DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF SECOND EMERGENCY RULEMAKING

Clean Rivers Impervious Surface Area Charge Relief Program
Emergency Residential Relief Program

The Director of the Department of Energy and Environment (DOEE or the Department), pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq*. (2013 Repl. & 2019 Supp.)); the District of Columbia Water and Sewer Authority Rate Increase Mitigation Amendment Act of 2018, effective October 30, 2018 (D.C. Law 22-168; D.C. Official Code § 34-2202.16b (2019 Supp.)); Section 307(a) of the Coronavirus Support Temporary Amendment Act of 2020, effective October 9, 2020 (D.C. Law 23-130; 67 DCR 8622) (October 23, 2020)); and Mayor's Order 2018-104, dated December 31, 2018, hereby gives notice of the adoption of the following emergency rules to add new Sections 3710, 3711, 3712, 3713, 3714, 3715 to Chapter 37 (Customer Assistance Programs Eligibility Determinations) in Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking sets procedures related to a new DC Water bill relief program, the Clean Rivers Impervious Area Charge Emergency Residential Relief Program (CRIAC-ERRP), established by the COVID-19 Response Supplemental Emergency Amendment Act of 2020. CRIAC-ERRP provides eligible DC Water customers a bill credit equal to their outstanding balance.

A Notice of Emergency and Proposed rulemaking was adopted and became effective on October 7, 2020 and was published on October 23, 2020 at 67 DCR 12487. DOEE did not receive any comments on the emergency and proposed rulemaking; however, DOEE does not anticipate finalizing this rulemaking, as the CRIAC-ERRP program is authorized only temporarily. This second emergency rulemaking is being promulgated to allow eligible DC Water Residential Customers to continue to have access to the described benefits because the public health emergency has been extended through March 17, 2021.

This second emergency rulemaking was adopted and became effective on February 4, 2021. These emergency rules will remain in effect for one hundred twenty (120) days after adoption or the period of time for which the Mayor has declared a public health emergency pursuant to Section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01) and for one hundred and five (105) calendar days thereafter, whichever occurs first, unless superseded by publication of another rulemaking notice in the *D.C. Register*.

Title 20 DCMR, ENVIRONMENT, is amended as follows:

Chapter 37, CUSTOMER ASSISTANCE PROGRAMS ELIGIBILITY DETERMINATIONS, is amended by adding new Sections as follows:

3710 CUSTOMER ASSISTANCE PROGRAMS CLEAN RIVERS IMPERVIOUS AREA CHARGE EMERGENCY RESIDENTIAL RELIEF PROGRAM (CRIAC-ERRP)
3711 APPLICATION PROCESS (CRIAC-ERRP)
3712 ELIGIBILITY (CRIAC-ERRP)
3713 BENEFITS (CRIAC-ERRP)
3714 DENIAL, REDUCTION, OR REVOCATION OF BENEFITS (CRIAC-ERRP)
3715 ADMINISTRATIVE APPEALS (CRIAC-ERRP)

3710 CUSTOMER ASSISTANCE PROGRAMS CLEAN RIVERS IMPERVIOUS AREA CHARGE EMERGENCY RESIDENTIAL RELIEF PROGRAM (CRIAC-ERRP)

3710.1 This chapter sets forth the process and appeal procedures for the Department's determination of income eligibility for the payment of an outstanding water bill balance.

3710.2 This chapter also sets forth the Department's eligibility criteria for the payment of an outstanding water balance.

3711 APPLICATION PROCESS (CRIAC-ERRP)

3711.1 A person seeking assistance with an outstanding water balance under this program shall file an application with the Department.

3711.2 The Department shall prescribe the form of the application to be filed, and provide either a paper or electronic application, which shall be signed or electronically signed by the applicant. The application shall state that the willful making of a material false statement in the application carries criminal penalties in accordance with § 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405).

3711.3 An authorized representative may apply on behalf of an applicant if the applicant provides:

(a) A written and signed statement, or electronic signature, stating why the applicant cannot complete an application without a representative; and

(b) The name and address of the person authorized to act on the applicant's behalf.

3711.4 If requested by an applicant with a disability, or the representative of a person with a disability authorized pursuant to § 3711.3, the Department may assist the

applicant or representative with the aspects of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.

3712 ELIGIBILITY (CRIAC-ERRP)

3712.1 In order to be eligible for a benefit, the applicant household shall:

(a) Be financially eligible, determined by whether or not the applicant's annual household income is at or below one-hundred percent (100%) of the Area Median Income for the District of Columbia; and

(b) Be responsible for payment of DC Water's water and sewer services bill; and

(c) Reside in the District of Columbia.

3712.2 The applicant must be at least eighteen (18) years old or emancipated.

3712.3 A determination of financial eligibility shall be based on the gross income of the household.

3712.4 As a condition of eligibility, each applicant shall sign a release, or provide electronic acknowledgement, authorizing the Department to obtain or verify information necessary to process the application or for reporting purposes.

3712.5 Each applicant shall cooperate fully in establishing his or her eligibility, and the extent of the need, each of which shall include providing documentation or other proof of:

(a) Household composition;

(b) Income; and

(c) Any additional information that the Department may require.

3712.6 The Department may, to the extent otherwise consistent with District or federal law, obtain the information used in determining eligibility from:

(a) A document;

(b) A telephone conversation or interview for which notes are taken;

(c) Data from another government agency or utility provider;

(d) Internet data; and

(e) Other relevant sources.

3712.7 The eligibility and benefit determination will be completed within thirty (30) days after the Department receives a completed application, or, in the event of an unexpected or extenuating circumstance that affects the Department's ability to operate the Clean Rivers Impervious Area Charge Emergency Residential Relief Program (CRIAC-ERRP), such as a natural disaster, as promptly thereafter as possible, except that the following shall toll the timeline:

(a) An applicant's failure to supply information to document facts stated in an application;

(b) An inability to contact an applicant after three (3) attempts;

(c) Evidence of misrepresentation in an application;

(d) A failure to respond by a third party from whom the Department has requested information and over whom the Department has no control; or

(e) A delay in receipt of necessary information over which the Department has no control.

3713 BENEFITS (CRIAC-ERRP)

3713.1 The benefit amount is equal to the current outstanding water bill balance of the applicant on the day the application determination is made by the Department, if such balance is greater than ten dollars and equal to or less than two-thousand dollars. If the balance is greater than two-thousand dollars, the benefit is equal to two-thousand dollars. The Department may waive this requirement for extenuating circumstances, but in no case will the benefit amount be greater than the amount of the outstanding water bill balance.

3713.2 Benefits will, to the extent provided in an agreement between the Department and DC Water, be applied through a credit on the DC Water-assessed water and sewer bill after the Department transfers funds to DC Water for this purpose.

3713.3 The benefits shall be approved once per fiscal year (October 1 – September 30), unless the Department determines that remaining available funds are sufficient to provide multiple benefits per fiscal year.

3713.4 Nothing in this chapter shall be interpreted to mean that the benefit provided to eligible households by the Department is an entitlement, continuing or otherwise.

3713.5 If the Department determines that remaining available funds may be insufficient to provide benefits during a fiscal year, the Department may:

(a) Suspend the process of taking applications;

(b) Suspend the process of awarding benefits; or

(c) Revise the level of benefits to provide lower amounts.

3714 DENIAL, REDUCTION, OR REVOCATION OF BENEFITS (CRIAC-ERRP)

3714.1 If an applicant is determined ineligible for the program, the Department will provide to the applicant notice of ineligibility, to include:

(a) A statement of the determination of ineligibility and an explanation of that determination;

(b) A statement of the action that the applicant must take, if any, to be found eligible; and

(c) Notice of the applicant's right to appeal the determination, as provided in § 3715.

3714.2 If the Department determines that a prior eligibility decision for the program was based on material error, falsity, misrepresentation, concealment, omission, or fraud, the Department will:

(a) Reopen the application;

(b) Inform the applicant of the Department's intended action;

(c) Provide the applicant with a reasonable opportunity to respond; and

(d) Revise or revoke the determination of eligibility.

3714.3 The applicant shall not have a right to appeal a reduction, suspension, or revocation of the benefit based on a lack of available funding.

3715 ADMINISTRATIVE APPEALS (CRIAC-ERRP)

3715.1 With respect to a matter governed by §§ 3711 through 3714, an applicant adversely affected or aggrieved by an action of the Department may file a written appeal to the Director of the Department, or the Director's designee, stating the basis of the appeal, and providing any information or material that would support a change to the Department's action. The appeal must be filed within thirty (30) calendar days after receipt of the notice of the action.

3715.2 The decision of the Director or the Director's designee upon appeal shall become the final action of the Department. An applicant may seek review of that decision with, and request a hearing before, the Office of Administrative Hearings (OAH) within thirty (30) days of the Department's action. Prehearing practice and the conduct of the hearing shall be in accordance with the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801 *et seq*.) and the regulations set forth at Title 1, Chapter 28 of the District of Columbia Municipal Regulations.