Transcript of organizational proceedings of the applicant and certified copies of any ordinances authorizing outstanding bonds or notes.
* Preliminary Engineering Report.
* Proposed bond maturity schedule.
* Form RD 442-7, "Operating Budget".
* Proposed Rules, Rates and Regulations.
* Finding of No Significant Environmental Impact.
* Name and address of Area Director/Area Specialist servicing the project.

2. Not-for-Profit Corporations

The entire membership by adopting Form RD 1942-8, "Resolution of Members or Stockholders" authorizes the Board of Directors to execute RUS Bulletin 1780-28, "Loan Resolution Security Agreement". The loan will be evidenced by Form RD 440-22, "Promissory Note (Association or Organization)". It will be secured by a lien on all real property owned or to be acquired by the association. Form RD-IL 1927-4, "Real Estate Mortgage for Illinois" will be provided by USDA at the appropriate time. In addition, at loan closing the following forms will be required to be executed, as applicable: Form RD 1927-5, "Affidavit Regarding Work of Improvement" and Form UCC1, "Financing Statement".

SUBMITTAL OF DRAFT DOCUMENTS FOR LOAN CLOSING

A draft copy of the Note(s), Mortgage, Financing Statement (draft or existing), Loan Resolution, Resolution of Members of Stockholders and Grant Agreement, as applicable, must be submitted to the State Office with the docket when requesting closing instructions.

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RULES, RATES AND REGULATIONS

Associations will provide rules, rates and regulations for the operation and use of its facility. "(A) (An) (Ordinance) (Resolution) to Establish Rules, Rates and

Regulations for the Operation of System",

Guide 5, Illinois Instruction 1780 is suitable with appropriate modifications for water system projects.

The sewer rate and use ordinance provided by the Environmental Protection Agency as amended by Guide 5A, Illinois Instruction 1780 will be used on sanitary sewer projects receiving USDA financial assistance.

Applicants operating a combined water and sewer system should provide by ordinance or resolution separate rules and regulations for the use of each facility as outlined above. The section relative to rates may be deleted and provided for in a separate ordinance.

ENVIRONMENTAL REQUIREMENTS

USDA Rural Development Instructions contain the major environmental policies of USDA Rural Development as well as the procedures and guidelines for preparing environmental impact analysis. By taking into account potential environmental impacts of proposed projects and by working with USDA applicants, other Federal agencies, State and local governments and interested citizens and organizations actions can be formulated that advance program goals in a manner that will protect, enhance and restore environmental quality.

STATE AND LOCAL AGENCY CONCURRENCE

Evidence of concurrence by appropriate State and local officials must be included in the docket:

1. Consistency with Local Development Plans

Dockets will contain evidence that the proposed project will be consistent with any overall economic development plan and other local or area development plans, zoning laws, or ordinances, and receive the sanction of interested local and state agencies.

(a) Evidence will include positive statements from the appropriate official in cases where an overall economic development plan, zoning laws, or ordinances are in effect. The attorney will provide a positive statement regarding the absence of such plan, etc. if such be the case.

(b) In the case of water lines extending through or areas adjacent to incorporated municipalities authorized to provide such service a statement of "No Objections" will be provided from the appropriate municipal official.

2. Licenses and Permits

Provide copies of all licenses and permits necessary for facility construction or operation. These include but are not limited to the following:

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(a) Permits are required from the Illinois Department of Natural Resources, Office of Water Resources, Springfield, Illinois, in accordance with Illinois Statutes for constructing water retaining structures; or for any type structure in any waterway of the State under its jurisdiction. Permits from the U. S. Army Corps of Engineers are required for the same purpose on any waterway within its jurisdiction.

(b) Illinois Environmental Protection Agency, Springfield, Illinois approval of plans and specifications for public water wells, treatment and distribution systems must be obtained.

(c) A log of any wells drilled should be filed with the State Geological Survey Division of the Illinois Department of Natural Resources.

(d) State of Illinois, Environmental Protection Agency, Springfield, IL, approval of plans and specifications for public sewage collection and treatment works must be obtained in accordance with Illinois Compiled Statutes.

(e) Water and sewer system operators must be licensed in accordance with the requirements of the Illinois Environmental Protection Agency.

CONSTRUCTION CONTRACT DOCUMENTS

Engineers Joint Contract Documents Committee (EJCDC) Version 2007 contract documents for construction of USDA financed projects will be used on projects receiving USDA assistance. Illinois Instruction 1780, Guide 10, “USDA Rural Development Construction Sign” and Guide 12, “Construction Contractors Affirmative Action Requirements Goals for Minority and Women Participation” will be a part of the contract documents. Illinois Instruction 1780, Guide 11, “Front End Documents for USDA Water and Wastewater Projects,” is a checklist of documents to be included in construction contracts.

If the Illinois Department of Commerce and Economic Opportunity (DCEO) standard construction contracts are used, Illinois Instruction 1780, Guide 10, “Addendum to Rural Development Supplemental General Conditions” will be a part of the contract documents.

OPERATION AND MAINTENANCE PLAN

Applicants are required to submit to USDA Rural Development a proposed plan for operation and maintenance of its facility prior to loan closing. Guide 6, Illinois Instruction 1780, entitled “Plan for Operation and Maintenance of Water or Waste System,” outlines the contents of such a plan.

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